

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 5 January 2011

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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 LAU KONG-WAH, J.P.

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE JOHN TSANG CHUN-WAH, G.B.M., J.P.
THE FINANCIAL SECRETARY

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

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

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

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

MS JULIA LEUNG FUNG-YEE, J.P.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE EDWARD YAU TANG-WAH, J.P.

SECRETARY FOR THE ENVIRONMENT

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

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Employees Retraining Ordinance (Amendment of Schedule 2) (No. 4) Notice 2010	173/2010
Statutes of The Chinese University of Hong Kong (Amendment) Statutes 2010	174/2010
Matrimonial Proceedings and Property (Amendment) Ordinance 2010 (Commencement) Notice	175/2010
Mutual Legal Assistance in Criminal Matters (Ireland) Order (Commencement) Notice	176/2010

Other Paper

Report No. 9/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Management of Waste Electrical and Electronic Equipment

1. **MR CHAN HAK-KAN** (in Cantonese): *President, some green groups have predicted that along with Hong Kong's economic recovery, coupled with the introduction of many new models of electrical and electronic equipment by manufacturers in recent years, including smart phones, tablet personal computers*

and high-definition television sets, which attract quite a number of consumers to purchase such equipment and dispose of equipment of old models, the amount of electronic waste in Hong Kong will increase. On the other hand, the Ministry of Environmental Protection announced that the Regulation on Disposal of Waste Electrical and Electronic Equipment (the Regulations) would come into operation with effect from 1 January 2011, which expressly stipulates that import of waste electrical and electronic equipment (WEEE) forbidden to be imported to the State is not allowed. In this connection, will the Government inform this Council:

- (a) of the respective quantities of WEEE generated, disposed of and recycled in Hong Kong in the past three years; among such waste, the quantity of recycled equipment exported to the Mainland and other major regions; as well as the equipment and raw materials involved;*
- (b) whether it has assessed if the implementation of the aforesaid Regulation by the State will reduce the avenues to export recycled WEEE from Hong Kong and increase the quantity of such equipment being disposed of in landfills; if the assessment outcome is in the affirmative, of the specific details, as well as the options to address the problem; and*
- (c) as it has been more than half a year since the authorities completed public consultation on the producer responsibility scheme (PRS) for WEEE, when the authorities will formally commence work on the introduction of the legislation concerned and introduce it into the Legislative Council for scrutiny, with a view to reducing the generation of WEEE at source?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, good morning. I have to thank Mr CHAN Hak-kan for his question.

As a consumption-oriented society, Hong Kong generates a significant amount of WEEE annually, which are still useful and with economic value. Moreover, the recycling value of WEEE is higher than that of other recyclable items; the treatment process could open up business opportunities. Last year,

the Environment Bureau conducted a consultation on implementing proper management of WEEE through the introduction of the mandatory PRS and actively planned to include WEEE in the PRS. One of the key objectives of the PRS is to arrange for local treatment of WEEE, as against the current export-dependant situation. Our reply to the three parts of Mr CHAN's question is as follows:

- (a) The amount of WEEE generated, disposed of and recycled in Hong Kong between 2007 and 2009 is tabulated below:

	<i>Generated</i> (<i>'000 tonnes</i>)	<i>Disposed</i> (<i>'000 tonnes</i>)	<i>Recycled</i> (<i>'000 tonnes</i>)
2007	70.1	11.1	59.0
2008	71.4	12.6	58.8
2009	72.0	7.7	64.3

As shown in the statistics, some 80% to 90% of WEEE now generated in Hong Kong is recycled, eventually leaving only a small amount being disposed of at landfills. The majority of WEEE recycled is shipped to developing countries for re-use and recovery. Products and recyclables involved are mainly television sets, refrigerators, waste plastic and waste metals. As to the export statistics, we do not have breakdown figures for individual export destinations. So, pardon me for failing to provide such figures.

- (b) In accordance with Article 35 of the Regulations promulgated by the State Council, the Regulations shall commence operation on 1 January 2011. With the key objective of introducing controls through a PRS, the Regulations cover mainly matters relating to the collection, recovery and disposal of WEEE within Mainland China. In addition, Mainland China has banned the import of WEEE for some years in order to stop the pollution problems arising from the influx of waste from the outside. Under Article 9 of the Regulations, WEEE that are prohibited from import by the State shall not be imported. This time, the aforesaid provision reaffirms the established import ban. But as indicated in the consultation

document on the PRS on WEEE that we published last year, the demand for second-hand products from other places in the world is expected to drop gradually; the import control on WEEE might also be progressively tightened internationally. We have therefore proposed to develop local treatment facilities by which we could avoid the bulk of WEEE being disposed of at landfills. In addition, many used products might be re-used after refurbishment and parts re-used or recycled. Eventually non-recyclable components in WEEE would be detoxified before they are eventually disposed of to ensure that they would not cause harm to the environment and human health.

- (c) We received 2 700 submissions during the public consultation on the PRS on WEEE. The community at large and the relevant trades are generally supportive. But since the scheme involves different aspects including the coverage of future regulation, flow management (including enhanced import and export control), proper treatment of wastes and sharing of costs, it is essential for us to conduct in-depth analysis and draw reference from the different experiences in other jurisdictions. We plan to engage the relevant trades in in-depth discussions later in the year on four key aspects, hoping that a specific proposal can be formulated. These aspects include the charging mechanism, the local treatment mechanism, import and export control as well as the support to the local recycling and treatment of relevant items. The Government will adopt this as the major item in the next stage of the PRS, and we hope that in addition to enhancing the recovery rate of WEEE, we may at the same time promote a locally-rooted recycling industry. The Government would strive to put in place the PRS on WEEE as soon as possible.

MR CHAN HAK-KAN (in Cantonese): *President, in the past, most of the electronic waste in Hong Kong was exported to the Mainland. But since the enactment of the relevant legislation in the Mainland, we have been told by certain recyclers that electronic waste in Hong Kong can no longer be exported to the Mainland. Basically, around 20 tonnes of electronic waste are stocked in*

the recovery sites daily. However, we noticed the Government say in its response to recyclers that laws and regulations in the Mainland would not affect the export of electronic waste from Hong Kong. I thus find it strange. Why would the understanding of the Government differ so greatly from the actual situation now faced by recyclers? Does the Government know in detail the operation of the recovery industry? At present, more than 20 tones of WEEE are stocked in recovery sites every day, how will the Government handle the waste? If we rely on the facilities in the EcoPark alone, will the problem faced by us now be solved?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, thanks to Mr CHAN Hak-kan for his supplementary question. First, regarding the new law just promulgated by the State Council, which I mentioned earlier, this is not a new practice indeed. As early as a few years ago, regulation was imposed on second-hand electrical equipment or WEEE to be imported into the Mainland. Hence, the trade has had knowledge of the present situation. We learnt from the trade in general that at present, this type of waste electrical equipment exported from Hong Kong will be exported to certain developing countries, such as Africa or Southeast Asian countries, but such exports to the Mainland are already subject to control now. Surely, Mr CHAN has raised the question of whether certain items will be transhipped to the Mainland illegally. However, this practice is not allowed under the law even today, and enforcement actions will be taken.

Nonetheless, this brings us to a wider issue. As I pointed out in the main reply, apart from the Mainland, other places will also tighten the relevant control gradually. At the same time, the market for second-hand electrical equipment is shrinking. For this reason, we have to encourage the handling of WEEE at source in Hong Kong, and that import and export control has to be imposed. Currently, we are dealing with this issue through a number of channels, including the one mentioned by Mr CHAN earlier, that is, to examine the feasibility of promoting recovery through the operation of social enterprises. Moreover, if these products have to be exported as second-hand products now, there are still some places to which these products can be exported for the time being.

MISS TANYA CHAN (in Cantonese): *Part (c) of Mr CHAN Hak-kan's main question is in fact crystal clear. He asked: As the consultation has been completed for some time, when will the Government introduce the legislation to the Legislative Council? We surely welcome the response given by the Secretary in part (c) of the main reply, which points out that the Bureau has set the directions, procedures and various areas of work, and knows how it should handle the problem, but are these not issues known long ago? When will the legislation be introduced to the Legislative Council for scrutiny?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Thanks to Ms CHAN for her supplementary question. Yesterday, when I talked about the future waste management strategy of Hong Kong, I gave particular mention to waste reduction and recovery, and that WEEE would be a key item in the work to be taken forward. As I mentioned in the main reply earlier, according to the views received during the consultation, the majority view is supportive of the overall direction, but for the charging methods, the views collected are diverse. We hope to finalize as our next step the specific implementation proposals in four aspects. These include, first, the imposition of charges, which has to be discussed with the trade; second, the establishment of a local treatment centre; third, the setting up of a regime on import and export control, which involves legislative amendments; and fourth, examination of the recycling channels. We hope that discussions with the trade can be carried out within this year, the next few months in particular, and once a specific proposal is confirmed, we will move on to drafting the legislation.

MISS TANYA CHAN (in Cantonese): *President, he has not given a direct answer. Surely, I noted from the paper that*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MISS TANYA CHAN (in Cantonese): *I mentioned in my supplementary question earlier that though the Secretary said the legislation would be introduced between 2012 and 2013, we hoped this could be done as soon as*

possible. So, does the Government have a firm date for introducing the bill to the Legislative Council? We are really eager for it.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I have made it very clear earlier that once the four aspects are confirmed, we will started the drafting work.

MS MIRIAM LAU (in Cantonese): *The Secretary was right. Since other countries, including the Mainland, will gradually cut their reception of waste electrical products, we should develop local treatment facilities. But the Secretary should understand that the treatment of waste electrical equipment is not that simple. Take disassembly as an example. As you mentioned earlier, toxin-free treatment must be carried out, and this is described by the trade as the detoxification process. But regrettably, our performance in this area is poor. At present, not much effort has been put in this aspect, and only a non-profit-making organization operating in the EcoPark is processing a small amount of such waste. If other countries stop accepting our waste electrical equipment and with the implementation of the PRS, what is our capacity in handling this type of waste? The most controversial issue in the consultation paper is not the imposition of charges. The trade has expressed many worries. Is Hong Kong capable of handling the large amount of waste electrical equipment? The consultation paper has mentioned little about this.*

May I ask the Secretary of the overall concept in handling waste electrical equipment, particularly in detoxification or the disassembly of components for recycling? If the authorities do not clarify issues in this respect, and the legislation introduced to the Legislative Council only involves the imposition of charges imposed, I think the relevant trade will have strong views.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Ms Miriam LAU's question has precisely answered the question asked by Ms Tanya CHAN earlier. At the next stage, we will hold in-dept discussions with the trade.

As for the issue of detoxification treatment, this will be one of the major topics in our discussions with the trade. If a treatment centre is to be established

in Hong Kong in future, it must be ensured that the disassembled parts meet environmental protection requirements and not pose hazards to bodily health and the environment. But this is not the only step. Moreover, we learnt from our discussions with the trade that if the international community discovers any component of certain electrical products contains toxic substance that will cause environmental issues in recycling, we may impose import and export control to deal with the problem. Hence, in the four directions mentioned by me earlier, the establishment of the treatment centre must meet environmental protection requirement. Moreover, if any kind of products will cause environmental concerns, import and export control must be imposed simultaneously. This will be one of the items for detailed discussion.

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

MS MIRIAM LAU (in Cantonese): *He has not answered my question. I believe an answer cannot be found by consulting the trade. May I ask the Secretary whether he has a comprehensive plan for handling waste electrical equipment? The consultation paper carries little mention of this. According to the overall concept of the Secretary, how will the work be taken forward? The trade cannot provide the answers to these questions to the Secretary. May I ask the Secretary of the plan in his mind for dealing with these issues?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, if a local treatment centre for waste electrical equipment is to be established, we must draw up a set of environmental protection standards. In fact, a set of standards has been adopted in the international community, so this is not a brand new issue to the industrial sector. In future, when we set up the treatment centre, be it operated by the Government or by a call of tenders, these standards must be established to address these relevant issues.

PROF PATRICK LAU (in Cantonese): *I am glad to hear the Secretary's remark that the number of electronic products needed to be recycled is great, which*

proves that these products have a market. Regarding the plan stated by the Secretary in part (c) of the main reply, from the point of view of the public, it is most desirable that when they purchase a new product, the suppliers or the shops selling the product will recover their old products. May I ask the Secretary whether it is possible? Has the Secretary considered this practice?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Regarding the four aspects I mentioned earlier, the last point is about recovery channels, which is exactly the point raised by Prof Patrick LAU. The future system will include recovery. In other words, apart from imposing charges and developing local treatment facilities, channels of recovery will also be taken into account, say, how the public can dispose of the old products upon the purchase of new ones. We will consider this aspect in our proposals.

MR CHAN KAM-LAM (in Cantonese): *I very much agree with the Secretary that we should identify ways for local treatment of waste electrical equipment, and the authorities may as well discuss with the trade on the actual implementation. However, in the past many years, when we discussed these issues with recyclers of waste paper or waste electrical equipment, they kept complaining that the Government had failed to offer support. Even though some people had proposed the options of granting government rent waiver or tax concession, the Government had not responded. Besides, the technical support rendered had also been minimal. May I ask the Secretary, in the future discussions with the trade on ways to address these problems, whether the authorities will introduce some policies with foresight, so that the trade will have greater confidence in the determination of the Government in implementing the proposals? Otherwise, despite the long time spent on discussions, they may still be facing major limitations in resources, technical support, legislation and various aspects, and our effort will be futile. A few years later, we may have to deal with these problems again, and the waste in question will eventually be disposed of in landfills, which is the last thing we would wish to see. May I know whether the Secretary has specific policies that will be implemented shortly?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): The details of the entire plan have been outlined in the consultation paper. This plan is different to the existing practice, for at present, a large quantity of this type of waste is exported after recovery. Why did I mention the four directions in particular earlier? Under the plan, the first direction is the imposition of charges, which will influence the behaviour of the public. The second direction is the establishment of the practice for local treatment, which leads to the third direction of imposing import and export control as a supportive measure. In other words, these items cannot be exported freely but will have to be treated in Hong Kong. The final direction is the overall recovery mechanism, and we will examine ways to encourage employees of the relevant trades to work with us in taking forward these tasks. This is a reflection of the PRS policy. On the one hand, policies on the management of the disposal of these items have to be laid down, so that when they are transported to landfills for disposal in future, they will be subject to control. On the other hand, it is hoped that financial incentives can be provided in implementing import and export control, so that certain products can be treated locally. We hope that through the various channels, as mentioned by Mr CHAN Kam-lam, these items will not be disposed of in landfills ultimately.

MR IP WAI-MING (in Cantonese): *As a number of colleagues followed up the issue that since we see that in the EcoPark During our talks with the recycling trade, we noticed that many people have the acquired technique but they receive no actual assistance from the Government on the sites required. We can notice from examples in places around the world, say Taipei, that government assistance is a must for development in this sector. The Government now says that import and export control will be imposed on electronic waste. May I know whether the Government has any figures indicating the quantity of electronic waste transported to Hong Kong via both legal and illegal channels? If there is such waste, and adding to it the quantity of local waste, the quantity of waste we have to handle will be colossal. Apart from the measures mentioned earlier, how will the Government handle such an enormous quantity of electronic waste?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, we impose legal control according to the international convention, the Basel Convention, which includes import and export management. At present, in Hong Kong, certain second-hand electrical equipment still usable can still be exported. But for materials obtained from disassembled waste electrical equipment, which are intended for shipment overseas for recycling, they are managed under the licensing and export licence system.

Mr IP asked whether there was illegal transshipment, but this is not allowed under the international convention and laws of Hong Kong. The authorities exercise control through law enforcement, where relevant items are seized every year, and some of the items returned. Some people may exploit the geographical location of Hong Kong to tranship items to the Mainland, but since this is not allowed under the law, so we will continue to enforce the law.

PRESIDENT (in Cantonese): Mr IP, has your supplementary question not been answered?

MR IP WAI-MING (in Cantonese): *May I ask whether the Government has the relevant figures? For we want to know, and as Mr CHAN Hak-kan mentioned earlier*

PRESIDENT (in Cantonese): What figures? Please repeat your supplementary question.

MR IP WAI-MING (in Cantonese): *Does the Government have figures on the quantity of waste electrical equipment illegally transhipped to Hong Kong and impounded here?*

PRESIDENT (in Cantonese): Mr IP, you are asking for the figures on the quantity of waste electrical equipment transported to Hong Kong from overseas, am I right?

MR IP WAI-MING (in Cantonese): Yes.

PRESIDENT (in Cantonese): I heard earlier that you seemed to be asking about the figures on the quantity of waste electrical equipment transported to Hong Kong legally or illegally. Secretary, do you have the relevant figures?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, for waste transported to Hong Kong via illegal channels, we certainly do not have the official figures, for no reports will be made to us. However, we have figures on cases discovered in enforcement actions every year. For instance, between 2007 and 2009, there were 276 prosecutions, and the amount of noxious electronic items transhipped and seized ranged roughly from tens of tons to several hundred tons each year, and in certain cases, the items had to be returned in the same ships. We noticed that the figures in 2007 and 2008 were higher but reduced in 2009. For example, in 2007 and 2008, we had initiated prosecutions in more than 100 cases, but in 2009, it had dropped to 50-odd cases, and the figures on the amount of items seized reflect the same pattern.

PRESIDENT (in Cantonese): We have spent 23 minutes on this question. Second question.

Reverse Mortgage Pilot Scheme

2. **MR ALAN LEONG** (in Cantonese): *President, the Hong Kong Mortgage Corporation Limited (HKMC) earlier announced the launching of a pilot scheme on reverse mortgage (reverse mortgage scheme) as a measure to tackle the problem of ageing population. While the banking industry has expressed support for the scheme, some members of the public are worried that the reverse*

mortgage scheme might not be able to achieve the goal of "making use of residential properties to provide for the twilight years of the elderly". In this connection, will the Government inform this Council:

- (a) given that some elderly people are worried that the buildings in which they are residing are too old, the appraised value of their properties will therefore be on the low side, the monthly annuity payments receivable under the reverse mortgage scheme will as a result be very small, coupled with the requirement that they have to bear the maintenance costs of the properties, thus it is difficult for the scheme to effectively support their post-retirement life, in the face of the above concerns of the elderly people, of the role the Government will play in implementing the reverse mortgage scheme so as to build up a reverse mortgage market which is fair and sustainable, and to ensure that the twilight years of the elderly people who participate in the scheme will be provided for;*
- (b) given that according to experience in foreign countries, quite a number of the elderly people participating in reverse mortgage schemes have fallen victim to investment pitfalls because they are not conversant with financial operations such as mortgage investment, and so on, and have become heavily indebted eventually, what measures the Government will adopt to ensure that, in the processes of valuation, negotiation and renewal of terms with banks, elderly people who are eligible for the scheme will be protected in a sustained and reliable manner, so as to prevent them from falling victim to investment pitfalls; and*
- (c) given that the purchasing power of the annuity payments received by the elderly people under the reverse mortgage scheme will diminish as a result of inflation, whether the Government will consider linking the scheme with inflation, so as to better protect the elderly; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the reverse mortgage pilot scheme to be launched by the HKMC is in essence a financial arrangement. It aims to provide the elderly with

an additional choice, so that they can use their properties as collateral to borrow reverse mortgage loans from banks and receive a fixed amount of cash loan every month (that is, annuity payment) for a fixed period or over their lifetime as supplementary funds to improve their standard of living. Meanwhile, the elderly can continue to live in their properties for the rest of their lives.

According to a survey conducted by the HKMC with 1 005 elderly people a few months ago, about 44% of the respondents supported the introduction of reverse mortgage in Hong Kong and almost a quarter of the respondents indicated that they would consider participating in reverse mortgage. It shows that there is demand for reverse mortgage in Hong Kong.

I will address the three parts of the main question raised by Mr LEONG one by one.

- (a) For part (a) of the main question, reverse mortgage is a voluntary financial arrangement which provides the elderly with an additional choice. The pilot scheme to be launched by the HKMC will operate on the basis of market orientation and prudent commercial principles. The HKMC will strike a balance between the needs of the elderly and the risks to the banks as well as the insurer (that is, the HKMC) when developing the details of the reverse mortgage pilot scheme. Apart from examining overseas experience in reverse mortgage, it will take into account the unique circumstances in Hong Kong, including the higher volatility of local property prices, the increasing life expectancy in Hong Kong, the possibility of the currently extremely low interest rate going up, and so on. Under the reverse mortgage pilot scheme, the HKMC will act as the insurer to reduce the risks to the banks and the elderly. This can help encourage banks to explore the new market of reverse mortgage.

Under the reverse mortgage pilot scheme, there will be established procedures for conducting property valuation, which will be done by recognized professional surveyors. With regard to property maintenance, the elderly will still have to bear the responsibility and the cost of it even if they do not apply for reverse mortgage. The Government and some other non-government or public organizations

(for example, the Hong Kong Housing Society and the Urban Renewal Authority) currently provide different schemes to help needy homeowners conduct property maintenance.

The Government will continue to keep a close eye on the housing needs of the elderly, and promote and encourage the implementation of measures and policies on tackling the problem of ageing population and the maintenance as well as renewal of buildings.

- (b) For part (b) of the question, first of all, it is necessary to clarify again that reverse mortgage is just a special mortgage loan arrangement which does not incur any investment gain or loss. The amount of the appraised value of the properties will of course affect the amount of annuity payment. However, any surplus after deducting the outstanding loan principal, accrued interest, insurance premium and other applicable fees from the proceeds from the property disposal will be given to the inheritor(s) of the elderly. On the contrary, if the proceeds from the property disposal cannot cover the outstanding loan balance for any reasons, the HKMC will compensate the shortfall to the banks so that the elderly and their families will not have to bear the burden. In addition, once the amount of annuity payment has been confirmed, it will not be reduced or suspended over the term of the reverse mortgage so as to provide a good protection to the elderly. The HKMC is also studying the possibility of engaging independent professionals to offer pre-sale counselling services for the reverse mortgage applicants, so that the elderly can fully understand their rights and obligations before drawing a reverse mortgage loan. The more successful reverse mortgage schemes in other countries also provide such counselling arrangement. The HKMC is now in discussion with The Law Society of Hong Kong the development of an effective module to engage lawyers to help interested elderly understand the details of the pilot scheme.
- (c) For part (c) of the main question, in developing the details of the reverse mortgage pilot scheme, the HKMC mainly takes into account the long-term trend and volatility of local property prices, the trend

of interest rate, the life expectancy of the elderly population, and so on. The amount of annuity payment, once confirmed, will not and should not be increased or decreased over the term of the reverse mortgage. Otherwise, it will be hard to provide a stable and reliable stream of cash loan for the elderly to improve their standard of living while remaining in their residence. At the moment, the HKMC has no plan to offer a reverse mortgage scheme with floating annuity payment linked with inflation rate.

MR ALAN LEONG (in Cantonese): *President, part (a) of my main question actually asked the Government what role it would play to make this scheme more viable. The Secretary's main answer seems to suggest that the HKMC will act as the insurer on behalf of the Government. May I ask the Secretary to elaborate more clearly so as to give this Council a better idea of the operation of this insurance scheme? Will the HKMC make an undertaking that the banks will not incur any losses, or will other arrangements be made? I would like to have a better idea.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): *President, the banks mainly ensure that, after the disposal of the properties upon the death of the elderly, if the values of the properties are found to be higher than the amounts of loans drawn by the elderly during their lifetime, the surplus will be given to their inheritors. Actually, the amount of loan obtained by the elderly is the total sum of monthly annuity payments they have received, including interest and insurance premium. Upon the disposal of the properties, the banks will give any surplus after deducting the annuity payments, insurance premium and accrued interest from the proceeds from the property disposal, that is, after the payment of the loan principal, interest, insurance premium and administrative fees, to the inheritor(s) of the elderly. In fact, the banks are only doing business, regardless of the rise and fall of property prices. The amounts of interest and loan to be recouped by the banks depend on the amounts of loans drawn by the elderly.*

With regard to insurance premium, what protection will be offered? Even if property prices have fallen at during the disposal of the properties, as Members

should be aware of the occasional volatility in the local property market, and the price of the property sold is lower than the total sum of the loan payment, interest and insurance premium, the shortfall will be met by the HKMC. The inheritor(s) of the elderly will not be held responsible. Hence, the reason for paying insurance premium and taking out insurance is that the elderly are not required to repay the loan principal and interest during their lifetime. The calculation of all the accounts will not be done until the disposal of the properties upon the death of the elderly.

MR LEE WING-TAT (in Cantonese): *President, according to part (a) of the main reply, this scheme will operate on the basis of market orientation and commercial principles. I can already predict two scenarios as follows: First, the valuation conducted by the banks and the HKMC will be very conservative, so as to ensure that they will not incur any losses; and second, both of them have to make profits. Hence, from this perspective, the annuity payment thus receivable by an elderly participant will definitely be much lower than the amount of annuity receivable by him if he sells his property and divides the proceeds from the property by 20 or 25 years to support his living for the rest of his life. Nevertheless, the elderly in Hong Kong do not prefer selling their properties and then depositing the proceeds from the selling of their properties into the banks and withdrawing one twenty fifth part of the deposit every year for their use.*

Such being the case, may I ask the Secretary what the appeal of the scheme is? The Secretary should not think that the elderly are not smart. They are very smart indeed. They will find out after doing some computations that the banks and the HKMC are eating into their money. They will not participate in the scheme, will they? Furthermore, do the practice and principle of operating on the basis of market orientation and commercial principles afford no room for discussion? I am not asking the Secretary to offer subsidies, but will this overriding principle become a constraint on the entire scheme?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Regarding the question raised by Mr LEE, it is actually impossible to draw a comparison between the two issues in terms of an elderly person's participation in the reverse mortgage scheme and a decision made by him to sell

his property today. If an elderly person sells his property today, he can certainly obtain a sum of money. However, this sum of money has to be used to meet his living expenses for the many years to come. As he no longer possesses a property, he must first of all use some of his money to rent a flat for self-occupation and then examine if the remainder is enough for him to maintain a cash flow for the rest of his life. Therefore, the elderly must take into account the various benefits brought about by this scheme. For instance, one can receive a regular income. Although Mr LEE considers that the relevant sum of money may be negligible, it is actually a loan. The monthly annuity payment receivable represents the amount of loan drawn by an elderly participant from the bank. The amount of loan can improve his living, and he can at least receive a sum of money monthly. It is very difficult to compare this with another option, that is, renting a flat for self-occupation after selling one's property.

The Honourable Member is mainly concerned about whether the scheme should operate on the basis of commercial principles, and it appears to me that Members do not think that subsidies should be offered. First of all, the scheme is not a welfare arrangement. It merely provides the elderly with one more financial option, so that they can consider whether they should participate in the scheme. Therefore, we consider it appropriate to operate the scheme on commercial principles.

MR CHAN KIN-POR (in Cantonese): *President, the elderly are very concerned about inflation. The Secretary indicated in the main reply that the products of the scheme would not be linked with inflation by offering floating payments. I believe, however, if the scheme can be linked with inflation in a certain manner, its products will become more appealing and the elderly will enjoy greater peace of mind. My supplementary question is: If the prices of the properties rise sharply several years after the participation of the elderly in the scheme, can the Government or the HKMC consider increasing their annuity payment to enable them to fight against inflation? I believe the products will become more appealing if the Government can achieve this. Will the Government do this?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): *President, the HKMC will actually bear substantial risks in launching*

this scheme, including the interest rate risk, for the trend of interest rate is unknown. The prevailing interest rate, being extremely low, will definitely rise in the future. The loan interest payable by the elderly will also increase in the future subsequent to the rise in the interest rate. The loan amount will also increase when the elderly sell their properties in the future. In addition to the interest rate risk, there will be the risk resulting from volatility in property prices and various other risks. The risks in terms of figures will increase accordingly should the annuity be linked with inflation.

Furthermore, the participation rate might not be very high during the initial launching period of the scheme. Insofar as the HKMC is concerned, the number of elderly persons and members of the public participating in the scheme must be large before a balance can be struck in the relevant ratios. Hence, I believe after the number of applications for reverse mortgage has reached a certain level and the accounts of the entire scheme have been put on the right track, the relevant authorities will constantly review if the annuity payments can be adjusted upward and if more concessions in loan interest rates can be provided in various ways.

MS EMILY LAU (in Cantonese): *President, it is a good deed to make an additional arrangement in relation to the problem of ageing population, so as to provide the elderly with an additional choice. I hope the Government can really achieve this.*

The Secretary indicated in the main reply that the elderly could opt to receive the loan payment for a fixed period or over their lifetime. May I ask the Secretary, insofar as the experience in foreign countries is concerned, if there is a large number of people who opt to receive loan payments for a fixed period? Because I thought that all participants would receive loan payments for the rest of their lives, but now I find that the payments can be halted abruptly over the term of the reverse mortgage. As the Secretary said that the objective of this scheme is to improve the standard of living, what are the reasons for making this arrangement? I hope the Secretary can give us an explanation and tell us if the scheme has any flexibility. For instance, can the elderly make a fresh request for receiving the annuity payments if they suddenly find themselves in a poor

financial situation after ceasing to receive the payments? Will the amount of annuity payments receivable by then be reduced?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the participants can opt to receive their loan payments over a period of 10 years, 15 years, 20 years or over their lifetime, as mentioned by the Honourable Member just now. If a participant wishes to extend his mortgage period after the termination of a 10-year loan period or over the term of the reverse mortgage, such as five years after receiving the loan payment, he may first repay his loan and then submit an application in accordance with the general mortgage terms and conditions. In other words, he may first terminate his existing contract and, after calculating the loan amount and repaying it, enter into a new contract. He may opt for this flexible approach.

MS EMILY LAU (in Cantonese): *My question is: According to the experience in foreign countries, will many people opt for a medium rather than lifelong loan period and then submit a fresh application after the termination of the loan period?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): We have made reference to the experience in a few regions, such as Korea, the United States, and so on. As the schemes in these regions are not entirely identical, we have not yet made any comprehensive assessment, and thus we are unable to say which kind of tenure is more popular. However, the monthly annuity payments receivable will vary according to different loan periods. Basically, the shorter is the period, the higher the annuity payment. Only in doing so can we provide a choice to the elderly. Certainly, this will also depend on the age of the elderly. Whereas a 60-year-old participant may receive a lower annuity payment, a 70-year-old may receive a higher payment.

MR FREDERICK FUNG (in Cantonese): *President, geared towards ensuring secure living for the elderly, this scheme basically concerns the lack of working capability and meagre income of the elderly. People with a high income and*

enormous assets will not need to participate in this scheme. Therefore, I think the applicants will come mainly from low-income households.

In my opinion, two levels must be taken into consideration in determining the amount of monthly annuity payment provided to the elderly under the reverse mortgage scheme. The first one is the Comprehensive Social Security Assistance (CSSA) level. A participant had better apply for CSSA if the annuity payment he will receive is even lower than the CSSA payment. The second one is the minimum wage level to ensure that the reverse mortgage scheme is meaningful. To meet these two standards, the relevant property must have a minimum value before its owner can receive a certain amount of annuity payment. Will the Government consider two factors which will affect the significance of the scheme? The first factor concerns whether the value of a property makes it worthwhile to make an arrangement for reverse mortgage in relation to the property to enable the elderly to receive a meaningful monthly annuity payment. The second factor concerns inflation because, judging from the prevailing circumstances, if inflation continues to rise, it will still be meaningless, even if the CSSA level is set at \$3,500, as the relevant purchasing power will continue to shrink whereas the scheme will not allow increases in annuity payment.

My supplementary question is: In order to ensure that the reverse mortgage scheme remains meaningful to the elderly, first, will the Government encourage only elderly persons with properties valued at above a certain level to apply for participation in this scheme? Second, given inflation, can the Government — I am talking about the Government — compensate to the elderly the shortfall arising as a result of inflation?

PRESIDENT (in Cantonese): Mr FUNG, you have raised two supplementary questions.

MR FREDERICK FUNG (in Cantonese): *No, the scheme is meaningful only when it can ensure secure living for the elderly, though it has two possibilities.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): In respect of the considerations suggested by Mr FUNG, we have not drawn any bottomline for the property prices by prescribing the minimum property value for an application to be made. On the contrary, the ceiling of \$8 million has been imposed on the property prices. This means that a property with a price tag of more than \$8 million will still be evaluated as \$8 million at the most, for the purpose of determining the loan amount. However, no minimum limit has been imposed. Even if a property is worth \$500,000 or \$1 million, consideration will still be given according to its valuation.

With regard to minimum wage, insofar as the elderly are concerned, the cash flow is meant to improve their living standard. People participating in this scheme are actually applying for loans from the banks. Hence, whether or not the annuity payments receivable by the elderly will exceed the level of minimum wage is not a major consideration, because the elderly are actually borrowing from the banks in the manner of home mortgages.

As regards the issue of CSSA, we are discussing whether or not the annuity payment receivable by the elderly should be included as income under CSSA. However, the payment will not affect their "fruit grant" because this sum of income needs not be taken into account for the purpose of calculating income.

MS STARRY LEE (in Cantonese): *First of all, President, I have to declare that I am a director of the HKMC.*

Reverse mortgage seeks to turn properties into cash, thereby achieving the objective of "making use of residential properties to provide for the twilight years of the elderly". It is worthy of support because an additional choice can then be provided to the elderly. Properties are the biggest investments for both Hong Kong and Chinese people. If their properties can be encashed, this scheme is worthy of support. However, the Bureau has to make this scheme more attractive. According to the information provided by the Bureau, if an elderly person applies to a bank for a mortgage with a property worth \$1 million, his monthly income may range from \$1,800 to \$4,600, depending on his age and the period of annuity payment he has selected.

If \$4,600, the maximum monthly annuity payment, is multiplied by 12 months and then 10 years, a participant can actually receive a total of \$552,000.

Compared with \$1 million, there will still be a discount of \$448,000. To my understanding, the reason for the substantial discount is that the elderly person is not required to pay rent and so he can continue to live in his property. But judging from the figures, the valuation is indeed on the conservative side. Just now, a number of Members asked whether the annuity could be linked with inflation or even rising property prices. May I ask the Secretary again if he has found out, in the course of studying this scheme, whether any changes were seen in annuity payments under reverse mortgages in different regions as a result of linking with inflation and rising property prices?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the problem is how to make the scheme more attractive, because even if the evaluation is based on \$1 million when a loan is drawn, only a \$400,000-odd loan can be secured if 10 years are used as the basis for the calculation of the loan period

PRESIDENT (in Cantonese): Secretary, the question asked by the Member is: In the experience in foreign countries, is there any case of link the annuity payment with inflation?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Right, I was answering the question. Insofar as experience in foreign countries is concerned, we find that there is a similar scheme in Korea. If property prices really rise substantially, we may consider allowing the elderly to terminate their contracts and then make a fresh application. Should property prices soar from \$1 million to \$2 million, one may first terminate his contract and then make a fresh application for another loan contract. In this way, he can boost his monthly annuity payment.

MS STARRY LEE (in Cantonese): *President, my question is*

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

MS STARRY LEE (in Cantonese): *Yes, the Secretary has not answered my question. My question is: Is there any experience in foreign countries where the annuity payment is linked with inflation or rising property prices? If such information is not available at the moment, can the Secretary provide us with the supplementary information after the meeting?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I will provide the supplementary information after the meeting. (Appendix I)

PRESIDENT (in Cantonese): We have spent nearly 24 minutes on this question. Third question.

Measures to Support Education of Children from Low-income Families

3. **MS AUDREY EU** (in Cantonese): *President, with regard to the education of children from low-income families, will the Government inform this Council:*

- (a) *of the policies that the authorities have put in place to support the education of children from low-income families to facilitate the upward mobility of these children in today's knowledge-based society; of the details of such policies;*
- (b) *whether the Government has compiled statistics on the numbers and percentages of children from families of various income groups who received university education for the past five years; if so, of the details; if not, the reasons for that; and*
- (c) *whether the Government will consider flexibly reducing the teacher-to-student ratio of schools in districts with more low-income*

families (such as Tin Shui Wai) or schools with more students from low-income families; if so, of the details; if not, the reason for that?

SECRETARY FOR EDUCATION (in Cantonese): President, my reply to the Ms EU's questions is as follows:

- (a) The Government's student financial assistance policy is to ensure that no student is denied access to education due to lack of means. At present, the Student Financial Assistance Agency (SFAA) administers various means-tested and non-means-tested financial assistance schemes to provide assistance to pre-primary children, primary and secondary students, post-secondary students and other people pursuing continuing education. In the 2009-2010 school year, the SFAA disbursed over \$3.5 billion of means-tested financial assistance and \$1.2 billion of non-means-tested loans.

At the pre-primary education level, the Government introduced the Pre-primary Education Voucher Scheme in the 2007-2008 school year to provide parents of children attending eligible local non-profit-making kindergartens with non-means-tested fee subsidy. Families with financial difficulties may also apply for additional fee remission under the Kindergarten and Child Care Centre Fee Remission Scheme.

As for primary and secondary education, apart from the provision of 12-year free education since the 2008-2009 school year, primary and secondary students from needy families may also apply for assistance under relevant means-tested financial assistance schemes to meet various education-related expenses.

At the post-secondary education level, the Government has in place two means-tested financial assistance schemes, that is, "the Tertiary Student Finance Scheme — Publicly-funded Programmes" and "the Financial Assistance Scheme for Post-secondary Students", to provide eligible students pursuing publicly-funded and self-financing, locally-accredited post-secondary programmes respectively with non-repayable grants to cover tuition fees and

academic expenses as well as low-interest loans to meet living expenses. In addition, the Government also provides Non-means-tested Loan Schemes to provide these students and other students pursuing continuing education with non-means-tested loans to facilitate their academic pursuits. The Financial Assistance Scheme for Designated Evening Adult Education Courses and the Tuition Fee Reimbursement for Project Yi Jin Students administered by the SFAA also offer fee assistance in the form of tuition fee reimbursement.

- (b) The Government does not enumerate the number of persons enrolled in degree courses by household income. However, we have attempted to estimate the number and percentage of persons enrolled in degree courses in and outside Hong Kong by monthly household income in the past five years, based on the General Household Survey of the Census and Statistics Department. Details are tabulated at Annex.
- (c) All along, having regard to the different needs of students, we have been providing schools with additional resources and teachers to improve the quality of education. We have provided additional teachers for those schools which admit Bottom 10% and Band 3 students. Schools can, based on their own needs, deploy flexibly the additional teachers to facilitate a whole-school approach to supporting the academically less accomplished students and, with a view to providing early intervention, arrange for small group teaching of core subjects.

We do not consider it appropriate to adjust across-the-board the teacher-to-student ratio of individual districts according to the proportion of low-income families. This would not only fail to target schools in need but would also cause uneven allocation of resources and create labelling effect on the districts concerned. In fact, the teacher-to-student ratio of public sector primary schools has gradually improved from 1:22.0 in the 2000-2001 school year to about 1:15.2 in the 2010-2011 school year, and the teacher-to-student ratio of public sector secondary schools has also gradually improved from 1:18.5 to about 1:15.4 during the same period.

Number of persons⁽¹⁾ aged 19-23 in domestic households enrolled in degree courses by monthly household income, 2005 - 2009

Monthly household income (HK\$)	2005		2006		2007		2008		2009	
	Estimated number	As percentage of total number of persons	Estimated number	As percentage of total number of persons	Estimated number	As percentage of total number of persons	Estimated number	As percentage of total number of persons	Estimated number	As percentage of total number of persons
< 10,000 ⁽²⁾	13300	16%	11900	15%	11900	14%	11700	14%	14000	15%
10,000 - 19,999	26400	32%	23900	30%	24900	30%	23700	28%	26800	28%
20,000 - 29,999	16400	20%	16600	21%	17600	21%	18800	22%	18600	19%
30,000 - 39,999	8300	10%	10100	12%	9800	12%	10400	12%	11800	12%
≥ 40,000	18100	22%	18200	23%	19700	23%	21100	25%	24300	25%
Total	82600	100%	80600	100%	83800	100%	85600	100%	95400	100%

Notes: (1) Covers the land-based non-institutional population of the Hong Kong Resident Population but excludes foreign domestic helpers. Persons who are studying degree courses outside Hong Kong and are members of the Hong Kong Resident Population are included.

(2) Includes households without employed persons, e.g. households that consist of economically inactive elderly persons or retired persons only.

(3) Figures may not add up to the totals owing to rounding.

Source: General Household Survey, Census and Statistics Department

MS AUDREY EU (in Cantonese): *President, the Government states that the information in the Annex provided is estimates. Of course, I have no idea whether or not such estimates by the Government are accurate, but as evident in these estimates, insofar as families with a monthly income of \$30,000 are concerned, the percentage of their children enrolled in universities has been rising ever since 2005. However, for families with a monthly income of less than \$30,000, the percentage of their children enrolled in universities has been falling all the time.*

President, as a matter of fact, the reason for me asking this oral question is that I am very worried that the problem of the disparity between the rich and the poor is worsening. This applies especially to the upcoming education system, that is, the 3-4-4 academic structure, which stresses greatly on extra-curricular activities or OLE (Other Learning Experience). Such activities require a lot of resources. Then how are the authorities going to assist the children of these low-income families and help them break away from poverty? This actually depends very much on whether or not the authorities can render assistance to them in education. Let us look at these figures again. The chances of the children from these low-income families enrolling in universities are much smaller. So may I ask the Secretary whether there are any special means or specific measures to help these low-income families to ensure that they can have at least one child enrolled in a university? The Civic Party suggests that there should be measures to ensure that the first child in any family can enrol in a university free of charge or such similar measures should be adopted. Does the SAR Government have ever considered such measures?

SECRETARY FOR EDUCATION (in Cantonese): *President, as I have said in the main reply, these data are deduced from the General Household Survey. Based on the family income groups, we obtained the number of persons studying in Hong Kong or abroad during the past five years. The data do not merely cover the number of persons studying in Hong Kong but also those studying abroad. So we do not know what is the difference between the number of those studying in Hong Kong as compared to these figures. However, a common sense estimate would be families with a higher income would tend to send their children abroad for studies. With respect to the figures available now, we have to be careful because there could be such differences. Of course, our figures are*

not distinguished in this way. But since there is so such distinction in the figures, and given the possibility of such differences, by common sense, families with a higher income would have a greater chance of sending their children overseas for studies. If we take away this substantial proportion, I would think that the figures of persons studying in Hong Kong from families of different income groups would be more or less the same.

As to whether there is any policy of enabling the first child from poor families to study in a university, we do not have such a policy at present. However, as I have made it clear in the main reply, the present policy is, irrespective of whether the child concerned is the first or the second in the family, provided that he or she has got the academic qualifications or eligibility, if his or her family has stringent financial circumstances, we do have various kinds of financial assistance schemes in place. First, we will provide assistance in tuition fees. Second, with respect to living expenses, we will lend loans to the students to enable them to maintain their living. Therefore, it does not matter if the student is the first or second child in the family, provided that he or she has the abilities, we have various schemes to enable him or her to continue with his or her studies.

MR ALBERT HO (in Cantonese): *President, I believe Members must have met some working young people who tell us that when they were young, that is, at school age, it might be due to their love for fun that they did not do well in school, but when they started to work, they realized that they were inadequate and so they wanted to pursue studies again. What they ask for are not things like the Youth Pre-employment Training Programme or vocational training, but they want to enrol in a grammar school and strive to enter a university. So they want to study in an evening school in the hope of studying Secondary Three or Four again and later take a public examination. But we do not have any financial assistance scheme for evening schools and evening schools are not free. I know that the Financial Assistance Scheme for Designated Evening Adult Education Courses mentioned by the Secretary, but those courses are not the evening secondary schools I am talking about. Of course, there are also those new arrivals to Hong Kong and they have missed the chance of studying in grammar schools because of the ups and downs in life. May I ask the Government, since our existing policy is the provision of 12 years of free education so that students*

can study in a university eventually, why evening secondary education cannot be provided for free?

If the Government is worried about the possibility that working adults will not persevere in their studies in the evening after working for eight hours a day, or that the attendance rate will be very low and the withdrawal from studies rate will be very high, hence resulting in a waste of public money, then we can prescribe some criteria such as only those with an attendance rate of 80% are eligible for full subsidy and they have to pay the tuition fees in advance, and so on. All these can be considered. Will the Secretary consider providing fully subsidized evening secondary education so that these people who have missed the chance to study when they were young but have awakened to the need to study later on can pursue their studies and enter a university eventually?

SECRETARY FOR EDUCATION (in Cantonese): Currently, we have the Financial Scheme for Designated Evening Adult Education Courses. The aim of the Scheme is to provide the tuition fees or refund the tuition fees for qualified persons enrolled in such courses. The eligibility criteria are that the person concerned must be a resident of Hong Kong aged 17 or above and enrolled in an evening course offered by a designated centre commissioned by the Education Bureau. The means test mechanism concerned is in line with other adjusted family income tests and the amount of subsidy is divided into half remission and full remission. As Mr HO has just said, we have certain requirements. If a person has an attendance rate lower than 80% but not less than 60% and if he passes in all the subjects for the academic term concerned and can produce a certificate of proof such as a medical certificate, he may be waived the remaining 20% attendance rate. We will grant him the subsidy.

MR ALBERT HO (in Cantonese): *President, he has not answered my question directly and that is, can efforts be made to bring this in line with our policy of 12-year free education, that is, people can basically be enrolled in an evening secondary school free of charge if they meet the requirements? Put simply, can they be enrolled in evening schools if they meet the requirements?*

SECRETARY FOR EDUCATION (in Cantonese): I think this does not come under the scope of the Scheme I am talking about. But we do have financial assistance schemes available and if the attendees can meet certain requirements, they are eligible for half or full remission.

MR RONNY TONG (in Cantonese): *I think the Secretary has not answered part (a) of the question raised by Ms Audrey EU. The thrust of the question is social mobility. The answer given should not be concerned about the provision of free education, but about how education of better quality can be provided instead so that they can be better qualified to study in a university in Hong Kong. Ms EU pointed out earlier that as evident in the figures, social mobility at present is indeed on the low side and there have been newspaper reports of late about the social mobility now being far lower than at the time when we, that is, when you President and I, were at school. So the thrust of the question is about that. Does the Secretary have any long-term policy on it? The recent row over Direct Subsidy Schools shows that the Education Bureau and the Direct Subsidy Schools do not care the least about the poor students. Can the Secretary provide some more direct and focused measures to help poor students equip themselves and hence facilitate social mobility?*

SECRETARY FOR EDUCATION (in Cantonese): As I have pointed out in the main reply, in terms of increasing social mobility, we will provide barrier-free access to all students so they can enrol in schools according to their abilities. If they do have the abilities, we will not bar them from entering a school due to their lack of means or deprive them of the chance to study and hence reduce upward social mobility. Now our subsidy schemes do not just cover tuition fees, but also expenses in other areas such as living expenses. We will act according to the circumstances and make out loans to those in need. As to the question of whether they can eventually study in a certain school or not, I would think that depends on their academic results. If their results meet the requirements, our policies already suffice in catering for all their needs.

PRESIDENT (in Cantonese): Has the Secretary not answered your supplementary question?

MR RONNY TONG (in Cantonese): *He has not answered the thrust of my supplementary question.*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MR RONNY TONG (in Cantonese): *President, it is not just about the granting of subsidies, but how students can be helped in being enrolled in schools of better quality to equip themselves so that they stand a greater chance of studying in a university. President, this is my supplementary question. It is not about things as simple as granting a subsidy to students to enable them to study in a school. I hope the Secretary can grasp the thrust of the question.*

SECRETARY FOR EDUCATION (in Cantonese): As a matter of fact, the subsidies given by us are applicable to all schools and universities. All of them will be offered subsidies and we do not prescribe that only good universities will be given the subsidies and those universities of a poorer quality will not be given any. Our policy is to give subsidies to all universities. If the students have the abilities to be admitted to a certain university and hence have a chance of upward social mobility, we will pay out financial assistance to them. We will not impose any obstacles to bar certain kinds of people from entering certain schools. I think I have answered the supplementary question from Mr TONG.

MS STARRY LEE (in Cantonese): *President, now if young people want to move up the social ladder, apart from winning in the races of life and receiving basic education as the Secretary has said, as we all know, they will also need to acquire many different learning experiences. If anyone wants to knock on the door of an elite school, he will have to master a sport and an artistic pursuit. In our past contact with many low-income families, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) learnt that the greatest problem faced by their children in education was the lack of surplus money to enable their children to attend tutorial classes or take part in extra-curricular activities. The DAB has raised the demand with the Government many times, that the Government should provide an allowance to poor students for them to take part in extra-curricular activities. But the Government has not made any response to*

date. I hope the Financial Secretary can respond to that on this occasion. May I ask the Secretary if he has conducted any survey to understand in what areas in relation to education low-income families want the most to get help from the Government? Only when this is done can the problems be addressed and remedies provided to help their children move up the social ladder.

SECRETARY FOR EDUCATION (in Cantonese): We know very well that education does not simply mean attending classes. There should also be other matching facilities, such as after-school learning activities like extra-curricular activities and interest classes. In line with our poverty alleviation policy, since 2005 the Education Bureau has introduced School-based After-school Learning and Support Programmes to enable schools and NGOs to organize extra-curricular activities. This will provide after-school support to poor students to enhance their learning effectiveness, enrich their learning experience outside the classroom and enhance their awareness of society and their sense of belonging. As a matter of fact, there is great diversity in extra-curricular activities and they include after-class homework assistance and cultural and artistic activities, sports activities, leadership training, voluntary service, skills training and visits. To further increase such learning opportunities, the Government has increased substantially the current annual provision for School-based After-school Learning and Support Programmes by \$100 million, that is, from \$75 million to \$175 million. So we hope that much more efforts can be made so that schools can organize such activities as I have said, and when the scope of such activities is widened and more efforts are made, more people will stand to benefit.

PRESIDENT (in Cantonese): Is your supplementary question not answered?

MS STARRY LEE (in Cantonese): *President, the Secretary has not answered my supplementary question. This is because I asked earlier whether any survey had been conducted to understand in what areas parents need most assistance from the Education Bureau. And as far as I know, when poor students take part in school-based extra-curricular activities, they will also need to pay the fees.*

Has the Secretary conducted any survey to learn about the areas where parents want help from the Bureau the most in order that solutions can be found?

SECRETARY FOR EDUCATION (in Cantonese): We have not conducted any formal survey. But with respect to fees, other financial assistance schemes are also available, though they may not be government schemes. The Hong Kong Jockey Club has a Life-wide Learning Fund. The scheme can provide financial assistance to students to take part in extra-curricular activities. So if students who need to take part in such activities are unable to pay for the expenses, they may apply to the relevant organization for assistance.

PRESIDENT (in Cantonese): We have spent almost 22 minutes on this question. Fourth question.

Manpower Arrangement of Radio Television Hong Kong

4. **MR PAUL CHAN** (in Cantonese): *President, in September 2009, the Government announced that it would maintain Radio Television Hong Kong (RTHK)'s status as a government department, giving a clear way forward for RTHK's future. Yet, it has been reported that the manpower arrangement put forward by the authorities in December 2010 when announcing RTHK's development as a public service broadcaster has aroused concerns among some of the staff of RTHK. In this connection, will the Government inform this Council:*

- (a) *of the reasons for the Government to first recruit staff at the Assistant Programme Officer (APO) rank when resuming recruitment of civil servants for RTHK in the first quarter of this year; whether the authorities had consulted all staff of RTHK before resuming such recruitment; if they had consulted, when the consultation took place and what specific views the staff had; if not, the reasons for that, and whether they will consider conducting such consultation before resuming the recruitment so as to address staff's concerns, making appropriate adjustment to the recruitment*

arrangement in the light of the majority views of staff, and announcing the overall recruitment arrangement and the timetable;

- (b) before RTHK resumes recruitment of civil servants, whether the authorities have assessed the impact of such arrangement on existing non-civil service contract (NCSC) staff; whether those NCSC staff will be dismissed immediately upon completion of the recruitment of the first batch of civil servants; if so, whether the authorities have assessed the impact of such arrangement on the quality of RTHK's programmes; if the NCSC staff will not be dismissed immediately, how the authorities will arrange such staff to depart in an orderly manner without giving rise to duplication of human resources; and*
- (c) given that the authorities have mentioned in the paper "Public Service Broadcasting and the Future of Radio Television Hong Kong" released in 2009 that the Director of Broadcasting would undertake an internal restructuring review for RTHK, but the incumbent Director of Broadcasting will leave RTHK in February this year upon the expiry of his contract, whether the restructuring review has been completed; if so, whether the authorities will publish the outcome of the review; if it has not yet been completed, of the reasons for that; whether the authorities have assessed the impact of the departure of the incumbent Director of Broadcasting on the restructuring review; if they have assessed, of the details; if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, RTHK has an important role to play in order to fulfil the mission as the public service broadcaster of Hong Kong. It has to undertake various new developments for providing quality broadcasting services for the public. In the coming few years, RTHK will embark on various new development initiatives, including the preparation for the launch of digital audio broadcasting and digital television broadcasting services, facilitating community involvement in broadcasting, reprovisioning of the new Broadcasting House, and establishing a digital media asset management system. Last December, the Government announced a package of arrangements concerning the provision of resources, manpower and facilities to fully support RTHK in taking forward its

new initiatives. One of the elements is to resume the recruitment of civil servants and internal promotion by RTHK in the first quarter of this year.

RTHK currently has about 80 vacancies in the Programme Officer (PO) grade. Among them, about half are at the APO rank and the remaining vacancies are at the other promotion ranks of the grade. These vacancies are currently filled by civil servants in the PO grade under acting or doubling arrangements, while the duties in respect of some posts are taken up by contract staff. Some posts are left temporarily vacant.

My reply to the three parts of the question is as follows:

With regard to part (a) of the question, according to requirements of the Civil Service Regulations (CSR), open recruitment of civil service grades in general has to be conducted at the basic rank. If vacancies at promotion ranks arise, consideration has to first be given to filling them by promotion from a lower rank. In line with this requirement, RTHK will resume recruitment at the APO rank in the first quarter of this year, and in parallel, commence promotion procedures to fill vacancies at the promotion ranks of the grade. If suitable candidates cannot be identified through internal promotion exercise to fill vacancies at the promotion ranks, the department may consider conducting open recruitment at these ranks according to established policy and procedures.

Since the end of last year, the management of RTHK has started communicating with its staff in different sections and units to explain the vacancy position in the respective sections or units and the concerned recruitment arrangements and timetable. It has also maintained close contact with the RTHK Programme Staff Union to understand the staff's concerns, address their queries and allay their anxiety.

With regard to part (b) of the question, the main purpose of RTHK's civil servant recruitment exercise this year is to fill existing vacancies in the PO grade. This represents a positive development in general with regard to the manpower development of RTHK, as well as its existing civil servants and NCSC staff. As regards the practical impact on individual staff, it is difficult to determine as it hinges on the number of NCSC staff who will apply for the civil service posts and who will be employed, staff wastage, the increase in the number of posts in RTHK, and so on.

When applying for the civil service posts, NCSC staff currently employed by RTHK will have a significant competitive edge over other applicants who have not worked in the department because of their appraisal records and hands-on experience. Even though RTHK may have to reduce the number of NCSC posts after the existing civil service vacancies are filled through open recruitment, this does not mean that the NCSC staff handling the related work have to leave the department immediately. In dealing with the departure or retention of NCSC staff and the renewal of their contracts, RTHK will consider the overall situation, conduct the process in a fair and impartial manner, and ensure that staff deployment and programme quality would not be adversely affected. Moreover, in view of the many new developments in RTHK's services, we expect that the overall staffing requirement will only increase, but not decrease. RTHK will ensure that there will not be duplication of resources in working out its manpower deployment.

With regard to part (c) of the question, following the announcement of the Government on the way forward in respect of RTHK in September 2009, RTHK has reviewed its internal structure and the overall development of the PO grade in light of the department's new initiatives. The review at this stage has been completed, and RTHK has devised a plan to make adjustments to its structure for strengthening internal co-ordination and enhancing efficiency, including rationalizing the division of responsibilities of its management staff. These adjustments are being implemented progressively, including the creation of a Deputy Director post at D3 level for a period of three years and a Controller (Broadcasting Services) post at D1 level. We will submit the proposal to the Establishment Subcommittee of the Legislative Council in due course. The implementation of the entire work plan will not be affected by the departure of the incumbent Director of Broadcasting. I am confident that all of RTHK staff will work as devoted as ever and will continue to provide quality public broadcasting services to the community.

MR PAUL CHAN (in Cantonese): *President, in the main reply the Secretary mentioned that according to the requirements of the CSR, open recruitment is generally conducted at the basic rank while internal promotion procedures are commenced in parallel. But President, I think RTHK needs to make special arrangements this time around. It must be noted that given the civil servant recruitment freeze imposed by the Government due to the financial tsunami,*

coupled with uncertainties in the future of RTHK, a large number of RTHK staff are employed on NCSC terms. Many of them have worked in RTHK for a very long time, and some have a length of service of more than a decade. Many of them are at the middle and even senior level. They do not belong to the basic rank but they form the backbone of RTHK. However, they are completely left out in this civil servant recruitment or promotion exercise. President, with regard to this problem left over by history, I think the Government, being a responsible employer, should not only "conduct the process in a fair and impartial manner" as stated in the main reply. Rather, it must take a humane and caring approach and act responsibly. It must not make use of the opportunity to get rid of such staff.

President, my supplementary question is: Can the Government make an undertaking that these contract staff with long years of service will be given priority for appointment on civil service terms and promotion, and that they will be given generous compensation by the Government even if they cannot be appointed on civil service terms?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, as a government department, RTHK must follow and comply with the policies and regulations of the Government. Having said that, being a media organization, RTHK has its uniqueness, and the Government's policies, which are not absolutely rigid, will confer on department heads certain powers and discretionary powers in the light of the actual operational needs of the department. But with regard to Mr Paul CHAN's proposal, I think it may not meet RTHK's operational needs and serve the best interest of RTHK to convert all of its NCSC staff into civil servants. As Members all know, the media industry is unique, and as there are changes from time to time in society in the demand for the types of programme productions and the standard expected of them, it is necessary to maintain some degree of turnover in talents engaging in creative work. For this reason, retaining a certain number of non-civil servants by employing them on contract terms actually has its merit. This can, on the one hand, give the management flexibility and latitude to respond to the overall prevailing conditions and needs relating to the media while enabling us to adapt to the standard expected of the media in the market on the other. Meanwhile, I would like to draw Mr CHAN's attention to the fact that, RTHK has since the 1970s maintained a certain number of NCSC posts which account for about 30%

of the total number of staff. So, I think RTHK still has a need to retain the mechanism of NCSC staff and the relevant posts in accordance with the operational needs of programme productions. However, when an open recruitment is conducted to fill civil service vacancies, we certainly welcome and encourage RTHK staff currently employed on contract terms to apply for these posts, and I believe their chances are more favourable given their work experience and appraisal records.

MR ALBERT CHAN (in Cantonese): *President, early this year a large number of staff of the news division of the Television Broadcasts Limited had fled the company, and the current situation of RTHK was described very clearly by Mr Paul CHAN earlier on, but the Secretary seems to have failed to grasp the core of the problem. The core of the problem is the many years of delay by the Government in formulating a policy on RTHK over the past decade or so. As a result, many posts or serving staff have become uncertain pending a decision of the Government, and promotion procedures have been stalled continuously for many posts. We certainly welcome the recent announcement by the Government to resume the recruitment of staff to fill certain posts in RTHK, but the Government does not have a full picture. It has not conducted comprehensive consultation and discussion with its staff, nor has it drawn up a comprehensive plan on staff establishment. As a result, many serving staff — some of whom are very loyal, very professional with a strong sense of responsibility, and have worked in RTHK for over a decade to 20 years — are feeling very worried because the future is extremely uncertain*

PRESIDENT (in Cantonese): Please state your supplementary question directly.

MR ALBERT CHAN (in Cantonese): *..... So, will the Secretary discuss clearly and thoroughly with the staff union and the staff as well on the formulation of a new establishment for RTHK and proceed to the recruitment exercise only after reaching a preliminary decision with the support of the staff union?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I would like to assure Mr Albert CHAN that the management of RTHK has, in fact, consistently maintained close contact with the staff, including staff in different sectors and units as well as the staff union, and as we have already identified the way forward for RTHK, a review has been carried out in respect of staff establishment and division of responsibilities, and the proposals have also been finalized.

As I said in the main reply, a plan has been devised, and the authorities have since last year communicated with staff in each section or unit to understand their concerns in a focused manner, targeting their respective area of work. We have currently launched work in respect of the recruitment procedures, direction of recruitment, vacancy position, timetable, and so on. I can, therefore, assure Members that this is an issue of great concern to us. We certainly hope that the staff of RTHK can feel at ease in continuing their service in RTHK.

MR ALBERT CHAN (in Cantonese): *President, the Secretary said earlier that the senior management had conducted consultation and discussion with the staff*
.....

PRESIDENT (in Cantonese): Mr CHAN, has your supplementary question not been answered?

MR ALBERT CHAN (in Cantonese): *Is it that she has been hoodwinked or the relevant persons have lied to her?*

PRESIDENT (in Cantonese): I think the Secretary has answered your question.

MR ALAN LEONG (in Cantonese): *President, the Secretary's reply is, in a nutshell, neglecting history and evading the thrust of the question. I wish to point out that the Secretary mentioned earlier that 30% of RTHK's staff are employed on contract terms, and this statement actually defies the historical fact, because what happened was that over the past decade or so, many RTHK staff*

had to be employed on contract terms continuously because the Government had not formulated a policy on RTHK. Since she has recalled this historical fact, can the Secretary, in view of this historical fact, tell us explicitly whether the authorities will consider implementing special measures in special times to resolve the problem faced by this group of contract staff employed on NCSC terms who have served RTHK for so many years?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, to begin with, I would like to state some facts in response to Mr LEUNG's remark earlier that it is due to uncertainties in the future of RTHK that 30% of its staff are contract staff. It actually involves another historical fact and that is, the Government has to limit the staff establishment at a certain percentage in the light of the financial position or other conditions. Between 2000 and 2008, the civil service establishment was frozen and during this period of time, RTHK, being a government department, certainly had to follow this policy and freeze the recruitment of some staff. So, the fact that 30% of the RTHK establishment is made up of contract staff is not entirely the result of uncertainties about the future of RTHK. As I pointed out repeatedly earlier in reply to Mr Paul CHAN's question, it has been a policy of RTHK in programme productions that it is necessary to have a certain percentage of its staff employed on contract terms.

MS LI FUNG-YING (in Cantonese): *President, can the Secretary officially give a guarantee here that the "rice bowls" of NCSC staff will not be smashed after the existing vacancies are filled by civil servants as a result of this open recruitment exercise?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I thank Ms LI Fung-ying for her concern about the serving staff. Human resources are actually a very important and most valuable resource to government departments, especially when it comes to the provision of broadcasting services which has to rely on manpower. So, we certainly will not easily give up any staff currently working in RTHK and showing good performance. We certainly hope to retain them. Therefore, I can assure Ms LI that given the many new services now provided by RTHK as well as its very

promising developments, many new posts are set to be created. As for staff who currently work in RTHK, even if it is necessary to appropriately reduce the number of NCSC posts after a review of the job types following the completion of the recruitment exercise, I believe manpower redeployment can still be made in respect of other posts, so that RTHK will continue to keep these manpower resources to support the provision of various services.

MR LEE CHEUK-YAN (in Cantonese): *President, I really must speak the minds of the staff of RTHK. To describe what RTHK has been doing now, they would say that RTHK is kicking down the ladder. The Secretary said earlier that the recruitment of civil servants had been frozen since 2000. But this group of NCSC staff has worked in RTHK for over a decade to pursue their aspirations and a career in the media. However, the authorities are telling them, "Sorry, although you are a PO, we are only recruiting APOs now, so you can accept a demotion and send in your application." They have worked as a PO for over a decade, but the authorities are telling them that the recruitment is conducted to fill vacancies of APOs. Does the Secretary think that this is fair to them? Of course, we cannot take the Secretary to task, for she has done nothing to be blamed. She can say that it is most unfortunate that Denise is not in the Chamber, because it is the Secretary for Civil Service, Denise YUE, who formulated this policy very conservatively and very unfairly. If we ask the authorities to allow NCSC staff to be directly promoted to become civil servants (hereinafter referred to as "through train"), Denis YUE will definitely say, "We must adhere to the principle of meritocracy and so, we must conduct an open recruitment. But when it comes to promotion, sorry, NCSC staff will not be considered for promotion." As we can see from the Government's reply, NCSC staff are entirely not given any opportunity for promotion. Instead, they have to accept demotion and a salary cut and start all over again from the lowest starting salary point. Is this fair at all?*

President, my question is: Why can the authorities not be a little fairer by conducting an open recruitment for all the posts if they really adhere to the principle of meritocracy, so that contract staff currently working as POs can apply for the PO vacancies, in which case civil servants and NCSC staff can be assessed altogether. I think the civil servants will not mind it, for they will be assessed altogether. Only such an arrangement can be considered fair, and only in this way can the principle of meritocracy be upheld. When it comes to

the "through train" arrangement, the authorities said that an open recruitment must be conducted, but when it comes to promotion, the authorities are trying to short change them

PRESIDENT (in Cantonese): Mr LEE, you have already stated your supplementary question. Please let the Secretary answer it.

MR LEE CHEUK-YAN (in Cantonese): *I hope the authorities can treat the contract staff fairly.*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I wish to point out that most of the posts covered by this recruitment exercise are actually at the entry rank, and insofar as this grade is concerned, a great majority of colleagues are at the entry rank in terms of their years of service as well as salary and allowances. But, certainly, a small number of staff are taking up posts at the promotion ranks. As I said in the main reply, the Government's policy has actually given consideration to the circumstances under which an open recruitment should be conducted for promotion ranks. Two criteria are adopted in our consideration: First, difficulties are encountered in recruitment, which means that no suitable candidate can be identified in the recruitment exercise; second, the relevant job type or its operation requires special skills or experience. An open recruitment can be conducted under these circumstances, and a decision will have to be made by the heads of department in the light of the actual circumstances, and they do have this discretionary power. So, at this stage, we think that colleagues should not feel too discouraged. As to whether there will still be unfilled vacancies for which an open recruitment will have to be conducted, or whether it is necessary to make extra manpower deployment arrangements after the completion of this promotion exercise, the relevant work is still in progress. However, I fully agree that we need to have regard to the concerns of all employees and colleagues, and this is precisely the reason why we are discussing this with them, consulting their views and communicating with them in depth. We will handle this issue very seriously and carefully.

MR LEE CHEUK-YAN (in Cantonese): *President, the Secretary has not answered my question because all she said in reply was that an open recruitment would be conducted under two circumstances. What I am asking her directly here is whether she will conduct an open recruitment for all the posts but she has not answered my question. She only said that an open recruitment would be conducted to fill the elementary posts, that is, posts at the entry rank. She should directly answer me as to whether or not an open recruitment will be conducted for all the posts.*

PRESIDENT (in Cantonese): Mr LEE, I think the Secretary has actually given an answer. Let me see if the Secretary has anything to add.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I have nothing to add.

PRESIDENT (in Cantonese): We have spent 24 minutes on this question. Fifth question.

Execution of Section 107 of Securities and Futures Ordinance

5. **MR LEUNG KWOK-HUNG** (in Cantonese): *President, this is a case of "though I did not kill my neighbour, it was because of me that he died". I now ask my main question. President, I went with a group of aggrieved investors of Lehman Brothers-related minibonds and structured financial products (Lehman Brothers victims) to the Securities and Futures Commission (SFC) on 22 November 2010 to file a report that the persons concerned of some banks and securities companies had made false or reckless misrepresentation when selling such financial products to their customers, suspectedly breaching section 107 of the Securities and Futures Ordinance (section 107). In response to the appeal from the SFC, Lehman Brothers victims took the initiative to provide further information and requested it be filed for action, but this was rejected by the SFC. In this connection, will the Government inform this Council:*

- (a) *given that the SFC indicated in its reply to me on 9 December 2010 that Lehman Brothers victims had staged their protest persistently*

outside the building in which the SFC was located, and had not co-operated with the SFC and provided it with the necessary information, whether the authorities have assessed if the protest actions of Lehman Brothers victims are covered by the rights protected by the Hong Kong Bill of Rights Ordinance; if such an assessment has been made, of the outcome;

- (b) *given that the SFC requires the victims to report information on the case to the SFC by post, by fax or by email, and has rejected the victims' request of lodging their complaints by way of reporting in person, but it is clearly stated in the SFC's leaflet on "How to Make a Complaint" that members of the public may also "[lodge a complaint] in person" apart from doing so by post, by fax and by email, whether it knows why the SFC has deprived Lehman Brothers victims of their freedom to lodge their complaints in person, and whether the Government has assessed if the SFC's practice is contrary to the objective of "protecting investors", which is one of the regulatory objectives of the SFC under section 4 of the Securities and Futures Ordinance; and*
- (c) *whether it knows under what circumstances the SFC, as the statutory authority responsible for enforcing the Securities and Futures Ordinance, may reject the filing of report by a member of the public under section 107 on the criminal offence of a person making a fraudulent or reckless misrepresentation for the purpose of inducing another person to invest, and under such circumstances, which official at the level of Secretary of Department or Director of Bureau can order the SFC to discharge this legal responsibility?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, we understand that a group of investors of Lehman Brothers-related products (hereafter referred as "the Group") approached the Securities and Futures Commission (SFC) on 1 November 2010 and said that an enormous number of witnesses intended to come forward to provide evidence to the SFC in relation to the enforcement action on section 107. Section 107

creates a criminal offence where a person, through a fraudulent or reckless misrepresentation, induces a person to invest in securities.

- (a) Between 1 and 22 November last year, we understand that the SFC and the Group had some ongoing correspondences. The SFC has communicated to the Group numerous times to offer and explain to the Group the various existing complaint channels for members of the public to report suspected misconduct to the SFC. As of now, only four members of the Group have taken up the offer to come forward with details of these complaints. Since 22 November last year, members of the Group have been protesting almost daily at the building in which the SFC is located.
- (b) We have enquired into the process of the SFC's complaint handling. Accordingly, the SFC provides a range of options for members of the public who wish to report suspected misconduct, including personal appointments with the SFC staff, completion of specially designed complaint forms and telephone number to lodge complaints by telephone. These procedures enable complainants to tell their stories in their own words so that the SFC can then assess the complaint in light of all relevant evidence and data, and make an effective and expedient decision as to further action. The complaint channels are reasonable, and in line with the SFC's regulatory objectives and with international best practice. They are designed to handle high volume complaints in an efficient way. They have proved to work, as made evident by the SFC's expeditious handling of thousands of complaints since the collapse of Lehman Brothers.

The SFC has made these complaint channels available to the Group in the same way as it has for every member of the public. However, the Group had insisted that they did not want to "file complaints" using the SFC's complaint channels. Instead, they wanted to make "criminal case reporting" by which it appears that they are requesting the SFC to open immediate investigation files with each complainant meeting an investigator and providing a statement with an identified officer in charge of the investigation. The SFC has explained that it is unable to commence immediate

investigations on request under the Securities and Futures Ordinance (SFO), and that its normal complaint channels cover "criminal case reporting" as well. The SFC has requested members of the Group to provide details of their allegations and concerns so that the SFC can make a decision as to whether there is sufficient basis to meet the statutory threshold to commence an investigation. In addition, the SFC has made strenuous attempts to meet the Group and to listen to their concerns. Unfortunately, most members of the Group have declined the SFC's offer to meet with them and refused to follow the SFC's established avenues for reporting suspected misconduct.

- (c) Finally we have been informed by the SFC that in no circumstances has the SFC rejected the reporting of a suspected breach of section 107 by a member of the public. On the contrary, as stated above, the SFC has encouraged, and stood ready to listen to, legitimate complaints. As of now, the SFC has only received details of four of these complaints.

MR LEUNG KWOK-HUNG (in Cantonese): *This is a typical stock answer. As Members may know, thousands of victims are involved in the collapse of Lehman Brothers, and this Council has invoked the Legislative Council (Powers and Privileges) Ordinance to carry out investigations. So, it is not an ordinary incident or an incident which involves a certain person who, after purchasing certain stocks, thought that he has fallen victim to a suspected fraud, but an incident which involves almost everyone in the community. It has been two years since the incident happened. As a Member of the Legislative Council, I am really ashamed because I am unable to help them. The Secretary's reply is a typical stock answer. She said they have already lodged their complaints, or they must lodge their complaints following the proper procedures. Generally speaking, she was right in saying so. However, I am duty-bound because I joined the Lehman Brothers victims in their demonstrations and I know what they were doing. Somehow, they realized that the SFC may instigate prosecution against certain people under section 107 to which I referred in the main question, and they thought they already had enough evidence to inform the SFC that someone had contravened section 107. They were actually reporting a case rather than lodging a complaint.*

President, if a person considers that he has obtained sufficient evidence and takes the initiative to report a case, accusing certain people of certain organizations of having contravened a certain criminal law, how will the SFC handle such a case? Will the SFC follow the general complaint handling procedures in handling the case? Maybe, let me give an example. If we have discovered a dead body, that is, if somebody has died, do we still need to lodge a complaint? What I wish to ask is whether the SFC will meet with the Lehman Brothers victims to enable them to inform it that some people have contravened section 107 and how these people have contravened that provision? If the SFC will meet with them, how many reports can be handled daily with the SFC's existing manpower? Rather than requiring the SFC to handle all reports in one go, they only hope that the SFC can handle four to six reports daily. Without more nonsense, please give a reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I have already explained clearly in the main reply just now that the SFC actually stood ready to meet with them and listen to their complaints. The SFC once took the initiative to arrange to meet the 30 members of the Group, among whom 17 originally indicated that they were available. So far, however, only two of them have provided the relevant information and two others have provided information over the telephone. In other words, a total of four members have provided information, while the remaining 10 people or so cancelled the meeting in the end. Therefore, it is not true that the SFC refused to meet with them. Quite the contrary, the SFC did take the initiative to arrange to meet with them.

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

PRESIDENT (in Cantonese): Your supplementary question is not answered? Please repeat your supplementary question.

MR LEUNG KWOK-HUNG (in Cantonese): *Actually, if she had listened carefully, she would have known that they were reporting a crime rather than lodging a complaint about their losses*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MR LEUNG KWOK-HUNG (in Cantonese): *My supplementary question was whether she would place on file cases relate to matters that are evident to all, rather than treating such reports as general complaints. This is where the controversy lies, and the point is as simple as that. Certainly, I am not referring to her because she is not from the SFC, but does she think she should see to it that the SFC*

PRESIDENT (in Cantonese): Mr LEUNG, the point you have raised is not part of the supplementary question just now. Just now, your question was obviously about whether a meeting with the victims would be arranged, to which I think the Secretary has already given a reply. However, you are now asking a further question about whether the cases would be placed on file, which is another question.

MR LEUNG KWOK-HUNG (in Cantonese): *No, what I meant by a meeting was the kind of meeting to report a case. If you listen to the audio recording, you will realize that I was saying that they are now taking the initiative, just as in the case of reporting a murder at discovering a dead body*

PRESIDENT (in Cantonese): Please make your question clear so that the Secretary can give a reply.

MR LEUNG KWOK-HUNG (in Cantonese): *Will she meet with them when they come forward to report a case? The question is as simple as that. She will only place their cases on file when they lodge their complaints.*

PRESIDENT (in Cantonese): Please sit down.

MR LEUNG KWOK-HUNG (in Cantonese): *That is, somebody has died, but she said the matter should be treated as an ordinary complaint. It does not work this way.*

PRESIDENT (in Cantonese): Mr LEUNG, please sit down.

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): First of all, we have not established separate complaint channels for complaints about the contravention of section 107 and ordinary complaints. If the complainants are willing to come forward, the SFC will arrange for its staff to listen to their complaints. The SFC will then decide, based on the information provided by them and the information collected from the investigation into these cases, whether there is sufficient evidence to enable the SFC to reasonably believe that their cases can be placed on file and investigations instigated. In this regard, the Group seemed to be unwilling to lodge their complaints by going through this procedure.

DR MARGARET NG (in Cantonese): *President, at the outset of the Lehman Brothers incident, I already requested that a committee, if not a select committee, be established immediately to conduct investigations by invoking the powers under the Legislative Council (Powers and Privileges) Ordinance. However, we find it really disappointing that the truth of the incident remains obscure to date.*

President, the main reply was really very puzzling. The truth is yet to be uncovered, while a group of people are willing to provide information which may help find out the truth. They have been going to the SFC every day, hoping that they can meet with its staff. According to the Secretary's reply, however, the SFC has only received four complaints so far. What has caused such a difference? According to the last sentence in part (b) of the main reply, most

members of the Group refused to follow the SFC's established complaint procedure. In other words, they did lodge their complaints and provide information, but the SFC refused to place their cases on file because they did not follow the established complaint procedure. Was that what happened? If so, how could the SFC find out the truth of the incident? Should the SFC review whether the practice adopted in handling this incident was too bureaucratic? Should the SFC accept their reports or complaints and listen to their information before deciding what to do? This way, the SFC would not have only placed four complaint cases on file. What exactly has prevented the SFC from accepting complaint cases and placing them on file?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Thanks to Dr NG for the question. Perhaps, I did not explain it clearly enough just now. Actually, the SFC was ready to listen to the complaints of the Group. It was not that the Group was unable to report their cases, but the Group requested the SFC to open investigation files or arrange for investigators to meet with them immediately. When the SFC indicated that it would arrange for its staff to meet with them, make an audio recording of the meeting and conduct an investigation based on the information obtained, members of the Group, unwilling to conduct the meeting this way, had a dispute with the SFC staff. The relevant Member said in her remarks just now that the truth remains obscure. Actually, the police have received over 3 000 reports on contravention of section 107 and taken statements on these cases. So far, the police have arrested three suspected bank staff and will arrange for the relevant cases to be heard in the District Court one after the other.

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

DR MARGARET NG (in Cantonese): *President, she has not answered my supplementary question. My supplementary question was: As so many people were ready to lodge their complaints and requested that their cases be placed on file, why has the SFC only placed four complaint cases on file so far? Has the SFC refused to place their cases on file because they did not follow certain established procedures? I still cannot understand this point. Does the*

Secretary think that 3 600 cases are enough and there is no need to accept further complaints?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): The SFC did not refuse any complaint. I wish to clarify another point, and that is, the SFC had all along been taking the initiative to approach members of the Group to find out whether they were ready to meet with the SFC. It turned out that only four members of the Group were ready for the meeting while other members cancelled the meeting in the end even though they had promised to attend it.

DR MARGARET NG (in Cantonese): *According to them, they wanted a meeting but no meeting was arranged for them. What exactly has happened? The Secretary has still not answered my supplementary question. Why did the SFC not place their cases on file when they wanted to lodge their complaints? President, according to the main reply, these people asked for a meeting, and so I do not understand why there is such an inconsistency.*

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): For various reasons, members of the Group cancelled the meeting in the end, and one of the members did so because he could not accept the SFC's standard practice of making an audio recording of the meeting, claiming that he was afraid the SFC would alter the audio record. We took a great initiative to arrange for a meeting with them, but for various reasons, they cancelled the meeting in the end. I wish to make it clear that the SFC did not refuse to listen to these complaints.

MR KAM NAI-WAI (in Cantonese): *President, the SFC has always been criticized for engaging in black-box operation and keeping the public in the dark*

about the relevant procedure and progress of the entire incident and the circumstances under which compensation agreements were reached with banks. Therefore, in making their complaints, the victims were like speaking to a wall. I do not understand why the Government could not deal with the incident properly. Although the Hong Kong Monetary Authority (HKMA) did not handle the incident really very well, it has at least managed to publicize its investigation progress regularly. For example, I recently learnt that as at 30 December last year, the HKMA had issued to banks Notices of Proposed Disciplinary Action in relation to 783 cases. Will the Secretary urge the SFC to follow the HKMA's example by regularly making public the progress of the relevant complaints to enable the public to know whether or not avenues of redress are available?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): The investigation results achieved by the SFC are evident to all. Over the past two years, the cases of 33 000 complainants have been resolved through settlement agreements, involving compensation of over \$6 billion. As for how many cases have been resolved and how many cases are being processed, the SFC does and has the need to treat them in strict confidence. Insofar as these complaints are concerned, they are still being processed by the SFC.

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

MR KAM NAI-WAI (in Cantonese): *President, why did the Government not urge the SFC to follow the practice of the HKMA? Does it mean that the HKMA needs not observe any confidentiality obligation? While the HKMA also has to comply with confidentiality requirements, it publicizes the relevant figures. Why does the SFC not follow the HKMA's example and make public the investigation progress regularly?*

PRESIDENT (in Cantonese): Mr KAM, you may only repeat the part of your supplementary question not answered. Members should not engage in a debate during the question time. If you are dissatisfied with an official's answer, you

may only follow up the issue through other channels. I will see whether the Secretary has anything to add.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): The SFC's investigations are top-down investigations. It has completed the investigation of 16 banks and the investigations of the DBS Bank and a few other banks are still in progress, and there are two cases under investigation.

PRESIDENT (in Cantonese): We have spent more than 21 minutes on this question. Last oral question. Mrs Sophie LEUNG will ask this question for Mr LAU Wong-fat.

Children Interest Classes Conducted in Multi-storey Commercial Buildings

6. **MRS SOPHIE LEUNG** (in Cantonese): *In reply to Mr LAU Wong-fat's question on children interest classes conducted in multi-storey commercial buildings raised on 24 November 2010, the Government did not indicate that it would review the existing legislation regarding regulation of fire services installations and means of escape for the venues of such interest classes. In this connection, will the Government inform this Council, given that children, especially the younger ones, need to be assisted or even carried by adults to escape from the fire scene in case of a fire, whether the Government has assessed if the regulation of fire services installations and means of escape for the venues of children interest classes in multi-storey commercial buildings at present is sufficient to safeguard the safety of these young children in case of a fire; if such an assessment has been made, of the outcome?*

SECRETARY FOR EDUCATION (in Cantonese): President, as mentioned in our written reply of 24 November 2010 to the question raised by the Honourable LAU Wong-fat, schools registered or provisionally registered under the Education Ordinance (the Ordinance) (Cap. 279), irrespective of their modes of operation or whether they are located in commercial buildings, must comply with the relevant requirements regarding fire service installations and equipment, and

sanitation. Therefore, in respect of applications for registration by schools located in commercial buildings, the Education Bureau would approve only those which have obtained from the relevant authorities (for example, the Fire Services Department (FSD) and the Buildings Department) certificates or notices stating that the premises concerned are structurally safe and suitable for the purposes of a school. In addition, no part of any school premises, except the parapet wall round a roof playground, shall be situated at a height of more than 24 m above ground level unless the Permanent Secretary for Education, with the advice of the Director of Fire Services, has issued written approval. As regards those children interest classes not offering educational courses (for example, singing, painting), they are not schools as defined in the Ordinance and they do not fall within the regulatory ambit of the Ordinance. Nevertheless, children, especially the younger ones, are normally accompanied by adults when attending interest classes. The adults present would help the young children escape from the scene in case of a fire.

The Buildings Ordinance (Cap. 123) and the Fire Safety (Commercial Premises) Ordinance (Cap. 502) require that every building shall be provided with safety measures including fire service installations and equipment, means of escape in case of emergency, means of access for firefighting and rescue as well as fire resisting construction. Commercial buildings have a wide variety of uses and heavy flow of people. The existing legislation has prescribed standards of fire safety measures for this type of buildings to protect the buildings and safeguard the safety of occupiers, users and visitors in case of fire or other emergency. Furthermore, the Government monitors different kinds of premises by way of licensing or registration regimes, and would also, in the light of the additional risks of fire of specific premises, impose more stringent fire safety requirements.

MRS SOPHIE LEUNG (in Cantonese): *President, in response to parents' fervent hope for their children's success, a large number of children interest classes, such as music classes and ballet classes, have recently been offered in commercial buildings. Will the Government consider conducting investigations into different aspects such as the number, floor locations and the number of students of such institutions in order to assess their level of risk, and will it consider introducing counter-measures?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Education, please.

SECRETARY FOR EDUCATION (in Cantonese): We have not yet got hold of the full details of these premises and their number. If necessary, we will conduct inspections to understand the situation and examine the level of risk.

DR LAM TAI-FAI (in Cantonese): *President, last May, a rock climbing centre in Kwun Tong caught fire late in the night. Fortunately it happened at night, when there was no class, and therefore no one was injured; otherwise the consequences could be unimaginable. In fact, this incident has already sounded the alarm. There are many interest classes on the market that are not regulated by the Education Ordinance. They are very popular, and more and more are being offered. Some may be conducted in multi-storey buildings that are not so well equipped with fire service installations, or even in industrial buildings without any sprinkler system. May I ask the Secretary, after the occurrence of this incident, whether he or other government departments took the initiative to understand how many interest classes are currently being conducted in industrial buildings without any sprinkler system or fire services installations, so as to let everyone know how many time bombs there are, and how the authorities would gradually defuse the bombs?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Education, please.

SECRETARY FOR EDUCATION (in Cantonese): President, as I mentioned in the main reply, in fact, every building must be provided with safety measures necessary to its intended use, including fire service installations and equipment, means of escape for firefighting and rescue and as well as fire resisting construction. There are such existing requirements. Therefore, insofar as commercial buildings are concerned, there are existing ordinances that list such requirements already. As regards the interest classes, we have to understand that whether it is necessary to impose additional fire services requirements is a

separate issue, but we believe the existing commercial buildings are basically equipped with appropriate installations in this regard.

DR LAM TAI-FAI (in Cantonese): *President, my supplementary question just now was in fact*

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

DR LAM TAI-FAI (in Cantonese): *..... Maybe I did not make my question clear enough just now. I asked the Secretary whether he has taken the initiative to understand if interest classes are conducted in industrial buildings without any fire services sprinkler system. The question is about those classes conducted in industrial buildings rather than multi-storey commercial buildings.*

PRESIDENT (in Cantonese): Which Secretary will reply?

SECRETARY FOR SECURITY (in Cantonese): President, in fact, in the current relevant fire safety legislation, our focus of concern centres on the fire safety of the building itself, such as the standards for fire service installations and equipment, the fire safety of individual venues in the building, and so on. At present, many shopping centres are already equipped with sprinklers. If my memory is correct, all the factory buildings have been equipped with such sprinklers since 1987. As regards Mr LAM's question about whether such interest classes are conducted in old factory buildings, any change to the use of these old factory buildings requires an application with the Government. Secretary Michael SUEN has also mentioned just now that the Government will consider conducting a review to examine the children interest classes conducted in industrial buildings and even shopping centres or other buildings not regulated by the Education Ordinance. In this connection, we may need to conduct a detailed investigation.

MR TAM YIU-CHUNG (in Cantonese): *President, about one year ago I also raised a similar question enquiring about the children interest classes conducted in these multi-storey commercial buildings. It seems the Government's reply is not much different from that of one year ago. I heard the Secretary's reply just now. It seems that for the time being the Government has no intention yet to conduct any proactive investigation to understand the current situation. I have this question for the Secretary, apart from the issues of fire escape and fire services mentioned just now, given the fact that so many children gather together, there may be a need to pay attention also to other issues, such as health problems, so should the Government not also take the initiative to gain a more comprehensive and in-depth understanding of the issues related to this situation, in order to ensure children's safety?*

SECRETARY FOR EDUCATION (in Cantonese): President, as I said just now, we will now consider conducting a comprehensive inspection to check the number of such interest classes and their distribution.

PRESIDENT (in Cantonese): Mr TAM, has your supplementary question not been answered?

MR TAM YIU-CHUNG (in Cantonese): *Apart from numbers and locations, the view I expressed just now is that the authorities should also gain a better understanding of the potential impact on health when so many children gather together.*

SECRETARY FOR EDUCATION (in Cantonese): President, we will definitely consider all the issues in this regard.

MR PAUL TSE (in Cantonese): *President, the very core of the problem should be that we now assume that children are accompanied by their parents or adults when attending such interest classes. We are not discussing whether the general standard fire service installations are adequate to cope with the general flow of*

people in commercial buildings, but rather to cope with the situation where a particularly large number of children gather, and according to our assumption that the children are accompanied by adults, whether the fire service installations are sufficient to cope in the event of a fire? However, if this assumption does not hold, for example, some interest classes are like nurseries, where parents bring their children in and then leave, are the installations adequate to cope with this situation judging from the current standards? In case of an accident, how should it be dealt with? The Secretary should consider the following directions: First, whether licensing should be considered to supervise these interest classes; second, if not, whether a special request should be made in relation to certain special types of premises according to the existing Fire Services Ordinance. Only these two directions are correct. It is incorrect to simply say at this moment

PRESIDENT (in Cantonese): Please come to your supplementary question direct.

MR PAUL TSE (in Cantonese): and wait until the next accident before we deal with it. May I ask the Secretary whether he will consider either licensing or making a special request in relation to these special premises, as I said just now?

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Education, please.

SECRETARY FOR EDUCATION (in Cantonese): President, I think the licensing issue mentioned by Mr TSE is another issue, not related to fire fighting equipment only. If we talk about licensing, we have to see what legal basis there is. At present, our only basis is the Education Ordinance. The Education Ordinance has provided clear definitions for schools and education programmes, but these definitions do not include the interest classes mentioned just now. Therefore, if we talk about licensing or adopting other approaches, we have to make very careful consideration to see how much impact there will be in various

aspects and whether we need to look into the issue afresh with a new approach in law. We need to address the issue carefully.

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

MR PAUL TSE (in Cantonese): *We know and have also seen that the current situation may carry this risk. The Secretary cannot simply say that now we I hope the Secretary*

PRESIDENT (in Cantonese): Mr TSE, I must reiterate that no debate should be opened during question time.

MR PAUL TSE (in Cantonese): *I fully understand.*

PRESIDENT (in Cantonese): Therefore, you should not express personal views. Please repeat the part that the Secretary has not answered.

MR PAUL TSE (in Cantonese): *At least he has to answer whether these places will be considered special places where, according to the requirements for special premises under the Fire Services Ordinance, fire protection facilities are subject to requirements different from those for commercial buildings in general, such as clubs, restaurants, or pinpointing such special venues as interest classes*

PRESIDENT (in Cantonese): Mr TSE, I think your question is too complicated. Let me see whether any Secretary has anything to add.

SECRETARY FOR EDUCATION (in Cantonese): President, as I said just now, if we have to consider this issue, we must in addition identify the legal basis

that allows us to do so. I said just now that under our existing law, namely the Education Ordinance, we do not have the power to request additional fire service installations for these places. If we really have to do so, we must enact another law.

MR PAUL TSE (in Cantonese): *This is not a legal issue. In fact, it may be a security issue*

PRESIDENT (in Cantonese): Mr TSE, I cannot let you go on, because we cannot end up in a debate. If you still wish to raise another question, please wait for a second turn.

MR PAUL TSE (in Cantonese): *My supplementary question was clearly put but he has not answered it. That is, regarding the security aspect*

PRESIDENT (in Cantonese): Please repeat your supplementary question. You need only repeat your supplementary question once.

MR PAUL TSE (in Cantonese): *Fine. Can the Secretary regard these interest classes, which are currently conducted in the form of small classes, as special premises from the security point of view, and impose special fire services requirements, as in the situation similar to clubs and restaurants? This is a very simple question. President, I do not understand why you do not understand it.*

PRESIDENT (in Cantonese): What is your supplementary question? What you said just now is your view.

MR PAUL TSE (in Cantonese): *I asked that the issue be looked into from the security point of view.*

PRESIDENT (in Cantonese): You did not raise your question. Please raise it.

MR PAUL TSE (in Cantonese): *From the security point of view, is it possible to regard some interest classes, which are currently conducted in the form of small classes, as special premises, and stipulate special fire services requirements, as in the situation similar to clubs and restaurants?*

SECRETARY FOR SECURITY (in Cantonese): President, I understand Mr TSE's question. For venues not regulated by the Education Ordinance, the situation is the same as that of other venues not regulated by the Government's licensing or registration systems, where the relevant fire safety legislation has not provided for these additional requirements. Therefore, if it is necessary to provide for these additional requirements, an amendment to the legislation is likewise necessary. Regarding karaoke establishments and other places mentioned by Mr TSE just now, the relevant legislation has already provided for the relevant requirements in this connection, and the FSD has formulated relevant codes to complement the legislation. Therefore, this involves considerations in policy and future legislative amendments in the future.

MRS SOPHIE LEUNG (in Cantonese): *President, in the main reply, the Secretary mentioned that unless with the consent of the Permanent Secretary for Education, no such venues shall be situated at a height of more than 24 m above ground level. The height of 24 m is almost equivalent to eight storeys. May I ask the Secretary, in considering all the replies just now if he will also consider including the requirement that these interest classes be conducted only in places not higher than eight storeys, if such regulation is deemed necessary in the future?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary of Education, please.

SECRETARY FOR EDUCATION (in Cantonese): President, what the main reply said just now is that we do have such requirement for schools under the existing Education Ordinance. Therefore, if there is such a request in this

regard, or if in future we really need to enact legislation to regulate other interest classes, I think this is reasonable reference.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

District Urban Renewal Forum

7. **DR PRISCILLA LEUNG** (in Chinese): *President, in his 2010-2011 Policy Address, the Chief Executive proposes to set up District Urban Renewal Forums (DURFs) to collect views from professionals and local residents, with the first pilot DURF to be set up in Kowloon City. In this connection, will the Government inform this Council:*

- (a) *when the first DURF will be set up the earliest; what principles the Government will adopt in appointing members to DURF, and the respective ratios of members from the Government, business sector, local residents and professionals; and DURF's foremost work plan upon its establishment;*
- (b) *given that the authorities have proposed in the "Public Views and Future Direction Paper", which was released at the final stage (that is, the Consensus Building Stage) of the Urban Renewal Strategy Review, that DURF "should be independent of District Council (DC)", how DURF will communicate and co-operate with DC in future;*
- (c) *whether the tasks or terms of reference of DURF will overlap with those of the Town Planning Board (TPB) in future; if so, how the authorities will deal with it;*
- (d) *given that apart from Kowloon City, there are many old buildings in other districts in Kowloon, whether the authorities at present have any plan to set up DURFs in other districts; if so, when these DURFs will be established the earliest; and*

- (e) *how the authorities ensure that the views of DURF will be given due consideration?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, my reply to the five-part question is as follows:

- (a) The Development Bureau plans to promulgate the revised "Urban Renewal Strategy" (URS) in the first quarter of 2011 and set up the first DURF in Kowloon City District as announced in the Chief Executive's 2010-2011 Policy Address. The objective of establishing DURFs is to implement urban renewal following local characteristics and aspirations more systematically through a platform guided by professionals, with the participation of members of the local community and facilitated by government departments. The Chairman of DURF will come from a professional discipline familiar with urban renewal issues. Membership will include District Councillors/Area Committee members, professionals, established non-government organizations/groups serving the district, and representatives of the Urban Renewal Authority (URA) and relevant government departments. We are now considering the membership of DURF and non-official members will be appointed by the Government in their personal capacities. While we will not have any predetermined ratio for members based on their background, we will strive to include a broad spectrum of representatives from different fields. The top priority for DURFs is to provide advice on district-based urban renewal initiatives (including locations where rehabilitation, redevelopment or preservation should be carried out) from a holistic and integrated perspective through public engagement and studies.
- (b) While the DURFs will be independent of the DCs, interaction between them can be achieved through exchanges and joint activities. Moreover, we will actively consider inviting local District Council members to serve as members of DURFs.
- (c) DURFs are consultative in nature and not statutory bodies. DURFs will adopt a "people-centred, bottom-up, district-based" approach to recommend urban renewal initiatives for the old districts. The TPB

is a statutory body responsible for the systematic preparation of draft plans for the lay-out of such areas of Hong Kong as the Chief Executive may direct, as well as the types of buildings suitable for erection therein, and the preparation of draft development permission area plans according to the Town Planning Ordinance. There is no overlap between DURFs and the TPB in their work or functions. In fact, if the recommendations of DURFs involve amendments to Outline Zoning Plans or require prior approvals of the TPB, the implementation agents concerned will proceed in accordance with the Town Planning Ordinance.

- (d) We will decide on where to set up the second DURF in the light of the experience gained in the operation of the first DURF established in Kowloon City, and also having regard to the number and conditions of dilapidated buildings in various districts. For the time being, we have yet to firm up a timetable for setting up other DURFs.
- (e) The setting up of DURFs to facilitate urban renewal of old districts is an important initiative under the revised URS announced after a two-year public engagement exercise. It is also a key measure to implement the "people-centred, bottom-up, district-based" approach. The revised URS has been endorsed by the Executive Council and announced by the Chief Executive in his 2010-2011 Policy Address, and hence is a policy agenda of the Special Administrative Region Government and a blueprint guiding the work of the URA. Besides, the Government has earmarked additional resources for the creation of eight non-directorate posts and will apply to the Finance Committee of the Legislative Council for funding to create a directorate post of Chief Town Planner so as to make sure that there will be sufficient manpower resource to support the work of DURFs. The \$500 million Urban Renewal Trust Fund to be set up will also ensure that DURFs will have sufficient funding to conduct researches, organize public engagement activities and carry out other work. The Development Bureau will monitor the overall operation of DURFs to ensure that their recommendations will be adopted where appropriate.

Handling of Food Waste

8. **MR TOMMY CHEUNG** (in Chinese): *President, it was reported earlier that a private housing estate in Tung Chung had promoted waste reduction since 2007, including trying out a scheme on food waste recovery by hiring a food waste processor from an electrical appliance company at a monthly rental of \$3,000 to handle food waste collected from 500 households participating in the scheme. Although a reduction of about three tonnes of food waste can be achieved through the scheme each month, only a monthly refuse transportation fee of about \$200 can be saved in return, which is very small compared to the rental paid. It was also reported that the food waste processor had already reached its monthly maximum handling capacity at present, and if more households wished to join the scheme, the housing estate had to rent an additional food waste processor, revealing that the cost-effectiveness of handling household food waste in an environmentally-friendly manner is low. In this connection, will the Government inform this Council:*

- (a) *whether it has compiled statistics on the number of housing estates providing food waste recovery services at present; if so, of the number involved; if not, whether it will conduct such a survey in future and assess the inclination of housing estates to participate in food waste recovery;*
- (b) *given that the aforesaid above example has revealed the low cost-effectiveness of handling household food waste in an environmentally-friendly manner, whether the authorities will formulate any financial assistance scheme or support measure, so as to increase incentives to attract more housing estates or residential buildings to join household food waste recovery schemes, thereby responding to the community's aspirations for green living; and*
- (c) *of the progress of the project entitled "Waste to Food — Community Trial Project of Kitchen Waste Recovery with Vermi-composting" conducted by the Kadoorie Farm and Botanic Garden with subsidies provided by the authorities in 2009; whether the project has been extended to the household level; if not, of the reasons for that; if so,*

the number of housing estates or residential buildings participating in the project, and its cost-effectiveness of handling food waste?

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

- (a) We note recently that several private estates have offered food waste treatment services within their estates on their own initiative. It shows that the environmental awareness of the public has been rising and many people are willing to reduce food waste disposal so as to reduce the pressure off of our landfills. We are greatly encouraged and happy to see the development of this trend. We are now collecting information of food waste treatment in private estates so as to learn more about their food waste collection and recycling practices.

- (b) We have launched various education and publicity activities to enhance the awareness of the public and the business sectors about food waste avoidance and reduction. These initiatives include inviting all schools to sign a Green Lunch Charter to stop using disposable food containers and cutlery and adopt the on-site meal portioning approach where possible, so as to reduce food waste and protect the environment. Moreover, by making use of the Environment and Conservation Fund (ECF), we have been supporting schools to implement on-site meal portioning and various education and promotion programmes for food waste reduction. For example, in 2008, the ECF supported the "Save Food Day" activities to promote good eating culture and habit, and to encourage the public to reduce the portion of their food should they wish to eat less so as to avoid food wastage.

On measures for recycling food waste, there are different treatment techniques and different modes of food waste collection for various types of food waste. At present, some 960 tonnes of food waste are generated from the commercial and industrial (C&I) sectors, which are more readily for separation at source for collection. To encourage the reduction of food waste in the private sector, the

Environmental Protection Department has been implementing a "Food Waste Recycling Partnership Scheme" (the Scheme) with various sectors including property management companies, restaurant trade, food processing factories and shopping mall management companies. Launched on 1 June 2010, the Scheme is looking into different modes of collection and treatment of food waste so as to develop feasible solution to tackle food waste and to promote wider use of on-site treatment equipment, thus alleviating pressure off of our landfills. We will carry out education programmes to help train the management and front-line staff of the C&I partners on good food waste reduction and management practices. A Code of Practice on the management of food waste will be drawn up. Sharing sessions and seminars will be held with the partners to help consolidate the experience gained on the avoidance and treatment of food waste.

We are now planning for the development of two Organic Waste Treatment Facilities at Siu Ho Wan, North Lantau and Shaling, North District (design capacities would be 200 tonnes per day and 300 tonnes per day respectively). We have been working with the major food waste generators of the C&I sectors to produce guidelines on the management and collection of food waste so as to facilitate their delivery of food waste to the future Organic Waste Treatment Facilities for treatment.

As for the domestic side, we will work with the relevant stakeholders to enhance publicity and education on food waste reduction. In addition, we will explore the feasibility of making use of the ECF to support the provision of small scale on-site food waste treatment facilities in estates to further reduce the disposal of food waste.

- (c) In 2009, the ECF allocated about \$270,000 to the Kadoorie Farm and Botanic Garden for the carrying out a project entitled "Waste to Food — Community Trial Project of Kitchen Waste Recovery with Vermi-composting" (the Project) from July 2009 to April 2010. The Project is to test vermi-composting of food waste at the community level and to educate the public on related green concepts of food waste reduction and treatment.

Under the Project, the organizer, through collaboration with four entities (school, community group, community garden and estate residents' organization), set up vermi-composting boxes to educate the public on the related green concepts of food waste reduction and treatment. The organizer also recruited 50 households in public housing estates, private estates and small village houses to join the Project and practice domestic vermi-composting. It also held a series of public education activities, including seminars and exhibitions, to educate the public on the concepts of vermi-composting and food waste reduction. According to the organizer, over five tonnes of food waste were treated and converted into compost for organic farming.

On the whole, the Project fulfils the project objectives and requirements endorsed by the ECF.

Family Niches in Columbaria of Chinese Permanent Cemeteries

9. **MR IP KWOK-HIM** (in Chinese): *President, recently, some members of the public have complained that the Chinese Permanent Cemeteries do not allow married daughters to use their family niches except for those divorced, and such a rule allegedly involves sex discrimination. As stipulated in Rule 21A of the Chinese Permanent Cemeteries Rules (Cap. 1112, sub. leg. A) (the Rules) (Rule 21A), each family niche may be used for the deposit of up to four sets of cremated human ashes, and the second or subsequent set of cremated human ashes deposited in that niche shall be those of a close relative of the deceased first deposited in that niche having the same family surname. Besides, Rule 21A also provides that a married woman (unless divorced from her husband) shall be deemed to have her husband's family surname. As a result, daughters-in-law may be included, but married daughters do not meet the requirements. Yet, the eligibility requirements for the use of the family type niches provided by the Food and Environmental Hygiene Department (FEHD) are more relaxed, allowing the ashes of four close kins to be deposited in the family type niche at the same time. Even the ashes of sons-in-law with different surnames can be deposited in the family type niches. In this connection, will the Government inform this Council:*

- (a) *given that Rule 21A was formulated in 1986, whether the Board of Management of the Chinese Permanent Cemeteries (BMCPC), chaired by the Secretary for Home Affairs, will consider amending the requirements on surnames under Rule 21A so as to eliminate the possible sex discrimination involved;*
- (b) *given that according to Rule 21A, a permittee may be allocated more than one family niche, of the number of such type of permittees who each holds more than one family niche;*
- (c) *of the number of the FEHD's family type niches and their utilization; and*
- (d) *given that the allocated family/family type niches may not be fully utilized, resulting in a situation of "the living taking up space for the dead", whether the authorities will adjust the policy on family/family type niches (such as reducing their supply) in view of the current shortages of niches?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

- (a) Currently, the BMCPC handles its matters, including applications for family niches according to the Chinese Permanent Cemeteries Ordinance (Cap. 1112) (the Ordinance) and the Rules. To enhance the flexibility in using family niches, BMCPC is conducting a review of the Ordinance and the Rules, including examining the possibility of relaxing the restrictions in relation to close relatives on the use of a family niche, with a view to meeting the actual needs of the community.
- (b) According to the Rules, the BMCPC may allocate more than one family niche to the same permittee, but each permittee may only apply one family niche for each deceased person. At present, 546 permittees have been allocated with more than one family niche under the BMCPC.

- (c) Currently, there are 15 327 family niches under the management of the FEHD, of which 15 267 have been allocated.
- (d) According to the allocation mechanism of family niches adopted by the FEHD and BMCPC, family niches are only allocated in respect of a deceased person. In applying for a family niche, an applicant is required to provide proof of cremation of the deceased. Cremated ashes of the deceased must be deposited in the allocated family niche within three months from the date of allocation.

At present, family niches account for about 9% of all niches managed by the FEHD. The percentage has already been reduced to less than 1% in new columbarium developments. The BMCPC will also review the supply of different types of niches from time to time and adjust the supply according to the actual needs of the public.

Short-term Food Assistance

10. **MR WONG KWOK-KIN** (in Chinese): *President, the Government has implemented food bank projects since 2008 to provide short-term food assistance for people in need and people with difficulties in their livelihood. In this connection, will the Government inform this Council:*

- (a) *of the average number of people who have obtained food assistance per month since the introduction of food bank projects, with a breakdown by District Council district;*
- (b) *given that upon the introduction of the above projects in 2008, the authorities undertook to provide \$12 million to each of the five non-governmental organizations (NGOs) which are responsible for operating food banks for meeting operational expenses, of the amount of funds which have been spent by each of these NGOs so far, and the average amount of expenses used for providing this service per month;*

- (c) *given that the authorities have set aside a reserve of \$27.5 million upon the introduction of the projects in 2008, whether the authorities have used such reserve so far; if they have, of the items funded by the reserve; and*
- (d) *in response to the recent inflation in the prices of food and imported goods, whether the Government will review the existing food bank projects, as well as increase resources and service quotas, in order to meet the demands of the people in need?*

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

- (a) The five short-term food assistance service projects commissioned by the Social Welfare Department (SWD) commenced operation on 27 February 2009. Up to 30 November 2010, the five projects had already catered for nearly 40 000 service users. Since the operating NGOs only submit statistics of their service areas, the SWD cannot provide the information by District Council district. The average number of beneficiaries per month of the projects is at Annex 1.
- (b) The actual expenditure of the five operating NGOs and their average monthly expenditure up to 30 November 2010 are at Annex 2.
- (c) The Administration has indicated in its submission to the Finance Committee of the Legislative Council that an initial amount of \$60 million will be allocated to the operating NGOs by instalment to meet the operational expenses of the service projects, and that another \$27.5 million will be reserved for meeting service demands in excess of the first round of provision. Since none of the operating NGOs have fully spent the initial allocation, the SWD does not have to resort to the reserve at this stage.
- (d) There is no quota for the short-term food assistance service. As service utilization was stable in the past year and there was no significant increase in service demand, the SWD estimates that the funding available will enable the projects to operate up to 2013. However, the SWD will closely monitor the service demand.

Annex 1

Number of beneficiaries of the five projects

<i>Operating NGOs</i>	<i>Serving Districts</i>	<i>Number of Beneficiaries (monthly average, up to 30 November 2010)</i>
Kwun Tong Methodist Social Service	Kwun Tong, Wong Tai Sin and Sai Kung	291
Tung Wah Group of Hospitals	Kowloon City, Yau Tsim Mong and Sham Shui Po	501
Hong Kong Sheng Kung Hui Welfare Council	Tuen Mun, Yuen Long and Tin Shui Wai	332
Hong Kong Women Development Association Limited	Sha Tin, Tai Po and North District	248
St James' Settlement	Hong Kong, Other Islands and Tung Chung, Tsuen Wan and Kwai Tsing	531

Annex 2

The actual and average monthly expenditure of the operating NGOs

<i>Operating NGOs</i>	<i>Serving Districts</i>	<i>Actual Expenditure (up to 30 November 2010)</i>	<i>Average Monthly Expenditure</i>
Kwun Tong Methodist Social Service	Kwun Tong, Wong Tai Sin and Sai Kung	\$5.62 million	\$270,000
Tung Wah Group of Hospitals	Kowloon City, Yau Tsim Mong and Sham Shui Po	\$4.95 million	\$240,000
Hong Kong Sheng Kung Hui Welfare Council	Tuen Mun, Yuen Long and Tin Shui Wai	\$4.83 million	\$230,000
Hong Kong Women Development Association Limited	Sha Tin, Tai Po and North District	\$4.35 million	\$210,000
St James' Settlement	Hong Kong, Other Islands and Tung Chung, Tsuen Wan and Kwai Tsing	\$3.02 million	\$140,000

Land (Compulsory Sale for Redevelopment) Ordinance

11. **MR RONNY TONG** (in Chinese): *President, the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) (the Ordinance) came into operation in 1999. Under the Ordinance, any person who owns not less than 90% of the undivided shares in a lot may make an application to the Lands Tribunal (the Tribunal) for an order for the compulsory sale of all of the undivided shares in the lot for the purposes of redevelopment. The Government, by publication of the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice in the Gazette in January last year, specified that with effect from 1 April 2010, in respect of three classes of land lot, the application threshold for compulsory sale would be lowered from 90% to 80%. In this connection, will the Government inform this Council:*

- (a) since the Ordinance came into operation in 1999, whether the Tribunal has rejected any application for a compulsory sale order (including applications with the thresholds of 90% and 80% respectively); if so, of the reasons for the rejection and the details;*
- (b) whether the authorities have assessed, from 1999 to the present, the differences between the prices at which the properties were sold compulsorily under the Ordinance and the prices of the properties built on the same land lots after redevelopment; if so, of the details; if not, how they monitor whether the Ordinance has been abused causing the minority owners not being reasonably compensated for their properties concerned; and*
- (c) given that some minority owners have reported that the services currently provided by the Legal Aid Department do not cover the proceedings handled by the Tribunal under the Ordinance and the negotiation prior to such proceedings, rendering quite a number of minority owners (who have not the financial means) unable to appoint lawyers, engineers or other experts to assist them in negotiating better prices for their properties even though they are dissatisfied with the valuation of their properties, whether the Government will amend the relevant legislation to enable minority*

owners to receive legal aid so that they can negotiate the valuation of their properties with the developers on a more equal footing; if it will, of the timetable for the amendment; if not, the reasons for that?

SECRETARY FOR DEVELOPMENT (in Chinese): President, my reply to the three-part question is as follows:

- (a) Since the Ordinance came into operation in 1999 and up till 30 December 2010, the Tribunal has received a total of 85 applications for compulsory sale, of which 26 have been granted compulsory sale orders, one has been dismissed, 37 withdrawn by applicants or adjourned for various reasons and 21 are being processed. With the exception of four cases, 81 out of these 85 applications are based on the 90% threshold.

The dismissed case was an application based on the 90% threshold, involving land lots at Nos. 125 and 127 Tung Choi Street, Kowloon (Lands Tribunal Case No. LDCS 1000/2006). According to the judgment handed down by the Tribunal in March 2007, as the applicant had failed to adduce sufficient evidence to satisfy the Tribunal that redevelopment was justified due to the age or state of repair of the existing development on the lots, the Tribunal decided not to make a compulsory sale order.

- (b) Under the Ordinance, an application by a majority owner to the Tribunal for compulsory sale of land shall be accompanied by a valuation report prepared not earlier than three months before the date on which the application is made. The report shall set out the assessed market value of each property on the subject lot, and the assessment shall meet the relevant requirements specified in the Ordinance. The valuation report will form the basis for pro rata apportionment of future sale proceeds to each majority owner and each minority owner in accordance with the existing use values of their respective properties as assessed in the report.

If the Tribunal decides to grant a compulsory sale order after hearing the case, it will approve a reserve price which has "taken into account the redevelopment potential of the lot", and appoint a trustee to sell the lot by public auction (unless all owners of the lot have agreed to seek the Tribunal's approval under the Ordinance for selling the lot by other means). A reserve price which has "taken into account the redevelopment potential of the lot" will be higher than the total existing use values of all properties on the lot as the former reflects the value derived from, among others, a better utilization of the plot ratio of the lot. When handling compulsory sale cases, the Tribunal judge always sits with an experienced surveyor who will offer professional advice on the cases in the capacity of a Tribunal member.

After the lot has been sold, sale proceeds will be apportioned on a pro rata basis in accordance with "..... the values of the respective properties of each majority owner and each minority owner of the lot" as assessed in the abovementioned valuation report (that is, in accordance with the ratio between the existing use values of the respective properties of the majority and the minority owners).

With regard to the past 22 cases in which the Tribunal granted compulsory sale orders and the subject lots were successfully sold by public auction, the transaction prices were on average 2.6 times the existing use values of the lots. In other words, the proceeds apportioned to each minority owner after public auction were 2.6 times the then market value of their respective properties. We consider that the provision for the Tribunal to approve reserve price under the Ordinance can ensure that the minority owners are reasonably compensated. However, we must point out that "2.6 times" is only an average figure based on the abovementioned cases. Obviously, the redevelopment value of land lots varies from site to site.

We have not made comparison between the prices at which the properties on the lots were sold compulsorily and their prices upon redevelopment. This is because various costs and risks are

involved in the process of redevelopment, and the final prices of the redeveloped properties are affected by many factors, including the overall economic situation and the market price of the properties, or even the change of land use, such as a change from domestic use to commercial use. Hence, the prices of the redeveloped properties cannot serve as suitable indicators to assess whether the minority owners have been reasonably compensated.

- (c) Pursuant to the Legal Aid Ordinance, legal aid is only available to proceedings in the Tribunal under Part II of the Landlord and Tenant (Consolidation) Ordinance. Nevertheless, legal aid may be granted, subject to means and merits tests, to a person who appeals against the decision of the Tribunal. At present, the Government has no plans to amend the relevant provisions of the Legal Aid Ordinance.

However, the Development Bureau attaches much importance to providing administrative support to minority owners before the commencement of legal proceedings under the Ordinance. As we have pointed out in the motion debate on "Reviewing the operation of the Land (Compulsory Sale for Redevelopment) Ordinance" at the Legislative Council meeting of 1 December 2010, the Development Bureau will launch a Pilot Mediation Scheme for compulsory sale cases in late January this year. This scheme, to be piloted for one year, aims to facilitate parties involved in or contemplating compulsory sale applications under the Ordinance to undertake mediation on a voluntary basis. The Government will provide financial support for the pilot scheme, including its setup and operating costs, as well as the financial assistance to be provided to eligible elderly minority owners in paying mediator fees. If both parties, namely, the majority owners and the minority owners, who are or who will be involved in compulsory sale applications, are willing to join the mediation scheme, staff of the service provider of the pilot mediation scheme will first explain the operation of the mediation mechanism to both parties. To enhance transparency, we will request the service provider of the pilot mediation scheme to provide a list of its accredited mediators and a standard charging rate to facilitate both parties joining the scheme to make their choice.

All accredited mediators are independent professionals who are professionally trained in mediation. They will, in an unbiased and confidential manner, help both parties discuss and negotiate on a balanced footing, with a view to reaching consensus.

Further, the Development Bureau will, at around the same time, launch a Pilot Scheme on Outreach Support Service for Elderly Owners. We will be engaging a social welfare agency to provide outreach support service to elderly minority owners of old buildings. The social welfare agency will develop a network with elderly centres in various districts to proactively explain to elderly owners the general practice of property acquisition and the process of compulsory sale under the Ordinance. The agency will also refer the elderly owners to professionals such as surveyors for advice and assistance if they wish, and to check their cases for them free of charge, including ascertaining through the various government departments such as the Land Registry, the Buildings Department and the Planning Department, if the properties in which they reside fall within one of the specified classes of lot for which the 80% compulsory sale application threshold applies under the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice which came into effect on 1 April 2010.

To step up publicity and public education to help minority owners know their rights and the support measures provided by various agencies, as well as the caveats that they should watch out for when approached by developers or their intermediaries during voluntary acquisition or compulsory sale, the Development Bureau will also launch a video on the Ordinance in late January this year. The video will explain in a user-friendly manner the scope of the Ordinance as well as the process of compulsory sale to enable affected owners to know their rights and the protection for them under the Ordinance. The video will also introduce to the public the support and assistance available to them, including the further information service available at the 10 Property Management Advisory Centres of the Hong Kong Housing Society, the role of the Estate Agents Authority (EAA) in regulating the practice of estate

agents in the acquisition of old buildings, and the assistance the EAA renders to the minority owners. The video will also introduce the Pilot Mediation Scheme and the support service by the social welfare agency to be commissioned by the Development Bureau.

Retrofitting Franchised Buses with Emission Reduction Devices

12. **MR LEE WING-TAT** (in Chinese): *President, regarding the problem of franchised buses and air pollution, will the Government inform this Council:*

- (a) *given that the Government indicated in its reply to a question raised by a Member of this Council on 17 March 2010 that it had been discussing with the franchised bus companies to explore various options to reduce the emissions of franchised buses, which included accelerated replacement of old buses, bus route rationalization, setting up of low emission zones (LEZ), and assessing the feasibility of retrofitting selective catalytic reduction (SCR) devices onto Euro II and III buses to reduce their nitrogen oxides (NO_x) emissions, and so on, of the work progress of the Government in implementing various proposals so far and the future work plan in this regard, and provide such details in respect of each of the aforesaid options;*
- (b) *given that the Government also indicated in its reply to the question on 17 March 2010 that if all Pre-Euro, Euro I and Euro II commercial vehicles were retired, the economic benefit (including the reduction in costs of medication, consultations, hospital admissions, and loss of earnings due to the receptors' work absenteeism, and so on) to be brought about would be about \$24.3 billion, of the percentage of such social costs saved through reduction in costs of medication and loss of earnings in the total social costs; whether the Government had made any projection on such economic benefit in the past three years; if it had, of the results (including the percentage of various social costs saved); if not, the reasons for that;*

- (c) *if it has looked into whether various franchised bus companies will use the retrofitting of their buses with emission reduction devices as the details and justifications for adjusting the bus fares; and the Government's measures in response to any upward adjustment of bus fares on such grounds;*
- (d) *of the number of franchised buses which have been retrofitted with diesel catalytic converters, diesel particulate filters (DPF), SCR devices or other emission reduction devices, with a breakdown by the emission standard met by the bus; and*
- (e) *of the retrofitting costs of each of the emission reduction devices in part (d), and their respective effectiveness and durability in improving air quality?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

- (a) Reducing emissions from franchised buses in busy corridors has been a priority of the Government in improving roadside air quality. Therefore, the Chief Executive announced in his Policy Address last October that the ultimate policy objective of the Government is to have zero emission buses running across the territory. When the current bus franchises expire in the coming few years, additional requirements will be imposed in the franchises for the bus companies to switch to zero emission buses or the most environmental-friendly buses when replacing existing ones, taking into account the feasibility and affordability for bus operators and passengers. To this end, the Chief Executive proposed to fund the full cost of procuring six hybrid buses for use by the franchised bus companies along busy corridors to test the operational efficiency and performance of these buses under Hong Kong conditions and to collect operational data. If the bus companies wish to test other more environmental-friendly buses such as electric buses, the Government will be ready to provide them with the same financial support. We are discussing with the relevant franchised bus companies the arrangements for the testing of hybrid buses. The

franchised bus companies are also considering making use of the funding to test electric buses.

The Policy Address also proposed that subject to satisfactory results of the trial to retrofit Euro II and Euro III buses with SCR devices, the Government will fully fund the retrofit of the devices while the bus companies will bear the subsequent operational and maintenance costs. Moreover, it set out specific targets for setting up pilot LEZ. The progress of the above measures, together with other issues mentioned in the question, is set out below:

(i) *Accelerating replacement of buses and retrofitting Euro II and Euro III buses with SCR devices*

At present, franchised bus companies are required to operate their franchised bus services with buses under the age of 18, and have been replacing their serving buses accordingly. This arrangement has taken account of the maintenance, operational and financial capability of the bus operators and their obligations to provide a proper and efficient service to the public. It is estimated that about 35% of in-use franchised buses (about 2 000 buses), including all pre-Euro and Euro I buses, as well as some Euro II buses, will retire by 2015.

At present, over 60% of franchised buses are Euro II and Euro III vehicles. Given their large numbers, it would be difficult to phase out these buses in the coming few years. We are looking into other options which are more cost-effective than accelerating bus replacement to reduce emissions from franchised buses, such as retrofitting suitable after-treatment devices to the existing buses.

According to overseas experience, retrofitting buses with SCR devices can reduce their NO_x emissions by about 60%. At present, the franchised bus companies have completed, where

technically feasible, the retrofit of their Euro II and Euro III buses (about 3 500 buses) with DPF to reduce the particulate emissions. Retrofitting DPF on Euro II and Euro III buses, coupled with SCR devices, could upgrade their emission performance to reach Euro IV or above level. Subject to satisfactory trial results, it will be more cost-effective than expediting the replacement of buses.

We have set up a task force to prepare for and monitor the trial of retrofitting Euro II and Euro III buses with SCR devices. It comprises representatives from franchised bus companies operating routes serving busy corridors in the urban areas, overseas and local experts, bus and bus engine manufacturers, SCR device suppliers, and relevant government departments. The task force is making the necessary preparation with a view to launching the trial in around mid of 2011. It will examine the trial data six months after the trial to ascertain the feasibility of the retrofit as soon as possible.

As stated above, subject to satisfactory results of the trial, the Government will fund the full cost of retrofitting Euro II and III buses with these devices while the bus companies will bear the subsequent operational and maintenance costs.

(ii) *Bus route rationalization*

Rationalization of bus services is an ongoing exercise. The Transport Department (TD) has been working with the District Councils and the franchised bus companies to pursue cancellation, amalgamation, truncation of bus routes and frequency reduction so as to reduce the number of bus trips and bus stopping particularly on busy corridors. In implementing bus route rationalization, the TD will consider whether reasonable alternative services are available for the affected passengers. On the other hand, the bus companies will redeploy surplus buses saved from bus route

rationalization to other bus routes that require additional services.

A number of new railways have come into operation since 2004, providing the public with more choices of railway services. In response to changes in the demand of bus passengers, under the bus route rationalization schemes between 2004 and October 2010, the TD cancelled 51 bus routes, truncated 22 routes and reduced the frequency of 148 routes. The number of franchised buses decreased from 6 179 in 2004 to 5 769 in end October 2010 (that is, reduced by about 7%).

(iii) Setting up of LEZ for Buses

The Government has been pushing the franchised bus companies to deploy more environmentally-friendly buses to serve the busy corridors. As at end October 2010, all franchised buses serving along Yee Wo Street, 94% along Nathan Road, and 90% along Des Voeux Road Central already met Euro II or above emission standards. To achieve greater environmental benefits, the Government further plans to designate pilot LEZ in these busy districts. We will increase as far as possible the ratio of low emission franchised buses (that is, Euro IV or above buses) running in these zones from 2011-2012, with the target of having only low-emission buses in these zones by 2015.

Under the normal replacement arrangement, the franchised bus companies will replace their old buses in the coming years. We will request the franchised bus companies to accord priority to the deployment of new buses to routes serving the pilot LEZ as far as possible. Besides, subject to satisfactory results of the trial to retrofit Euro II and Euro III franchised buses with SCR devices, we will also request the

franchised bus companies to deploy buses retrofitted with SCR devices to serve the pilot LEZ.

- (b) The public consultation on Air Quality Objectives Review was completed in November 2009. The consultation document sets out the consultant's estimate on the economic benefits of the proposed air quality improvement measures. The replacement of all pre-Euro, Euro I and II diesel commercial vehicles would bring about economic benefits of roughly \$24.3 billion to the society in the coming 50 years. The estimate seeks to show that we should endeavour to replace these diesel commercial vehicles. We believe the estimate is still valid and there is no need to conduct another estimation at this stage.
- (c) The Government has been encouraging franchised bus companies to retrofit suitable emission reduction devices to their bus fleets so as to reduce emissions. Regarding the retrofit of Diesel Oxidation Catalysts (DOC) (on Pre-Euro and Euro I franchised buses) and DPF (on Euro II and III franchised buses), the costs incurred were fully borne by franchised bus companies. As the costs involved have been apportioned since 2000, it will not create any pressure for future fare increase. Moreover, subject to satisfactory results of the trial of retrofitting SCR devices, the Government will fund the full cost of retrofitting Euro II and III buses while the bus companies will only bear the subsequent operational and maintenance costs. We therefore believe the retrofitting will only have minimal impact on bus fares.
- (d) At present, all Pre-Euro and Euro I franchised buses (about 1 500 buses) have been retrofitted with DOC. Regarding DPF, the franchised bus companies have completed, where technically feasible, the retrofit of DPF on their Euro II and III franchised buses (about 3 500 buses). No franchised buses have been retrofitted with SCR devices as the trial of retrofitting such devices is still under preparation.

- (e) Retrofitting pre-Euro and Euro I franchised buses with DOC can reduce their particulate emissions by about 30% and emissions of hydrocarbon and carbon monoxide by about 50%. Retrofitting Euro II and Euro III buses with DPF can reduce the emissions of particulates, hydrocarbon and carbon monoxide by about 80% to 90%. As for SCR devices, some places in Europe, such as London and Belgium, have retrofitted some of their Euro II and Euro III buses with these devices, which can generally reduce the NO_x emissions by about 60%.

The retrofitting costs of DOC and DPF are as follows:

- (i) DOC — about HK\$10,000 to HK\$20,000 per bus; and
- (ii) DPF — about HK\$30,000 to HK\$40,000 per bus.

Regarding retrofitting of SCR devices, according to the preliminary information provided by the suppliers, the cost for large-scale retrofit of SCR devices to Euro II and Euro III franchised buses is estimated to be about HK\$150,000 per bus.

Physical Education Lessons in School

13. **DR RAYMOND HO** (in Chinese): *President, some parents have reflected to me that in recent years, quite a number of children in Hong Kong only watch television or play computers after school, leading a sedentary lifestyle with no physical activity, and that physical education (PE) lessons in school have become the main opportunity to do exercise. In this connection, will the Government inform this Council:*

- (a) *whether it has stipulated the weekly minimum duration of PE lessons in primary and secondary schools in Hong Kong at present, and whether it has specified the contents of such lessons;*
- (b) *of the respective numbers of primary and secondary schools in Hong Kong which have sports venues of their own and those which have to*

borrow outside sports venues or swimming pools for conducting PE lessons; and

- (c) *given that some parents have relayed to me that, for students in those schools which have to borrow outside sports venues for conducting PE lessons, travelling to and from such venues or swimming pools is troublesome and time-consuming, thus greatly reducing their interest in PE lessons, whether the Government will consider adopting some measures which are targeted to improve that situation, so as to increase students' interest and participation in PE lessons, thereby improving their physical fitness?*

SECRETARY FOR EDUCATION (in Chinese): President, PE plays an important part in promoting sports culture in the society. In fact, "To lead a healthy lifestyle and develop an interest in and appreciation of aesthetic and physical activities" is one of the learning goals of the school curriculum. However, we believe that physical activities should not only be carried out in PE lessons. It is more important for students to develop an active lifestyle and engage in various types of physical activities for energy expenditure during leisure time. The answers to the questions asked by Dr HO are as follows:

- (a) The Curriculum Development Council of Hong Kong recommended that primary and secondary schools should allocate at least 5% of the total lesson time for PE (that is, two lessons per week/cycle and 35 to 40 minutes per lesson) to help students develop a healthy lifestyle, cultivate perseverance, and positive values and attitudes. As indicated in the PE Key Learning Area Curriculum Guide (2002), the PE curriculum aims to provide an open and flexible curriculum framework, with broad and balanced contents covering six strands, namely motor and sports skills, health and fitness, sports-related values and attitudes, knowledge and practice of safety, knowledge of movement and aesthetic sensitivity. The Education Bureau requires schools to observe the developmental characteristics of Key Stage One (that is, Primary One to Three) students and teach fundamental movements, including locomotor skills, stability skills and manipulative skills to ensure that students develop a solid

foundation for transferring to various types of sports. We also require schools to teach at least eight different physical activities from not less than four areas in other Key Learning Stages (that is, Primary Four and above) such that students can have an all-around development in sports. The Annex shows the learning targets and examples of activities for different Key Learning Stages. Schools should adopt a life-wide learning approach and provide, apart from PE lessons, related co-curricular activities, including interest groups, training, in-house as well as inter-school competitions, and so on, to help students broaden their horizons and develop their potential.

- (b) Generally, there are adequate basic facilities in Hong Kong primary and secondary schools, including multi-purpose basketball court, covered playground, school hall, student activity room, and so on, for the implementation of the PE curriculum. To provide students with diversified experiences of PE, most schools make use of public recreational facilities of the Leisure and Cultural Services Department, Housing Department, and so on, to organize learning activities and sports competitions. Schools are not required to report to the Education Bureau the frequency and arrangement of hiring public sports facilities.
- (c) According to our understanding, when arranging PE lessons outside school, schools normally choose nearby sports facilities and provide appropriate administrative support such as arranging double-lessons for PE, linking PE lessons with recess or lunch periods, providing transportation, and so on. Many schools have successful experience that can be shared, in professional development programmes organized for teachers from time to time. In general, the activities conducted outside school are those that students have less chance to play (for example, swimming, squash, tennis, golf, and so on) or are especially interested in (for example, football). Thus, we believe that arranging students to use sports facilities outside school should help students enhance rather than reduce their interests and involvement in PE lessons.

The learning targets and examples of activities of different Key Learning Stages

<p><i>Strands</i></p> <p><i>Learning Targets</i></p> <p><i>Key Learning Stages</i></p>	<p><i>Motor and Sports Skills; Health and Fitness; Sports-related Values and Attitudes; Knowledge and Practice of Safety; Knowledge of Movement; Aesthetic Sensitivity</i></p>
<p>Key Stage One (P1 to P3)</p>	<ul style="list-style-type: none"> - To develop locomotor movement skills, stability movement skills and manipulative movement skills through fundamental movement activities and physical play. - To acquire basic knowledge about fundamental movement and know the health benefits of physical activities. - To be able to express oneself and be creative in physical activities. - To develop positive attitudes towards participation in physical activities.
<p>Key Stage Two (P4 to P6)</p>	<ul style="list-style-type: none"> - To develop basic skills in at least eight different physical activities from not less than four areas through introductory activities and modified games, and engage regularly in at least one PE-related co-curricular activity. - To acquire basic knowledge about physical activities and their contribution to health. - To communicate effectively and be co-operative with others. - To follow rules and regulations and demonstrate fair play.

<i>Strands</i> <i>Learning Targets</i> <i>Key Learning Stages</i>	<i>Motor and Sports Skills; Health and Fitness; Sports-related Values and Attitudes; Knowledge and Practice of Safety; Knowledge of Movement; Aesthetic Sensitivity</i>
<p>Key Stage Three (S1 to S3)</p>	<ul style="list-style-type: none"> - To acquire and apply basic skills in at least eight different physical activities from not less than four areas which include games and competitions, as well as to participate actively and regularly in at least one PE-related co-curricular activity. - To be able to apply theories of physical activities and training principles in a health-related fitness programme. - To be able to think critically about debating issues in PE and sport. - To demonstrate appropriate etiquette and sportsmanship in physical activities.
<p>Key Stage Four (S4 and above)</p>	<ul style="list-style-type: none"> - To refine learnt skills and acquire skills of novel events of diversified activities, and participate actively and regularly in at least one PE-related co-curricular activity. - To be able to analyse physical movement and evaluate the effectiveness of a health-related fitness programme. - To be able to apply problem-solving skills when facing problems in a PE learning context. - To take the role of sports leader or junior coach and to demonstrate responsibility and leadership in school and the community. - To maintain and transfer the attributes of perseverance, sportsmanship, the ability to face difficulties, and other personal qualities to daily and social life.

3.3.2 Selection of Content	
- Examples of activities that could be included in the PE curriculum:	
<i>Areas of Activity</i>	<i>Activities</i>
Fundamental Movement (For Key Stage One)	Activities and games to develop locomotor movement skills, stability movement skills and manipulative movement skills
Athletics	Track events, Jumping events, Throwing events, Cross Country Run, and so on
Ball Games	<i>Team Games:</i> Basketball, Football, Volleyball, Handball, Hockey, Rugby, Softball, Netball, and so on
	<i>Racket Games:</i> Badminton, Table-tennis, Squash, Tennis, and so on
Gymnastics	Basic Gymnastics, Educational Gymnastics, Rhythmic Gymnastics, Sports Acrobatic, Trampolining, and so on
Swimming and Aquatic Sports	Basic Swimming Strokes, Life Saving, Survival in the Water, Synchronized Swimming, Canoeing, Rowing, Sailing, Windsurfing, and so on
Dance	Rhythmic Movements, Western Folk Dance, Chinese Dance, Social Dance, Creative Dance, Jazz Dance, and so on
General Physical Fitness Activities	Circuit Training, Resistance Training, Cardiorespiratory Fitness Training, Endurance Training, and so on
Outdoor Pursuits	Hiking, Camping, Orienteering, Excursion, and so on
Others	Jump Rope, Shuttlecock, Aerobic Dance, Golf, Chinese Martial Arts, Cycling, Ice Sports, and so on

Source: Curriculum Development Council (2002). PE Key Learning Area Curriculum Guide (Primary One to Secondary Three). Hong Kong: Education Department

Measures to Assist Cross-boundary Transport Sector Affected by Shortage of Diesel on Mainland

14. **MS MIRIAM LAU** (in Chinese): *President, it has been reported that due to recent shortage of motor vehicle diesel on the Mainland, some Mainland petrol stations have limited the refuel amount per vehicle or stopped such service, while*

some of them have even refused to supply diesel to cross-boundary trucks. Even though cross-boundary truck drivers from Hong Kong have tried as far as practicable to fully refuel their vehicles in Hong Kong beforehand, it is necessary for them to refuel midway when they travel longer distances. Some members of the transport sector have relayed to me that as a result of diesel shortage, drivers have to look for petrol stations everywhere in order to refuel their vehicles. As the frequency of refuelling increases due to the limit on the refuel amount, drivers often need to spend hours to refuel at several petrol stations before they can travel on with a full tank. This causes delays to their schedules and thereby reduces the number of delivery trips they can make. Diesel shortage on the Mainland has caused difficulties in business operation for the cross-boundary transport sector, increased the costs of cross-boundary transportation and affected the livelihood of cross-boundary truck drivers. In this connection, will the Government inform this Council:

- (a) of the sources of diesel imported into Hong Kong and the respective percentages of diesel imported from those places; as well as the measures implemented by the authorities to stabilize diesel supply in Hong Kong at present;*
- (b) whether it has assessed the impact of Mainland's recent diesel shortage on Hong Kong; if it has, of the outcome and the measures in place to deal with the situation; if not, the reasons for that; and*
- (c) given that it has been reported that diesel shortage on the Mainland may continue for some time until February this year, whether the authorities have measures to help the cross-boundary transport sector cope with the difficulties in refuelling on the Mainland; if they have, of the details of such measures; if not, the reasons for that?*

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

(a) and (b)

We have consulted the Environment Bureau on parts (a) and (b). According to the data compiled by the Census and Statistics

Department on imported gas oil (including motor vehicle diesel) for the first three quarters of 2010, the main sources of import for Hong Kong in that period were Singapore (41.7%), Korea (17.3%), Japan (17.2%) and Mainland China (14.7%).

The Government has been monitoring the reserves of gas oil in Hong Kong for meeting local demand. We have not observed any abnormality in gas oil supply recently.

To ensure that adequate reserves of key oil products are kept for meeting local demand, the Government has agreed on a code of practice with major oil importers, under which the importers are required to maintain gas oil reserves of not less than 30 days' consumption in Hong Kong. Furthermore, since the oil crisis in the 1970s, the Government has put in place legislative and administrative measures to deal with any possible oil supply disruption in Hong Kong. According to the Oil (Conservation and Control) Ordinance (Chapter 264), the Government could regulate the storage, supply, acquisition, disposal or consumption of oil (including gas oil) under special circumstances. The Government has also drawn up a contingency plan to co-ordinate the implementation of energy conservation measures by both the public and the private sectors as well as the allocation and consumption of oil in the event of a disruption in oil supply.

- (c) The Transport Department has been maintaining close liaison with the transport sector on their latest operating situation. It has recently contacted some operators and drivers of the cross-boundary transport trade to see whether their operation has been affected by the diesel supply situation on the Mainland. It was informed that since the vast majority of operators/drivers of cross-boundary goods vehicles and coaches would refuel their vehicles in Hong Kong before leaving for the Mainland due to better diesel quality and other considerations, the supply of diesel on the Mainland has little impact on their operations. Nevertheless, the Government will closely monitor the situation, continue to keep in close touch with the

cross-boundary transport trade, and where necessary, reflect the situation to the relevant Mainland authorities so as to assist the trade's operation as far as possible.

Internship Programme for University Graduates

15. **DR DAVID LI:** *President, the Internship Programme for University Graduates (the Programme), launched in August 2009 ceased accepting new applications after 31 March 2010. In May 2010, the Secretary for Labour and Welfare informed the Panel on Manpower that 1 674 and 239 graduates had taken up internships in Hong Kong and the Mainland respectively. In this connection, will the Government inform this Council:*

- (a) of the total number of applications it received under the Programme;*
- (b) of the positions offered to the participants of the Programme with a breakdown by industry;*
- (c) whether it has collected data on the post-programme employment of the participants of the Programme; if so, of the respective numbers of participants who have been offered full-time employment by the same employers who offered them internships upon the expiry of the internship periods and of those who are not employed by the same employers, the number of participants who successfully found other full-time employment within three months upon the expiry of the internship periods; and*
- (d) whether it has any plan to re-introduce the Programme or to offer a new scheme to promote employment of university graduates?*

SECRETARY FOR LABOUR AND WELFARE: President,

- (a) The Programme commenced receiving internship positions from enterprises on 10 June 2009 and enrolment of graduates began on 1 August 2009. The Programme ceased accepting applications

from graduates for internship positions after 31 March 2010. In total, 8 102 eligible graduates registered for the Programme.⁽¹⁾

- (b) The breakdown of local and Mainland internships by industry is set out below.

Table 1: Breakdown of Local Internships by Industry

<i>Industries</i>	<i>Number of Interns</i>	<i>Percentage (%)</i>
Business Services	454	27.0%
Education Services	190	11.3%
Construction and Engineering	106	6.3%
Finance	85	5.1%
Retail	70	4.2%
Others (for example, Transport, Manufacturing, Import and Export Trades, and so on)	776	46.2%
Total	1 681	100%*

Note:

- * There is a slight discrepancy between the sum of individual items and the total owing to rounding.

Table 2: Breakdown of Mainland Internships by Industry

<i>Industries</i>	<i>Number of Interns</i>	<i>Percentage (%)</i>
Finance	101	42.3%
Business Services	35	14.6%
Insurance	25	10.5%
Transport	16	6.7%
Real Estate	11	4.6%
Others (for example, Construction and Engineering, Hospital, Manufacturing, and so on)	51	21.3%
Total	239	100%

- (1) According to a survey conducted in February 2010, about 80% of the Programme registrants were in full-time employment at the time of interview. In other words, the majority of those who had not been placed into internship had already secured a full-time job.

- (c) A total of 983 internships were completed in full at the end of November 2010. Among the 554 local and 90 Mainland interns successfully surveyed, 449 (81%) of the former and 30 (33.3%) of the latter were further employed by the same hosting enterprises.
- (d) The Programme was launched as a special and time-limited initiative targeted at university graduates of 2008 and 2009 in the wake of the financial tsunami. According to the latest employment statistics published by the Census and Statistics Department, the seasonally adjusted unemployment rate stood at 4.1%, the lowest level in almost two years. The latest statistics of the Joint Institution Job Information System (JIJIS)⁽²⁾ also indicate that the number of full-time job positions for university graduates received during September to November 2010 (2 749) has increased by 45.14% on a year-on-year basis.

Taking into account the notable improvement in the labour market situation and the increase in job openings for university graduates, we ceased accepting internship positions and applications from graduates after 31 March 2010. We will continue to monitor the labour market situation closely and offer assistance to job seekers through our wide range of employment services.

- (2) JIJIS is a central database system recording job vacancies offered by employers to graduates of the eight University Grants Committee-funded institutions.

Installation of Noise Barriers by MTR Corporation Limited

16. **MR JAMES TO** (in Chinese): *President, I have recently received complaints from members of the public about the serious noise problem arising from the operation of trains along a rail section of Mong Kok East Station near Yim Po Fong Street. They have also pointed out that the MTR Corporation Limited (MTRCL) has already retrofitted noise barriers for the rail section along Peace Avenue, but it has not retrofitted such barriers for the section along Yim Po Fong Street. I have subsequently checked with the MTRCL, which has indicated that the Kowloon-Canton Railway Corporation (KCRC) conducted a study in 1993 and installed noise barriers at a number of locations. However,*

the MTRCL has not explained why it has not retrofitted noise barriers along Yim Po Fong Street. Moreover, I have learnt that the MTRCL is carrying out noise barrier retrofitting works to the north of Olympic Station. In this connection, will the Government inform this Council:

- (a) of the respective numbers of complaints received by the Environmental Protection Department (EPD), MTRCL (including KCRC and the former Mass Transit Railway (MTR) Corporation) and other government departments in the past five years which involved noise generated from railway operation; among such complaints, of the number of those confirmed to have involved noise levels exceeding the statutory standards specified in the Hong Kong Planning Standards and Guidelines (HKPSG), with a breakdown by year and rail section;*
- (b) whether the Government has collated statistics on the number of existing rail sections of the MTRCL with noise levels exceeding the statutory standards; of the approximate decibel (db) measurements by which the standards have been exceeded, with a breakdown by rail section;*
- (c) whether it knows the number and outcome of investigations conducted by the MTRCL (including the KCRC and the former MTR Corporation) after 1993 on noise problems arising from operation, and whether any noise barrier has been retrofitted for the existing railway lines having regard to the outcome of the investigations; if so, of the details of those projects;*
- (d) whether various departments such as the EPD and the Highways Department, and so on, had discussed with the MTRCL in the past five years about mitigating the noise problem along railway lines; if they had, of the proposals and efforts actually taken to mitigate noise; whether the Government knows if the MTRCL has planned to carry out the projects concerned, including the installation of noise barriers;*
- (e) whether it knows the factors based on which the MTRCL at present decides if noise barriers should be installed; whether the*

Government has discussed reviewing the guidelines concerned with the MTRCL;

- (f) *given that HKPSG stipulates that "shielding is only effective if it breaks the line-of-sight from the window of a sensitive use to the rail sources", whether the Government knows why the KCRC merely retrofitted noise barriers for the rail section along Peace Avenue then but did not do so for the section along Yim Po Fong Street; and*
- (g) *whether it knows when the retrofitting of noise barriers to the north of Olympic Station will be completed; of the effects of these noise barriers anticipated by the MTRCL and the Government, and whether retrofitting noise barriers to the south of Olympic Station will be considered?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

(a) and (b)

In general, complaints about the noise of running trains received by other government departments will be referred to the EPD for follow-up. Over the past five years, the total number of complaints about the noise of running trains received by the EPD is as follows:

Table 1: Total number of complaints
about the noise of running trains
(excluding Light Rail Transit trains)
from 2006 to 2010 (as at end September)

<i>Year</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i> <i>(as at end September)</i>
Number of complaints about the noise of running trains received by the EPD	44	35	37	39	32

Note:

The MTRCL could not make available the number of complaints received by the corporation.

The HKPSG provides guidance on new railway projects and new developments in the vicinity of railways. The noise levels of trains in operation are regulated by the Noise Control Ordinance (NCO). They should not exceed the following corresponding statutory noise limits set out in the NCO which are A-weighted equivalent continuous sound pressure level measured over a 30-minute period:

<i>Time period</i>	<i>Area Sensitivity Rating</i>		
	<i>"A"</i>	<i>"B"</i>	<i>"C"</i>
Day (0700 to 1900 hrs) and Evening (1900 to 2300 hrs)	60 dB (A)	65 dB (A)	70 dB (A)
Night (2300 to 0700 hrs)	50 dB (A)	55 dB (A)	60 dB (A)

Upon receiving a complaint, the EPD will investigate into each case to ascertain if the noise levels of running trains exceed the statutory limits. For details of the cases with noise levels of running trains exceeding the statutory limits over the past five years, please refer to Table 2 below.

Table 2: Information on cases with noise levels exceeding the standards under the NCO

<i>Rail Section</i>	<i>Number of complaints</i>	<i>Year of complaint</i>	<i>Approximate exceedance at complainant's flats nearest to the railway</i>	<i>Measures taken by the MTRCL</i>
Tai Wo Station to Tai Po Tau	11	2006, 2007, 2008, 2009, 2010	10 dB(A)	Altered the train operation patterns to reduce the noise level
Kowloon Bay Station to Ngau Tau Kok Station	8	2007, 2008, 2009	7 dB(A)	See the second and third paragraphs of response (c) below
Waterloo Road to Mong Kok East Station (along Yim Po Fong Street)	3	2008, 2010	7 dB(A)	See response (f) below

<i>Rail Section</i>	<i>Number of complaints</i>	<i>Year of complaint</i>	<i>Approximate exceedance at complainant's flats nearest to the railway</i>	<i>Measures taken by the MTRCL</i>
Ngau Tau Kok Station to Kwun Tong Station	2	2008	7 dB(A)	See the second and third paragraphs of response (c) below
Exit of Beacon Hill Tunnel to Tai Wai Station	2	2009	3 dB(A)	As the cases were caused by noise generated from a Mainland Through Train being hauled by a diesel locomotive, the departure time of the subject Through Train was adjusted.
Heng Fa Chuen Station to Chai Wan Station	1	2009	2 dB(A)	Altered the train operation patterns and carried out maintenance works at the concerned section of tracks

- (c) In 1991, the former KCRC commissioned a consultancy study and drew up a "noise reduction programme" for the East Rail (ER) Line. The programme took account of the seriousness of noise impact on residents at different locations along the ER Line, the priorities of retrofitting noise reducing installations, as well as the practicability and effectiveness of these measures. Under the programme, noise barriers retrofitting works commenced in 1993 and the works had all been completed now. For details please refer to Annex 1.

For the railway lines of the pre-merger MTR Corporation, noise problems mainly occurred on the Kwun Tong Line. The viaducts of the Kwun Tong Line were constructed more than 30 years ago. The design does not allow for the loading of other additional structures such as noise abatement facilities. Therefore, to install effective noise barriers, it is necessary to either carry out piling

works or construct self-standing supports beside the viaducts to bear the additional loading. There are carriageways under most parts of the viaducts of the Kwun Tong Line and the piling works or construction of self-standing supports would occupy one carriageway for a prolonged period. The impact on traffic would not be acceptable. Nonetheless, to reduce the noise from trains, the MTR Corporation commenced a programme in 2001 to minimize the rail joints on the Kwun Tong Line. The programme was completed in 2003, reducing 65% of the rail joints on the viaducts. In addition, the Corporation takes into consideration the situation of each location and implements appropriate measures to reduce the noise generated by running trains. These include regular grinding of wheels and tracks, maintenance of trains and tracks, lubricating the tracks and wheels, altering the train speed, installing wheel dampers and using welding at rail joints where applicable to reduce the noise generated by running trains.

The Kwun Tong Development and Renewal Task Force of the Kwun Tong District Council had commissioned the Hong Kong Policy Research Institute Limited to carry out a study on the severity of road and rail traffic noise along Kwun Tong Road and improvement methods. A report on the results and recommendations of the study was published in 2009. The report pointed out that installing noise barriers and covering the tracks were not feasible as there was not enough space and also it would have aesthetic impact on the landscape.

The MTRCL also retrofitted noise barriers near Tung Chung Station and Tsing Yi Station along the Tung Chung Line/Airport Express in 2006 and 2009 respectively. After the merger of the two railway companies, the MTRCL followed up the former KCRC's works of retrofitting noise barriers at Wo Liu Hang near Fo Tan Station on the ER Line to reduce the noise impact of trains on nearby residents. The works was completed in 2010.

- (d) The EPD and the MTRCL hold liaison meetings regularly to discuss, among other things, environmental issues such as noise along the rail lines. In response to complaints about the noise of trains, the EPD has proposed to the MTRCL that a consultancy be commissioned to conduct a comprehensive review of the noise levels of running trains and a study on the practicable improvement measures where necessary.
- (e) Currently the noise levels of the MTRCL running trains are under the control of section 13 of the NCO. The EPD will request the MTRCL to make improvements if the noise levels of the MTRCL trains are found exceeding the standards under the NCO. However, as the MTRCL's ER Line, Tsuen Wan Line, Kwun Tong Line and Island Line are all built before the commencement of the NCO, there are practical difficulties and constraints if noise abatement facilities are to be retrofitted along these lines. Therefore, section 37 of the NCO stipulates that section 13 shall apply to the MTRCL only so far as is practicable and compatible with the discharge of any function or the exercise of any power or duty conferred or imposed upon it according to law.

As railway is a convenient means of transport, following the start of train services many facilities and buildings would be developed along the railway. Due to the limitations of the original planning, there is a great difficulty in requiring the rail company to implement noise mitigation measures for new buildings developed after the railway is completed.

The MTRCL will adopt appropriate measures to reduce noise generated by running trains by taking into account the merits of each case, the varied conditions of different rail sections, the development of technology and the topography. The measures include grinding the rails and wheels regularly, proper maintenance of trains and rails, lubricating the tracks and wheels, adjusting the running patterns of trains and reducing train speed where feasible, installing wheel dampers, welding the rails at the joints where applicable in order to

reduce noise from wheel movements on the track, and constructing noise barriers. These various practicable measures help reduce noise generated during the operation of railway.

New railways must meet the requirements and statutory standards under the Environmental Impact Assessment Ordinance. The MTRCL must also carry out works and operate the railways in compliance with the requirements of the relevant legislation and the environmental permits, including the necessary noise reduction measures.

- (f) According to the findings of a consultancy study completed in 1996 by the former KCRC, noise generated by running trains was the main noise source affecting residents along Peace Avenue. The retrofitting of noise barriers would be effective in reducing the overall noise level along Peace Avenue. As for the situation along Yim Po Fong Street, the consultant pointed out that as the noise level of trains there was similar to that of road traffic. Reducing the noise level of trains would not significantly improve the overall situation, and therefore the consultant did not recommend any specific noise reduction measure for the section along Yim Po Fong Street. Nevertheless, the KCRC has retrofitted 4 m high noise barriers along Yim Po Fong Street to reduce the noise impact of trains on local residents.
- (g) The MTRCL completed the noise barrier works to the north of Olympic Station in late 2010 and will assess the effectiveness of the noise barriers. The assessment is scheduled for completion in the second quarter of 2011. The noise barriers are designed to reduce the noise levels of running trains to meet the requirements of the NCO. The MTRCL has no plan to retrofit noise barriers to the south of Olympic Station. The development of the estates to the south of the Station has incorporated building design mitigation measures to reduce the noise impact of train operation on residents. As the statutory requirements are complied with, no noise barrier would be required.

Locations of completed noise reducing installations
along the ER Line (in order of date of completion)

	<i>Area</i>	<i>Location</i>	<i>Noise Reduction Measures</i>
1	Tai Wo	Tai Wo Station	full enclosure
2	Tai Wai	Hin Keng Estate	semi-enclosure
3	Tai Po	Tai Po Market Station (Elegance Garden at Tat Wan Road)	semi-enclosure
4	Fan Ling	Fanling Centre	semi-enclosure
5	Tai Wai	Manlai Court	semi-enclosure and 1.5 m high track side barrier at railway bridge
6	Tai Wai	Tsuen Nam Road	station panels and 5.0 m high track side barrier
7	Ho Man Tin	Peace Avenue/Ho Man Tin Street	semi-enclosure, 1.5 m high track side barrier at Argyle Street railway bridge and at Waterloo Road railway bridge
8	Mong Kok	Yim Po Fong Street	4.0 m high track side barrier
9	Mong Kok	Embankment Road	3.0 m high track side barriers
10	Yau Yat Chuen	Tat Chee Avenue/Fa Po Street	0.5 m and 5.0 m high track side barriers
11	Kowloon Tong	Cumberland Road/True Light Lane	1.5 m high track side barrier and station panels
12	Tai Po	Pan Chung	1.5 m, 2.5 m and 4.0 m high track side barrier
13	Tai Po	Tai Po Kau Hui	1.5 m and 5.0 m high track side barrier
14	Tai Po	Tai Po Tau village	2.0 m high track side barrier
15	Tai Po	CARE Village	5.0 m high track side barrier
16	Tai Po	Hong Lok Yuen (South)	1.5 m high track side barrier
17	Tai Po	Hong Lok Yuen (North)	1.5 m high track side barrier
18	Sha Tin	Wo Che Villages	3.0 m, 4.0 m and 5.0 m high track side barriers
19	Fo Tan	Lok Lo Ha	3.0 m and 5.0 m high track side barrier

	<i>Area</i>	<i>Location</i>	<i>Noise Reduction Measures</i>
20	University	University Station	station panels
21	Tai Po/Fan Ling	Tai Po (North)/Fan Ling (South) (East Side of the Track)	1.5 m high track side barriers and 1.5 m high track side barriers with reducer
22	Sheung Shui	Yuk Po Court/Choi Yuen Estate/Choi Po Court	4.0 m high track side barrier, station panels, roof panels at south portion of platform and 0.5 m up-stand at platform canopy

Installation of Vehicular Countdown Device

17. **MR WONG KWOK-HING** (in Chinese): *President, it has been reported that Hong Kong's neighbouring places such as the Mainland, Taiwan and Macao have already installed countdown devices for both vehicular and pedestrian traffic lights. Yet, Hong Kong only provides flashing signal reminders for pedestrian crossing lights, making it difficult for pedestrians to know the time left for crossing the road. Moreover, it has been reported that since Hong Kong has also not installed countdown devices for reminding drivers about traffic light signal changes, it is difficult for drivers to judge the road conditions, thereby increasing the risk of accidents. In this connection, will the Government inform this Council:*

- (a) *of the total number of traffic accidents that happened at pedestrian crossings with light signals, as well as the percentage of such number in the total number of traffic accidents in the past three years;*
- (b) *given that in June 2008 the Transport Department (TD), in its paper for the Panel on Transport of this Council, indicated that before dismantling the countdown devices installed on trial, it had provided detailed explanations in relation to the findings of the study on the use of countdown devices and its plan to dismantle such devices to the Traffic and Transport Committees of the relevant District Councils (DCs), of the DCs that the TD had consulted on*

dismantling the countdown devices; whether those DCs had voted on this subject; if the DCs had voted, of the voting results; and

- (c) *given that, although the TD's findings in 2006 from a study on the countdown devices installed at 15 trial locations indicated that such devices "encouraged" pedestrians to rush across the road during the flashing green signal, and the TD had also pointed out that its research on overseas practice found that countdown devices were not standard equipment at signalized crossings, it has been reported that apart from the Mainland, Macao and Taiwan which have already installed such countdown devices, the United States, Germany and Japan will also introduce the "Little Green Man" animated countdown device pioneered by Taiwan, whether the authorities will reconsider and study the installation of countdown devices so as to follow such international trend?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the design and operation of the traffic lights currently used in Hong Kong are comparable with those in advanced countries and in line with international standards to ensure road safety. All along, we have educated the public about the code on proper use of traffic lights through road safety publicity activities. A "Green man" light means that pedestrians may cross the road if it is safe to do so. A flashing "Green man" light means that pedestrians must not start to cross the road. If they have already started crossing the road, they should keep going at a steady pace and they will have adequate time to finish crossing or reach a central refuge safely. A "Red man" light means that pedestrians must not cross the road. As regards vehicular traffic lights, a green light means that drivers may move across the junction if it is safe to do so. A red light means that drivers must stop behind the stop line. An amber light means that drivers must stop unless they are so close to the junction that stopping suddenly might cause an accident. The operation of traffic lights and the code are clear, straightforward and well-established. Road users are very familiar with them.

My reply to the three parts of the question is as follows:

- (a) The numbers of traffic accidents at signalized pedestrian crossings involving pedestrian casualty and their percentage in the total number of traffic accidents over the past three years are at Annex.
- (b) The TD, in conjunction with the City University of Hong Kong, conducted a study on Pedestrian Flashing Green Countdown Display (PFGCD) from February to October 2006 at 15 trial crossing sites in various districts. The findings showed that as pedestrians tended to have different perception of the time needed for crossing the road, the information provided by PFGCD somehow encouraged some pedestrians to chance crossing the road during the flashing "Green man" signal, thus exposing more pedestrians to risk and causing adverse impact on road safety. In July 2007, the TD wrote to the relevant DCs to explain the findings of the study at the trial crossing sites and the arrangements for terminating the trial. The DCs concerned included the Tsuen Wan, Tai Po, Central and Western, Wong Tai Sin, Kowloon City, Kwun Tong, Eastern, Sham Shui Po, Sai Kung, Kwai Tsing and Yau Tsim Mong DCs. Most of them made no comments. The TD was also invited to attend meetings of the Eastern, Sham Shui Po, Sai Kung and Tsuen Wan DCs to provide more detailed explanations and discuss the findings of the PFGCD trial. Among the DCs consulted, only the Sai Kung DC took a vote favouring the reinstallation of the PFGCD at Tong Chuen Street/Po Yap Road in Tseung Kwan O.
- (c) The "Little Green Man" animated countdown device is a variation of the pedestrian traffic light countdown devices. It shows numbers and animation to indicate the remaining time of the pedestrian phase, with an operation principle similar to that of other countdown devices in general.

The Administration follows closely international development in the use of pedestrian and vehicular traffic countdown devices. No conclusion has yet been reached on whether pedestrian traffic light countdown devices should be adopted. However, findings of the TD's previous trials showed that PFGCD encouraged pedestrians to

chance dashing out of the pavement during the flashing "Green man" signal, thus posing adverse impact on road safety.

As regards vehicular traffic light countdown devices, so far there has been no research data to support their effectiveness in enhancing road safety. In recent years, studies in Taiwan found that vehicular traffic light countdown devices would increase the traffic accident rate, and therefore recommended ceasing their use. Such devices have not been installed in overseas countries such as the United Kingdom and Australia. While they are used in some parts of the Mainland cities, countdown devices are not standard installation at signalized junctions. To the TD's knowledge, there are no reports confirming that such devices are effective in enhancing road safety.

The Administration will continue to follow closely the international development and research on the matter and conduct a review as appropriate in due course.

Annex

Number of traffic accidents at signalized pedestrian crossings
involving pedestrian casualty

<i>Year</i>	<i>Number of traffic accidents</i>	<i>Percentage in the total number of traffic accidents</i>
2008	886	6.1%
2009	912	6.4%
2010 (January to November) [#]	916	6.8%

Note:

provisional figures

Employment of Persons with Disabilities by Government

18. **MR CHEUNG KWOK-CHE** (in Chinese): *President, at present, there are about 400 000 people with disabilities in Hong Kong. The authorities have*

not only enacted legislation to eliminate discrimination against employees with disabilities, but have also encouraged enterprises to employ people with disabilities so that people with disabilities can give full play to their strength and skills. In this connection, will the Government inform this Council:

- (a) whether at present the Government has a policy that requires various government departments to employ people with disabilities up to a certain percentage; if it has, of the details; if not, the reasons for that;*
- (b) of the respective numbers of civil servants with disabilities employed and government staff with disabilities employed on non-civil service terms by the Government in the past three years, together with a breakdown by government department; and*
- (c) whether the Government will implement a quota system for employing people with disabilities; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): President, with regard to parts (a) and (c) of the question, the Administration is committed to promoting the employment of people with disabilities and ensuring that they enjoy equal opportunity of participating in productive and gainful employment in the open market. As an employer, the Administration provides employment opportunities for them through enabling civil service job applicants with disabilities to compete with other able-bodied applicants on equal grounds. Candidates with disabilities who meet the basic entry requirements for a post will not be subject to any shortlisting criteria and will be automatically invited to attend selection interviews. Once these candidates are considered suitable by the selection board to carry out the duties of a particular post, they would normally be recommended for appointment even though they may not be able, due to their disabilities, to perform the full range of duties of every post in the same rank.

At the community level, the Administration considers that people with disabilities should be assisted to find appropriate jobs on the basis of their

abilities. To this end, apart from providing vocational training and employment support for people with disabilities, the Administration will continue to adopt positive encouragement measures, such as giving recognition to good employers, sharing of good practices and providing incentive and assistance to employers.

The Administration has reservations on introducing a statutory or mandatory quota system for employment of people with disabilities for Hong Kong as a whole. It also has reservations on introducing a policy requiring every government department to employ a prescribed ratio of people with disabilities. According to studies by the European Commission in 2000 and the International Labour Organization in 2003, such a system has not been successful overseas in helping people with disabilities secure employment. Some countries have indeed abolished their quota systems. To promote the employment of people with disabilities, the international trend is to focus on the enactment and enforcement of anti-discrimination legislation and the provision of incentives for employers and enhanced support measures for people with disabilities. Moreover, under a mandatory employment quota system, people with disabilities could be perceived as a liability by employers and co-workers. This may not be conducive to their integration into the community.

With regard to part (b) of the question, the number of government employees with disabilities in the past three years⁽¹⁾ is set out below:

<i>Year</i>	<i>Number of civil servants with disabilities</i>	<i>Number of employees with disabilities on non-civil service terms</i>
2008	3 225	287
2009	3 238	266
2010	3 316	281

Note:

- (1) Employees with colour blindness or defective colour perception are not included in the statistics.

A breakdown of these government employees by departments is set out in Annexes A and B.

Annex A

Number of civil servants with disabilities serving in the Government in 2008-2010 (By Department)

<i>Department</i>	<i>As at</i>		
	<i>31 March 2008</i>	<i>31 March 2009</i>	<i>31 March 2010</i>
Agriculture, Fisheries and Conservation Department	333	334	330
Architectural Services Department	32	32	29
Audit Commission	3	3	3
Buildings Department	9	9	8
Census and Statistics Department	21	21	21
Chief Executive's Office	1	1	1
Civil Aid Service	4	5	6
Civil Aviation Department	8	8	8
Civil Engineering and Development Department	33	31	31
Companies Registry	19	19	17
Correctional Services Department	241	251	273
Customs and Excise Department	42	45	48
Department of Health	76	75	72
Department of Justice	17	16	15
Drainage Services Department	133	128	119
Electrical and Mechanical Services Department	120	110	98
Environmental Protection Department	7	7	7
Fire Services Department	26	31	30
Food and Environmental Hygiene Department	247	224	214
Government Flying Service	2	2	1
Government Laboratory	1	2	3
Government Logistics Department	29	25	23
Government Property Agency	4	3	3
GS: Civil Service Bureau	17	13	15
GS: Commerce and Economic Development Bureau	17	16	14
GS: Development Bureau	1	2	1

<i>Department</i>	<i>As at</i>		
	<i>31 March 2008</i>	<i>31 March 2009</i>	<i>31 March 2010</i>
GS: Education Bureau	85	83	77
GS: Environment Bureau	2	1	1
GS: Food and Health Bureau	1	1	0
GS: Home Affairs Bureau	1	1	1
GS: Labour and Welfare Bureau	1	1	2
GS: Offices of the Chief Secretary for Administration and the Financial Secretary	15	13	12
GS: Security Bureau	1	1	1
GS: Transport and Housing Bureau	1	1	1
Highways Department	58	63	68
Home Affairs Department	52	49	51
Hong Kong Observatory	1	1	2
Hong Kong Police Force	402	448	514
Hospital Authority (On Secondment)	62	56	51
Housing Department	86	87	89
Immigration Department	166	180	190
Information Services Department	3	3	3
Inland Revenue Department	77	84	92
Intellectual Property Department	1	1	2
Invest Hong Kong	1	1	1
Judiciary	33	31	31
Labour Department	37	37	41
Land Registry	19	17	20
Lands Department	33	34	37
Legal Aid Department	13	11	9
Leisure and Cultural Services Department	251	247	252
Marine Department	40	35	32
Office of the Telecommunications Authority	4	3	4
Official Receiver's Office	6	6	8
Planning Department	8	8	7
Post Office	58	56	60
Public Service Commission	2	2	2
Radio Television Hong Kong	6	5	5

<i>Department</i>	<i>As at</i>		
	<i>31 March 2008</i>	<i>31 March 2009</i>	<i>31 March 2010</i>
Rating and Valuation Department	17	16	18
Registration and Electoral Office	2	2	2
Social Welfare Department	135	133	133
Student Financial Assistance Agency	2	3	4
Television and Entertainment Licensing Authority	1	2	2
Trade and Industry Department	10	9	10
Transport Department	21	23	22
Treasury	11	12	11
University Grants Committee	1	1	1
Water Supplies Department	56	57	57
Total	3 225	3 238	3 316

Annex B

Number of non-civil service terms employees with disabilities serving in the Government in 2008-2010 (By Department)

<i>Department</i>	<i>As at</i>		
	<i>31 March 2008</i>	<i>31 March 2009</i>	<i>31 March 2010</i>
Agriculture, Fisheries and Conservation Department	41	34	31
Census and Statistics Department	0	0	5
Civil Engineering and Development Department	1	0	0
Companies Registry	1	1	1
Customs and Excise Department	3	1	1
Department of Health	33	35	31
Department of Justice	2	2	1
Drainage Services Department	4	4	0
Electrical and Mechanical Services Department	9	7	9
Environmental Protection Department	2	3	4
Fire Services Department	0	3	3

<i>Department</i>	<i>As at</i>		
	<i>31 March 2008</i>	<i>31 March 2009</i>	<i>31 March 2010</i>
Food and Environmental Hygiene Department	12	11	5
GS: Education Bureau	26	25	24
GS: Offices of the Chief Secretary for Administration and the Financial Secretary	1	2	2
GS: Security Bureau	0	1	1
Highways Department	1	1	0
Home Affairs Department	12	11	7
Hong Kong Police Force	1	1	1
Immigration Department	3	3	3
Inland Revenue Department	29	20	16
Judiciary	2	3	2
Labour Department	1	0	0
Land Registry	3	2	5
Lands Department	3	3	3
Leisure and Cultural Services Department	27	26	45
Marine Department	0	0	1
Office of the Telecommunications Authority	1	2	3
Official Receiver's Office	0	0	1
Post Office	11	9	10
Radio Television Hong Kong	0	1	2
Rating and Valuation Department	0	1	1
Registration and Electoral Office	13	2	16
Social Welfare Department	32	34	31
Student Financial Assistance Agency	3	5	6
Television and Entertainment Licensing Authority	1	0	0
Trade and Industry Department	1	4	4
Transport Department	0	2	2
Treasury	1	3	1
Water Supplies Department	7	4	3
Total	287	266	281

Centres for Persons with Disabilities and Elderly in Community

19. **MR WONG SING-CHI** (in Chinese): *President, regarding problems relating to the selection of the sites for and construction of centres for persons with disabilities and the elderly, will the Government inform this Council:*

- (a) *of the numbers and percentages of the various types of residential care homes and community care service centres for persons with disabilities the construction of which was rejected by various District Councils (DCs) in the past three years, as well as the reasons for rejection, with a breakdown by DC district (list in table form);*
- (b) *of the numbers and percentages of the various types of residential care homes and community care service centres for the elderly the construction of which was rejected by various DCs in the past three years, as well as the reasons for rejection, with a breakdown by DC district (list in table form); and*
- (c) *whether the authorities have put forward any proposal having regard to the reasons for rejection; if they have, of the details; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, the Government has been proactively identifying suitable sites for use by rehabilitation and elderly service facilities. To this end, the Social Welfare Department (SWD) maintains close contact with relevant government departments including the Lands Department (LandsD), Planning Department (PlanD) and Housing Department, with a view to reserving sites in new development or redevelopment projects as far as practicable for setting up rehabilitation and elderly service facilities. The SWD also keeps a close watch on government properties, school premises, and so on, released from re-engineering of services for use by rehabilitation and elderly services. In parallel, the SWD also actively identifies vacant public housing units for conversion into rehabilitation service facilities. My reply to Mr WONG Sing-chi's question is as follows:

(a) and (b)

In identifying sites for residential care homes/community care service centres for persons with disabilities and the elderly, the SWD has to take into account various factors, including the demand and supply of the relevant services in the local community, the size of the site, complementary transportation arrangements, planning parameters of PlanD, user clauses stipulated by LandsD, and so on. After the site has been selected, the District Social Welfare Officer of the SWD will conduct consultation when appropriate to gauge the views of members of the local community. Some members of the local community may express concern about individual projects or object to the location of certain centres, such that the SWD may take a longer time to conduct local consultation. Nonetheless, up to this moment, no construction or expansion projects for rehabilitation and elderly service units have been shelved by the SWD owing to objection by members of the local community. In the case of local objection to a certain project, the SWD and the service operators concerned will strengthen communication with members of the local community in a positive and pragmatic manner. The SWD will work closely with the DCs and local organizations with a view to identifying a feasible solution and confirming the location of the project as soon as possible.

(c) As mentioned above, the SWD will conduct local consultation for setting up rehabilitation and elderly service facilities. In response to the views and requests of members of the local community, the SWD and the service operators concerned will also put forward solutions, such as adjusting the design of the building or premises concerned (including the height and orientation, and so on), improving complementary facilities (for example, provision of additional parking and boarding/alighting bays for ambulance, additional landscape buffers, and so on), enhancing monitoring measures (for example, infection control and managing the environmental hygiene of residential care homes), and so on, so as to work out a solution acceptable to all stakeholders without compromising service quality.

To enable the smooth commencement of services, the SWD and service operators will increase the awareness of the local community towards the relevant rehabilitation services and persons with disabilities through various activities such as service briefings, visits, and so on. All the District Co-ordinating Committees on Rehabilitation Service have all along been actively organizing various public education programmes at the district level to promote the message of inclusiveness, encourage public acceptance of persons with disabilities and support the establishment of rehabilitation service units to serve persons in need.

Leakage of Government Confidential Information

20. **MR PAUL TSE** (in Chinese): *President, WikiLeaks has been disclosing confidential files relating to defence and foreign affairs of various countries continuously. It has been reported that a recently-unveiled cable sent from the Embassy of the United States in Beijing, which revealed that Hong Kong was the target for terrorist attacks by some former East Turkestan groups during the equestrian events of the 2008 Beijing Olympic Games hosted by Hong Kong, even put the Secretary for Security in a very embarrassing position. Departments taking charge of defence, internal affairs and foreign affairs of various countries have been urgently finding counteractions and means to prevent further leakage of sensitive information. In this connection, will the Government inform this Council:*

- (a) *what policies and measures are in place to immediately raise the security level of communications and messages/information exchanged within the Hong Kong SAR Government and those exchanged between it and the Central Government as well as government organizations of various countries; and*
- (b) *whether it has any contingency mechanism to facilitate it to take immediate contingency measures when Hong Kong-related sensitive information is further disclosed by WikiLeaks?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, WikiLeaks describes itself as a not-for-profit media organization that provides a secure and anonymous way for sources to leak information to its journalists. It accepts restricted or censored material of political, ethical, diplomatic or historical significance. It claims to verify the authenticity of submitted material before publishing it alongside a news story that explains the significance of the material submitted. In terms of technology usage, WikiLeaks does not disclose information about the location of its servers. It claims to protect its sources by keeping no logs and by using military-grade encryption.

Regarding the questions raised by Mr Paul TSE, my reply is as follows:

- (a) Protection of classified information, including personal data, is the personal responsibility of every government staff. The Government Security Regulations cover all sources of information, including documents, photos, videos and electronic records and have specified the arrangements for the storage, processing and transmission of classified information. In view of continued technology advancements, the Government has developed a comprehensive set of information security regulations, policies, procedures and guidelines for bureaux/departments (B/Ds) to follow so that classified information will receive proper protection from malicious or unintentional leakage to unauthorized parties. They were developed with reference to international best practices and are reviewed from time to time to reflect changes in business requirements, technology and security threats. B/Ds should put in place effective security management procedures, practices, controls and measures commensurate with the security classification of the information, data or communication involved. These requirements apply equally to both manual and automated systems, including computer information systems and networks. Information security is a mandatory requirement in all government information technology (IT) systems and is typically incorporated as part and parcel of the requirements of the relevant systems. Specific security requirements cover storage, processing and transmission of classified information, management of cryptographic keys, marking

of documents, destruction of classified information, physical security and handling of breaches of security. Certain classes of sensitive information are prohibited from transmission over public networks.

A committee led by the Office of the Government Chief Information Officer (OGCIO) and comprising core members from OGCIO and the Security Bureau oversees IT security within the Government, reviewing and endorsing changes to the government IT security related regulations, policies and guidelines, and providing guidance and assistance to departments in enforcing them. This committee is underpinned by a working group led by OGCIO comprising representatives from OGCIO, Security Bureau, Hong Kong Police Force, Chief Secretary for Administration's Office, among others.

Training, education and awareness are vital in the overall security framework. The Government continues to promote a culture of information security at all levels including arranging training and education to relevant staff to enable them to understand and follow the policies, guidelines and procedures. In the wake of media reports on WikiLeaks, the OGCIO had issued another reminder on 2 December 2010 advising all B/Ds to stay vigilant of the risks of any unauthorized disclosure or unintended leakage of government information. The reminder advised all B/Ds to critically review their procedures for protecting classified information, and to put in place effective information security controls and safeguard measures for their information systems. B/Ds were also reminded to provide ongoing staff awareness and training on the importance of data protection. The above committee and working group will continue to keep abreast of international IT security developments with a view to maximizing the protection afforded to sensitive government information.

- (b) Under prevailing Government Security Regulations and related procedures, in case exposure of sensitive government information does occur, individual B/Ds are responsible for conducting initial investigation in the first instance. They are required to report the incident to a central incident response office (with membership from

Security Bureau, OGCIO, and Hong Kong Police Force) if the incident involves information in electronic form which is classified or includes personal data.

Depending on different scenarios of information exposure, the contingency mechanism may involve but is not limited to the following actions:

- (i) Identifying the root cause of the incident;
- (ii) Assessing the impact and damage of the incident;
- (iii) Collecting evidence to support subsequent case investigation;
- (iv) Escalating and alerting all related parties;
- (v) Minimizing the impact to other systems;
- (vi) Strengthening the security protection to prevent reoccurrence;
and
- (vii) Reviewing and updating departmental security policies and procedures as needed.

In the case of incidents involving other public or regulated organizations, the responsible B/Ds which have purview over those organizations will be responsible for liaising with the organizations on their respective contingency and remedial actions.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Three proposed resolutions under the Interpretation and General Clauses Ordinance.

PRESIDENT (in Cantonese): First motion: Repealing the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010.

I now call upon Mr LEUNG Kwok-hung to speak and move the motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR LEUNG KWOK-HUNG (in Cantonese): President, I move that the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010 (the Notice) be repealed. In fact, I believe my bid to repeal the Notice will not be supported by too many Members in this Chamber and even other people outside this Chamber.

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

Regarding criticism and self-criticism, I will begin with a self-criticism of the League of Social Democrats (LSD) because since the passage of the minimum wage bill, there was a long period of silence in society, and the Provisional Minimum Wage Commission (the PMWC), appointed by the Chief Executive, was tasked with determining the minimum wage rate. At the beginning, the LSD repeatedly pointed out by way of protests and petitions on different occasions or in this Chamber, the unfairness in the composition of the PMWC, namely, only a quarter of its members are from the employee side, and that given such composition, there is no way for the employee side to secure the minimum wage level it has all along advocated, that is, an hourly rate of \$33. After a few months, the LSD had eventually realized that it could not possibly, for various reasons, issue another warning to the labour sector — I am certainly not referring to the unions only, but the working masses in general — that the minimum wage rate might be set at \$28. Some people in the political circle or the community have also intimated that the minimum hourly wage rate would be set as \$28. Actually, this rate was already revealed by someone before the passage of the minimum wage bill. This amount is in fact a compromise.

While some Members in this Council suggest \$20, some consider this rate not entirely appropriate and \$24 a more reasonable amount. Being somewhere between \$24 and \$33, \$28 is in line with the middle-of-the-road approach, so to speak. But can the problem facing us today be resolved with this line of thinking? I think the problem cannot be resolved in this way because I already disagreed with how the Government handled the determination of the minimum wage from the very beginning. The Government has merely stipulated the lowest minimum wage rate without preventing it from falling. I think the Government should not act in this manner. The stipulation of the minimum wage should enable an ordinary labourer to live on his wages so long as he is willing to work eight hours daily and take a day off weekly. As the saying goes, "The first thing is survival, and the second development". He should be given the opportunity to enjoy a reasonable standard of living and pursue self-development.

I propose to repeal the Notice today not because I wish to scrap the minimum wage system, but because I wish to repeal the minimum wage level set by the PMWC, which was appointed by the Chief Executive. What consequences will arise if we vote against this Notice today? Certainly, the minimum wage level will then no longer exist, but the minimum wage will still be retained. In that case, what consequences will we face? To fulfil his responsibility as the head of government or a self-proclaimed representative of public opinion, the Chief Executive will then have to express his views on the minimum wage level because, according to the law, there is simply no need for him to heed the advice of the PMWC. Let me cite an example. For instance, the PMWC proposes that the minimum wage level be set at \$45, but the Chief Executive may think that this will affect Hong Kong economy and exacerbate unemployment and hence adjust the minimum wage rate to \$33. The PMWC may also heed the views put forward by someone else and consider that the minimum wage rate should be set at \$24. However, the Chief Executive may also exercise his power not to heed the advice of the PMWC. I heard some colleagues say, "If I vote in favour of your motion today, the minimum wage may be adjusted downward or its implementation may see no fruition." Let me tell Members that this is not the fact.

According to the Chief Executive, he has exerted his utmost during his tenure of office to introduce a minimum wage. What is the significance of the

minimum wage rate proposed by the PMWC appointed by the Chief Executive being vetoed by this Council? That would mean that the PMWC appointed by the Chief Executive is not endorsed by the Legislative Council, the only representative of public opinion elected to monitor the Government in Hong Kong. That means a political crisis. It would also mean that the PMWC appointed by the Chief Executive does not have the support of the representative of public opinion, and hence the Chief Executive would have to bear all the responsibilities. It would be irresponsible of him to make appointments to the PMWC anew, because the PMWC appointed by him has been denigrated by Members of this Council. In other words, it would be meaningless for the Chief Executive to make appointments to the PMWC anew. Instead, he should exercise the power conferred on him by the Basic Law to set a level considered by him to be appropriate. Therefore, should Members think that the Chief Executive would re-activate the advisory organ should this Notice be vetoed today, Members would actually be assuming that the Chief Executive would act irresponsibly. I believe Donald TSANG will not act in such an irresponsible manner. For this reason, I think colleagues' worries are unwarranted. Firstly, the Chief Executive has, for a long period of time, acted in contrary to the wishes of this Council with repeated procrastinations, making it impossible for the minimum wage to be implemented, and hence workers who are currently unable to earn an hourly wage of \$28 will continue to suffer. Not only is this the Chief Executive's responsibility, it is also the standard by which we can judge whether or not he is implementing a policy of benevolence. It is unnecessary for us to worry about him. We need only repeal this Notice today to make him consider back in his office how the minimum wage rate should be set. It can be set at \$26 or \$30.

I would also like to explain why I do not propose a motion today to adjust the minimum hourly wage rate to \$33. It is because the present minimum wage rate has already been stipulated in the law. Moreover, the public opinion represented by the Legislative Council has been overridden by the so-called PMWC appointed by the Chief Executive, which acts like a rubber stamp, because the legislation is a cheater. In other words, the Chief Executive is not held accountable. Suppressed by the rubber stamp appointed by him, which is like a god statue, we can only yield or reject the offer. There are both similarities and differences between the issue of minimum wage and the constitutional reform, namely the constitutional reform package was manipulated

solely by the Chinese Communist Government, but the Chief Executive needs not bow to and listen to the Chinese Communist Government over the issue of minimum wage.

In all fairness, today we just need to adhere to our past stance, that is, exactly \$33. Even if our request was vetoed in the end, that would still mean we have propagated the aspirations of the workers in Hong Kong and preserved the goal we have been fighting for years in this Chamber. We cannot see why we should not veto this minimum wage standard, which is set by the Chief Executive according to the recommendation of this rubber stamp to deprive workers in Hong Kong of the chance to enjoy a reasonable standard of living.

I will now answer another question: Will it be counterproductive for me to act in this manner? In my opinion, the answer is in the affirmative if the Government is shameless. The Government may take the risk by procrastinating this matter for one year or so for another consultation, and we will also incur losses, for the implementation of the minimum wage will be slightly delayed. But this is the most important point of labour movements, and that is, we will not sell our status as the eldest son for a bowl of red bean soup.

Today, we are not begging the Government; nor are we begging the Chief Executive for alms. It is just that according to our survey and estimation, we think that a worker should not earn such a meagre income. In fact, the Government is doing this because I lost a court battle over a judicial review and had thus paid nearly \$1 million. Having no alternative, the Government was forced to act in this manner in accordance with its arguments. Hence, although the Government has authority, so long as this Council can uphold justice to make the Government face a major political and moral crisis, Donald TSANG will then be compelled to act in this manner.

I know that my motion might not be passed. I hope to borrow Mr LU Xun's words to express my aspiration. They go like this, "Is your resistance not for the purpose of realizing the hope for brightness? It must be so. However, my resistance is nothing but bringing trouble for darkness. With the heavy burden of carrying on old practices on my back and the gate of darkness on my shoulders, they are set free to places wide and bright, and I will end up being buried under the gate of darkness." I believe I will be scolded by some people

for stirring up troubles or disregarding the livelihood of the people because of the request made by me here today. I also know that Members may wish for brightness. I understand that I am alone and weak, and I cannot hope for brightness, as Members do. The only thing I can do is to put up resistance, though I am bringing trouble for darkness only.

Within a matter of months, the situation has changed drastically in this Chamber, with Members changing from not accepting \$1 less to not accepting \$1 more. Because of my laziness, I am not qualified to fight for brightness. But I have to make this last-ditch effort to bring trouble for darkness. I am not qualified to, as Mr LU Xun said, carry on old practices and the gate of darkness on the shoulders. But still, I hope my speech today will inspire people engaged in labour movements and workers at large that eating food handed out in contempt will cause you cramps.

Mr LEUNG Kwok-hung moved the following motion:

"RESOLVED that the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010, published in the Gazette as Legal Notice No. 145 of 2010 and laid on the table of the Legislative Council on 17 November 2010, be repealed."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEUNG Kwok-hung be passed.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, the Government published in the Gazette in November last year four Notices under the Minimum Wage Ordinance to stipulate the initial statutory minimum wage (SMW) rate, the effective date of the initial SMW rate and the monetary cap for exempting employers from keeping records of the total number of hours worked of employees. The Legislative Council subsequently formed a Subcommittee to study these Notices.

To start with, I have to sincerely thank Chairman of the Subcommittee, Mr TAM Yiu-chung, and 23 members of the Subcommittee for their hard work in

convening a total of four meetings to discuss the contents of the Notices in a comprehensive, careful and detailed manner and listen to the views put forward by 21 deputations. I am very pleased to know that the Subcommittee will not propose any amendments to the Notices. With the deadlines for amending the relevant Notices going to expire today, I earnestly hope that we can take a big step forward in the implementation of the SMW.

The Government opposes the motion moved by Mr LEUNG Kwok-hung because the initial SMW rate is the result of a consensus forged by the PMWC by adopting the principle based on data and after fully gauging the views of various sectors. The SMW rate is indeed not easy to come by. I will respond to Members' arguments in a comprehensive and detailed manner in my second speech. Thank you, Deputy President.

MR TAM YIU-CHUNG (in Cantonese): Deputy President, in my capacity as Chairman of the Subcommittee on Subsidiary Legislation Relating to Statutory Minimum Wage (the Subcommittee), I will now report on the deliberations of the Subcommittee on the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010 (the Notice).

Some members of the Subcommittee are concerned that while the initial statutory minimum wage (SMW) rate will be implemented on 1 May 2011, the SMW rate recommended by the Provisional Minimum Wage Commission (PMWC) is determined with reference to the wage data collected in the 2009 Annual Earnings and Hours Survey (AEHS) conducted some two years ago.

The Administration has advised that there is inevitably a time lag between data collection and the compilation of statistics. In view of this, the PMWC has already taken into account relevant indicators with more up-to-date data sources, especially with regard to business operating conditions and the latest wage trend, the latest inflation and economic forecasts, general economic conditions, labour market conditions, competitiveness and standard of living. The PMWC has also taken into account other relevant considerations, such as promoting social harmony, enhancing work incentive, enhancing quality of life, raising purchasing power and other potential chain effects.

As regards the cycle of reviewing the SMW rate, some members consider that the rate should be reviewed annually. At its meeting on 30 November, the Subcommittee passed a motion calling on the Administration to initiate a review based on the 2010 AEHS and implement the second SMW rate in the first half of 2012.

The Administration has stressed that the Minimum Wage Ordinance (MWO) requires the PMWC to present a report on the SMW rate at least once every two years. While the SMW rate is determined through an evidence-based approach, the Census and Statistics Department (C&SD) will conduct the AEHS annually. The situation will also be closely monitored with a view to conducting a review of the SMW rate at an appropriate time. More detailed statistical data will be collected so as to ascertain the impact assessment of the implementation of the SMW. The Administration will consider the suggestion that the review of the initial SMW rate be advanced for completion and release of the findings no later than May 2012.

Deputy President, next I will express my personal views and those of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB).

The Notice specifies that the initial SMW rate be set at \$28 per hour. The poverty problem currently faced by Hong Kong is mainly attributed to the fact that only short-term, casual and temporary jobs are offered. Moreover, wages are seriously suppressed, giving rise to the problem of in-work poverty among a large number of low-paid workers. The objective of stipulating a minimum wage is to prevent individuals from receiving excessively low wages by institutional means. According to a study conducted by the PMWC, the SMW rate of \$28 currently proposed by the Government can benefit approximately 314 600 workers, or 11.3% of the total number of employees in Hong Kong. In other words, the majority of these 310 000 workers will see their income rise because of the new regime, or be benefited because of the reduced number of hours worked without their income being reduced.

Should we accept the SMW rate of \$28 per hour? I think this decision can be tested from three perspectives. The first perspective concerns the mechanism for formulating the SMW rate. The PMWC, which is tasked with making commendations, comprises members from the labour, business and academic sectors as well as public officers. This structure is in line with the

mode of joint consultation which has all along been adopted in Hong Kong. The legislation stipulates that, in discharging its functions, the PMWC must strike an appropriate balance at four crucial levels, namely preventing excessively low wages, striving to reduce the wastage of low-income posts, sustaining Hong Kong's economic development and maintaining its competitive edge. It is evident in the report compiled by the PMWC that it has striven to follow the above principles in examining and comparing all sorts of data and used them as the basis for its decision. Hence, its proposed minimum wage rate is more objective.

The second perspective concerns the effects on society. The wages of workers to be benefited by the hourly rate of \$28 will be increased by 16.9%, and their income will thus be improved in a relatively substantial manner. Insofar as enterprises are concerned, studies have found that most of them can bear the additional cost arising from increased payroll costs. Therefore, enterprises will not resort to massive streamlining. Neither will employment in Hong Kong and its economic competitive edge thus be affected.

The third perspective concerns the comparisons with other places. The hourly rate of \$28 can benefit 11.3% of all the employees in Hong Kong. This ratio is far higher than the 5.4% recorded in the United Kingdom when the minimum wage system was introduced in 1998. Apart from this, if we compare the rate with the median wage, the hourly rate of \$28 is equivalent to 47.9% of the hourly median wage recorded in Hong Kong in the second quarter of 2009. On the contrary, in the United Kingdom and the seven major industrial countries where minimum wage regimes are in place, the relevant ratios recorded in 2008 were 46% and 44% respectively. In other words, the minimum wage rate in Hong Kong is slightly higher than those in these places.

It can thus be concluded from these three observations that setting the initial SMW rate at \$28 is more justifiable. We consider that the Government should expeditiously implement this measure and then make constant improvements through conducting tracking studies of its implementation. The minimum wage rate is a lagged rate. In particular, the initial figure reflects the situation in mid-2009. Hence, I hope the Government can shorten the cycle of review of the SMW rate to once a year, in order that the SMW rate can stay close to the social conditions and enhance protection for the rights and interests of low-income workers.

The implementation of the minimum wage will undoubtedly produce some chain effects. The incident of Cafe de Coral, which occurred two months ago, is a case in point. While some employers might slash manpower, dismiss the elderly and weak employees or introduce automated work processes to replace some of their staff, some might reduce the employment of full-time and long-term workers or even relocate some of their work processes to places outside Hong Kong. The number of unemployed workers will thus increase. According to some surveys, more than 40 000 people might lose their jobs as a result of this. However, we have not yet seen any preparatory and relief measures taken by the Government. We hope the Government can make early preparations to help affected workers by, for instance, setting up a short-term unemployment grant, to provide assistance to low-income earners who become unemployed as a result of the introduction of the minimum wage regime.

On the other hand, we expect a sharp rise in the number of labour disputes in future because quite a number of enterprises might revise their payroll strategies. For instance, slashing bonuses, free meals, accommodation and medical benefits is the usual practice adopted by enterprises to offset increased payroll costs. In Hong Kong, monthly salary has all along been used as the basis for the calculation of conditions of employment. Yet, hourly wage is used by the minimum wage regime as the basis for calculation. Hence, there are bound to be numerous disputes over the calculation of meal breaks, holidays and standby periods. The Government must not take these issues lightly.

The implementation of the minimum wage regime is a major reform in social policy in Hong Kong in recent years. As a result of the implementation of the new regime, measures pertaining to the existing Comprehensive Social Security Assistance Scheme, the income ceilings on public housing applications, and so on, have to be reviewed and relaxed accordingly. Apart from publicizing and promoting the minimum wage regime properly, the Government must expeditiously proceed to resolving conflicts between various related policies. I so submit. Thank you, Deputy President.

MR WONG KWOK-HING (in Cantonese): Deputy President, with respect to the proposal made by Government to the PMWC to set the minimum wage at \$28 per hour, I have pointed out a long time ago that Members of this Council from the FTU must hear the views of the local labour sector.

On 29 last month, the three Members of this Council from the labour sector, that is, Mr IP Wai-ming, Dr PAN Pey-chyou and Ms LI Fung-ying, as well as six members of the Labour Advisory Board, convened a meeting in the labour sector that is commonly called the "3+6" conference. Then they sent out a message to the community. I have with me their press release at hand. It can be seen clearly that 277 people attended the conference on that day, when they had a discussion for two hours. It was reported that more than 30 leaders from the labour sector had spoken in the conference. Apart from taking part enthusiastically in the discussion, they also issued questionnaires. The findings of the questionnaires collected show that on the question of whether or not the minimum wage rate announced by the Government should be accepted or otherwise, 87.4% of the trade unions, that is, 181 said that they would agree. This is the mainstream view. So I will later on vote according to the consensus reached in the labour sector and support the setting of the minimum hourly wage rate at \$28. Of course, I have to oppose the motion proposed by Mr LEUNG Kwok-hung to repeal the \$33 (someone next to the Member said it should be \$28) repeal the wage rate of \$28.

I think that the view of the labour sector shows the common view shared by trade unions of all backgrounds in Hong Kong, and it speaks the mind of most of the workers. This is because in the fight for minimum wage, the labor sector has been striving for the goal for years and it can be said that the movement has persisted for more than 10 years. Thanks to the fierce fight put up by countless trade unions and leaders of workers, we have reached this point today. If we accept the proposal made by Mr LEUNG Kwok-hung in his motion to repeal the wage rate set, then how are we going to face up to the efforts made for more than 10 years in the past for minimum wage? Therefore, I agree with the tactic agreed during the grand conference of the labour sector held previously, that we should attain it bit by bit. We should accept what is put before us now, for at least more than 300 000 wage earners with a low income will benefit. Admittedly, this is not perfect and there are things that we may be unhappy. We will continue to strive for a minimum hourly rate of \$33. And given the rising prices and inflation, not only should we strive for \$33 but also the Government should conduct a review of the initial wage rate as soon as possible. Then there should be a review every year so that the jobs of low-pay elementary workers can be protected. I consider this a decision made practically and in line with the interest of the workers and as a result of hearing what they have in mind. So I will vote against Mr LEUNG Kwok-hung's motion.

When I was listening to the speech made by Mr LEUNG Kwok-hung just now, I tried very hard to find out why he had proposed this motion. I think there are a few points that I do not think I can agree. He said the reason for opposing it was that the PMWC was appointed by the Chief Executive, so with its members being appointees, their decision should not merit support. He also said that we should repeal the Notice and pass the ball back to the Chief Executive's court and let him make the proposal. I think that the logic of this argument is flawed. Since he does not trust these representatives appointed by the Chief Executive from among the labour sector, business sector, academic circle and public officers, nor does he trust the studies made by them and the conclusions they have reached, then why would he trust the Chief Executive? Besides, the LSD has always been saying that the Chief Executive is selected by a small circle. He fails to address this logical fallacy. I do not know what explanation he can offer on that count. Why does he trust the Chief Executive selected by a small circle? How can he make the Chief Executive listen to him and really prescribe a minimum hourly wage of \$33 or any other rate? And this minimum wage rate set should meet the requirement of being open, fair and just. I am most baffled by this.

Second, he said that if the Chief Executive were allowed to make the decision himself, he would set a wage rate that is proper. This is what I heard Mr LEUNG say, very carefully. This then begs two questions. I have no idea why Mr LEUNG is so trustful of the Chief Executive. How can he be sure that the Chief Executive will set such a wage rate? Will the Chief Executive ever set such a wage rate? And when will he do so? All this is verbal coercion by LEUNG Kwok-hung. Will Donald TSANG listen to him? He will not care. Right? Will the Chief Executive set a wage rate as requested by him? Also, there is the question of a proper wage rate. He said that the Chief Executive would have the final say and set a rate that would be proper. How can I believe that the Chief Executive can ever set a proper minimum wage rate all by himself? What is meant by a proper rate? What criteria are employed in such determination. I find this most strange. As a matter of fact, there are great controversies between the employer and employee sides over the level of the hourly wage rate that should be set. We have held many discussions among trade unions on this issue. This is the reason why we held this grand conference in the labour sector to collect views from all quarters and to enable people to join in the discussion. Our affiliated trade unions had also held their own discussions

and it was only after these many rounds of discussion and the findings of a questionnaire survey that we arrived at this common view on 29 December.

On what grounds should we trust the Chief Executive? Is he like a god and what he says will be regarded as proper? This is weird. The logic of that argument is entirely different from the beliefs held by the LSD. So I think the whole matter is all too weird. Why will Long Hair trust the Chief Executive all of a sudden? I hope Long Hair can explain that to us.

When we from the FTU were fighting for enacting a minimum wage law, our experience was that we had to persevere and never give up. In the last term of this Council, CHAN Yuen-han, KWONG Chi-kin and I made use of the opportunity offered by Donald TSANG's bid for re-election. He had to get our nominations and we said, fine, but if he wanted our nominations, he had to promise us that once he got re-elected, he had to proceed with legislating to set a minimum wage. Then he made a promise and we nominated him. This is how we made him yield.

When he was re-elected, he launched the Wage Protection Movement. The Movement lasted for one year and the results of that were so deplorable that even he himself became very unhappy with it. And so the Movement came to an end after one year of failure. At last, it was only due to the pressure from the whole society that he agreed to go ahead with minimum wage. The whole thing proves that we have to press him and results will only come out like squeezing a tube of toothpaste. If we were to repeal the wage rate proposed, on what handle can we press him in future? I have no idea on what handle we will use. How can we compel him? The reality is, Mr Donald TSANG still have more than one year before his term expires. Can we compel him in the year or so to come to set a minimum hourly wage rate that is acceptable to Mr LEUNG Kwok-hung? This is impossible.

Second and also the last point, Mr LEUNG asked towards the end of his speech whether things would backfire if we oppose the Government but pass his motion. He also said that there would be risks. When he said those things, I had no idea for how long the minimum wage is going to be delayed. He did make those remarks. Precisely because he has made those remarks that I want to ask him this question: if he knows that things will backfire and there are risks, then can he tell me, how long are we going to wait? Shall we wait for another

10 months or more? When Donald TSANG has stepped down, how are we going to make ourselves accountable to the low-pay wage earners then? How is their lot going to be made any better?

The minimum wage law has been delayed until this day and we are dying to see it come into force at once. We think the effective date of 1 May next year is too late. Mr LEE Cheuk-yan will move a motion to implement minimum wage earlier. We will support him. Why should we take this risk and repeal the minimum wage rate set? This is not his personal risk. This is a risk shared by all low-income wage earners in Hong Kong, it is about their rice bowls. We cannot afford to gamble in this way. For this reason, it absolutely does not worth the while. It is not a risk we can afford to run. This proposal fails to take into account the wage earners at the grass-roots level, who have the least competitiveness. And this proposal will never serve to protect the practical interests of the elementary workers.

Deputy President, when Mr LEUNG Kwok-hung spoke earlier, the last remark he made sounded most unpleasant to my ears. He said "..... eating food handed out in contempt will cause you cramps". I wish to tell Mr LEUNG. We have all along been fighting for a minimum wage and even if we cannot get a wage rate of \$33 today and if we can only get \$28, this is certainly not something unwanted. We are not begging or imploring for that. It comes as a result of our fight. This is something we have all along been fighting for, not just in this term of the Council but throughout the past many terms. This is also the result of the fight jointly put up by Members, irrespective of their affiliations. I do not think Mr LEE Cheuk-yan would agree that this is something handed out in contempt. Are we begging for it? When have I ever begged? We fought for it.

It does not matter so much if the view or questions he raises are sensible or not, for different people would look at the matters differently. It is a question of viewpoints. But if it is said that the wage rate of \$28 which comes as a result of our fight is nothing but food handed out in contempt, then I can never take it. We workers are poor but we stand tall and upright. We have given our labour and we want to fight for a fair reward, and that is all. It is only reasonable that we do this. Even if it is not possible to realize this minimum wage rate of \$33, we will never give up, and we will continue with our fight. This is definitely not food thrown at our face in contempt. I am sure all the wage earners in Hong

Kong, be they high-, medium- or low-paid, will all agree to what I have said. If this proposal of a minimum hourly wage of \$28 is passed today, it shows nothing but the success of the labour sector all across Hong Kong. It is not food handed out in contempt.

Lastly, I hope that the Government must expeditiously undertake the first review of the minimum hourly wage within one year after its implementation.*(The buzzer sounded)*

DEPUTY PRESIDENT (in Cantonese): Speaking time is up.

MS LI FUNG-YING (in Cantonese): Deputy President, the subsidiary legislation on minimum wage under examination today has only one focus and, that is, to pass the initial minimum wage rate of \$28 per hour as proposed by the Government. However, I am not saying that the other two proposals, namely, on the effective date and the monetary cap for exempting employers from keeping records of total hours worked are not important and afford no room for discussion.

Deputy President, the labour sector demands that the initial minimum wage rate be set at a rate from \$33 to \$35, which is very clear. It is likewise clear that when this Council passed the principal legislation for minimum wage, the legislature was disallowed to amend the minimum hourly wage rate as proposed by the Government. In other words, insofar as the proposed minimum wage rate in the subsidiary legislation is concerned, there are only two options open to us now and, that is, to endorse or not to endorse it.

When this Council passed the principal legislation on minimum wage, I opposed the amendment concerning the power of this Council to amend the minimum wage rate. The speech I made on that day was like this and I quote: "..... to empower the Legislative Council to amend the level of minimum wage, even though this may give this Council greater decision-making powers on the minimum wage, it is not difficult to envisage controversy to arise more extensively and more frequently year after year in the entire community on the setting of the level of minimum wage, and this is also against the purpose of setting up the Minimum Wage Commission. Having weighed the pros and cons

of this amendment, I cannot agree to it." End of quote. Although the minimum hourly wage rate proposed by the Government falls way short of the demand of the labour sector, I would still think that this principle should not be changed.

Deputy President, Mr LEUNG Kwok-hung moved a motion to repeal the Notice on the amended Schedule 3 which sets the minimum wage rate at \$28 per hour. I understand the discontent of Mr LEUNG Kwok-hung with the minimum wage rate proposed by the Government which is far too low, but I do not think that it is an option for the labour sector to reject this minimum wage rate. This hourly rate of \$28 as the minimum wage can be considered as offering little benefit to the elementary workers, but it is also something that should not be discarded. However, if the minimum wage rate proposed by the Government is negated, it is like rejecting the efforts made by everyone of us throughout all these years, that is, the fight for an early enactment of the relevant law and ensuring the implementation of minimum wage protection. This is the reason why I cannot agree to the amendment by Mr LEUNG. However, this is not the only reason, for there is another reason which I think is equally important, namely, I have a different view about minimum wage and the role played by the Government in it.

As members of the Subcommittee studying this piece of subsidiary legislation criticized time and again that the minimum wage of \$28 an hour was too low and could never safeguard the needs of living of the grassroots, public officers attending the meetings could only resort to using the MWC as a shield, stressing that when the MWC reviews this SMW rate, it must strive to strike a proper balance between avoiding excessively low wages and the loss of low-pay jobs, while maintaining Hong Kong's economic development and competitiveness. Undeniably, these are the criteria considered by the MWC in determining the minimum wage rate, but should they be also used by the Government in such determination? When a balance cannot be struck among these aims of avoiding excessively low wages and minimizing the loss of low-pay jobs, and maintaining economic development and competitiveness, and if the minimum wage rate cannot assure a basic living for the employees after all economic considerations are factored into this, then should the Government stand aloof and shirk its responsibility? Does this mean that our responsibility of legislating to ensure a minimum wage is fulfilled? I think these are the problems we have to face today.

I can never agree to the attitude displayed by the Government in handling this minimum wage issue. When the rate recommended by the MWC fails to assure a basic living for the employees, what the Government does is to stand aloof and divert the discontent and criticisms of the whole society to members of the MWC. This is not only unfair to the MWC, but it also seriously undermines its credibility. The work of the MWC in future is hence affected. This kind of tricky and irresponsible approach taken by the Government is no different from the so-called smart guys in society. But it should never be the kind of thing that a government with a sense of commitment should do. I respect the decision reached by the MWC, but I demand the Government to undertake to make up for the difference between the minimum wage rate and the basic needs of employees. Therefore, after the Government had proposed that the minimum wage rate be set at \$28 per hour, I made three demands, namely to use a monthly income of \$6,500 as the criterion and abolish the asset test for the Work Incentive Travel Allowance; to issue food vouchers in order to offset the effects of inflation on minimum wage in assuring a basic living for employees; and to set up an unemployment loan fund for provision of assistance to employees. Despite the fact that these three proposals have not attracted any positive response by the Government, yesterday when representatives of The Federation of Hong Kong and Kowloon Labour Unions to which I belong attended a hearing of the Manpower Panel on the transport subsidy scheme, they presented again the demands of the Federation. I hope the Government can give serious thoughts to these proposals.

Deputy President, some time ago I read an article entitled "An analysis of the basic wage determination mechanism in Taiwan" written by HSIN Ping-Lung, an associate professor at the Graduate Institute of National Development at the Taiwan National University. I would like to share with Members some of the ideas espoused in that article. The writer points out that if basic wage is seen as the only mechanism to ensure a basic living for the working population, it is like asking the enterprises to shoulder all the relevant responsibility and this is likely to create a three-loss scenario of excessive costs for the enterprises, distorted wages in the labour market and inadequate protection of the basic living of the workers. Hence many countries in Europe and North America advocate the idea of personal basic income. If the income of a person is lower than the basic income, the government will have to shoulder the responsibility concerned and make up for the difference between the two. Our present law on minimum wage and its implementation precisely fits Prof HSIN's description. When we are to

implement a minimum wage, do we want a three-loss or three-win scenario? The key lies in the attitude displayed by the SAR Government which always talks about "always people first" and "for the people".

Deputy President, I so submit.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, today marks the last step of the work in this Council in the implementation of a minimum wage. In July we passed the relevant law and it is only today that the first minimum wage rate is set. If the Notice is passed, it means the first step is taken in implementing the minimum wage law. I have walked for 12 years along this path. I recall back in 1999 there were only nine votes in favour of it in this Chamber. I am happy to see the implementation of minimum wage now. However, I think that with this wage rate set at \$28, it can be regarded as a flawed victory for the trade unions. This is really flawed.

Just think about this. With \$28 times eight hours and multiplied by 26 days, it is only \$5,800 a month. All along we have been demanding a minimum hourly wage of \$33. Let me elaborate once again how this amount of \$33 is worked out. Actually, this rate of \$33 is only the CSSA payment for two persons plus travelling expenses and with about eight hours of work every day, it is just \$6,800 a month. We can see that with this sum of \$5,800, it cannot even add up to the CSSA payment for two persons. When I say that the minimum hourly rate of \$28 is flawed, this is because at this rate, workers in Hong Kong cannot even feed their family, not even sustaining the living of a married couple. Honestly, life would be extremely hard if people have to use this CSSA payment amount of \$5,800 to support the life of two persons. This sum cannot even measure up to the CSSA payment amount. On top of it, when workers go out to work, they will have to pay for the transport costs. I have to criticize the travelling allowance launched by Secretary Matthew CHEUNG as well, for applications for this allowance can only be made using the entire family as a unit. Even with a monthly salary of \$5,800 resulting from the implementation of minimum wage, a person cannot qualify for the travelling allowance of \$600. The result is that life will become hard up all the more. We from the Confederation of Trade Unions (CTU) are very unhappy about the existing rate and we think that people cannot support their family with this rate. We insist that a rate of \$33 is reasonable.

In addition to my statement that an hourly wage of \$28 cannot raise a family, the arrangements made by the Government for purposes of implementing the minimum wage demonstrate a lag in three aspects. This is a cause of great discontent to us.

The first time lag is about the data. What is the time lag about? Now the data obtained by the Provisional Minimum Wage Commission (PMWC) — the Secretary has said that they would use the data as the basis, but the data obtained by them are those from the second quarter of 2009. According to the Government's schedule, the minimum wage will be implemented on 1 May next year — I suggest it should be 1 February next year — and there is a time lag of two years if the date of 1 May is taken. This is using the data obtained two years ago for use in 2011. As we know, inflation has been running wild over these past two years. Come 2011, the data will then have lagged very much behind. But this Government which is so shameless pointed out during the discussions in the Subcommittee that the PMWC would consider all data. Frankly, we all know that after reading the data, the PMWC will put them aside and in the end they will only talk about what rate should be acceptable to them. This is how it works. I know that there are some difficulties here. It is because there are only three representatives from the labour side, so how can they argue with the other members in the PMWC? There are 12 members altogether in the PMWC and these representatives are in a "3:9" situation. The whole thing is led by the Government and no matter how hard the labour side may fight, they may not be able to get what they want because of this difference in the number of members from other sides. The Government claims that it has examined all the data, but as we know, these data are all lagged. So the first lag is in the data.

I am more furious with the second lag. Later on I will speak more on that in the debate on the second resolution. It is a time lag in implementation. I will talk in detail about this time lag in data and the delay in putting it into practice only in 1 May next year.

The third lag is even more outrageous. It is the time lag in review. I am really flabbergasted by the Government. Why? We have discussed with the Government the issue of review. It is most outrageous that a review will come after the implementation of the minimum wage. This Government is clever in playing with data. But the data are meant to fool people. The final decision is not based on the data but on the result of negotiation in the PMWC. The

Government said that data will be collected after the implementation of the minimum wage for study. Just think, if data will be collected only after the measure has become effective, we can work out that as the minimum wage will come into force on 1 May 2011, the time lag in implementation plus the time lag in conducting a review, and then with the data collection work, it will be at least early 2012 when data collection is finished. And we have no idea whether or not there will be any data by then. Suppose we have the data by the beginning of 2012, and based on the data obtained in early 2012, the PMWC will hold meetings and conduct consultations. After about six months, it will be the end of that year when anything is introduced to the Legislative Council. And when it comes to implementation, it will then be 2013. This is the timetable of the Government. I am very dissatisfied with this timetable. This is like fooling the people. Why do we have to wait until after the implementation of minimum wage on 1 May this year to collect data and conduct a review? As a matter of fact, the latest data should be available by now. The Secretary can tell me later when the latest data will be available. The Census and Statistics Department undertook that there would be data at the end of last year. These are the data for 2010 — the latest figures in the second quarter of 2010 on hourly wage, inflation, economic growth, and so on. The PMWC has examined the data for 2009 and now we have all the data for 2010. Then why can a review not be conducted right now? If a review is conducted now, then the minimum wage rate can catch up with the inflation. The second minimum wage rate should be implemented in 2012. There should be a review every year. We are very unhappy about this, for the Government is employing a delaying tactic.

I have to talk about what my stand is with respect to the proposal from Mr LEUNG Kwok-hung to repeal the minimum wage rate of \$28. With respect to this proposal, the CTU has consulted its affiliated associations. We have discussed it. Now the biggest problem before us is, as we know, we cannot amend this wage rate. We cannot demand that it be amended to \$33 per hour because it has been written into the law. I believe Members will remember that when we deliberated on the bill, we had proposed an amendment to remove this restriction imposed on the Legislative Council in amending the wage rate. At that time, because of the opposition from the functional constituencies of this Council, our amendment was negated. And now, we have this situation. We cannot amend it. Since the situation is that there can be no amendment, what Mr LEUNG Kwok-hung can do is only to repeal it. What is the meaning of this repeal? Honestly, this is a difference between nothing and \$28. This means

either the hourly wage will not be increased at all or it will be increased to \$28 — this applies to those people earning an hourly rate below \$28.

We have always been thinking about this: what do people earning an hourly wage of less than \$28 think? If the minimum wage cannot reach \$33, would they rather not have this minimum hourly wage of \$28? We have to make a decision. Eventually, we thought that we could not support the motion proposed by Mr LEUNG Kwok-hung to repeal the Notice. Why? I have actually thought about it and discussed it with LEUNG Kwok-hung. Given the developments, I think we have to try our luck and put our stakes on the table. What are we staking up? It is that we can fight and obtain a minimum hourly wage of \$33 after the Notice is repealed. But I do not think that it is something worth gambling for. Why? If we lose, then some 200 000-odd people who should have their wage raised to \$28 per hour will not get any pay rise. We as a union must think carefully and ask ourselves, are we confident that we can make the wage of these hundreds of thousands of people rise to \$33 per hour? If it can be done, then we will certainly do it. But personally I would think that, first, I have no confidence in this Government. Mr LEUNG Kwok-hung said earlier that the Notice should be repealed in any case and pass the ball back in the court of the Chief Executive and see if he can act so despicably. But what if the Chief Executive is really as despicable as Mr LEUNG Kwok-hung has said? How can he not be acting so despicably? What is he after? That I know of course. Under this law, it is not necessary to establish the Minimum Wage Commission (MWC) anew and examine the information all over again. Of course, the Chief Executive may say, "I will give you a minimum hourly wage of \$33 and I agree that the minimum wage rate should be \$33 per hour." He can certainly say that, but I do not have any confidence in him. For this Government which is colluding with the business sector and inclined towards the consortia, I do not believe at all that it will do anything good for the workers.

If the Notice is repealed, the Government may say that the matter will be referred to the MWC. But the fact is that the MWC is not yet formed even today and we do not know when it will be formed. Even if it is formed, meetings will have to be held for discussions afresh. Will the Government support this minimum wage of \$33 per hour? I have no idea. Of course, Mr LEUNG Kwok-hung may think that I do not have much of the fighting spirit in me. But as trade unionists, no matter if we are talking about a pay rise or fight for anything, I would often say to the workers, "You can take as much as your

strength enables it." If you want a 10% pay rise, do you have 100% support from the workers? As trade unionists we will think whether or not we can get 100% of the workers or most of the workers to agree to a strike. If we go on a strike for one day, we may get something. If we go on a strike for two days, we may get a bit more. And if we go on a strike for a longer time, we may get even more. However, and at the end of the day, I need to make some assessment and that is, how much strength have we got? As unionists, we must work that out carefully. If we think the result is attainable, then I will go with the workers and fight for a minimum wage of \$33 per hour. I am not saying that I do not want this rate now and then I will just rely on sheer luck that the Government will approve of this \$33 hourly rate.

However, if we do not take this rate and we vote it down, will the rebound from the workers be strong enough? Will all the workers in Hong Kong, or will 100 000 workers come out and take to the streets and fight with me for this minimum wage of \$33 per hour? I have to ask myself this question. And when I ask it, I know one thing and that is, I am the person going to do it. I have to ask myself whether or not I can do it. If the answer is yes, then I will do it no matter what and no matter how it is to be done. We have been engaged in the labour movement for so many years and sometimes we have to admit that we have not done a good job. Maybe I am not bold and resolute enough and I do not have the charisma. Or maybe I have not yet gathered enough force in the labour movement to enable me to lead the workers and fight successfully for a minimum hourly wage of \$33.

I can only promise the workers of Hong Kong that although I am not able to fight and get a minimum hourly wage of \$33 for them today, if we all work hard, we will certainly succeed. However, I am not the only one to work hard. All the workers of Hong Kong should stand together and fight. We must fight this Government that is biased in favour of the giant consortia. If we are united, honestly, I will not be talking about an hourly wage of \$33 but the right to collective bargaining. This will definitely be the next goal for the CTU. It does not matter if it is an hourly wage of \$33 or a minimum wage, anything that can help workers and benefit low-pay workers is the prime task. But at the end of the day, we have to strike a balance in society. We should not just be talking about a minimum wage. We have to strike a balance and so we have got to fight for the right to collective bargaining. So I must tell LEUNG Kwok-hung this. He is a comrade in arms. I know he will fight together with me for a minimum

wage of \$33. I also hope that Members can lend their support to the CTU in this fight. We must fight for an early review of the minimum wage rate and strive to enable workers to get a rate that they deserve.

One last comment. This Government is sly and skewed towards the giant consortia. By sly I mean it always evades its responsibility. Despite the fact that the PMWC is formed by the Government and manipulated by it and everything turns out exactly like its script, after it has directed the play, it says that the whole matter has nothing to do with it and the decision was made by the PMWC. This is really sly. The Government is seriously biased in favour of the giant consortia. It is always badmouthing the issue of minimum wage and it never makes any fair remarks. It always tries to scare off the people, leading to much misunderstandings about the minimum wage issue. I find this a cause of much regret. Thank you, Deputy President.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, Mr LEUNG Kwok-hung has proposed a motion today to repeal the legislation which provides for a minimum wage of \$28 per hour, while hoping that the Government can introduce legislation as soon as possible to set the minimum wage at \$33 per hour. With regard to his view, we in the Neighbourhood and Workers Service Centre (NWSC) have discussed it for a long time and debated it repeatedly. We find that we are caught in a dilemma. Should we support or oppose it?

To us, it is difficult to support it, and it is also difficult to oppose it. Why do I say so? Deputy President, let me first explain why it is difficult to support it. If we support his view, which means that the minimum wage would not be \$28, what would happen then? As Mr LEUNG Kwok-hung said, the next step of work would have to be taken up by the Government. The Government would have to restart work all over again and be held responsible if it does not take action. Mr WONG Kwok-hing said earlier that the minimum hourly rate of \$28 was recommended by the PMWC to the Government and ultimately endorsed by the Chief Executive to be the SMW. As we all know, members of the PMWC or the future Minimum Wage Commission are appointed by the Government. If they have fixed the initial minimum wage rate at \$28 per hour today, can we expect them to revise it to \$33 per hour in future? Even if they would set the minimum wage rate at a level higher than \$28, does it mean anything at all? Will the Chief Executive overrule their view and fix the minimum wage at

another amount other than \$28? There are good reasons for us to have doubts. Why? As Mr LEE Cheuk-yan said earlier, this Government is skewed in favour of the consortia. Moreover, I can also see that the Government (especially the Chief Executive) has never cared about the living of the grassroots.

Although the Minimum Wage Ordinance has been enacted, history has told us that the Donald TSANG Administration was not genuinely committed to introducing legislation on minimum wage. We still remember the Wage Protection Movement which had been implemented by the Government for two years. It had all along been the Government's policy to adopt stalling tactics, in the hope that legislation would never have to be enacted. But the business sector had indeed been very unscrupulous in setting very low wage levels. Despite the implementation of the Wage Protection Movement by the Government, the wage levels still could not meet the minimum standard proposed by the Government. It was out of no choice that the Government proceeded to enacting legislation on minimum wage. We did see how difficult it was during the legislative process. Mr LEE Cheuk-yan said earlier that we had fought for the setting of a minimum wage in this Council for over a decade, and on the community front, as far as I can remember, I had fought for it in the community for over 30 years. It was after many years of efforts that a legal framework is finally put in place. But if the minimum wage rate is not endorsed, the legislation would become meaningless. If we agree to repealing this minimum hourly rate of \$28, what should be the next step? For the time being, we are unable to see the future picture and so, it is difficult for us to support him.

However, if we oppose it, what would be the result? To us, it is difficult to oppose it. If we oppose it, it would mean that we accept the setting of the minimum wage at \$28 per hour. As Members all know, the labour sector and the grassroots have all along stated expressly that the minimum wage should be \$33 per hour in order for workers to meet the basic standard of living and to live with dignity. Deputy President, why is it \$33? Results of the 2004-2005 Household Expenditure Survey of the Census and Statistics Department showed that the average monthly expenditure of a single person was \$6,108 at that time. If a worker works 26 days a month and eight hours a day at \$28 per hour, his monthly income is only \$5,824, which still falls short of the average monthly expenditure of \$6,108 for a single person. The calculation is done on the basis of eight hours of work a day because we are now fighting for eight hours' work a

day. This shows that even if we accept that the minimum wage be set at \$28 per hour, it can only bring about some slight improvement in the standard of living.

In fact, the PMWC has made reference to the hourly wage in a dozen sectors in the second quarter of 2009, and the average hourly wage is less than \$28 in many of these sectors. In the estate management and cleaning services sectors, the average hourly wage is \$27.6, which is only \$0.4 short of the hourly rate of \$28 that we are talking about today, but the average hourly wage in the catering sector is \$32.7, while that in the elderly homes, laundry and dry cleaning services, and hairdressing sectors is \$33.7. The overall average hourly wage in local sectors is as much as \$58.5, which is double the proposed rate of \$28. From this we can see how low the minimum wage level is. Although it is said that 310 000 workers may benefit from a minimum wage rate of \$28 per hour, how much will these workers benefit from it? We should not only say that 310 000 workers will benefit from it. We should also look at the extent to which they will benefit from it. Actually, they will not benefit a lot from it. When introducing the Wage Protection Movement, the Government particularly mentioned two major job types in the property management and cleaning services sectors. The average hourly wage in these two job types is \$27.6, which is \$0.4 short of the proposed \$28. Therefore, we can see that although many people may benefit from a minimum wage of \$28 per hour, the quality of their living will not be greatly improved as a result. We must bear in mind that insofar as the principle and meaning of minimum wage are concerned, our aim is to improve the standard and quality of our living, and to ensure that due importance is attached to our dignity in living. But a rate of \$28 simply cannot achieve these aims. We insist that the minimum wage should be set at \$33 per hour. It is, therefore, undesirable to support the proposed rate of \$28, and this should not be something that we are happy to do.

To the NWSC, it is very difficult to support or oppose the motion of Mr LEUNG Kwok-hung. Mr LEE Cheuk-yan pointed out over and over again earlier that the SAR Government is skewed towards the business sector and consortia, which is a fact. And, the Donald TSANG Administration or Donald TSANG himself has over and over again adopted very clearly the political position of affinity differentiation. Under the present circumstances, it would be very difficult to successfully call on him to make major changes unless there is truly a strong social movement.

With regard to this rate of \$28, we have started to see some divisions among workers as some of them support it while some others oppose it. This is different from the situation in the early stage of our fight for legislation on minimum wage when our position and views were unanimous. After this rate was proposed, there have been different views. Some workers think that it is still better than nothing, for they hope that after the minimum wage is set at a certain rate, they can continue fighting for an increase of this rate at the next stage, but if we do not accept it now, it would be like achieving nothing at all.

Mr LEE Cheuk-yan will propose a motion later to revise the effective date of minimum wage from 1 May to 1 February. Some workers said that if this minimum hourly wage of \$28 is repealed, no minimum wage can take effect on 1 May, let alone 1 February. So, under such circumstance, it is very difficult for us to make a decision on whether we should support or oppose it.

Finally, I can only state our position that we demand the minimum wage to be set at \$33 per hour. To uphold this position, we can only abstain in the vote. We hope that after the Government has learnt of our position in striving for \$33, it will expeditiously conduct a review on this rate of \$28 within one year. A number of colleagues said earlier that this rate is seriously lagging behind the times. Faced with the impending inflation, it is basically difficult for us to make ends meet. In fact, prices are surging at a rate that people are frightened. Workers in all sectors and industries have felt the pressure of surging prices, but is there any increase in their wages? Even if they do get a raise, can it catch up with the inflation? This is also a problem.

We can only reiterate our position once again here. We demand that the Government expeditiously conduct a review within one year, with a view to increasing the minimum wage rate to over \$28 per hour, so that the livelihood of more workers can be protected and the quality of their living upgraded.

Meanwhile, I would like to mention in passing the productivity assessment of persons with disabilities. Although this is not within the scope of our discussion today, I must speak up for persons with disabilities. It is very unfair to subject them to the assessment. Many persons of disabilities are very worried that even though the minimum wage will be \$28 per hour, they eventually may not even be paid at \$28 per hour if their productivity is assessed to be less than 100%. So, this arrangement will have far-reaching effects on them.

Incidentally, I wish to put forward a demand to the Secretary and that is, I hope that a wage subsidy will be provided to persons with disabilities whose productivity is assessed to be less than 100% to enable them to be paid at an hourly rate of \$28. I hope that the Government can provide a 50% wage subsidy to them, so that they can have a reasonable wage level. This will then allow all the workers to share the fruits together under the law, rather than paying able-bodied workers at \$28 but denying disabled workers a reasonable wage level. This is also a strong demand from us.

Deputy President, I so submit.

MR WONG SING-CHI (in Cantonese): Deputy President, the Legislative Council conducted a debate overnight on 17 July last year and enacted the Minimum Wage Bill into law after going through the Third Reading. We still remember vividly the scenes back then when Members were exhausted by the heated debate; some even had to hide in the Ante-Chamber to catch a nap or take a rest. The Bill was ultimately passed by a great majority vote.

What Members said in their speeches today had mostly been mentioned in the debate back then. At that time, Members considered it necessary for the minimum wage level to be linked with the people's dignity and livelihood. In fact, during the deliberations on the Bill, we actually understood that the Legislative Council could either oppose or accept the minimum wage rate. But in the course of discussions, we did demand that the Legislative Council be allowed to propose amendments to the minimum wage rate but this proposal was rejected in the end. Such being the case, we all considered that should the minimum wage rate be set at a far from satisfactory level, we would rather not have it. It is now set at \$28. Not being able to please either side, such a rate can be considered as having little worthiness and yet not being bad enough to be discarded.

At end-August last year, we understood that the PMWC had reached a consensus but the relevant proposal had to be submitted to the Chief Executive for consideration. Subsequently, the PMWC refused to disclose to us the minimum wage rate on the ground of confidentiality. In the meantime, rumours were flying as some people said that it was \$28 per hour, while some said that it was \$29, and we learnt that it was \$28 only in the last minute when it was made

public. On hearing it, people with a discerning eye will know that it is actually easy to work out this amount. At that time, apart from an hourly rate of \$20 suggested by Mr Tommy CHEUNG, the commercial and industrial sector had proposed a rather low level of \$24 per hour, and Members of the labour sector then counter-proposed a rate of \$33. Adding these two figures and dividing it by two would arrive at \$28.5. I thought to myself at the time that the Government should act fairly by at least setting it at \$28.5, which might as well make both sides happy. But the Government eventually favoured the commercial and industrial sector and deducted \$0.5 to set it at \$28 only. Members may perhaps make a guess and think about whether or not that was the Government's position.

If my guess is correct, I really have no idea why Mr LEUNG Kwok-hung would suddenly harbour such a wish and place such trust in the Chief Executive in expecting the latter to revise his decision and accept the hourly rate of \$33 proposed by the labour sector amidst everybody's applause after this minimum wage rate is overturned. This does strike me as strange. You have gone so far as to suggest that we overturn this wage level for the Chief Executive to revise his decision and so long as he will revise his decision, he will propose a rate of \$33. Do you really believe this will happen? If you do believe that this is how things are going to develop, then, it would be reasonable for you to propose that the current rate be overturned in the hope that the minimum wage rate will ultimately be set at \$33 for which we have championed. But if you do not in the least believe it, and I guess Mr LEUNG Kwok-hung does not believe the Chief Executive would propose an amended rate of \$33 after we overturned this proposed minimum hourly wage of \$28, and I dare say nobody in this Chamber today would believe this would happen, in that case, do we still have to take the risk of further putting off the implementation of the minimum hourly wage of \$28? I personally believe that even if we support Mr LEUNG Kwok-hung's motion today and vote down the proposed minimum hourly wage of \$28 for the Government to propose a new rate again, the Chief Executive will not fix it at \$33 either, nor will he fix it at a level higher than \$28.

The ultimate result would be the minimum wage rate of \$28 per hour not being implemented expeditiously. In that case, the following scenario would arise: The PMWC has provided a figure, and it is up to you whether you believe it or not, but if you do not believe it, some problems will arise. The PMWC pointed out that if the minimum wage rate is set at \$28 per hour, more than

314 600 workers, or 11.3% of the total number of employees in Hong Kong, would have a pay rise of 16.9% on average. I think this number is credible. This is a huge number, which means that some 300 000 workers have been paid at even less than \$28 per hour, which is basically inhuman and shameful indeed. I believe this figure is true. If we veto this minimum wage rate of \$28 per hour now, as I said earlier, the Chief Executive would unlikely propose an hourly rate of \$33, and these 300 000-odd workers would have no chance of getting a pay rise in the near future. Even if the motion to be moved by Mr LEE Cheuk-yan later is not passed, at least they can still expect a pay rise on 1 May, all the more better if Mr LEE Cheuk-yan's motion is passed as 310 000 workers could immediately benefit from a pay rise on 1 February.

(THE PRESIDENT resumed the Chair)

We think that the situation now is not the most satisfactory. The Democratic Party has all along proposed that the minimum wage rate should be half of the median income, which is \$29.25 per hour, and rounding this figure, it means a minimum rate of \$30 per hour. There is still a gap between the hourly rate of \$28 proposed now and the level expected and advocated by us. But the point is that we must take into consideration a group of low-income workers who are currently paid very shameful wages. If we pass the proposed rate of \$28 today, these 300 000-odd workers can be paid at this rate shortly. If we vote against it, these 300 000-odd workers could not realize their dream of a pay rise for a long time to come. This is a fact we have seen in considering whether or not to support Mr LEUNG Kwok-hung's motion.

Therefore, the Democratic Party cannot support Mr LEUNG Kwok-hung's motion because we consider that even though this is not the most desirable proposal, nor can it enable low-income workers to earn wages sufficient to maintain a reasonable standard of living, it can at least enable the 300 000-odd workers to get a pay rise in the near future.

President, inflation is very serious in Hong Kong now, and prices have been ever surging. In fact, even if this hourly rate of \$28 is adjusted upward to \$33, it may not necessarily be able to cope. In this connection, I will move a motion later in the hope that the Government can do something in this respect.

But at this point in time, I think we should not take any risk. If a minimum wage rate of \$28 per hour can help some citizens, we hope that it can take effect as soon as possible.

But most importantly, after the passage of the minimum hourly wage of \$28, a lot of work will actually need to be done, because some employers may seek to take advantage of the loopholes in law by all means. Even if the minimum wage rate is set at \$28 per hour, they may still seek to exploit workers by hook or by crook. For instance, Café de Coral suddenly announced some time ago that the company would deduct the "meal allowances" from workers' wages. Although it withdrew its decision eventually, what it did has shown clearly that most unscrupulous employers are actually leaving no stone unturned to exploit any loophole. Even though an hourly rate of \$28 is endorsed, they are still thinking about exploiting their workers.

President, I think this is a very important task. I, therefore, hope that the Legislative Council can pass this minimum wage rate today and then urge the Government and the Secretary to launch the relevant work on all fronts, so that each and every low-income worker can truly be paid reasonable wages in accordance with the minimum wage rate, while punishing those unscrupulous employers who still seek to exploit low-income workers by all means when the minimum wage rate remains inadequate to meet the basic standard of living of the people. I hope that the Government will increase the vigour of its initiatives and put in greater efforts.

President, I hope that Members can join force later to enable this minimum wage rate to take effect as early as possible. This can actually be more helpful to the low-income workers, enabling more workers to earn wages at a level which is closer to meeting the needs of their living. Although the proposed rate still falls short of that, we still hope that the workers can make as more income as possible.

I so submit. Thank you, President.

MR IP WAI-MING (in Cantonese): First of all, the Federation of Trade Unions (FTU) will not support Mr LEUNG Kwok-hung's motion.

Mr LEUNG Kwok-hung proposed to repeal the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010, in order to make the Chief Executive give up the SMW rate of \$28 per hour as proposed presently and set afresh another minimum wage rate for endorsement by the Legislative Council.

Mr LEUNG pointed out that as the minimum wage proposed now is only \$28 per hour, instead of \$33 for which the labour sector has been fighting, it is not desirable to wage earners and has failed to meet the objective and so, he decided not to accept it, for he considered that it is like "alms handed out in contempt" and he would rather destroy everything by overturning this proposal and starting all over again. I respect this view of Mr LEUNG Kwok-hung, but I take exception to it.

President, in fact, many colleagues mentioned earlier that over the past decade or so, the labour sector has been fighting for a minimum wage. To many trade unions in Hong Kong, the fight for a minimum wage is a long-lasting battle. As Hong Kong is a society which upholds free economy, we do see that the Government is more inclined to support the business sector in its administration. The implementation of statutory wage protection in Hong Kong actually faces a lot of obstacles. In spite of this, the FTU has, over the past decade or so, consistently worked in concert with other members of the labour sector to fight for it, because we recognize the need to set a minimum wage in Hong Kong society for the protection of workers' welfare. In the wake of the 2004 financial turmoil, the problem of in-work poverty became more and more serious. We, therefore, proposed motions to call on the Government to set a minimum wage and standard working hours, urging the Government to introduce legislation on minimum wage to protect the most basic standard of living for workers. We considered at the time that some low paying sectors or jobs could be dealt with first. Subsequently, the Government responded by introducing the Wage Protection Movement to provide protection for workers' wages on a voluntary basis, enabling workers to earn dignified wages.

President, the labour sector could have opposed the Government's Wage Protection Movement back then because this voluntary approach was not what the labour sector was asking for and besides, right from the very beginning, we already considered that this approach was doomed to failure. However, we finally chose to accept the Wage Protection Movement because we knew that if we did not accept it, the entire Wage Protection Movement would only be

negatived and if that happened, we might not be able to convince the entire society with the efforts of the labour sector alone. We, therefore, decided to tolerate it and give the Government and the business sector ample time to accept the making of legislation for the protection of minimum wage. President, we had waited for two years, and the Government, the public and the community as a whole finally saw that the business sector was indeed minded only to make as much money as possible, not letting go any opportunity to reap profits. All they cared about was to hire workers at the lowest cost to the neglect of the workers' livelihood. When everybody found that the Wage Protection Movement had failed to yield satisfactory results, a consensus was reached in the community at large, that there was a need to prescribe a minimum wage. At that time, not only the Chief Executive held this view, many members of the business sector had started to accept the introduction of legislation on minimum wage.

President, I have taken all the trouble to give a detailed account of what happened a long time ago because I hope to make two points clear: First, the legislation on minimum wage did not come by easily. It was achieved after many years of fight by the entire labour sector and workers, together with the tolerance of workers and the consensus of society. Second, it did take time to forge a consensus in society and secure support from it in order to achieve the objective. I do not wish to see the minimum wage being smashed just before it is going to be endorsed today. It is because two other motions will be proposed later, one of which seeks to advance the effective date of the Minimum Wage Ordinance from 1 May to 1 February. Disregarding whether the Ordinance will take effect on 1 February or 1 May, I am concerned that if the minimum wage rate of \$28 is overturned while the Minimum Wage Ordinance will still take effect on 1 February or 1 May, this would put across an even worse message and that is, even though the Minimum Wage Ordinance has come into force, the minimum wage rate is not yet finalized and in that case, it would send a wrong message to the labour sector and the community as a whole. This will be distressing to the supporters, but much welcomed by the opponents, for it would be impossible for workers to enjoy the protection of minimum wage this year, while those unscrupulous employers could have a pretext to continuously exploit their workers.

Many grass-roots workers are now earning an hourly rate of only \$21 or \$22. They hope that the minimum wage can help them, albeit in a small measure, to meet their living expenses. Overturning the minimum wage would

make it impossible for the workers to obtain speedy assistance. Just as a colleague also said earlier, at least 300 000-odd workers in Hong Kong are waiting to benefit from the proposed SMW rate. And I must also ask: If this minimum wage rate is overturned today, who can guarantee that the future rate can be \$33 or more per hour? Well, it may be possible with some luck, but if the Chief Executive appoints a new Minimum Wage Commission which will again set the minimum wage rate at \$28.5 or \$29 per hour, which still falls short of \$33, and when the proposal is submitted for deliberations by the Legislative Council, should we again reject it and start everything all over again? If so, may I ask when we can truly enjoy the protection of minimum wage? In view of this, we consider that we should first accept the proposed minimum wage rate of \$28 per hour and then continue with our fight to achieve the objective of \$33. We now demand an hourly rate of \$33 as the minimum wage, but faced with inflationary pressure, is it still enough to meet the needs? All in all, the labour sector will make continuous efforts to fight for a more reasonable wage level.

President, it does not mean that we are throwing in the towel in choosing to accept a minimum wage rate of \$28 per hour now. Our view is to strive for the enactment of legislation first and after achieving this, we will proceed to work towards the objective of \$33 or more. President, labour movement can never achieve success in one step. All the achievements that have been made for the benefit of workers are accumulated over time as we persist with our fight day after day. We often need to be tolerant, and we need to make compromises in the process. But we will persevere and continue to fight on. I believe if we accept this minimum wage rate now, members of the community will understand the need for setting a minimum wage and at the same time, we hope the business sector will appreciate that the minimum wage actually does not affect them as greatly as they imagine, while the community will agree that \$28 is not enough for maintaining a reasonable standard of living for workers. Let me tell the Secretary that in the coming days, the labour sector will continue to fight for a rate of \$33 or more. The Secretary once said to us that since the minimum wage would take effect on 1 May this year, there would not be a need for the labour sector to mention minimum wage again in the march on the Labour Day this year. But Secretary, perhaps you will be disappointed because in this year's march on 1 May, I believe we will demand that the Government review this SMW rate of \$28 per hour within one year. This will remain a key aspiration of the labour sector. Therefore, while the Secretary expects us not to mention minimum wage

again in the march on 1 May, I am afraid the Secretary is going to be disappointed.

Secretary, as many colleagues have mentioned, if, after a day of hard work, workers still cannot support themselves and their family with their earnings or wages, it would be necessary for the Government to conduct a review and lend a helping hand. We originally expected that the existing transport subsidy scheme could provide a certain degree of assistance to workers but regrettably, Secretary, under the existing scheme, applications have to be made on a household basis, rather than on an individual basis as in the past, and with such a low income limit, many low-income families or current recipients of the transport subsidy will turn out to be not eligible for this subsidy, which completely defeats the original intent of the Government in introducing the scheme.

Secretary, while we accept this rate of \$28 per hour today, it does not mean that we agree that this is a reasonable rate. Under such circumstance, I hope that when the new transport subsidy scheme is examined by the Finance Committee on 28 January, the Secretary can listen to the views of the labour sector and appropriately make amendments to the scheme to allow applicants to choose whether to apply on a household or individual basis, or adopt the practice similar to tax assessment and that is, in choosing between two assessment methods, tax payment is assessed by the method which is more favorable to the taxpayer. Second, I hope the Government can increase the income limit because the current limit is too low, and many workers may not be able to fully benefit from the scheme. I hope the Government will understand that the setting of the minimum wage rate at \$28 per hour, together with the support of the transport subsidy scheme, can ease the financial pressure on workers to a certain extent. But if the Secretary sticks to the old rut and insists on the existing practice, I believe there will be more chances for the labour sector to come into contact with the Secretary in the coming days.

Lastly, in respect of the review, I hope the Secretary can listen to the unanimous view of the labour sector and review the wage level one year after the implementation of the minimum wage rate, and especially as inflation is envisaged to worsen this year, I hope the Secretary will conduct a review in the light of the circumstances. The Secretary has openly stated that the Comprehensive Social Security Assistance rates will be reviewed in the light of inflation. I, therefore, strongly call on the Secretary to review the wage level

one year after the implementation of the minimum wage given a time lag of two years in the statistics and in the light of the high inflation rate.

President, I so submit.

MR RONNY TONG (in Cantonese): President, I do not have any labour movement background, and neither do I come from the labour sector. However, it is precisely due to this background of mine that I have a profound understanding of the plight and injustices suffered by the labour sector. Therefore, when I was returned as a Member of the Legislative Council in 2004, I set for myself three goals: First, to fight for universal suffrage; second, to fight for a minimum wage; and third, to fight for the introduction of a fair competition law.

Unfortunately, President, there is one common point among these three subjects, namely, there are diverse views on them in society. President, while I agree to some of the views, I do not think these views can pass the justice test, still less representing the views of the majority Hong Kong public. Yet, the existence of such voices should not be taken lightly. Let me cite a simple example. When we established the Civic Party, my colleagues and I insisted that minimum wage be included in our platform. Back then, I was also the chairman of the economy branch. When the subject of minimum wage was discussed at the first meeting of the economy branch, my stance was even refuted by fellow members of my political party holding different views. I only managed to convince them more than two years later. When this could happen to such a small political party, what would happen when one tries to convince all the people in society?

President, I fully understand the mentality of Mr LEUNG Kwok-hung, and I do not mind saying in public that among the various members of the League of Social Democrats, I respect LEUNG Kwok-hung most, probably because I can see traces of myself in him. While LEUNG Kwok-hung allows his passion to manifest explicitly, I keep my passion to myself. Such passion manifested through street struggles and social movements is necessary, and I have never thought that such a mentality is not suitable for Hong Kong. I always think that street struggles and work of this Council are not in conflict with each other in any way. Quite the contrary, they should complement each other within and without the establishment. However, is it feasible to adopt this mentality in this

Council? Is this mentality of only taking victory but not a drawn game as the outcome equally applicable to this Council? President, I have great doubts about it.

Actually, when I look at my work in this Council in retrospect, I can see many different such examples. Regarding the Race Discrimination Ordinance which was passed some time ago, did we have a total victory? The difficulty we faced at that time was whether we should vote against this piece of legislation, though we had been fighting hard for it over the years. Regarding the Domestic Violence Ordinance, did we have a total victory? At least, we definitely failed to secure a total victory in the recent constitutional reform package because members of my political party still consider to date that it was a wrong decision to support the constitutional reform package. In the course of enacting the competition law later, we will face the same problem.

President, here lies the difference in views between Mr LEUNG Kwok-hung and I. While I do not denigrate his stance, I only consider that every struggle in this Council is an interim rather than the ultimate struggle. If one adopts the stance of only taking victory but not a drawn game as the outcome in waging a struggle in this Council, I cannot see how remarkable results can be achieved. President, after years of struggle, we have finally enabled the passage of this piece of legislation. If this legislation is negated because the SMW rate cannot meet our demand, there is really no way to estimate when we can work our way back to the existing starting point. Certainly, it is also possible that a greater victory will be achieved because we never know what the future bodes. However, is it the right mentality for politicians in this Council? That is, should politicians in this Council lay a wager in every single incident and struggle to see whether a total victory or a total loss will be resulted?

President, I always think that we should see things from the others' perspective, as it may be able to give us some insights. From the others' perspective, will they have a total victory? In particular, from the perspective of the business sector, will they have a total victory? In the examples of the Race Discrimination Ordinance, the Domestic Violence Ordinance and the constitutional reform package I mentioned just now, or even the enactment of the competition law we are fighting for currently, can we say that the pro-establishment faction or the SAR Government have won a total victory? If

not, we should not deny the small achievement we have made after more than a decade's fight.

President, I think politics warrants compromises, but there must be a bottomline, and this bottomline may vary from one person to another. While some people said my bottomline is too low, I think as long as I can be accountable to myself, I should stick to my bottomline. This is also the final advice of the late "Uncle Wah" for me.

President, taking reference from countries all over the world where a minimum wage law is in place, we can see that the initial minimum wage rate of almost every country was not a perfect starting point. Actually, the business sector which opposes the enactment of the Minimum Wage Ordinance also used this as one of their reasons for raising strong objection. They claimed that after the passage of this legislation, irrespective of how low the initial rate would be, say \$20, it would only rise but not drop and finally reach a level that would be unacceptable to them. Therefore, even if the statutory hourly wage passed was only \$20, they would still have great reservations about it. As evident in international experiences, this starting point may not be most acceptable to the labour sector, but we have to start from a certain point anyhow.

President, we will debate on the commencement date of the Minimum Wage Ordinance and the issue of providing for a cap to exempt employers from keeping records of employees' hours worked later, and the basic principle involved in these issues is the same, which is where the balance should be placed and where the bottomline should be set in making compromises to secure agreement of all quarters, so that this law will not fail to achieve its goals.

President, I hope Mr LEUNG Kwok-hung will forgive me for my remarks today. While I appreciate and agree to his stance, I cannot accept his proposal. Similarly, I also hope he will understand and agree to my expectation and stance in relation to this law.

President, if this piece of legislation is negated at this stage, I think it will not only be unfair to many people who have made great efforts for this but also cause great disappointment to hundreds of thousand workers. From their perspective, I strongly believe that they would prefer seeing this door opened

slightly to seeing it closed forever. President, I cannot support Mr LEUNG Kwok-hung's motion.

Thank you, President.

MR TOMMY CHEUNG (in Cantonese): President, in delivering his policy address two years ago, the Chief Executive undertook that the implementation of the minimum wage would, apart from protecting the low-income earners, strike a proper balance between forestalling the loss of low-paid jobs and maintaining the competitiveness of the economy. No one would have expected that the Chief Executive even made a turn in his earlier remark on the first minimum wage rate that it would inevitably have certain impact on the labour market and the business environment. When the Chief Executive could go back on his words this way, does he have any integrity at all?

The catering industry is very concerned about the minimum wage rate being set at the level of \$28 per hour because it will necessitate a wage increase for over 30% of employees in the industry, excluding the labour force which will be affected by the ripple effect, thereby definitely resulting in a substantial cost increase.

Although the unionists may say that according to the statistics provided by the Census and Statistics Department (C&SD), setting the minimum wage rate at \$28 will only push up the wage cost of the catering industry by 2.9%, the C&SD admitted long ago that the relevant figures had not taken into account the ripple effect. Besides, the assumption was that all staff members earning an hourly wage below \$28 would only receive a raise to the level of \$28 per hour, and only the wage increase but not the staff-on cost, which is pegged to the hourly wage rate, was taken into account. Therefore, the cost increase of 2.9% is actually a grave underestimation of the impact on the catering industry.

Recently, many members of the industry have told me that even if they keep exploring additional means of generating revenue, their wage cost will at least be increased by over 5% as a result of the implementation of the minimum wage. For restaurants which serve moderate-to-low-priced food, the rate of increase is even higher, representing a double-digit increase.

Some people said that they would rather support this motion to repeal the Notice under this circumstance. However, if one calms down to reflect on the situation with logical reasoning, one will realize that even if this motion to repeal the Notice is passed, the PMWC will have to spend another few months on deliberation, the results of which will have to be discussed by the Executive Council. Besides, under the prevailing social atmosphere, will a different minimum wage rate be proposed? I have great doubts about it. On the contrary, this will further delay the pay rise for a group of employees who have been expecting it for a long time, thereby undermining social harmony and resulting in more losses than gains.

After all, no matter how much I disagree to the proposed rate, I should respect the PMWC's consensus, which is not easy to come by. As everyone has been tormented for so long, we should share each other's plight and tide over this difficulty rather than starting the work all over again, wasting so much manpower and resources.

Actually, there are hundreds of thousand disadvantaged people in Hong Kong who are often neglected, and they are the thousands of operators and shareholders of small and medium-scale restaurants. Some people thought in the past, and they still think so now, that employers must be unscrupulous and would definitely exploit their employees in order to make profits. Even if some employers have put at stake all their assets and money, including their "funeral expenses", while only earning their own share of salary, all employers are demonized.

One should note that only 30% of the restaurants in Hong Kong are operating with a profit, 50% of them just manage to break even, while 20% of them are operating at a loss. Some employers who rent their business premises and signed as the guarantor of the tenancy agreement of the premises even have to be personally liable for any breach of the agreement, thereby being liable for paying compensation amounting to the rental of a few years. Therefore, they would rather keep the business running with their liquidity. However, if a serious crisis strikes, many restaurants will be unable to cope.

Some unionists have criticized the catering industry for causing itself to be the hardest hit industry, a plight of its own making as it has been paying such low wages to its employees. People who made such a comment simply do not

understand the situation of the catering business at all, interpreting the complex market conditions with some simple concepts only.

I have repeatedly explained to Members that the unique feature of the catering business is the provision of free meals to employees. An employee is entitled to four free meals a day, irrespective of whether or not he is on duty on a particular day, and all he has to do is to join the meal prepared for staff. According to the analysis of the PMWC report findings, the ratios of costs of meal benefits to total wage cost involved in restaurants under the minimum wage levels of \$24 and \$33 are 11.3% and 8.4% respectively, which are higher than those of other industries.

Besides, as most staff employed by restaurants located beyond the urban areas live near their workplace, their burden of travelling expenses is relatively low, and so they are prepared to take up jobs in the catering business with lower wages. Therefore, it is not fair to judge the employers' moral standard solely by the hourly wages offered by them to employees.

Many Honourable colleagues said that as the existing wage level cannot catch up with inflation and many elementary workers are facing great hardship, the minimum wage rate should be increased. Reasonable as it sounds, and though helping the needy is one's obligation, upon more thorough thinking, I am afraid it would only be wishful thinking that substantially raising the minimum wage rate will help workers counter inflation.

First, the introduction of a minimum wage will definitely result in higher inflation. Over the past few months, Members may have noticed that different fees and charges, such as management fees and charges for elderly services, have increased one after another, and there will definitely be more price increases in the days to come. Therefore, the introduction of a minimum wage will not necessarily enable employees to have more spare money for spending.

Furthermore, as evident in both local and overseas experiences, wage levels can never catch up with inflation during inflationary periods unless the economy is growing rapidly. While wage levels will naturally rise rapidly when the economy is robust even if such administrative measures as providing for a minimum wage is not in place, increasing employees' wages using administrative means when the economy is weak or sluggish will only push up the

unemployment rate because enterprises simply cannot make enough profits to support such a pay rise. Compelled to offer a pay rise, business operators can only use other means to cut their expenditures, which may result in more losses than gains.

This problem can be seen in restaurants in different districts. In districts such as Yau Tsim Mong, Central and Causeway Bay, the business of restaurants has been improving over the past few years, thanks to the Individual Visit Scheme, and even in the absence of any legislation, some restaurants have offered more than \$28 per hour to employ a cleaning worker.

On the contrary, as middle-to-low-end restaurants in other districts with weaker spending power have a lower profit margin, the wage levels offered by them are lower. However, insofar as the implementation of a minimum wage is concerned, these disadvantaged small and medium enterprises (SMEs) will be dealt the greatest blow as the lower the wages of the employees, the greater the impact on the employers. The more we raise the minimum wage rate, the greater the impact on restaurants which have a small profit margin and are unable to raise their prices. They simply cannot afford to offer a pay rise, and all they can do is to layoff their employees. If this still does not work, they will have to fold.

Over the past two months, members of some low-paid industries other than the catering industry have also been telling me that the hourly wage rate of \$28 is already rather unaffordable to them, and if it is further increased to \$33, they will only die a faster death.

One should not think that a pay rise will definitely benefit the industry. If the rise in wage cost is beyond the affordability of the industry, many SMEs will be unable to maintain their business and forced to fold before members of the public can increase their spending. When people have lost their jobs, how can they have the money for spending? Besides, when the unemployment rate stands high, people who hold a job may cut their spending as they are afraid that they will lose their jobs, resulting in a vicious circle in the end.

In the final analysis, the crucial factor is that the wage increase must not come too fast and at too drastic a rate, and it must be increased in a gradual and orderly manner to facilitate the gradual absorption and adaptation of the market.

Some people criticized that such unhealthy competition is due to the excessively low wages in the catering industry in the past, and so when the wage rate is raised, the weak will be eliminated, which will inevitably result in the shrinking of the catering industry.

President, I have always said that the shrinking of the catering industry does not only involve the catering industry alone. Unlike the catering industry in other countries, the catering industry in Hong Kong has preserved a lot of labour-intensive traditional processes. Therefore, apart from the construction industry, I cannot think of any other industry that can provide such a large number of low-education and low-skilled jobs for middle-aged people, particularly middle-aged women, as our industry. Therefore, when the catering industry shrinks, the number of jobs lost as a result will have a significant impact on society and the economy as a whole.

Is the society of Hong Kong ready for this challenge? The structural problems of the Hong Kong economy have not been resolved so far. Over the past decade or so, the number of non-skilled jobs has been decreasing, the number of new arrivals from the Mainland coming to settle in Hong Kong has been increasing and the population is ageing. If more and more low-education and low-skilled workers and older people are unable to find a job, will we allow them to apply for the Comprehensive Social Security Assistance (CSSA) Scheme? Can the problem of disparity between the rich and the poor be resolved this way?

Unfortunately, it seems the authorities are not ready to rise to this challenge. A number of government representatives, including Secretary for Labour and Welfare Matthew CHEUNG present, even repeatedly evaded the question of how they would help industries which would be dealt the greatest blow by the minimum wage to tide over the difficulty.

I wish to remind the authorities that they have to make active efforts to uphold the principle of fairness. Apart from dealing with the problem by providing protection to workers, they should also make proactive efforts to create employment. I hope the authorities will not shirk their responsibility by only saying that impact is inevitable and rectifying problems after they have emerged because it may already be too late by then. I do not wish to see the minimum wage become a policy which stifles the development of SMEs, thereby causing

the market of Hong Kong to tilt further. I hope the authorities will be mindful of this.

President, I so submit.

MR ALAN LEONG (in Cantonese): President, the deep-rooted conflict of Hong Kong is manifested actually in the imbalance in the allocation of resources and the benefits or fruits of economic success. When the Civic Party was founded, it clearly stated in its platform that it would fight for the establishment of a cross-sector minimum wage system. Indeed, when the discussion in the community still centred around the issue of whether a minimum wage law for certain industries should be introduced, the Civic Party insisted on its stance. At least, the introduction of a minimum wage is a small step forward in alleviating this deep-rooted conflict.

Regarding Mr LEUNG Kwok-hung's motion today to repeal the Notice concerning the amendment of Schedule 3, the Civic Party certainly respects and understands it because we indeed consider this minimum wage rate of \$28 unable to effectively help improve the livelihood of the people in the lower strata, particularly low-skilled and low-education workers. However, regarding this minimum wage rate, which is obviously only of marginal interest, we may have to make a choice of whether or not to take it. President, according to current statistics, if the proposal of setting the minimum wage rate at the level of \$28 is endorsed, it is estimated that appropriately 310 000 workers will be benefited. In other words, if we support Mr LEUNG's motion today, these 310 000 workers will continue to be exploited by their employers, and these elementary workers who lack professional skills do not have any bargaining power at all in the market. Even though only 310 000 workers will be benefited, we do not hope these people will continue to be subject to exploitation and unreasonable treatment. Therefore, the Civic Party considers that the risk involved and the price to be paid in supporting Mr LEUNG Kwok-hung's motion and enabling the passage of the proposal of repealing the Notice concerning the amendment of Schedule 3 are indeed too high.

Earlier an Honourable colleague also asked whether supporting Mr LEUNG's motion today means that the SAR Government formed as a result of a small-circle election will immediately put forth the proposal of setting the

minimum wage at the level of \$33 per hour. I believe it is most unlikely to happen. Under this circumstance, and given that we are unable to amend the minimum wage rate, we will have to, for the time being, accept this proposal, which is only of marginal interest.

Having said that, however, the Civic Party considers that although we support this proposal of setting the minimum wage at the level of \$28 per hour for the time being, we hope the executive authorities will not think that the matter is done with. I believe the President may also recall that during the debate on the Minimum Wage Bill, the Civic Party clearly stated its stance that it hoped a review could be conducted once every year. Certainly, the relevant amendment was negated in the separate voting, but the relevant government official said that according to the provisions of the existing Minimum Wage Ordinance, the conduct of reviews would not be limited to once every two years. I hope this will come true because the Civic Party found that setting the minimum wage at the level of \$28 per hour is actually a decision which is lagging seriously behind the actual situation. Just now many Members have mentioned that the statistics which serve as reference for the PMWC will actually have lagged behind the prevailing situation when the minimum wage is implemented.

Besides, inflation is indeed fierce at present, and this Council will conduct a motion debate on the subject later. Therefore, if the authorities will only review the hourly rate of \$28 at the end of 2013 or 2014, as Mr LEE Cheuk-yan said just now, I believe the consequences will be more serious than the executive authorities can cope. Therefore, the Civic Party will, with reluctance, support the Notice concerning the amendment of Schedule 3. Nevertheless, we will also call on the Government to examine the issue seriously rather than conducting a review two years later because there is indeed a great gap between the hourly wage rate of \$28 and our target of helping people in the lower strata meet their reasonable needs of living.

President, before sitting down, I hope the authorities will understand that although Mr LEUNG's motion will not be passed today, and we would have completed the entire legislative process concerning the minimum wage, this is not yet the end. I hope Secretary Matthew CHEUNG and the executive authorities will take it as a new beginning.

From recent incidents, such as the one involving Café de Coral, we can see that some employers are indeed trying to find all sorts of ways to keep on exploiting the wage earners, thereby offsetting the additional cost arising from the implementation of the minimum wage and causing the low-skilled and low-paid labour force, which badly needs more reasonable and fairer treatment, to be unable to benefit from the minimum wage policy. Therefore, the Civic Party has to state clearly here that it hopes the executive authorities will understand that even though the entire legislative process and the whole procedure is completed today, they should not think that they can ignore the issue, believing that the relevant work is over and done with. The Civic Party will definitely continue to fight for a wage rate and treatment which are more reasonable for the elementary workers.

President, I so submit.

MR ALBERT CHAN (in Cantonese): President, in many advanced societies and regions, a democratic system and way of life is considered part of the living of the people. In developed regions and progressive societies, a reasonable wage is also considered part of the living of the people. However, like a democratic system, a reasonable wage is still a faraway dream in Hong Kong. Although the minimum wage law will come into effect, the minimum wage level, which is still on the low side, can certainly not be considered reasonable.

Many studies have revealed that, in comparing Gross Domestic Product and the minimum wage level, Hong Kong is absolutely lagging behind other advanced and well-developed regions. That Mr LEUNG Kwok-hung has moved this motion to repeal the Notice is because the proposed minimum hourly wage rate of \$28 is substantially lower than the aspiration of the people of Hong Kong and their demand for a reasonable living standard as well as the minimum wage rates in other progressive and well-developed regions. Hence, accepting this minimum hourly wage rate is tantamount to accepting an unreasonable wage.

President, the political phenomenon of Hong Kong society is very strange, with the democratic camp betraying democracy and collaborating with the communists in accepting the lame constitutional reform package by way of secret politics. Similarly, at least two members of the PMWC, who are widely

recognized as representatives of the labour sector in Hong Kong, have not raised objection to the minimum hourly wage rate of \$28. It has been reported that the minimum hourly wage rate of \$28 was unanimously accepted by the PMWC. Hence, these two members have likewise betrayed labour organizations in these black-boxes operation and secret politics, including an organization to which Mr LEE Cheuk-yan belongs, as one of the members of the PMWC, who is apparently a senior or formerly senior member of the Hong Kong Confederation of Trade Unions (CTU), has raised no objection to the minimum hourly wage rate of \$28. I have no idea how the CTU will explain to the public why one of their veteran representatives has not opposed the rate of \$28. Just now, Mr LEE Cheuk-yan made an impassioned speech, saying how he would continue to fight for \$33. But why did the representative of the CTU not object to the minimum hourly wage rate being set at \$28, as Mr LEE Cheuk-yan did in his impassioned speech?

Some people in the labour sector said that everything would be destroyed should the minimum hourly wage rate stipulated in this Notice today be rejected and repealed. I do not know how they look at the general strike staged for mariners' unions in 1922, calling upon mariners in Guangdong and Hong Kong to go on strike. Under the leadership of the communists at that time, a general strike was launched in January 1922 as seamen considered that their wages were unreasonable and their request for a pay rise was subsequently rejected. As a result, goods and foodstuff were not be shipped into Hong Kong. In February 1922, the struggle extended to various strata, including ordinary workers, coolies and home helpers, who all joined in the strike. As a result, no one washed the clothes and cooked for the taipans and tycoons. In the end, with the support of all sectors in the territory and Macao, the then colonial government in Hong Kong and employers were compelled to compromise and accede to the requested pay rise of 20%. Was everything destroyed? Was the action unreasonable? Was the struggle unreasonable? Where has the passion of the Hong Kong Federation of Trade Unions (FTU) and members of leftist unions in participating in struggles gone? Now you have chosen to remain evasive and accept the minimum hourly wage rate of \$28 because the Communist Party has not asked you to mobilize any action. The general strike launched by mariners years ago had shocked and impacted society severely, and the entire society was nearly paralyzed as a result. However, the mariners' general strike is recognized as the most successful struggle ever conducted by a trade union. May I ask friends in trade unions where your lofty sentiments and trust in workers have gone? Now, you are most skillful in "offering great help with slight scolding" by making impassioned

speeches in this Council but acting in a completely evasive manner when action is required.

President, the casting of affirmative or dissenting votes involves two basic principles, namely strategies and confidence. Strategically, you are prepared to take part in struggles and intensify conflicts, thereby resulting in the political awakening of the toiling masses and working class in Hong Kong and their participation in struggles. Or you believe some petty favours can prevent the people from awakening, just as opium could be used to dupe the people, as stated by Karl MARX. To a certain extent, these petty favours are used to dupe the people, in order that they will not participate in struggles for the sake of the petty favours. People organizing trade unions, labour movements and fighting for labour rights must believe that the working class will definitely awaken one day and that they will join in the collective actions organized by the working class and class struggles, and further fight for their own rights and interests. This is an issue of basic convictions. However, it is very strange that, just as the Democratic Party has joined the communists — not only the Democratic Party, but also the Hong Kong Association for Democracy and People's Livelihood (ADPL), with some of its members belonging to the democratic camp and most of its members being led by the Democratic Party — these people do not trust the people and participate in the *de facto* referendum in five geographical constituencies. Instead, they joined the communists and took part in secret politics. The same goes with the trade unions in Hong Kong. Having no trust in the workers and grassroots in Hong Kong, they are reluctant to launch labour struggles. They believe in the rich and powerful as well as secret politics. After their requests are met, they will join the rich and powerful and then betray the interest of the working class. The acceptance of the minimum hourly wage rate of \$28 by the labour representatives in the PMWC is irrefutable evidence that the interest of the working class in Hong Kong has been sold out by labour representatives, including Mr LAU Chin-shek from the CTU. I hope the FTU and the CTU will explain later why their representatives in the PMWC have failed to raise objection to the minimum hourly wage rate of \$28. In making public their stances and making a statement to the outside world, these two organizations once said that they would not accept the rate of \$28.

President, why must the LSD insist on opposing this Notice? This is tantamount to opposing the constitutional reform package. Being a "bogus reform package", the constitutional reform package proposed at that time

sacrificed and exploited the basic democratic rights of members of the public. The Notice under the MWO today is also a bogus piece of minimum wage legislation, because such an unreasonable rate and the passage and enactment of this piece of legislation will further poison the will of the working class. Once accepting these petty favours, they can never expect the minimum hourly wage rate to increase gradually in future. Given that the initial rate is unreasonable, how can we expect the Government to raise the rate gradually to a reasonable level in future?

Some people said that Mr LEUNG Kwok-hung has proposed a motion to repeal this Notice because he believes the SAR Government and Donald TSANG will propose a more reasonable rate. This is absolutely a smearing tactic, a wrong interpretation. The LSD will not trust or count on the Government. We only trust the people, the masses and the working class. Should the Notice under the Minimum Wage Ordinance be vetoed, I absolutely believe those unscrupulous employers will step up their efforts in exploitation, further exploitation and even total exploitation. It will definitely cause a rebound and strong sentiments among the masses. The existence of unreasonable wages will definitely cause a strong rebound among the working class — not only against employers, but also against this Government as well as those political parties and trade unions which preach in one way but act in another. This will definitely be followed by struggles.

We have no trust in the Government. What is more, we do not trust the Legislative Council, which is controlled by the functional constituencies and the so-called accountability system. What we trust is the public at large, the working class and the toiling masses. It is our hope that, as with the general strike staged by mariners in 1922, we can fight for their due rights and justice through the engagement of the masses and the devotion and struggles of workers. We will not trust the rich and powerful; nor will we rely upon them. What is more, we will not believe in secret politics.

President, I have to make a public appeal here to the toiling masses in Hong Kong whose rights and interests are being exploited. You must not continue to remain silent, because your silence will only make the unscrupulous employers, this Government with no popular mandate and the political parties betraying conscience continue taking advantages, passing fish eyes for pearls and saying one thing but doing another. In this way, the living standard of the

working class in Hong Kong will definitely not be improved. Workers must fight for their own rights and interests and rise to join the struggles.

President, in the incident of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, nearly 10 000 members of the public took part in the struggle outside the Legislative Council. Although hundreds of thousands of members of the toiling masses will be affected by the minimum wage, the response of workers to the minimum wage is relatively lukewarm. I certainly and absolutely understand the severe hardships in living faced by the toiling masses in Hong Kong and the fact that they are living from hand to mouth. If they do not go to work, they will not even receive a basic income; if they are absent from work for one day, their so-called bonuses, including attendance bonuses, will be gone, too. As a result, their families will face severe hardships in living. These situations are also commonly found in overseas countries. However, someday these toiling masses will realize that they will have no means of subsistence and there is no way for them to improve their lot if they do not rise to join in the struggles. The day of their awakening will also be the signal of the arrival of opportunities for labour rights to be improved.

MRS REGINA IP (in Cantonese): President, like a number of colleagues who have spoken, I am not in favour of Mr LEUNG Kwok-hung's motion because regardless of his purpose, it is indeed very risky to repeal this Notice. Just now, we heard a number of colleagues in this Council express diverse views on the statutory minimum wage (SMW) rate. I do not wish to express my views on the SMW rate anymore, but I would like to raise two points only for the Secretary to consider.

First, some colleagues mentioned just now that 310 000 low-income workers will be benefited after the minimum wage has taken effect. But actually, will these workers really be benefited? I have no idea whether or not the Secretary has read the email issued by Mr David WEBB, a critic of the stock market, to a number of Members of this Council. And on his webpage he pointed out that these low-income workers might not stand to benefit indeed should the Government fail to expeditiously revise accordingly the income level at which contributions to the Mandatory Provident Fund (MPF) must be made. After reading his email, I found that some of his views were worth consideration

by the Government. For instance, he pointed out that after the minimum wage has taken effect, a worker will be required to make contribution to the MPF after working 178.5 hours at the hourly wage rate of \$28. This means that the income of the worker is actually reduced. In other words, he has to work longer for he is required to make \$250 in MPF contribution (because he earns \$5,000 a month). In order to make up for the \$250, he has to work 9.4 hours more. Such being the case, will the worker really be benefited? Mr David WEBB also suggested that, in order for this problem to be resolved to enable low-income people to be truly benefited, the monthly income level at which MPF contribution has to be made should be raised to \$6,500. Moreover, the contribution ratios should be narrowed accordingly. For instance, for incomes ranging from \$6,500 to \$13,000 and from \$13,000 to \$20,000, the contribution ratios should be set at 10% and 5% respectively rather than 5% for the entire sum of income. This is the only way to ensure that low-income workers can truly be benefited. I wonder whether or not the Secretary has considered this, read the email and discussed this matter with the Secretary for Financial Services and the Treasury. I find that the views put forward by Mr David WEBB — though I am not at all acquainted with him — are very often quite insightful. Hence, I hope the Secretary can respond to his suggestion.

Another point I wish to raise is about inflation. Just now, a number of colleagues mentioned that "inflation is fiercer than the tiger". Given our daily contacts with many grass-roots people in the community, Members should be aware that inflation is indeed strong and fierce. During the enactment of the MWO, I also expressed support for the Government to conduct a review once every two years. May I ask the Secretary whether you will take inflation into account in the review? In other words, when the review is conducted two years later, will the inflation rates in the previous two years be factored into the calculation to enable low-income people to be truly benefited, or will the SMW rate be pegged with inflation when the MWO is amended in the future? Speaking of this point, I do not object that the SMW rate be adjusted upward or downward (in the case of deflation). Certainly, Hong Kong endured more than six years of deflation not long ago. I think no one would like to encounter such deflation again. I hope the Secretary can give us a response when he speaks later on. Thank you, President.

DR MARGARET NG (in Cantonese): President, although I will vote against Mr LEUNG Kwok-hung's motion today, I will still speak in support of Mr LEUNG moving this motion today. I think this motion carries great significance.

First of all, we have to awaken all people in Hong Kong to some facts. Firstly, the minimum hourly wage rate of \$28 is neither appropriate nor reasonable. Secondly, it must be noted that the mechanism established upon the enactment of the Minimum Wage Ordinance (MWO) was a black-box operation. The Chief Executive was not in charge of it personally. Neither did he announce how the conditions for setting a minimum wage should be drawn up. But then the PMWC was tasked with determining the minimum wage rate. With the only remark that it will support and respect the recommendation made by the PMWC, the Government is not required to defend the minimum wage rate. We already pointed out at that time it was irresponsible of the Government in enacting this legislation. Furthermore, given the present circumstances, the Legislative Council can only vote against or in favour of the rate, and it is unsatisfactory to do so.

President, I already said during the enactment of the MWO that, if the conditions were objective and the process of setting the minimum wage rate by the PMWC was transparent and responsible, this Council should not discuss afresh whether the minimum wage rate should be increased or decreased by \$2, as it was not at all meaningful to do so. However, the entire MWO is unhealthy. As a result, this Council can only accept or reject it today, and this shortcoming has now been highlighted today. Had Mr LEUNG Kwok-hung resigned himself to destiny in a pragmatic manner for fear that raising objection would deprive workers of minimum wage protection and thus decided to keep his mouth shut, we would have been unable to highlight the areas where the MWO was found to be deficient or unhealthy. For this reason, President, I greatly support Mr LEUNG Kwok-hung moving this motion.

I believe Mr LEUNG must have his justifications in saying that the minimum hourly wage rate of \$28 is unacceptable. During the enactment of the MWO, we were greatly dissatisfied that the living wage was not used as the basis for the calculation of the minimum wage. Our principle is very simple: An able-bodied person working full-time should at least be able to have two meals a day and feed his family. We think this is the dignity of human beings, and it is

necessary for us to assure this. However, the existing minimum wage rate is not set to ensure that this purpose is served.

The second reason why we find this rate unsatisfactory is that, even if the minimum hourly wage rate is maintained at \$28 today, workers will not gain immediate benefits because it will take some time before the minimum hourly wage rate can come into operation. Coupled with inflation by then, the increase in the wages of workers will actually see a substantial discount.

The third reason for us to bring up this matter today is to put this on record, in the hope that the relevant review will not be further delayed to once every two years. Instead, a review should be conducted expeditiously. I certainly agree with Mrs Regina IP that this mechanism allows both upward and downward adjustments. This is precisely why the conditions were written in relatively objective terms when the bill was passed by this Council. In doing so, the raising or lowering of the minimum hourly wage rate will be governed by objective factors rather than purely arbitrary political factors, depending on who is more powerful in the wrestle. President, I am certainly not that innocent, or as innocent as Mr LEUNG Kwok-hung. I know that regardless of what Ordinance we are talking about, there must be political wrestles when it comes to objective factors. A complete absence of objective factors, as with the case of this MWO, is unacceptable.

President, we came into frequent contacts with people from various strata during our discussions on the enactment of legislation on minimum wage. I know that even if the minimum hourly wage rate is set at \$28, many people will be overjoyed. This reflects the unfairness of Hong Kong society because the people's expectation is so low. They already find it unbelievable for Members of this Council to vigourously help them fight for minimum wage and succeed in doing so. President, this is wrong, unhealthy and unfair. Hence, it is indeed essential for us to bring up this point today for debate again.

Lastly, President, I wish to say that I was deeply moved when I heard Mr LEE Cheuk-yan deliver his speech just now because I know that Mr LEE is keenly aware that it is wrong to set the minimum hourly wage rate at \$28, for it should be \$33 at least. However, he did not blame anyone. He said that he could not repeal the minimum hourly wage rate of \$28 today because he knew that he could not possibly make it and force the Government to propose a higher

rate. On the contrary, he blamed himself, despite being an organizer of labour movements, for having done not good enough and failing to fight for collective bargaining as well as better and more reasonable pay for workers because of the scale of the workers' organizations. A person who has made so much contribution to the labour movement throughout his life is here in this Chamber blaming himself for having failed to do even better. I really admire him and feel deeply touched. I hope Mr LEE can gain the support of more people to enable us to make society fairer.

The Civic Party supports the minimum wage not because of economic consideration or considerations for the labour movement, but rather we believe that every person has dignity. A fair society must respect that every person is entitled to two meals a day so long as he is prepared to work full-time. A society which does not allow the existence of a fair system like this one is uncivilized. Our convictions are so simple and firm, and these are our justifications.

Today, President, I am sorry that I have to tell Mr LEUNG Kwok-hung that I cannot support his motion, but I support him in proposing this motion. Thank you.

MS CYD HO (in Cantonese): President, the motion moved by Mr LEUNG Kwok-hung today is really a motion of "all or nothing". This notion of seeking to destroy the good and bad alike as an outcome of compulsion only highlights the fact that the minimum wage law perpetuates an obvious attempt in the provisions to consolidate this hegemony of the Chief Executive in Council. As early as when the Legislative Council resumed the Second Reading of the minimum wage bill, we had pointed out that the most essential and effective empowering provision in the whole piece of legislation was embodied in these words in Schedule 3: the Chief Executive in Council may by notice published in the Gazette specify an hourly wage rate and the effective date. Although there are more than 10 provisions in the Ordinance on how the Minimum Wage Commission (MWC) is to be formed, its operation is like a black box. That is to say, even if an hourly rate is recommended by members of the MWC, it is not provided that the Chief Executive will by necessity accept it.

Therefore, even though there are more than 10 provisions on the organization and functions of the MWC, in the end the decision is made by the Chief Executive in Council by a notice published in the Gazette. The most outrageous point of all is that the law says that the Legislative Council can only accept or reject the minimum wage rate as published in the Gazette and cannot amend it. This provision is the cause of what I call destruction of good and bad alike. It can be traced back to the authorities. The party which aims at a total and landslide victory is not LEUNG Kwok-hung, but the Government. Mr LEUNG Kwok-hung is just not willing to lose. He does not want to yield and be defeated by the authorities, and that is all.

For this reason, President, I suggested an amendment during the resumption of the Second Reading of the relevant bill in the hope of removing the power to prohibit an amendment to the minimum wage rate from the Legislative Council. But as I had expected, my amendment was negated. Therefore, with respect to this approach of total destruction, Members should not blame Mr LEUNG Kwok-hung indeed because it is the result of a vote taken by all Members of this Council. It is the path Members have chosen to take. As expected, my amendment was negated on that day. Those Members who have negated this amendment to remove the restriction imposed on the powers of this Council are still unhappy with the proposed minimum hourly wage of \$28 today. They are still slamming the table and making a tirade of angry remarks. We have seen a lot of this sort of behaviour from people which act exactly contrary to what they preach. But still, I fail to understand all this.

Among the Members who opposed our amendment at that time, some of them only raised a point which appeared to be quite objective. They said that if the Legislative Council were given the power to make such amendments, it would only lead to disputes every time. Then can we say that there is no dispute when we do not have such power now and we can only choose the total destruction approach of taking it or leaving it? As a matter of fact, there are indeed disputes, and we have to form a Subcommittee for examination all the same.

In an open society, it is certain that there will be disputes in any controversial issue. If after arguments we cannot reach a consensus, then the issue should be put to the vote in an assembly. This would be a fairer and more open procedure as compared to a decision made by the Chief Executive in Council. Now we have a lot of disputes, but given that we are constrained by

the law and our powers are limited, so despite how sensible those who oppose the minimum hourly wage of \$28 may sound, and despite the enormous data backing them up like the forecast of a severe inflation or how unfair the proposed wage rate of \$28 is, there is nothing this Council or the public can do to avert it.

Because of the separate voting arrangement in this Council, even if we have the power to amend the wage rate, the scenario of Members from the geographical constituencies and functional constituencies failing to reach a consensus will appear. On the one hand, most of the Members representing functional constituencies in the business sector would think that the minimum hourly wage rate of \$28 is too high. They may introduce some amendment to reduce it. On the other hand, Members representing the grassroots would think that the minimum wage should be prescribed at a rate which enables people to work and support the life of a family of two persons. They want to raise the wage rate to \$33 per hour. So it is very likely that such an amendment will be negated in the division. In the present case, the executive authorities have ruled out even the extremely rare opportunity of Members from these two kinds of constituencies joining hands and passing an amendment. How then can the Government convince people that it cares for the grassroots? How can it tell people that it is accountable to the Council and to the public?

I must tell Mr LEUNG Kwok-hung here that I am very sorry that I cannot lend my support to his motion. This is because if the motion to repeal the Notice is passed, the Government will certainly not propose to this Council soon that the minimum wage be set at \$33 per hour. Against the backdrop of the onslaught of inflation and at this time when rents, transport costs, electricity tariffs, food prices, and so on, are all on the rise and a situation of people being mercilessly butchered possibly arising, so to speak, now there are close to 310 000 wage earners whose hourly wage is still less than \$28, so a repeal of the Notice will produce grave impacts on them.

In 2009, the mean monthly income for households in the 10 income groups shows that the mean monthly income for households from the group with the lowest income is only \$3,000. The mean monthly income for the second lowest group is only \$6,000. As a matter of fact, this monthly income of \$6,000 is only a little bit more when compared to the monthly income of \$5,800 of people who work eight hours a day and 26 days a month at an hourly rate of \$28. So if we negative this hourly rate of \$28 today, it will cause serious impacts on the some

300 000 families in the first and second lowest income groups in the lower class. So, sorry, I have to say that I cannot support the motion proposed by Mr LEUNG Kwok-hung today.

President, all along the rights of the disadvantaged at the grassroots would need a lot of hard work by many people over many years before they can ever be secured. It can never be obtained when the Chief Executive, in a sudden show of mercy, showers his blessing on the wage earners. The minimum hourly rate of \$28 which we have to endorse today is only a compromise. We still have to be careful about it, for after the minimum wage rate is imposed, despite the fact that the rate is so unreasonable, there are still a lot of cases of bogus self-employment and deduction of lunch hour pay, and so on. We must be alert to such exploitation and deduction of wages. I hope wage earners and the public will be on the alert and when such exploitation and deduction happen, they must come forth and defend the rights of the wage earners and put up a fight for them. Everyone must take action to fight for the rights of the consumers and make their criticisms known. We should act to protect the living of the grassroots and the disadvantaged.

Finally, President, we should certainly fight for the right to collective bargaining so that wage earners will enjoy the protection of a reasonable employment contract. Ultimately, a poverty line should be drawn up and this should be made the basis for determining a minimum wage rate. Thank you, President.

MR WONG YUK-MAN (in Cantonese): President, we say no to the minimum hourly wage of \$28. The stand of the three Members of the Legislative Council from the LSD is one and the same. We want a minimum hourly wage of \$33. This is our pledge to our voters. The message we want to strike home in proposing to repeal the Notice is clear enough and that is, we say no to \$28.

Just before today, and we do not have to go back to the distant past, those so-called leaders of the labour sector, union leaders and Members from the pan-democratic camp made a loud call for a minimum hourly wage of \$33. They made such a vociferous show. Now they are teaching us these pithy sayings: lift high and let go; a bird in the hand is worth two in the bush. On the contrary, I admire those people from the pro-establishment camp and the Liberal

Party. Although Tommy CHEUNG has messed up the matter, at least he has been consistent throughout. What is wrong if we ask the Chief Executive to set a minimum wage rate that is more reasonable? If the trade union representatives really believe that the minimum hourly wage should be \$33, they should support our repeal motion and show their stand by casting their votes in favour of it.

Mr Ronny TONG has reminded me not too long ago that, as he sees it, there should be no resistance in parliamentary politics. In his view, parliamentary politics means you cannot bring street politics into the parliamentary assembly. In postwar Japan, the unrivalled dominance of the Liberal Democratic Party is a result of democratic elections. In most cases of political violence, various small political parties will rise and put up resistance. I must tell you, it is not only in Taiwan that people actually fight in a routine manner in an assembly. You people are short-sighted and narrow-minded, and you do not read books. The first country in Asia where there are fights in the parliament is Japan. And in Korea, people are still fighting in the parliament today. Last year when we paid a visit to Korea, a member of the National Assembly invited us to lunch and in the same evening we watched the TV and saw him in a brawl. There is physical resistance in a democratic assembly. We have not yet reached that stage, have we? Throwing a few bananas and saying a few expressions are ruled by the President of this Council as unparliamentary, as if we have committed the most heinous of crimes. Put it in another way, parliamentary resistance may also include using the powers vested in us by the Rules of Procedure for resistance. This includes proposing amendments continuously and filibustering. What is so strange about all this? When even filibustering is not permitted in a democratic assembly, what should it be called? Is that not resistance?

This repeal motion proposed by LEUNG Kwok-hung is a kind of resistance. In the face of violence from the majority and a government with administrative hegemony, are we going to sit quietly like these people and take it, thinking that a minimum hourly wage of \$28 is better than nothing? This is of course impossible. If this is possible, then we would not have called ourselves the LSD. If it is acceptable to us, then we are not a political party marked by resistance. If it is acceptable, then this parliamentary assembly will not be what it should be. If Members are happy to be rubber stamps, they may as well go home and sleep. Some people shout at the top of their voices and pretend to uphold justice and righteousness. They shout to the point of almost shedding

their tears that it is all for the interest of the workers. It is not indiscriminate destruction. If they really believe that only a minimum hourly wage of \$33 can meet the needs of living of the workers, then they should go for \$33 and they should support us. This will exert a great pressure on the Government.

I wish to tell Members that I have written a whole piece of article on that topic. But I am getting Members must lend us their support. This is a battle of resistance. This is the way to force the Government to submit. I do not believe it dare to destroy everything. Withdraw the law, if it dares. I tell you, if this is the case, then this Government will have to collapse. I am not joking. If this motion is really passed, if the Government does not agree to \$33, see what consequence it will bring. It is very simple indeed. Let us think calmly. What are we doing here for? We have been talking about fighting for a minimum wage for dozens of years. Those people — those who have joined the peripheral organizations of the communist party and those who have joined the communist party and are members of it — what are they saying now? They know cocksure that the law will be endorsed. Can they come forth and show their stand on it? They say they cannot do it and they cannot support LEUNG Kwok-hung. We would expect only three votes cast for that motion.

President, the pursuit of truth is always solitary. You have gone through this stage in your life, have you not? At this time and age, the whole world says that you are superb. And you have walked a rough road to success. The DAB had a hard time when it was first founded. Right? Albert CHAN recounted earlier the glorious past of the leftists. That of course does not include the tossing of bombs during the riots in 1967. Back in the good old days all the strikes in Hong Kong had something to do with the communists and trade unions. And most of the time, these strikes were for the cause of justice. And now these people are living in luxury homes and sitting comfortably in this Council. They have forgotten that our great Mr SZETO Wah used to oppose the *de facto* referendum of the five constituencies before he died and that helped the passage of the political reform package. He had a comment on us. He said that people from the LSD were escapists who appeared to be leftist but were rightist in their bones. We take that remark with deep gratitude. We want to present this compliment to our union leaders today. They are escapists who appear to be leftist but are rightist in their bones.

I want to read out from my script again. Even if we look at it mildly, the inflation rate for this year will be 4.4% according to government forecast. The prices of everything will go up. Secretary Matthew CHEUNG, the data used to determine the minimum wage rate are lagging far behind the market and economic conditions now. It is only right for the executive authorities to revise the first SMW rate in the light of the prevailing circumstances. An hourly minimum wage of \$28 is definitely not adequate. Some people may say that repealing the Notice would mean that the Government is fickle and changeable. Secretary, please listen carefully. If something is wrong, why should it not be changed? This is obviously wrong and out of tune with the times. Does the Secretary know the prices people have to pay for the necessities now?

Some people say that overturning everything will certainly cause a delay in the implementation of the minimum wage. The implied meaning is that the LSD is causing havoc again. This is a slander against us. When the Government has got all sorts of economic data in its hands, how difficult is it for it to make an adjustment? If the Government aims at causing delays or even tries to revise the wage rate downwards, then the responsibility will fall on the Government instead. And a public uproar will be triggered. This is a simple truth we can see even if we do not think with our brains. Now the union leaders and the so-called democrats will not do this task as simple as pressing the button and cast their votes to oppose it.

Members of this Council should be accountable to the people. They must not waver in their stands. Most people from the pan-democratic camp were supportive of a minimum hourly wage at \$33 back in July. The Democratic Party and the Civic Party with a more middle-class background were calling for a rate of \$30 in July. When have they obliterated their stand and slashed their demand to \$28? They say, "Although we are unhappy with that, we are forced to take it, for it is better than nothing. A bird in hand is worth two in the bush." Foreigners will call these people cynics, and the Chinese will call them hypocrites. If the democrats and the FTU can persist and never give in and support this repeal motion, it would create a great moral force and compel the SAR Government to respond. May I ask, what is the use of being Members of this Council if these people do not fight for universal suffrage, not even dare to engage in parliamentary resistance for the sake of people's livelihood?

I recall Mr LEE Cheuk-yan said almost to his tears in a meeting of this Council on 14 July and with great passion, that the passage of the Minimum Wage Ordinance signified a victory of the workers and the cause of justice. He said, to this effect, "What I feel now is like the Spanish national soccer team has made it to the final. Defeating Germany is like enacting the law successfully. And getting \$33 is like beating the Netherlands and winning the World Cup." This is really a bad analogy. Spain has already become the world champion. If it is like what he says, this is conceding the game even before it is played. This means that Spain has not become the champion.

On the other hand, Mr IP Wai-ming of the FTU said that although he is not happy with the rate at \$28, many people would think that a bird in hand is worth two in the bush. He thought that the wage rate should be put into force first in order that the workers could enjoy such protection. This argument appears to be for the workers and the grassroots, but actually this helps the Government greatly in managing the people's expectations and telling workers to stop putting up any resistance. I think this argument is laughable. People from the FTU and the Hong Kong and Kowloon Workers General Union said that of the 181 trade unions that attended the grand conference last week, 87.4% accepted the proposed minimum wage rate. They will accept the minimum hourly wage at \$28 out of sheer reluctance. Have they attended any of these grand conferences where the attendees said that they would never back off from their demand of \$33? If the logic of certain Members who spoke in the Chamber today is correct — including the logic of remarks made by WONG Sing-chi — the Government would not have to say \$28 at all. It can just say \$25 and Members will come to their knees. Right? If it is not \$28 but \$25, what would be the case? When we propose to repeal the law, will Frederick FUNG support it? What is the difference between an hourly wage of \$28 and \$25? When Members can take \$28 but reject \$25, I just fail to see why.

We appreciate the work done by unionists, but talking about the issue alone, the trade unions and the grassroots We should affirm the work done by the civilian groups. It is because they do not have anyone to speak out for them in this Council. How are Members going to face up to those civilian groups that have discussed with us over a long time on this issue? I just want to ask Members, how are we going to say to them? I think we will say the same thing: it is better to have something than nothing. For if not, we will all have nothing. If Members think this will work, then go ahead and try. See if that

works. It would be perfectly easy to do so if everything proceeds according to the Government's plan. All the work done in the past is a waste of time. If Members can compromise with \$28, they can do the same with \$27 and \$26. For it is better to have something than nothing. There is simply no difference. Right? If it is said demanding that the minimum wage be set at \$33 is a kind of resistance tactic, then what are the criteria for backing off? Where is the bottomline? It turns out that this is asking for a sky-high price but conceding to a rock-bottom price later. But it is not Members who are making a counter offer now. The Government is making a counter offer of \$28. While Members ask for a sky-high price and demand \$33, the Government offers \$28 in return. Members say it is all right and it is a deal. This is the situation now, not complicated at all. It would be likewise very simple if we reject it. President, it is not complicated at all.

Members returned to this Council by direct elections are the most representative of public opinion under the current constitutional system of Hong Kong. If they are willing to be relegated to rubber stamps, if at the final moments they let go the demand for \$33 which they have held up so highly before, just do they have a sense of shame when they face the millions of voters? It is one thing whether this repeal motion from Mr LEUNG Kwok-hung can be passed, and it is another for Members who claim that they represent the grassroots to support the motion. In a parliamentary assembly that is truly democratic, it is most common and reasonable for Members to represent the interests of various classes and defend their interests. But in an assembly where the privileged dominate and in the face of a government of administrative hegemony, what we should do is to pursue something knowing well that it stands no chance of success. We should speak out for the oppressed grassroots.

Both Dr Margaret NG and Ms Cyd HO have put it very well earlier. The motion highlights the crux of the problem. President, if the motion from LEUNG Kwok-hung should be passed, this would really mean a dynastic change. You may not be sitting there anymore. This would really be dynastic. We do not have any expectation for those Members from the pro-establishment camp or the peripheral organizations of the communist party, or those Members who immediately come to their knees at the beckoning of "Grandpa". But for those people who shout at the top of their voices every day that they are all for the interests of the workers, do we not hold some expectations for them? But, sadly, we should not harbour any expectations for these people either.

There are two more resolutions today. The three of us from the LSD will speak. On the other issues related to the minimum wage, we will pour out our hearts' content on behalf of the grassroots while holding fast onto our social democrat convictions. When we speak, those who do not like to listen may all go away. But that does not matter, for there are the TV and the Internet. I am not speaking to them any way. If they do not like to listen, they may as well go away.

Thank you, President.

MR PAUL CHAN (in Cantonese): President, let me first make a declaration. I am an employer, and my company has hired cleaners, amahs and persons with intellectual disability. President, this Council enacted the law on minimum wage before the summer recess last year and today, which is half a year later, we are here to scrutinize the initial minimum wage rate recommended by the Provisional Minimum Wage Commission (PMWC) as well as its effective date. Like other colleagues and members of the public who support legislating for a minimum wage, I hope that the minimum wage can take effect as early as possible, because the earlier the minimum wage takes effect, the more helpful it is to employees who will benefit from it.

Having said that, as I stated during the resumed debate on the Second Reading of the Minimum Wage Bill last year, the issue of legislating for a minimum wage has been discussed for more than 10 years and it has never been easy for us to come to this stage. Insofar as minimum wage is concerned, although there are many overseas experiences that can serve as reference, this is, after all, the first time that legislation is enacted to introduce a minimum wage in Hong Kong. We should proceed carefully and grope our way across the river, while ensuring that the minimum wage, when implemented, can truly help the employees without causing unnecessary confusion, which would otherwise affect the employees who will benefit from a minimum wage as well as the small and medium enterprises (SMEs) which have over 60% of the labour force in Hong Kong in their employ.

President, before I discuss the resolutions proposed by the three Members on this Notice relating to the minimum wage, I would like to express my views on the minimum wage rate and its review.

As I mentioned during the resumed Second Reading debate on the Minimum Wage Bill, the 2009 Report on Annual Earnings and Hours Survey was an important source of statistics to which the PMWC had made reference in determining the minimum wage rate. Apart from making reference to these statistics, the PMWC had also taken into consideration other factors in arriving at the minimum hourly wage of \$28. When the minimum wage is implemented in May this year, there will have been a time lag of two years in these statistics because the Report that I have just mentioned was compiled based on the statistics in the second quarter of 2009.

President, the past two years have seen considerable growth in the economy of Hong Kong. When giving a briefing to this Council on the overall economic conditions in Hong Kong at the end of 2010, the Financial Secretary pointed out that significant economic growth had been recorded in the first six months as well as the third quarter of 2010, and adjusted the underlying inflation rate for 2010 upward to 1.7%. Setting the minimum wage rate at \$28 per hour is, therefore, too low indeed. Looking ahead to 2011, some banks have forecast that this year will continue to see robust economic growth in Hong Kong and that there is a chance for the economy to achieve a growth of over 5% for the whole year. But as Members can see, inflation will be very serious this year. Some academics have also predicted that the inflation rate may hit 5% to 6% this year. We can envisage that the ordinary citizens will be facing inflation which is even fiercer than a tiger. Even though they will have the protection of a minimum wage, and although workers who will benefit from a minimum wage will get a pay rise of about 16.9% on average according to the report of the PMWC, they will still be put under great pressure in daily living. Furthermore, the continued inflow of hot money means that the pressure of imported inflation still exists.

President, in citing the changes in the economic conditions over the last two years and the forecast of the outlook in 2011, I wish to point out that it is a reasonable demand that the minimum wage rate be reviewed at least annually, for which I had expressed support during the resumed debate on the Second Reading of the Bill. It is also administratively feasible, and it all depends on whether the PMWC and the Government are willing to do it. Although an hourly rate of \$28 is on the low side, in order for the legislation on minimum wage to come into operation early for the benefit of workers, I support the endorsement of an hourly rate of \$28 as the minimum wage rate. As persistent economic growth is envisaged, and considering that escalating inflation will impose heavy pressure

on the living of low-income families, I urge the authorities here to make preparations for a review of the minimum wage rate immediately after implementing the minimum wage rate at \$28 per hour, with a view to truly achieving the objective of preventing excessively low wages.

President, with regard to the resolutions proposed by the three colleagues, I would express my views on them together in order to save time. I oppose Mr LEUNG Kwok-hung's resolution on repealing the minimum wage rate. While I said that this minimum wage rate is on the low side and I am also dissatisfied with it, if this proposed rate of \$28 is repealed, meaning that a new minimum wage rate will inevitably have to be worked out all over again, I think this will cause unnecessary delay to low-income employees who are desperately in need of assistance.

As regards Mr LEE Cheuk-yan's proposal to advance the implementation of the minimum wage by three months, I think it is well-intentioned but the taking effect of a minimum wage will have implications not only on employees but also on employers in making matching arrangements, and in particular, SMEs and owners' corporations will be affected. We must have regard to the fact that they need time to modify the cleaning, security service and other relevant contracts or even to adjust the management fees, and all these cannot be done in one go. Although some enterprises or unscrupulous employers may seek to evade it by all means or cut employees' benefits before the implementation of the minimum wage, in which case we can severely criticize them, there is no reason for a great majority of law-abiding employers to be affected as a result of being made to face the advanced implementation of minimum wage when they have yet been fully prepared for it. This would mean favouring only the employees to the neglect of employers, and it would also affect the impression of the implementation of minimum wage as a means to help low-income workers as well as its effectiveness.

President, I would like to take this opportunity to remind the Government that since there are still four months before the minimum wage will take effect, it must properly carry out preparatory work, including publicity and education, in order to avoid unnecessary confusions and disputes. Particularly, it must draw up guidelines on minimum wage for reference by employers and employees to ensure that both employers and employees clearly and fully understand the relevant requirements. As an employer myself, I think employers are

duty-bound to understand the details and discuss with employees the arrangements required for giving effect to the minimum wage.

Lastly, Mr IP Wai-ming proposed that the monthly monetary cap for exempting employers from keeping records of employees' total number of hours worked be increased to \$20,000. The initial minimum wage rate is \$28 per hour, which means that the monthly wage is only about \$6,000, while the cap currently proposed by the Government is \$11,500 which is about double the minimum wage. Having considered this, I think the proposed cap is adequate for covering employees who will benefit from the minimum wage. If this cap is increased to \$20,000 which is unnecessary, it will increase the cost of compliance incurred by enterprises and therefore cause nuisance to the public. If the coverage of the cap becomes inadequate in future, or the minimum wage rate is adjusted upward, I will agree to an adjustment of this cap. But for the time being, President, in bringing the new legislation into operation, we must be careful, grope our way across the river, and give people the room and time to adapt to it.

President, I so submit.

MR FREDERICK FUNG (in Cantonese): President, the setting of the minimum wage rate at \$28 or \$33 per hour involves a differential of \$5 between the two rates; but between having a minimum wage and not having one at all, the differential will be \$28 if the minimum wage rate is \$28 per hour, or \$33 if the minimum wage rate is \$33 per hour. It means that the differential between having and not having a minimum wage is far bigger than that between \$28 and \$33.

Second, the question of whether a minimum wage should be set is a question of principle, whereas the question of whether it should be set at \$33 or \$28 is a technical issue involving a higher or a lower amount. In my view, I think the principle is more important, whereas the technicality and the \$5 differential are less important.

President, the second point that I wish to make is that earlier on, the three colleagues from the LSD did not just debate the issue of minimum wage, but also hurled abuses at people in this Chamber, including the unionists, the grassroots,

the pan-democrats, and so on. Is there a need to scold people in such a way? I take exception to this approach of debate, because hurling abuses at other people cannot achieve any result, and one cannot obtain an additional vote after hurling abuses at others. In other words, this approach can achieve only limited results, or even no result at all.

President, I have read two paragraphs about how politics is interpreted by a Chinese and a Western proverb. I like very much the way Dr SUN Yat-sen interpreted politics. What is politics? It is the affairs of all the people. Does it mean the affairs of the three Members of the LSD? Does it mean the affairs of these 60 Members of us in this Council? Or, does it mean the affairs of the 7 million people that we discuss in this Council? I think what we are discussing here is the affair of the 7 million people, not the affair of the three LSD Members. They cannot hurl abuses at other people because they in the LSD think that this is just the way they are.

As a Western proverb goes — President, you used to be a teacher and a headmaster and you can certainly translate it better than I do. But I will try to translate it from my perspective. I would translate it as "可行的藝術" (the art of possible). "Possible" means feasible, attainable and practicable. In other words, politics does not require us to establish arguments, or to delve into theories or academic corroboration. These should be discussions in the universities discuss. Politics serves to put into practice academic theories or objectives, and they must be possible in a sense that the objectives can be attained today, or they can be attained tomorrow, a year later, or a decade later, or it can even mean that the objectives can be attained after we have passed away. There is no time limit, but we must move towards these objectives. If we cannot attain them, we would need to pass the baton on to the next generation; it needs to be passed on from one generation to another, and some people have to carry on with it.

Under these principles, I think anyone engaging in politics to genuinely serve the people should — insofar as this issue is concerned, and especially as the three LSD Members have vehemently reprimanded other people and hurled abuses at us earlier — I think people who engage in politics need to do some soul-searching. What we do in politics is not a revolution; our work in politics is more like doing little by little persistently over a long period of time. Minimum wage is an issue creating the biggest conflict between the grassroots or

workers and the business sector. It is far beyond an issue on which a consensus can be reached through co-operation and co-ordination, and in the most dramatic circumstances, it can be a factor that triggers a revolution. The point lies in how Hong Kong tackles this issue in order to achieve a win-win situation. A win-win situation means that workers can make ends meet by earning wages at this rate, while the businessmen are willing to operate their business by paying wages at this rate.

Certainly, I think there is bound to be opposition to whatever rate at which the minimum wage is set, even if it is \$33 per hour. And, even if you agree to setting it at \$33, you may not agree to it next year, or you may no longer agree to it due to inflation next year. In that case, should we argue over it again next year? In fact, we have to argue over the minimum wage every year. It is quite unlikely that we can stop arguing over it even for one year. The only difference is whether our argument is based on \$28 or \$33. This is the difference. That said, I think this difference has nothing to do with the principle; it is not a conflict; nor is it a difference that can lead to "life-and-death" consequences. Why should this debate be turned into a "life-and-death" contention?

Particularly in this Chamber, debates are conducted whenever a meeting is held, and Members do not mind debating at all. In the course of a debate, for motions that do not yield any result and can be neglected by the Government after discussion, we can discuss it in whatever way we like. But how many people will be affected by the result of this debate? Of course, Members may choose not to believe the figure provided by the Government, but this is the only figure we have; otherwise, Members should provide other figures if they do not believe it. The income of 3 146 000 people will increase if they can be paid at this rate of \$28. This increase will mean putting money, dollar by dollar, into the pockets of these 310 000 people.

Perhaps some people may say, "I do not want this. Let us start all over again." To restart discussions, two conditions are required. In fact, the three LSD Members have also mentioned this point. The first condition is the "masses" as mentioned by Albert CHAN; WONG Yuk-man also mentioned the need to have the support from the "masses". But please tell me: Where do the masses come from? If you can suggest a way and say that 500 000 people will take to the streets tomorrow, I will support you immediately. But if only 500 people will take to the streets tomorrow, tell me what reasons there are for me to

support you. Please tell me how a considerable number of people can be mobilized, just as what had happened before when 500 000 people took part in a march, and these 500 000 people, who caused Chief Executive TUNG Chee-hwa to step down, is the number of people that can create an effect. If this number of people cannot be mobilized, and if this is all empty talk, how can we live up to the expectation of these 310 000 people?

As regards the second condition, WONG Yuk-man said that if Mr LEUNG Kwok-hung's motion is passed, what dynastic changes there will be! This, I agree. If LEUNG Kwok-hung's notion can be passed — this is not a notion; I said "notion" only because I heard Yuk-man say "notion" just now — if Mr LEUNG Kwok-hung's motion can be passed, there will certainly be dynastic changes. President, you would not be able to remain in office. I guess not only you could not remain in office, I myself also could not remain in office; nor could Members from the Democratic Party remain in office.

Having said that, dynastic changes have not yet taken place, so what should we do? Certainly, some people will say that there is only black or white to them, and that they will take it, or leave it. But this is a colourful world, as even a rainbow has seven colours, so why should we have to exclude other colours which can make this world more beautiful? When I say more beautiful, I mean making it possible for 310 000 workers to have a few dollars more in their pockets as soon as possible. Well, on this point, if Mr LEUNG Kwok-hung tells me, "Shut up, Frederick, I guarantee that the Chief Executive will propose a rate of \$33 six months later", then I would keep my mouth shut now and I can even resign. But since he has not made such a guarantee, how should I explain to those 310 000 workers? What is more, let me tell Members that a fairly large number of these 310 000 workers belong to the Kowloon West geographical constituency, which means that they are also my voters.

Mr LEUNG Kwok-hung may also say, "Trust me, this principle of mine cannot be wrong.". Let me point out once again that only the affairs of all the people are regarded as politics. What is most important is not my principle, not my ideal, not myself as a Member of this Council, and not the convictions of a certain political party. It is about the affairs concerning all the people, and other than ideal or convictions, politics may, at the end of the day, also be about meals, mouths to feed. The rental of shops in housing estates and on the street are becoming more and more expensive now, making it impossible for small and

medium enterprises in the business sector to carry on their operations. A minimum wage is the earnings that a worker can make at the minimum. If I do not allow it to take effect, how can I solve these problems? How can I explain to them, and how can I convince myself that this is correct?

President, I maintain that even if we pass this proposed hourly rate of \$28 today, it does not mean that we will fight no more and put up no more resistance. Passing this proposal is like taking an apple with us in putting up a fight. That is, these 310 000 workers will each take an apple and then take to the streets again. An alternative is that you can mobilize 500 000 people to take to the streets, but they have just nothing. I would choose the former and that is, I will get this thing first and then take to the streets again. This is just the way of Hong Kong people. This is the way not only over this issue, but also over other issues. Hong Kong people want to have at least a shelter and food before fighting on for their rights and interests. Whether this thinking is right or wrong has to be decided by the mass public themselves.

President, the second point that I wish to make is that when the minimum wage rate was set in the second quarter of 2009 for implementation in 2011, there will obviously be a gap, and coupled with inflation in the future, the Government must address such gap as soon as possible, and it should make an undertaking in its response later to conduct a review at least within one year. Secretary, you are also responsible for welfare in the Labour and Welfare Bureau. Since you are willing to conduct a review in respect of Comprehensive Social Security Assistance (CSSA), why can you not do the same in respect of wages? The objective of CSSA is to help people with the lowest income or no income at all, but after these people have received CSSA, their income will increase accordingly, or they will change from not having any income to having an income, and this group of workers is also making an income below the minimum wage rate. Therefore, the problem of their monthly income should also be addressed by a reasonable policy.

President, the third point that I wish to make is that we cannot turn a blind eye to history. A minimum wage does not come up for our discussion only today; nor is this principle endorsed only today. When I took up my first job in the community upon graduation from university, discussions had already started on this issue. It has been 20 years now, and it was only 10 years ago that this issue was raised for discussion in the Legislative Council. The community has

waited for a very long time. If this principle is endorsed but if it cannot be put into practice, I could not even justify this to myself. I started to work for this when I was young and now, I have turned bald. So, this history must be turned into reality, just as what I said earlier about "the art of possible" and the affairs of all the people. We must turn it into reality.

In this connection, I wish to make another point and that is, after the minimum wage becomes a reality, there will be two effects. The first practical effect is that 310 000 people will immediately benefit as their income will be increased; second, it can have implications on other social policies. With the implementation of a minimum wage, a standard would actually have been set, and in formulating any policy in future, the authorities should not draw the line at any point below this standard. At present, the decision simply rests with the Government, as it can set wages at whichever level it likes, and it is considered fair so long as it says so It can set the standard at the income limit adopted by the Housing Department or it can set the standard at the income limit for CSSA. But with the implementation of a minimum wage, the minimum wage rate will become the standard and this is an instant effect brought by minimum wage, which is far more significant than putting a few dollars more into the pockets of those 310 000 people.

President, I still insist on one point and that is, this debate today is not a "life-and-death" debate. It is not about any difference in principle; but a difference of \$5. But this difference of \$5 can have the result of having or not having a minimum age. So, I will definitely choose to have a minimum age. Although I did ask for \$33 in the past, and although I did say agitatedly — well, I was actually not agitated in proposing \$33 — I do support it; I have always supported the trade unions, and the grassroots have always supported the trade unions too, and we will throw weight behind the trade unions for whatever rate proposed by them, because this is related to workers, and this is an affair of all the people and particularly, this is an affair of workers. But I maintain that it is better to have it than not having it, and it is better to have a principle than not having one, and it is better to have a policy than not having one.

We must make a start, but the fight must go on. Together with the workers, we will fight on while taking an apple with us. We will take to the streets with an apple in our hands. Taking to the streets with a starving stomach is not the best. In fact, a place with more labour movements is where people are

more likely to have a shelter and food; the higher the education standard of workers to enable them to mobilize and organize workers and to understand policies, the better able they are to improve policies, particularly as we are striving for a civilized society, and civilized people have to deal with things in civilized ways. Hong Kong is an affluent and civilized society. We must allow our workers to get a shelter and food before everything else.

Thank you, President.

MS MIRIAM LAU (in Cantonese): In this prosperous city of Hong Kong, if a person who is industrious at work can make an income of only \$3,000 to \$4,000 after working for a whole month, that would be absolutely undesirable. So, although fully aware that the implementation of a minimum wage will do harm to the free market and lead to certain sequelae, from the angle of forestalling excessively low wages and after making reference to the results of opinion surveys and various types of statistics, and having considered the extent to which the community can withstand it, we in the Liberal Party reluctantly support that the initial minimum wage rate be set at \$28 per hour.

I still remember that at half past six in the morning on 17 July last year, other colleagues and I in this Chamber had been engaged in heated discussions in the marathon debate on the principal legislation on minimum wage lasting four days in a row. We spent a total of 41 hours and ultimately passed the principal legislation on minimum wage. Our objective was to take an important step for the protection of worker's interest. Subsequently, after conducting studies and listening to the views from all sectors of the community for over a year, the PMWC came up with the proposal of setting the minimum wage rate at \$28 per hour. This can be said as a consensus reached between employers and employees on the basis of mutual understanding.

However, if the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010 is repealed as proposed in the motion moved by Mr LEUNG Kwok-hung in this Chamber today, it would be tantamount to overturning everything and restarting work all over again. Such being the case, we must be very careful. I trust that the 3.5 million-odd wage earners have discerning eyes. They will keep their eyes peeled and watch clearly whether or not this would be beneficial to them. It is because if the minimum wage rate were to be set afresh,

the result would actually be unpredictable. But we can be sure of one thing and that is, there would be absolutely no chance for the minimum wage to take effect on 1 May. It means that the minimum wage long awaited by wage earners would remain at the conceptual stage, not to mention being brought into effect soon, simply because of the repeal of the minimum wage rate by Mr LEUNG Kwok-hung.

I wish to reiterate in particular that the Liberal Party has all along considered that the initial minimum wage rate should be set at a lower level as a start, in order not to create too great an impact on society all at once. Based on the proposed rate of \$28 per hour, a total of 314 600 employees will immediately receive a pay rise with an average increase of 16.9%. Obviously, this rate will immediately forestall excessively low wages for hundreds of thousand low-paid employees.

If we make reference to the situation in the United Kingdom, we will find that the initial implementation of the minimum wage covered only 5% of all employees in the country, but the coverage in Hong Kong is 11.3%, which is double that in the United Kingdom during the initial implementation of minimum wage, not to mention the fact that this hourly rate of \$28 has not factored in the ripple effects. Making reference to the experience of the United Kingdom and the United States, we can see that in the United Kingdom, even though the direct coverage of the minimum wage is only up to the fifth percentile, the ripple effects can nevertheless extend the impact of minimum wage to reach the 30th percentile of the pay hierarchy, and the resultant differential is nearly six folds. In the United States, an American scholar in economics, Jeannette WICKS-LIM, who has conducted many studies on minimum wage, found that when the minimum wage was increased from US\$4.75 to US\$5.15 in the United States in 1997, the ripple effects hence generated had drastically increased the total number of beneficiaries by two folds to 15 million people, whereas the wage bill had also increased by nearly two folds to US\$2 billion. This shows that the ripple effects must not be neglected, and Hong Kong is no exception.

To what extent will the employment opportunities of the vulnerable workers and the operation of small and medium enterprises (SMEs) be affected? The Liberal Party commissioned the Public Opinion Programme of the University of Hong Kong to conduct a SME Survey on Minimum Wage 2010 from 16 to 25 August 2010, in which 507 SMEs were interviewed successfully by random

sampling. The findings showed that many SMEs have to adopt various measures to increase revenue and cut expenditure in response to the implementation of the minimum wage, such as laying off staff or hiring employees of a higher calibre. With over 280 000 SMEs in Hong Kong and based on an hourly rate of \$28, it is projected that 46 000 people may lose their jobs, which is equivalent to about 1.3% of the total working population.

The PMWC has also made similar projections in its studies. It is pointed out clearly in the report that if the hourly wage is set at \$28, 0.9% of the enterprises (or close to 1 700 enterprises) will turn from positive to negative profitability, and about 45 000 employees of these enterprises will subsequently be laid off, thus pushing up the unemployment rate by 1.2%.

President, the minimum wage is originally intended to protect low-paid workers but regrettably, 40 000 workers with low skill and low educational attainment who are originally under employment will lose their jobs and hence their dignity in being able to support themselves because the market can no longer accommodate them. Many employers who have been operating with great difficulties are also pouring out grievances, worried about not being able to hang on and continue with their business.

The PMWC has stated that close to 1 700 enterprises will turn from positive to negative profitability. In fact, the 2009 Report on Annual Earnings and Hours Survey of the Census and Statistics Department (C&SD) has long stated that some SMEs have been operating at a loss. According to the projection of the PMWC, on the basis of an hourly rate of \$28, the low paying sectors such as property management, security and cleaning service sectors will have a cost increase of 6.8%, while the cost of other low paying sectors, including the hairdressing and courier sectors, will increase by 3.9%, and that of the catering and retail trade sectors by 2.9% and 1.3% respectively. These are only the averages. The cost increase faced by many SMEs may be even higher.

I have recently held meetings with the elderly care service sector in particular to discuss this with them. They are gravely concerned about whether their sector can withstand the impact of the minimum wage. The 2009 Report on Annual Earnings and Hours Survey of the C&SD shows that for the elderly home industry, the profit ratio of enterprises at the first quartile currently ranges from -0.5% to +0.05%, and if the minimum wage rate is set at \$28 per hour, it

will become -2.3%, which means suffering a loss. In other words, the 5% to 15% of elderly homes facing the greatest hardships in operation will all suffer a loss.

Other enterprises may cope with the minimum wage through downsizing and price increase in the light of the market conditions, but 80% of the inmates of private elderly homes in Hong Kong are recipients of Comprehensive Social Security Assistance (CSSA). The implementation of the minimum wage will lead to a drastic increase in staff cost but in order to maintain their service quality, it is impossible for them to cut the number of staff. Given the manning ratio requirement imposed by the Government on elderly homes, downsizing is absolutely not an option for them. Under such circumstance, while their staff cost increases, they nevertheless have to maintain their service quality and hence cannot cut the number of staff, and as the CSSA rates received by the inmates have not increased accordingly, these elderly homes may have to close down if the operators do not have the means to sustain their operation. If that happens, it will lead to extensive job loss. Besides, what can be done to rehouse the elderly inmates?

From this we can see that an hourly rate of \$28 has already exerted heavy pressure on SMEs. Generally speaking, the total expenditure on wages in Hong Kong will also increase by \$3.3 billion to \$541.6 billion. When it comes to competitiveness, if we take an overview of the minimum wage to median wage ratio in most advanced countries, we will see that it is only close to 45%. A minimum wage rate of \$28 per hour is equivalent to 48% of the median wage of \$58.5 in Hong Kong, which is slightly higher than that in other regions.

Moreover, in early 2010, Hong Kong was given the renown of the world's freest economy by the Heritage Foundation of the United States for 16 years successively. Having said that, Terry MILLER, Director of the Centre for International Trade and Economics of the Heritage Foundation, stated that the enactment of legislation on minimum wage and fair competition may affect the future ranking of Hong Kong. In the ranking list of the overall competitiveness of global cities published by the China Institute of City Competitiveness (the Institute) at the end of last year, although Hong Kong remained as the most competitive city in China, the competitiveness of Hong Kong ranked only the 10th among the 30 cities in the world. While this is due to a diversity of

complicated reasons, the Institute did mention that one of the reasons was an increase in financial cost resulted from the implementation of a minimum wage which would take its toll on the competitiveness of Hong Kong.

Furthermore, given the overflow of foreign hot money and as a vicious inflation is waiting to strike any time, setting the minimum wage rate at too high a level may add fuel to the inflationary trend. Under the circumstance, we consider it barely acceptable to set the minimum wage rate at \$28 per hour after balancing all the factors in various aspects.

As regards Mr LEUNG Kwok-hung's motion, Mr LEUNG proposed to repeal the Notice on setting the minimum wage rate at \$28 per hour. His motion seems to have completely turned a deaf ear and a blind eye to all these rational analyses. It seems to have entirely disregarded and refused to listen to these analyses. This is just the subjective wish of Mr LEUNG Kwok-hung who hopes to see a higher minimum wage rate.

He has explained in *Ming Pao* why he proposed this motion. He also repeated his arguments in his speech earlier on. He said that since the Legislative Council had already passed the legislation on minimum wage and if we repealed this minimum wage rate of \$28 per hour, Chief Executive Donald TSANG would, under political pressure, naturally be forced to propose a rate higher than \$28 per hour, which might be \$33 or even more than \$33. This is indeed the wishful thinking of Mr LEUNG. When it comes to confidence in Chief Executive Donald TSANG, having listened to the speeches made by Members, I think it appears that only the three Members from the LSD have such confidence in the Chief Executive, whereas the other Members do not have such confidence in him at all. In my opinion, to politicize minimum wage is tantamount to gambling on the minimum wage with the Chief Executive, to see if he has the guts not to increase the minimum wage rate to \$33 or more than \$33. This, I think, is irrational, extremely dangerous and absolutely undesirable.

In fact, if the minimum wage rate is increased to \$33 in one go, is it going to work? I would like to share some statistics with Members. According to the survey commissioned by the Liberal Party as I mentioned earlier, if the minimum wage rate is set at \$32 per hour, the number of people rendered out of job would drastically increase to become double the job loss resulted from a rate at \$28 per hour, with close to 100 000 workers becoming jobless, accounting for 3% of the

work population. If the rate is not \$32 but \$33 per hour, the consequences would be even more dreadful and definitely unmanageable by society. It would deal a heavier blow to the SMEs and jeopardize the overall competitiveness of Hong Kong more seriously. The report of the PMWC has also made similar projections. It is stated in the report that with a minimum wage rate of \$33 per hour, as many as 60% of the enterprises will turn from positive to negative profitability with a job loss of about 81 000, pushing up the unemployment rate by 2.2%.

Based on these statistics and analyses, I call on colleagues to vote against Mr LEUNG's motion, so that this hourly rate of \$28, which is a more balanced and proper minimum wage rate, can take effect as early as possible.

With these remarks, President, I oppose Mr LEUNG's motion.

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

MR PAUL TSE (in Cantonese): After listening to Ms Miriam LAU's arguments, I think it would only be reasonable if the Liberal Party opposed the introduction of a minimum wage. However, this Council, individual Members or political parties and groupings often preach one thing but act differently, whether voluntarily or involuntarily.

President, I was the only Member who voted against the introduction of a minimum wage during the legislative process, and I already explained in great detail back then that it was not because I did not support protecting the reasonable rights and interests and the dignity of workers in Hong Kong. Regarding such problems as in-work poverty and the disparity between the rich and the poor, I have made it very clear right at the beginning that I fully understand them and I support and hope that they can be alleviated. However, please allow me to stress once again that I still think the minimum wage law is not an effective cure to these problems. Quite the contrary, it may give rise to many after-effects, which are most unfavourable to the disadvantaged workers. It can be argued that it is helping the poor by robbing the poor. Theoretically, therefore, I cannot support this motion.

For these reasons, I also wish to take this opportunity today to point out that as Mr LEUNG Kwok-hung has moved this motion, I will give him my full support. Certainly, I do not support him for the reasons advanced by him, and I hope he would not mind my saying so. However, I hope there will be some voices of reflection in this Council. If the legislature in Hong Kong capitalism has been upheld in Hong Kong for over one and a half centuries, and it is simply not normal if there are no voices in this Council opposing minimum wage. Sometimes, we will actually face greater pressure to say "no", to oppose and query views which seem to be widely-accepted than saying "no" to the Government because the consequences we have to take or the immediate pressure we have to bear in saying "no" to the public or people who speak harsh words and put up stern faces may be more direct, instant and immense.

Anyhow, President, my point is that an Honourable colleague has said that setting the minimum hourly wage rate at the level of \$33 will bring about dynastic changes in Hong Kong. It may be right in saying so as Hong Kong has already undergone dynastic changes, just that these changes, which arose from the introduction of various new measures over the past couple of years, have taken place insidiously.

Ms Miriam LAU just said that the competitiveness of Hong Kong has kept declining. It is true. In this regard, Hong Kong has, without our noticing it, undergone dynastic changes. Certainly, nothing is absolute in this world, and things may tilt sometimes to the left and sometimes to the right, and other times waver pretty much in the middle. However, the cornerstones for Hong Kong's success over the years have remained unchanged — we uphold freedom, including the freedom of trade. When it comes to freedom, be it human rights, the rights enjoyed by individuals, the rights enjoyed by various organizations or the freedom to engage in economic activities, it can be said that Hong Kong tops the world. However, without our noticing it, we have forgotten the key to our success. Perhaps, this is human nature. Very often, we will only cherish people after they have passed away; we will only find certain concepts very useful after they have been abandoned; and we will only regret it after certain measures have been repealed. Anyhow, I think there must be someone to express this view for the record. I consider it very difficult to implement the concept of minimum wage in Hong Kong. I once pointed out that I have to express great reservation about calculating the minimum wage based on the

hourly wage rate using the present approach when so many problems have not been resolved properly, particularly for the tourism sector.

During the recent discussion on the minimum wage level, some incidents happened. These incidents have given rise to issues including whether meal breaks should be included in the calculation of minimum wage and that some vulnerable workers may face the imminent threat of being laid off. Recently, there have been reports on such issues, which are actually well within our expectation. Actually, many academics, particularly economists, have much reservation about using the minimum wage as a cure to the poverty and labour problems, and I am not going to expound on their arguments.

President, please allow me to make one more point, which will not take too long. What I wish to say is essentially that although the minimum wage law has been passed, and the legislation today on the minimum wage rate will also definitely be passed, I hope the Government will not think that it has got the case over and done with and won a victory and so it can get the issue off its back. Actually, labour problems require various other cures, while the minimum wage is not a good one. However, as the law has already been passed, we can only step up our effort to explore other solutions.

Mr Tommy CHEUNG just said that recently many Mainland tourists visited Hong Kong under the Individual Visit Scheme, which has enabled our tourism industry, the retailing sector and even the catering trade to flourish. Therefore, in districts visited by more tourists, such as Tsim Sha Tsui, Causeway Bay, Mong Kok and Tsim Sha Tsui East, restaurant staff actually receive wages which are much higher than the minimum wage rate without pressing their employers for it. This can precisely explain why I have so much reservation about this "effective cure" of minimum wage — with sound economic development, the wage level will naturally rise and we do not always have to resort to administrative means, particularly this clumsy means, to maintain the minimum wage level. This means is both unnatural and arbitrary, and it may even give rise to various after-effects. In particular, when there is such a big difference between the wage levels of the huge labour market of our neighbouring Motherland and Hong Kong, forcing through the implementation of the minimum wage will only bring us more serious problems than those which often emerge on the border of the United States and Mexico. I hope such a situation will not happen. However, I can envisage that forcing through the implementation of the

minimum wage in the presence of such a big difference will only distort the situation, thereby giving rise to the formation of an underground labour market, which is apparently subject to statutory regulation but actually free from control. The labour market of foreign domestic helpers in Hong Kong is a case in point. Regarding Indonesian maids, there have been numerous examples of them apparently being paid at the minimum wage rate while there are actually a lot of "rebates", that is, the so-called "kick-back". Part of their wages is deducted by the employer, and there are numerous such peculiar arrangements. After the implementation of the minimum wage, these situations will not only happen in the labour market of Indonesian or Filipino maids but also in the labour market of Hong Kong as a whole. I have to put this on record, and we will see what happens.

All in all, President, let me stress again that we should step up our efforts to encourage business ventures through various means, such as developing different industries and improving our tax system. Another example is the concept of "dual-CBD", which has always been advocated by me. That is, we should strive to encourage more international organizations to set up their headquarters on the border of Shenzhen and Hong Kong. All these are means to make the pie bigger, which is the true solution to the problem. Using administrative means to interfere with the market violently, as what we are doing now, will only result in many distorted situations.

Thank you, President.

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

MR WONG KWOK-KIN (in Cantonese): President, many Honourable colleagues have spoken on the justifications for introducing the minimum wage. Actually, after the passage of the principal legislation, we are only discussing today whether or not to accept this minimum hourly wage rate of \$28. Originally, I thought this issue would not be very complicated. Upon consultation, I found that although many trade unions are compelled to accept this rate, they still wish to express some common views, and many Members have already done so just now. First, this rate set on the basis of statistics which carry a lag cannot reflect the actual situation and fails to reflect the fierce inflation at

present and that which may occur in the future. Therefore, we request that the Government review and amend this rate as soon as possible within a certain period of time, such as within one year after the implementation of this rate. Regarding the desired effects of the minimum wage, the principles I have set are: first, it should forestall the endless drop of wages because, as we can see, before the introduction of the minimum wage, wages of many elementary posts have been decreasing as there has been an inadequate supply of jobs in the market, and it is not unusual for workers to have a wage cut whenever they enter into a new employment contract. We hope the introduction of the minimum wage can prevent such situations from continuing.

The second principle is that the minimum wage should be able to alleviate the hardship of the grassroots and the most needy workers. However, I would not expect that it can improve their situation or solve their problems altogether because even after the introduction of the minimum wage, this wage rate will not be able to resolve the difficulties in their living, and neither will it be able to substantially improve their lot. Rather, it will only be able to slightly ease their hardship. In this regard, we will see the initial realization of this principle after the implementation of the minimum wage. As for the adjustment of the relevant rate, I believe we will continue with our fight in the future.

Regarding Mr LEUNG Kwok-hung's motion today, I on the contrary think it is worth discussing. Basically, it is not a problem to move a motion, and everyone can express their own views on it, advance their own arguments and then cast their votes according to their own stances. This is also the established practice of this Council, and there is no problem about it. However, the few Members from the LSD have criticized almost everyone in the whole world in their speeches, which I think is where the problem lies. I think it is not a problem for them to put forth their arguments, but does it mean that they have to criticize other Members or even other trade unions to fight for workers' interests? I think this is open to question. Mr Albert CHAN repeatedly referred to the seamen's strike, and it so happens that I started off as a member of the seamen's union, and I believe I am more well versed in the part of history concerning the seamen's strike. When I went back to the office of the union to handle some matters, many senior members of the seamen's union who were closely connected to the seamen's strike warned me that I have to be sensible, strive for favourable terms and exercise control in dealing with labour disputes. That is, I should

make compromises properly, adhere closely to the principles and refrain from making exaggerated accusations.

We know it is not difficult at all to make labour disputes worse. When one keeps continually exaggerating the accusations and demanding for more while not giving in at all, labour disputes will definitely worsen. When we came across such situations in the trade union in the past, we would first ask ourselves whether the relevant people were undercover agents of the boss, as they demanded more and more without giving in at all, so much so that there would be no chance of resolution. We always suspected that such people were undercover agents of the employer, and all they wished to do was to mess up the matter. They kept standing on the moral high ground and chanting loudly. I am not saying that there are such people among us Members, and it only came to my mind that there were such situations.

Mr LEUNG Kwok-hung said earlier that if the minimum wage was messed up, we could pass this problem back to the Chief Executive again. What kind of an attitude is this? Should we put ourselves at the mercy of luck? What should be done if lady luck does not smile on us? If we pass the issue back to the PMWC which would set another minimum wage rate, which turns out to be \$28.1 per hour, what should be done? If it turns out to be \$27.9, what should be done? He has not offered any answer. After we have repealed this Notice, will all the workers in Hong Kong come forward and wage a struggle, thereby forming a very powerful force which will definitely enable us to attain the wage level of \$33? If this is the case, and provided that reliable statistics or feasible approaches are available, I believe we may give consideration to supporting this motion. To put it in the extreme, if Mr LEUNG Kwok-hung really presses this motion forward with all seriousness and indignation, and if he also indicates that he will resign from office again if he is unable to fight for the minimum hourly wage rate of \$33, so that a by-election will be organized before the relevant legislation is amended I have not consulted the Hong Kong Federation of Trade Unions (FTU), but I will vote for his motion. If he makes this undertaking, I will vote for his motion personally. It is just natural that I will support him under this circumstance because he is serious in this matter and he will resign from office if he is unable to fight for the wage rate of \$33, and so I will certainly vote for his motion personally. I think I can do so because he really wants to fight for workers' best interests.

However, we expressed our agreement to the hourly rate of \$28 only after consulting the public and knowing that they would accept this level. If the public does not have any intention of coming forward to wage a struggle, how can we induce and mobilize them? At that time, will we be staging a demonstration or exposing our weakness? Very often, trade unionists know very well that whether they can succeed in fighting for a certain cause depends on whether they can secure the support of the majority public or workers. Having engaged in the labour movement for so long, we consider it most agonizing when we clearly know, in handling a labour dispute, that we are unable to secure the support of the majority of workers while some workers insist on continuing with the struggle. Under this circumstance, the labour union will find it most difficult to decide what to do.

I remember that during the outbreak of SARS a few years ago, many companies, including some large-scale ones, required their employees to accept a pay cut. Some workers approached our trade union to seek advice as to whether they should sign the consent letter for the pay cut. After finding out that most workers had already signed the letter, while only a small number of workers were unwilling to sign it, should I advise the relevant workers to sign the letter? If I advised them not to sign the letter, they might even lose their jobs. This is the kind of situation which is most agonizing for unionists. If we are unable to secure the support of the majority of workers for waging a struggle, we can only bear the anguish in silence by making compromises rather than standing firm on the moral high ground and putting up demands which are exceedingly difficult to meet, thereby causing the people we serve, that is, the working masses, to suffer in the end. This is the last thing that labour unionists would like to see.

Thank you, President.

MRS SOPHIE LEUNG (in Cantonese): President, members of the community have all along been holding diverse views on legislating for a minimum wage. The Legislative Council, the PMWC and members from different sectors of the community have been discussing the issue of minimum wage for a long time since the Chief Executive Donald TSANG proposed legislating for a minimum wage in his Policy Address of 2008. After numerous studies, arguments, discussions and compromises, an outcome which is acceptable to all has been reached. As Mr WONG Kwok-kin said, although some people accepted this

result while "bearing the anguish in silence", we have agreed to this outcome after all. This outcome of setting the first SMW rate at the level of \$28 is not easy to come by at all. Therefore, I cannot agree to the Member's proposal of rejecting the outcome of extended discussions and starting the relevant work all over again.

The purpose of legislating for a minimum wage is to enable employees to receive a dignified income and protect workers from unreasonable exploitation, while at the same time forestalling the loss of low-paid jobs. I believe neither employers nor employees will disagree to this idea. Yet, we cannot ignore the realistic problems.

Regarding the proposal of starting the work concerning this legislation all over again, many Members have expressed opposition to it just now, and so I will not dwell further on it. However, I would like to talk about some realistic problems. Although these realistic problems will not necessarily arise, they have been discussed extensively. In particular, many academics have pointed out some areas which warrant attention.

The economy of Hong Kong has undergone a restructuring and is moving towards a knowledge-based and high value-added economy. Many labour-intensive industries which used to be very prosperous have been relocated elsewhere, and there are less and less industries which are suitable for low-skilled workers. For many years, there has been an oversupply of low-skilled workers.

The reality is that the minimum hourly wage rate of \$28 is indeed higher than the hourly wage of quite a number of low-skilled workers at present, and it is believed that this hourly wage has also gone beyond the affordability of some SMEs. Therefore, the elimination of the weak among low-skilled workers is a necessary side-effect of implementing the minimum wage. While the implementation of a minimum wage will result in a pay rise for many workers, it will affect the employment of some disadvantaged workers.

These effects will not emerge on 1 May or shortly afterwards, but we cannot take them lightly. The Government and all sectors in society should pay close attention to the impact of the minimum wage on the business environment and the labour market. In particular, they have to provide low-skilled workers with employment training and support for living so that they will not be sacrificed as a result of the minimum wage.

On the other hand, setting the SMW at the level of \$28 per hour will create much pressure on the business of labour-intensive enterprises, as mentioned in some press interviews and recent press reports, and the catering, security and cleaning sectors are some cases in point. Certainly, many such enterprises have remained silent as they think that "the fleece comes off the sheep's back" after all, and they will just wait and see what the users say later. According to government statistics, the overall remuneration expenditure of these enterprises will increase by 8% to 9.5% after the implementation of the minimum wage, which is already higher than the average rate of profit of these sectors. Coupled with the pressure arising from the recent strong inflation and the increase in rent, these industries will undoubtedly face even greater difficulties in their operation. Therefore, enterprises may need more time to prepare themselves for the implementation of the minimum wage, and they may adjust their staffing arrangement based on such factors as their mode of operation and financial strength.

I understand that the labour sector and many members of the public have great expectation of the minimum wage. However, the problem cannot be solved solely by criticizing and trampling on the business and industrial enterprises and people who tell the truth, and it will only result in the debasement of one's character. I also believe that the minimum wage seeks to make reasonable adjustments to the market ecology through the provision of a legal framework to enhance the harmony between employers and employees rather than creating more labour disputes and struggles.

Therefore, I call on Members to respect the views on the minimum wage expressed by people who tell the truth, particular SMEs, and I hope they will have the patience and rationality to listen to and understand the difficulties and needs of enterprises. We should work together to look for a solution that can balance the interests of enterprises and their employees, so that the minimum wage can achieve a "soft landing" rather than a "hard landing" in a mist of all sorts of accusations and criticisms. I hope the introduction of the minimum wage will not result in dealing even a harder blow to the economy of our society and the disadvantaged workers.

President, I so submit.

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

DR PAN PEY-CHYOU (in Cantonese): President, after years of campaigning and lengthy discussions by the labour sector, the Minimum Wage Bill was eventually passed by the Legislative Council on 17 July last year to give grass-roots workers minimum wage protection. As clearly pointed out just now by my colleague, Mr WONG Kwok-kin, our utmost concern is that the wages of low-income grass-roots workers have continued to drop over the past decade or so. Whenever they switched jobs, they would see their wages reduced. We find this situation quite heartrending, and it is a concern to us, too. Now we finally have a minimum wage law to provide protection to the elementary workers.

In November, the Government made the official announcement that the Chief Executive in Council had accepted the recommendation of the PMWC on setting the initial SMW rate at \$28 per hour and prepared to fully implement the rate on 1 May this year. The PMWC, set up on 27 February 2009, comprises a chairman and 12 members from the labour, business and academic sectors as well as people from the relevant government departments, all appointed by the Chief Executive. One of the terms of reference of the PMWC is to advise the Chief Executive on the initial SWC rate, that is the rate under discussion now.

The implementation of the SMW rate has a bearing on almost all the people of Hong Kong. All wage earners, whether they are low-income or high-income, proprietors and self-employed persons will all be affected by the minimum wage. This explains why, over the past couple of months, the public has been keenly interested in what level the initial SMW rate will be set, and there has been heated discussion in the community, too. I believe Members will still recall that, during the discussion on the legislation, a colleague proposed that the minimum wage rate be set at \$20. A major fast-food chain also resorted to deducting the wages for meal breaks of its employees, thus reducing the wages despite its claim to increase them. In fact, all this seeks to serve the purpose of allowing the chain to save some operating costs after the implementation of the minimum wage in the future.

This incident has not only aroused great public concern, but also attracted widespread fierce criticisms. The FTU and other labour organizations have been

requesting that the initial SMW rate be set at \$33 per hour. We think that \$33 is very reasonable because it is a "humane" figure. Although it might not be agreeable to the market, we believe, having regard to the dignity of toiling workers, workers should be entitled to a reasonable standard of living and a basic income to enable them to support their families. However, the figure eventually announced by the Government was \$28 per hour, which is undoubtedly a far cry from the minimum wage rate of \$33 per hour we have been fighting for. Furthermore, inflation over the past months has pushed up prices sharply. This figure of \$28 is indeed very disappointing.

Faced with the SMW rate of 28 per hour, we three Legislative Council Members from the labour sector and six employee representatives from the Labour Advisory Board had sat down to discuss what could be done. Could we decide on our own what votes to cast in the Legislative Council? Should we vote in support or against the SMW rate? In the end, we decided that we should consult all trade unions in the territory through a democratic procedure.

In a consultation forum held by us last week to consult the trade unions, a total of 277 trade union representatives were present, and they represented the views of 183 trade unions. Members who are familiar with the labour sector in Hong Kong should know that the figure of 183 is actually quite representative. Nevertheless, despite the enthusiastic speeches delivered by a number of trade union representatives in the consultation forum, there was no way for us to compile statistics solely by listening to their speeches. Therefore, we had also issued a questionnaire to all registered workers' unions in the territory and invited them to return the questionnaire after completing it. They were also asked to append the seal of their workers' union on each completed questionnaire. Although we have received approximately 220 replies, some of them might carry some mistakes. After final verification, 207 questionnaires were confirmed to be valid.

In the 207 valid questionnaires received by us, 87.4% of the trade unions indicated that they would accept the minimum wage rate currently announced by the Government. From the speeches delivered by representatives in the consultation forum and the questionnaires received by us, we can observe that all trade unions were dissatisfied with the figure of \$28. However, they also felt that should they turn down this figure, such that the "ball" would be passed back to the Chief Executive, as suggested by Mr LEUNG Kwok-hung just now. Will

we believe the SAR Government will answer the aspiration of the workers by setting the minimum wage rate at somewhere between \$33 and \$35 per hour according to our request? We believe the chances of the Government doing so are very slim. It is like throwing an egg on to a concrete floor, hoping that the egg will not break but bounce back instead.

Furthermore, Members can also see that the implementation of this rate is tantamount to the official enforcement of the minimum wage law. With the implementation of a minimum wage regime and procedure, the working class will then have a platform to continue to fight and campaign for a minimum wage rate which is more beneficial to the elementary workers. We know that there are different voices in society and different strata also have their own interests. While workers cannot deny that employers have their interests, employers cannot deny the interests of employees, either.

People in society are very often required to make compromises, and I do not regard compromises or concessions as failures. As the saying goes, "We need to eat rice mouthful by mouthful and walk step by step". If someone thinks that he will not be choked to death by opening his mouth and swallowing a bowl of rice in one gulp, he is free to do so. If someone thinks that he can jump several kilometres in one leap, he may also try to do so. But the reality tells us that it has taken Hong Kong society 10 to 20 years, coupled with the persistent campaigning efforts by people in the labour sector, the assistance rendered by conscientious social movement campaigners, and the forging of adequate consensus in society, to finally gain the acceptance of employers before the minimum wage can be set. This process is not the result of a piece of rock bursting open, not something coming out of thin air. This social revolution is not a sudden happening; it is the result of a gradual development in society. It is like frozen food taken out from the refrigerator requiring a defrosting process.

In fact, we believe that unless they are betraying workers, all these trade union representatives, who have joined and worked for their trade unions for years, should be able to see at this point in time regardless of their political affiliation, they have reached the consensus that there must be a starting point before their fight can continue from that point. With respect to this consensus, they have agreed that it is necessary to make concessions in reality in order to fight for a small victory before fighting for a bigger one. This is life; this is the

way of struggles. Hence, they have agreed to accept this minimum wage rate first and then fight for more in their next step.

In fact, low-income earners are now living in dire straits. According to a survey conducted by the Census and Statistics Department in the third quarter last year, the monthly income of 166 200 households are found to be under \$4,000. How can these households eke out a living? In order to give the elementary workers livelihood protection earlier, the FTU thinks that we should seize this opportunity by first implementing the minimum wage to give low-income workers protection before planning the next step.

In the questionnaire survey conducted by us, we find that except for one trade union, nearly 99% of the trade unions surveyed consider that the review of the SMW rate should not be conducted later than one year. This is a clear consensus reached by the labour sector because the hourly wage rate of \$28 is quite low. Moreover, the shadow cast by inflation before us has also posed a very serious crisis. If it really turns out that the review will not be conducted until two years after the implementation of the SMW rate, as stated by the Secretary, I am afraid many workers will have no money for meals by then. Furthermore, the SMW rate of \$28 currently proposed is calculated on basis of the statistical data of the second quarter of the year before last. In addition, the minimum wage will not be implemented until 1 May this year. This actually means that there will be a time lag of two years. In fact, it is already unreasonable for the review to be delayed for one more year.

For these reasons, we strongly request the Government to address squarely the hardships faced by the workers and conduct a review of the SMW rate not later than one year. I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I would like to thank the 22 Members who have spoken in the debate. The Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010 specifies

that the first statutory minimum wage (SMW) rate per hour is \$28. If the motion moved by Mr LEUNG Kwok-hung to repeal the above Notice is passed, the first SMW rate proposed by the Government will be revoked and the SMW cannot be implemented according to the present plan. The efforts made by Members over these past months will all come to nothing and everything will become futile. Therefore, the Government is strongly opposed to the motion proposed by Mr LEUNG.

I wish to stress that the Minimum Wage Ordinance seeks to establish a SMW regime and set up a floor for wages in order to prevent excessively low wages while not severely undermining the flexibility of the local labour market and competitiveness of the economy, as well as not causing any serious negative impact on the employment opportunities of disadvantaged workers.

The first SMW rate is recommended by the Provisional Minimum Wage Commission (PMWC) based on the data obtained. In the process the PMWC has made reference to the relevant statistical data of the Census and Statistics Department (C&SD), experience in other places, views offered by various related persons, as well as verified data and information and papers from scholars on the subject. In determining the recommended rate, the PMWC has considered and balanced various factors, such as the latest conditions in the economy and the labour market, the impact on business operation, competitiveness, economic growth, inflation, unemployment rate and promotion of social harmony, and so on. In order to listen fully to views from various sectors on the first SMW rate, the PMWC has held three rounds of in-depth and extensive consultation, met with more than 100 relevant organizations and persons, and visited the employers and employees from trades and SMEs likely to be affected by the SMW. It has also received more than 7 500 submissions from various groups and individuals. The Government has carefully considered the report from the PMWC and formed the view that the basis for the study conducted by the PMWC is reasonable and balanced. I wish to make use of this opportunity to thank the PMWC once again for the efforts and contributions made.

I think Members will understand that it is not easy for the SMW to become a reality after many years of discussion. If the Notice on the first SMW rate is repealed by passing the motion of Mr LEUNG Kwok-hung, it will cause a great delay to the implementation of the first SMW. Hence time is wasted and the low-pay elementary workers will not enjoy the protection of a SMW.

Enterprises will be at a loss in calculating costs and prices specified in contracts for goods and services, hence causing confusion and it is no good at all to both employers and employees. It is absolutely an all-loss approach to take.

As a matter of fact, the Minimum Wage Ordinance has clearly specified that the Minimum Wage Commission (MWC) should make a report on the SMW rate once every two years. While the SMW rate will be determined in accordance with the data-based principle, the C&SD will undertake an Annual Earnings and Hours Survey to collect the related information. Therefore, when supported by relevant data and when there is a need for it, we will review the SMW rate as soon as possible.

I would like to respond briefly to the concerns raised by a number of Members earlier. First, many Members are concerned about the problem of time lag in the data. As a matter of fact, in last July when we held a debate lasting for 41 hours, I had explained that in detail. Please allow me to recapitulate my stand on that day in brief. When the PMWC was studying the wage rate, it was aware that time should be set aside to let the Legislative Council pass the relevant subsidiary legislation and enable society to be fully prepared before the law was implemented. So apart from taking into reference the wage statistics of the second quarter of 2009, the PMWC has also taken fully into account the forecasts in GDP and inflation for 2010 as well as the latest information on the socio-economic conditions and the employment situation in Hong Kong. It has also noted the latest changes in wages. All these factors are considered. The latest relevant data are also considered.

Second, about the annual report mentioned by Mr LEE Cheuk-yan, that is, the Annual Earnings and Hours Survey. We recall that a report on the Survey was released on 18 March last year. The findings showed the data for the second quarter of 2009. As for the data of the second quarter of 2010, now the C&SD is working to improve the work flow and shorten the time required. It hopes to make the information public in February this year, that is, the latest data should be available around February. This is my first point.

On the other hand, Mr TAM Yiu-chung is very concerned about the problem of whether or not the disadvantaged workers will be affected or they will sustain any adverse impact. I would like to stress that we have actually noticed this problem. To tie in with the implementation of minimum wage, the Labour

Department will enhance its employment services and offer comprehensive services to assist the job seekers and those in employment who are affected. Elderly people, the middle-aged, young people and persons with disabilities are all our service targets. Also, in the middle of this year, as Members know, we will establish a one-stop employment training centre in Tin Shui Wai on a trial basis and offer one-stop services to job seekers. The Employees Retraining Board will deploy its resources flexibly in the light of the situation to offer courses with special potentials, especially employability potentials, to help those in need learn new skills and upgrade their existing skills so that they can secure a place in the labour market.

In addition, Mr Tommy CHEUNG is concerned about the kinds of assistance we offer to SMEs. We will keep a close watch on the disadvantaged employees I have just mentioned after the implementation of the minimum wage. Of course, this will include the impact on enterprises and SMEs in the low-pay sectors. When necessary, we will take some matching measures.

I would like also to make a brief response to the problems mentioned by Mrs Regina IP. She mentioned an article by Mr David WEBB. I have read that article by Mr WEBB also and there are some figures which I think should come to his knowledge. When launching this minimum wage regime, we estimated that the number of employees involved would be 314 600 persons and the rise in their wages would be 16.9%. Besides, he has also said in his article that the contributions made to Mandatory Provident Fund (MPF) schemes would be increased. We have also noticed that. As a matter of fact, the Mandatory Provident Fund Schemes Authority and the Financial Services and the Treasury Bureau are watching the operation of the MPF schemes closely. We will consider the impact on this as a whole. Also, with respect to inflation, in the speech I made earlier, I clearly said that inflation is one of the factors we would consider. When the rate is to be reviewed, a host of economic indicators will be considered and these will certainly include inflation, the unemployment rate, the GDP, the labour market, social conditions, and so on.

With these remarks, President. I call on Members to vote against Mr LEUNG's motion. Thank you.

PRESIDENT (in Cantonese): I now call upon Mr LEUNG Kwok-hung to speak in reply.

MR LEUNG KWOK-HUNG (in Cantonese): President, I will respond to the speeches made by various Members one by one. First of all, Mr WONG Kwok-hing. He asked me why I would have so much confidence in Donald TSANG. I then thought of a remark made by movie star Charlie CHAPLIN when he commented on EINSTEIN: "People cheer me because they all understand me and they cheer Einstein because nobody understands him." He did just the opposite because he does not understand me, and it is all because of a biased view that he does not understand me.

I proposed that the responsibility be given back to Donald TSANG because he, being the Chief Executive, must bear this political responsibility. In fact, we would do the same when debating various issues in the Legislative Council in that if the Legislative Council considers that a certain proposal should not be accepted, we must tell the Chief Executive, "Sorry, we cannot accept it." The Chief Executive governs in accordance with the Basic Law, and he has appointed a committee. Let us not talk about whether or not backroom deals are involved and assume that fairness is upheld, but if the legislature refuses to accept it, the Chief Executive certainly has to assume responsibility for that.

Some people asked what would happen if the Chief Executive stalled for another two years. He certainly can do that, but people would ask: How did this happen? For what reasons was the proposal rejected in the first place? Was it because Mr LEUNG Kwok-hung used magic on other Members of the Legislative Council and sedated them? Certainly not. We all vote according to our free will. So long as Members vote against the Notice on the amendment of Schedule 3 tabled by the Chief Executive, he would have to face this political consequence.

As time goes by, the truth is set to become clearer: The Chief Executive submitted a legislative proposal but did not allow Members of the Legislative Council to introduce amendments to it, forcing them either to accept or not to accept it. Understanding the views of the people, Members of the Legislative Council told the Chief Executive through the voting result that they would not accept the proposal. It is certainly the Chief Executive who should be held

responsible. Of course, he is in a position to stall for another two years, but can he possibly do so? Could it be that the work of the Chief Executive is something that can be played around with? When a job cannot be done, and if workers whose wages should be increased eventually do not get a pay rise, will they really hold a grudge against me? I know that you want to shift the blame to me. Fine, just do it as you like. But people who have some sense will know that the power is in the hands of the Chief Executive, not LEUNG Kwok-hung.

How can you exercise accountability in such a way? It really beats me. If you are really so scared of the Chief Executive, you should not have chided him just now. All that you dare to do at the most is to scold the king behind his back, and you just hem and haw before the Chief Executive. This logic is very simple. This is very simple political science. Under a system of the separation of powers among the executive, legislature and judiciary, the role of the Legislative Council is equivalent to that of a parliament in monitoring a president. The point is just this simple.

If people said, "Sorry, I do not see that the working class has the determination to fight for this," well, I have already apologized. I did not shoot my mouth off as you people did. I have admitted that the LSD was not careful enough after July last year by not pressing ahead with the mobilization work in full steam. I have not denied this. Our proposal to repeal this Notice today is precisely a remedial measure. Unlike you people, I am indeed too naïve. I entirely did not know that those three representatives of the labour sector had already voted in support of this rate of \$28, which means that they already knew it long ago. But they just kept it to themselves and held it back without uttering a word. Then they presented a *fait accompli* at the last moment, asking the trade unions on the one hand whether or not they would accept this proposal while saying on the other that all the representatives had already accepted an hourly rate of \$28. Is it not unlikely that you would not say such things? Could it be that you would say heroically, "We being your representatives do not support this hourly rate of \$28. Let us fight hard for the goal! These three representatives of us will stand firmly by matters of principle and resolutely fight for our goal!" This is so impossible. Who do you think you can deceive? It turns out that you already knew the result long ago but you did not mobilize workers and you did not fight back, and when consultation was conducted at the last moment, you told people that there was no other alternative and as a result, things have come to this sorry state. This is entirely like catching people off-guard. You did admit

that the representatives had already expressed support for this rate before they consulted the masses on whether or not they agreed to it. Mr WONG Yuk-man was right in saying that dynastic changes would be resulted if they did not agree to it. The FTU would have to step down. How could this ever happen? Can this be considered a movement of the people by any standard? President, now I realize that it should be a movement through the people, making use of the people to launch a movement and treating us as a lump of mud that can be compressed in whatever way they like.

I am a fair person. I did not say that we would surely win, but I admitted that we all had done something wrong. If you think that you have done something wrong, you must make remedies, and we shall see how the working class in Hong Kong will react. I know that many workers are of the view that they should put an end to this and that the proposed rate can be considered as barely acceptable. This is really a failure on our part. You have to face this failure and stop chiding the Chief Executive, buddy.

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

My view is simple. It is never too late to make remedies. In fact, in the political circle in Hong Kong, do Members think that the Chief Executive can go back on his words? Everyone is seeking to advance a straw argument, saying that once this Notice is repealed, what they have been fighting for over the past decade or so may come to naught. Secretary, what does it mean by coming to naught? Do you understand the meaning of coming to naught? It actually means that everything will vanish into thin air. This will not cause everything to come to naught. This will only temporarily put off its implementation. If the Notice is repealed, this issue would become the focus of discussion in the media and the press. Everyone will ask: How did this happen? I do not see how the situation can be reversed if we do not take this step. You are saying that you will continue to fight for it on a new platform. But how? Are you going to throw bananas at him? Or are you going to beat him up? If you do not exercise your vetoing right today, will he agree to holding meetings with you?

I had a meeting with Secretary Matthew CHEUNG today, and I am grateful to him for meeting with me. At first, I had asked to see the Chief Executive, so

that I could ask him what he would do in the event that the Notice was repealed. He nevertheless refused to see me and sent the Secretary to me. I find this very intriguing. Let me tell Members this: No government can resist political pressure, and one can see this point by just giving some careful thoughts to it. I particularly hope that colleagues in the pan-democratic camp can understand one point and that is, if our logic today is correct, then our logic in handling the constitutional reform was certainly wrong, wasn't it? If we always refuse to accept something when we are to choose between accepting or not accepting it, but we would certainly accept it when other people give us something more, what is there to speak of about fighting for anything? There is still one point that we must bear in mind and that is, Donald TSANG needs not face the pressure of the communist party on this issue. The communist party has not intervened by resorting to an interpretation of the Basic Law. The truth is just this simple.

Moreover, Ms LI Fung-ying criticized the Chief Executive for evading his responsibility. This cannot be more correct. This is why we have been striving for the election of the Chief Executive by universal suffrage. If the Chief Executive is returned by the people, even if we do not settle scores with him today, we will settle scores with him tomorrow, so he would be under even greater political pressure. If we hope to have the right to elect the Chief Executive in future, we must speak up today. This has precisely explained that when we give up our right as the first-born, we always have to pay a price for the lentil soup, because this has nothing to do with you anymore, as this is only our business, and what can you do even if we have backroom deals? This is the second point of my response.

The third point is that many people said that they would definitely support me if I could surely win. This is so laughable indeed. Could this be my responsibility? Well, I do have a share of the responsibility; so does the LSD. But is this not also the responsibility of the trade unions? It is like many workers telling Mr LEE Cheuk-yan that they would certainly support him if he could surely win; Mr WONG Kwok-hing, if you can surely win, I will definitely support you

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, please address your speech to the Chair.

MR LEUNG KWOK-HUNG (in Cantonese): This is just stating the obvious. I have also engaged in organizing labour movements. They said that they have fought for minimum wage for decades. Come on, I do not need to be told this. I was arrested by the police in 1977 for championing causes relating to May 1, and that picture being circulated on the Internet was the result of that. I have paid more than \$1 million in legal costs — No, it should be less; it was some \$900,000 — What is there for you to brag about? Everyone has been wasting no time to blow his own trumpet, and I am tired of talking about this. I think I have done nothing to be proud of. What I should be most proud of is that I am telling the Government in this Chamber today that the minimum wage rate of \$28 per hour is not going to work. I encourage all Members of the Legislative Council to use the vote in our hands to make it impossible for the Chief Executive not to face up to this issue, thereby making Hong Kong people reconsider this issue.

For how long can he stall? Tell me, for how long can he drag his feet? Some people said that he can drag on for another year or so. I would think that the easiest way out is for Donald TSANG to immediately summon all of us and ask us what we actually want. Even for only one landfill which is not of concern to many people, so long as the people there are up in arms, it has scared the life out of him

MR WONG YUK-MAN (in Cantonese): LOHAS Park.

MR LEUNG KWOK-HUNG (in Cantonese): What?

MR WONG YUK-MAN (in Cantonese): LOHAS Park.

MR LEUNG KWOK-HUNG (in Cantonese): Sorry, I am not interested in property developments. Let us all really give some thoughts to this. When you can exercise your own powers, and just as what Miss Tanya CHAN had advocated, we should vote it down since he has gone so far as to renege on his words, and this would really scare the life out of him because he simply cannot bear the consequences. Everyone is putting across a message that I consider most damaging. It is said that if we rejected the Government, the Government

would treat Hong Kong people even more badly. In other words, if we offend the Government by launching a mass movement, the Government would treat the public more badly. What exactly are they up to? I would have nothing to say if this is the view of the powerful and privileged class, but you people started out as trade unionists. The FTU, in particular, is all the more shameless. Mr LEE Cheuk-yan had first thought about giving in by agreeing to a minimum wage rate of \$30. The FTU categorically said that they absolutely would not make any concession. It was Mr WONG Kwok-hing who said that. What nonsense are you talking now? Other people already felt the pressure then and suggested to give in by agreeing to \$30, but you said that you absolutely would not make any concession, but today, you are going back on your words here.

LU Xun had said, "Saddened by his misfortune, Angered by his not putting up resistance". This is a reflection of Chinese people back in those years when their life was miserable, but they did not take the initiative to fight for their rights. Today, many people are gasping for breath under the suppression of the institutions, and they are frightened. I share their feelings. I am not qualified to criticize them. But I am qualified to criticize the argument that a minimum wage will cause the wage level to plunge and the unemployment rate to surge. I really would like to modestly ask for their view on this: In 1997, wages in Hong Kong nose-dived like a stone sinking deep into the sea and the unemployment rate surged from 2.2% to 8%. Was it because of the implementation of a minimum wage? Why did you not put forward this argument at that time? You nevertheless supported TUNG Chee-hwa instead, didn't you? I had to protest up there. Looking back, on the issue of minimum wage alone, I had been arrested thrice for shouting and yelling up there — it should be twice, not thrice.

What nonsense is this? This is entirely distortion of facts. Today, even the Government has admitted that there is a need to set a minimum wage, and you have also pointed out that the wages have kept on declining. Let me modestly ask for your opinion: The Gini Coefficient shows that the wealth disparity is worsening. What is the reason for this? Is it because of the implementation of a minimum wage? A minimum wage will lead to certain side-effects. This is a fact known to all, and the Government must address them. But if minimum wage is said to be causing the economy of Hong Kong to slide, the unemployment rate to rise and businesses to close down, that would be entirely a different matter. I have asked the Government repeatedly whether this is due to high land prices or imported inflation. Imported inflation has incessantly added

to the burden on lower-class workers in their living, which points to a need to raise their wages. What you have said is primarily reversing the cause and effect. You have all become rich. What you have done has resulted in the workers not being able to make ends meet. Now that they buy what they need with their wages but you outrageously said that this is a cause of inflation. Are you sick? Is inflation in Hong Kong the result of excessively high wages? I guess not. I really have never ever heard of this. It may be the case in the Mainland, as the wage levels are soaring in the Mainland.

So, is this Chamber a place where reasoning prevails? I think this does not matter. People who understand me know that I am worried down in my heart; people who do not understand me think that I have an axe to grind. You can insult me, defame me and sling mud at me today. It would be fine. History is record made by the people, written by the people. We shall see what people watching the live broadcast of this meeting would think. Do not think that you can sling mud at us just because certain members of the media favour you, such as *Wen Wei Po* which is publishing nonsense every day. I am not a saint. I have no enemy either, or at least I do not have any covert enemy, and I only have political enemies. Let me tell Members here that disregarding whether or not you will support me, the biggest gain today is that I have at least thoroughly exposed what exactly is in the minds of Members, their individual class interests. I feel honoured in managing to do this. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEUNG Kwok-hung be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

DEPUTY PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for three minutes.

(During the ringing of the division bell, THE PRESIDENT resumed the Chair)

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

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

PRESIDENT (in Cantonese): Among the Members returned by functional constituencies, one was in favour of the motion and 21 against it, nobody abstained; while among the Members returned by geographical constituencies through direct elections

(Some Members talked among themselves in their seats about the voting result)

PRESIDENT (in Cantonese): Members, the meeting is in progress.

Functional Constituencies:

Mr Paul TSE voted for the motion.

Dr Raymond HO, Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Dr Joseph LEE, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted against the motion.

Geographical Constituencies:

Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG and Miss Tanya CHAN voted against the motion.

Mr LEUNG Yiu-chung abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, one was in favour of the motion and 21 against it; while among the Members returned by geographical constituencies through direct elections, 28 were present, three were in favour of the motion, 23 against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Second motion: Amending the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010.

I now call upon Mr LEE Cheuk-yan to speak and move the motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR LEE CHEUK-YAN (in Cantonese): President, I move that the motion under my name be passed.

President, my motion is actually very simple, which is to advance the commencement date from 1 May to 1 February. This idea of advancing the commencement date by three months is proposed not only today, and I implore Members not to misunderstand that I only proposed implementing the law on 1 February only today. Actually, when the Government began drafting the legislation and at meetings of the Bills Committee, I kept saying to the Government that there was no reason why the minimum wage rate should be implemented half a year later. This timetable was drawn up by the Government right at the beginning, and as I said just now, not only the statistics and the implementation but also the reviews are lagging behind. The authorities indicated right at the beginning that the so-called adaptation process would take half a year. I think it is indeed ridiculous. If the Government really seeks to lift the low-income earners out of poverty and enable them to receive fair wages, why do we have to wait for half a year? As the Government indicated right at the beginning that we had to wait for half a year, we told the Government then that we did not see any ground for this six-month wait. In this regard, I am putting into action what I have all along been advocating during my discussion with the Government on the timetable, namely the law should be implemented in three months' time at the latest.

We think Members should not allow the Government to lead us by the nose. Is the Government's timetable always right? Why did the Government not propose a reasonable timetable right from the beginning to allow employees to receive minimum wage protection and a pay rise at an early date? Why do we have to wait for half a year? The Secretary will definitely say later that a lot of preparatory work has to be done. He will definitely ask Members to cast opposition votes on the ground that the law cannot be implemented on 1 February as preparatory work for publicity, the assessment mechanism for people with disabilities and various other aspects has yet to be completed. However, we have to bear in mind that this is a timetable set by the Government itself, and then

it will take its time to conduct assessments for people with disabilities and carry out publicity and education programmes. Why must we accept the Government's timetable? What is our most important consideration? The most important consideration is, insofar as workers are concerned, whether a pay rise should be given at this stage.

There is another motion debate today. What is the subject of that debate? The subject of that debate is inflation, which is fiercer than a tiger, and many political parties will urge the Government to introduce some relief measures, and so we will be able to debate on them. However, why do Members only know demanding the Government to introduce relief measures, while not requiring it to allow workers to receive a reasonable pay rise? Actually, a pay rise should be given on 1 January, and what I am proposing is 1 February. If a pay rise is given on 1 January, low-income earners will receive a wage increase of more than 10% or 5% at once, which can at least help them counter inflation. In the ensuing debate, Members will point out how horrendous the inflation rate is. They will also point out that the current inflation rate of food is 6.1%, and they will speak on how much hardship the grassroots have to put up with. Later on, Members will talk about such things as how the grassroots will address the problem of food price hike, how they will find ways to achieve savings, and that they may have to go shopping in the market when the vegetables have gone bad as their prices would have gone down by then.

However, the question I would like to put to Members is: When inflation is described as so horrendous, why do we not call for the early implementation of the minimum wage, so that workers will receive the relevant protection and a pay rise at an early date? The Secretary will probably say later that we have to give employers some time to make preparations. Just take a look at it. Employers are already making preparations now. As Members may notice, fast-food restaurants have increased their prices. They are pushing up the prices on the excuse of the minimum wage. However, when it comes to a wage increase, employers would say that it can only be implemented later but not so soon. If employers have increased the prices of their goods and services and are making preparations, why can they not increase employees' wages? Actually, the whole community is making preparations for it. If the relevant law will only be implemented on 1 May, does it mean that the public has been exploited because prices have risen before the minimum wage is implemented? There is no reason

why employers or enterprises have made preparations for price hikes but not wage increases. This is unfair to workers and it is exploitation of the public.

Regarding the question of whether employers are ready, we think employers can definitely cope. Whether the commencement date is 1 May or 1 February, they will have to face an increase in wages and an increase in cost, and they will have to find ways to solve this problem. In that case, why do we not allow these workers to receive protection at an early date? Actually, the focus of the question is which side one takes. If one takes the side of the business sector and employers, offering a wage increase is something just next to impossible; but if one takes the side of workers or if one adopts a more reasonable approach, what is the big deal about offering annual wage increases? Later on, Members will talk about a great many issues. For example, the Secretary will say that owners' corporations will need some time to prepare for the wage increase. What does it show, President? It actually shows that workers originally would not be able to get a wage increase. If not for the minimum wage, owners' corporations would not have to discuss this issue; and if not for the minimum wage, management companies would not have to discuss this issue, and neither would enterprises have to do so, because they have already decided, with great assertiveness, that employees would not get a wage increase. But now that the minimum wage is introduced, the authorities have to allow owners' corporations some time for discussion. Now, many workers hope to get a wage increase on 1 January, but insofar as the elementary workers are concerned, they will actually be unable to get a wage increase for the rest of their lives. Therefore, our survey findings show that many workers have a negative real-term increase in wage rates.

Here is a survey of the Census and Statistics Department (C&SD) which warrants our attention, and I find some figures published by the C&SD most shocking. At present, the current wage rates of workers in three occupations are lower than the corresponding real-term wage rates in 1992. What are the three occupations? The wage rates of workers in the drayage industry have dropped by 25%, those of workers in the fast-food industry have decreased by 5%, and those of workers in the non-Chinese catering industry have decreased by 1.5%. Compared with the wage rates in 1992, which is some two decades ago, and assuming the relevant index of the drayage industry in 1992 was 100, the corresponding index now is 78.5. Come to think about this. Members of these

industries are in a deplorable situation as they have been witnessing a continual drop in wage rates throughout these years. What I am doing now with this amendment today only seeks to help those workers who have all along been suppressed, unable to receive a wage increase and exploited, and thus unable to improve their livelihood. I just hope to advance the implementation of the relevant law by only three months. I believe all employers can cope with it, and there is no reason why they cannot do so. If I withdraw from my commitment, as the Government does, and pass the buck to the Provisional Minimum Wage Commission (PMWC), I would say that the chairman of the PMWC actually agrees to advancing the implementation, and he thinks it is okay. Therefore, what difficulties will there be in advancing the implementation date to 1 February? If Members disagree to implementing the law on 1 February, and then all political parties should seek financial provisions from the Government — I found that political parties nowadays only know how to seek financial provisions from the Government, and the motion debate later also seeks to request the Government to make financial provisions. It is the best tactic to seek financial provisions from the Government as it will not cause any harm to anyone, and neither will it cause any harm to the business sector. It is always easy to seek financial provisions from the Government. However, when it comes to requiring the business sector to take out some money, Members will disagree and suggest that we join hands to seek financial provisions from the Government instead. Is this the attitude of Members? Is this the attitude of the political parties in Hong Kong nowadays, particularly political parties with Members returned by functional constituencies? While they would think that it is not a problem to ask the Government for financial provisions, they would immediately defend the interests of enterprises when enterprises are required to take out some money. This is the last thing I would wish to see, but I believe such situations will surely arise.

As Members may know, given the presence of functional constituencies and the separate voting system, our proposal concerning 1 February today is actually most unlikely to be passed. However, I have to expound on my argument after all because I think we have owed workers the minimum wage protection for a long time. The Year of the Rabbit will be here after 1 February this year, and I hope a wage increase, which is like a red packet, will really be offered in the Year of the Rabbit, and I hope we do not have to wait until 1 May. Thank you, President.

Mr LEE Cheuk-yan moved the following motion:

"RESOLVED that the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010, published in the Gazette as Legal Notice No. 147 of 2010 and laid on the table of the Legislative Council on 17 November 2010, be amended as set out in the Schedule.

Schedule

Amendment to Minimum Wage Ordinance (Commencement)
(No. 2) Notice 2010

1. Paragraph 1 amended
Paragraph 1 —
Repeal
"1 May 2011"
Substitute
"1 February 2011"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEE Cheuk-yan be passed.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): The Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010 stipulates that the minimum wage law shall come into operation on 1 May. Mr LEE Cheuk-yan proposes to advance the commencement date to 1 February.

Though I understand Mr LEE's intention and aspiration, his motion is actually, with due respect, not practicable and may cause much confusion, which will not be in the interest of both employers and employees. We really need a transition and a preparation period of six months. Therefore, the Government's stance is very clear, and that is, we disapprove of this motion.

President, I will give a detailed and comprehensive response to Members' arguments when I speak for the second time.

Thank you, President.

MR IP WAI-MING (in Cantonese): President, I speak to state that the Hong Kong Federation of Trade Unions (FTU) supports Mr LEE Cheuk-yan's motion.

Advancing the commencement date of the minimum wage law from 1 May to 1 February will enable workers to receive the protection under the Minimum Wage Ordinance (MWO) at an earlier date. We consider it a good idea. With inflation standing high, this move will also enable some workers to receive a pay rise earlier, thereby enabling them to improve their livelihood.

The Secretary said in his response just now that such a long period of time is needed for preparation. However, I hope the Secretary will understand that the MWO was passed in mid-July last year after we had spent more than 40 hours discussing it here. If the Government had to make preparations, I believe it should have launched the preparatory work in July last year when the MWO was passed. Therefore, I think the Government's argument that the minimum wage law can only be implemented on 1 May as more time is needed for preparation may not hold water.

Certainly, we also hope that no confusion will arise within the Government if the minimum wage law comes into operation on 1 February. I think all the three parties, that is, employees, employers and the Government, have the responsibility to do their own part properly. Actually, the Government has already done a lot of preparatory work, and we think implementing the minimum wage law on 1 February will not give rise to such confusion as the Government claimed, and most importantly, this move will strike home a more positive message.

As trade unionists, we will also make adequate preparations, and we will express our concerns about the MWO to workers. We also hope that we can monitor the enforcement process of the law as a whole to prevent some unscrupulous employers from exploiting workers in this course.

As for employers, I think they have already had adequate time to make preparations. Since the passage of the MWO in July last year, members of the community have been expecting its implementation and have conducted adequate discussions on various issues, including the minimum wage rate. Regarding the Government's claim that some time should be given to employers, owners' corporations and property management companies to make preparations, I think

they were ready much earlier and are just awaiting the prescription of the minimum wage rate. Therefore, I think the Secretary's argument just now may not be justified.

I do not consider it impracticable to advance the commencement date of the minimum wage law from 1 May to 1 February. As long as employers, employees and the Government can work together in good faith, I consider it feasible to advance the commencement date of the MWO, which can also serve as a New Year gift to the elementary workers.

President, I so submit. All the four Members from the FTU will vote for Mr LEE Cheuk-yan's motion.

MR TAM YIU-CHUNG (in Cantonese): President, in my capacity as Chairman of the Subcommittee on Subsidiary Legislation Relating to Statutory Minimum Wage (the Subcommittee), I now report on the Subcommittee's deliberations on the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010.

Regarding the commencement of the Minimum Wage Ordinance (MWO), some Members were of the view that the commencement date should be advanced from 1 May 2011 to 1 February 2011 so that low-income employees could be benefited before the Chinese New Year. Some other Members were however of the view that even if the statutory minimum wage (SMW) rate was to commence on 1 May 2011, the preparation time of about six months was still inadequate for small and medium enterprises (SMEs), as the majority of them lack knowledge about the requirements in the law. At its meeting on 30 November 2010, the Subcommittee passed a motion calling on the authorities to implement the initial SMW rate on 1 February 2011.

The authorities advised that implementing the SMW regime on 1 May 2011, which is the next Labour Day, would not only carry symbolic significance but also give some six months' preparation time to the community. Prior to the implementation of the SMW regime, the Labour Department would launch a wide range of publicity and promotional activities. The authorities would prepare reference guidelines with illustrative examples and also work in collaboration with the Industry-based Tripartite Committees and stakeholders concerned in drawing up industry-specific guidelines.

The Subcommittee noted that Mr LEE Cheuk-yan would move an amendment to the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010 to the effect that the MWO (except provisions which had already commenced on 12 November 2010) would be implemented on 1 February 2011 and consequently the SMW rate would take effect from that date.

Besides, as there would be a time lag of about six months between the announcement of the initial SMW rate and its implementation, some Members were concerned whether there would also be a six-month time lag in the implementation of future SMW rates.

The authorities explained that time would be needed for the authorities to draw up general guidelines for employers and employees and industry-specific guidelines and conduct publicity programmes. Time would also be needed for some establishments to review and, if necessary, revise their business service contracts. Indeed, it has also been the usual practice of the United Kingdom in allowing some six months' time for the community to prepare for the implementation of each new minimum wage rate. The authorities would explore whether there would be room for shortening in future the lead time between the setting of an SMW rate and its implementation date.

President, I now wish to state my views and those of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB).

The Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010 stipulates that the SMW regime shall fully commence operation on 1 May 2011. The Government undertook during the scrutiny of the principal legislation by the Legislative Council in July 2010 that the new regime would fully commence operation six months after the minimum wage rate has been established. This Notice shows that the Government has honoured its undertaking as it has not postponed the implementation of the new regime because of some voices of obstruction.

Much as I hope that the SMW regime will be implemented as soon as possible, we consider it necessary to give different sectors in the community ample time for preparation. For example, there are now 111 800 workers engaged in property management and security and cleaning services, and many of them are earning an hourly rate of less than \$28. Among these workers, over

half of them provide services for single-block buildings or small private housing estates, and they receive an hourly wage of only \$20 or even less. After the implementation of the minimum hourly wage of \$28, these buildings may have to increase their management fees. Under the Building Management Ordinance, a substantial increase in management fee may come into effect only by a resolution of the owners passed at a general meeting of the corporation, and the notice period of owners' general meetings is not less than 14 days. Therefore, if the commencement of the MWO is advanced to 1 February 2011, it means that the vast majority of single-block buildings or small private housing estates will not be able to complete all the preparatory work within such a short period of some 20 days, and the vast majority of individual property owners in Hong Kong may contravene the MWO or the Building Management Ordinance as a result, which is definitely undesirable.

Although the MWO will only come into operation on 1 May 2011, we think the Government should encourage organizations with the relevant capability to implement the minimum hourly wage rate of \$28 at an earlier date. Government bureaux should urge various relevant public bodies to amend their employment terms and conditions at once to offer more favourable remuneration to low-income workers. With these remarks, I support the original Notice.

MR WONG SING-CHI (in Cantonese): President, the Democratic Party supports the motion moved by Mr LEE Cheuk-yan. When it comes to the commencement date of the minimum wage law, we have to talk about the powers of the Legislative Council in respect of the determination of the minimum wage rate. Actually, during the scrutiny of the principal legislation on minimum wage, we already mentioned the public opinion survey conducted by the Democratic Party before that. According to the findings, 70.9% of members of the public considered that the Legislative Council should have the power to monitor the determination of the minimum wage rate, while only 13.7% of members of the public were against this view. The Democratic Party thinks that such survey findings have clearly reflected the public's trust in and great expectations for the Legislative Council. Therefore, we think the Legislative Council should have greater powers to monitor the determination of the minimum wage rate, so as to protect the rights and interests of the majority of workers in Hong Kong.

Regrettably, the Government remained intransigent and continued to allow the executive to lead all initiatives by vesting the power to prescribe the minimum wage rate in the Government, which does not seem to be credible and democratic at all, and then in the Minimum Wage Commission (MWC). No one would have expected that a certain member of the PMWC would even deduct his employees' meal allowance after the prescription of the minimum wage rate, causing the public to lose all their confidence in the MWC appointed by the Government. But the Government is unwilling to return the relevant power to the Legislative Council. Therefore, the Legislative Council will have to continue to fight for the rights and interests of the medium-to-low-income earners. In particular, it will have to continue to monitor the implementation of the minimum wage for low-income earners. To date, members of the public still do not have the right to elect the Chief Executive. Neither do they have any specific ability to influence the Government's determination of the minimum wage rate. Therefore, the Legislative Council has a crucial role to play in this process.

As mentioned in the previous debate, the minimum hourly wage rate of \$28 is only of marginal interest. If we do not accept it, the 310 000 workers will definitely not receive a pay rise; but if we accept it, we are admitting that the current minimum hourly wage rate should be \$28. This will actually adversely affect the living standard of the general public.

What else can the Legislative Council do in this circumstance? It can fight for a higher rate and its early implementation by all means. Therefore, we are exercising this power today to propose here in this Council that the commencement date of the minimum wage law be advanced as much as possible. We did not arbitrarily propose a motion for discussion. Actually, if we do not move this motion today, what other motions can we move? Perhaps, we may only exert political pressure by simply rejecting the proposed rate, just as Mr LEUNG Kwok-hung did. However, this will only end up with losses to both sides, arousing much attention while resulting in devastating consequences, and that is all. Therefore, we opposed his motion just now.

What are the reasons for not advancing the implementation date from 1 May to 1 February? The Government said in its response that it would be too hasty to implement the law so soon, so much so that it would be impossible. However, this request is not put forth only today. During the discussion last

year, we already requested the Government to implement it as soon as possible. In its response, however, the Government cited all sorts of excuses, such as complementary computer systems would be required, and the SMEs might not be able to cope. The question is that it is simply not justified to not fight for an early pay rise for the low-income workers who are earning a shameful income now when members of the community, particularly low-income earners, are experiencing the serious blow dealt by inflation and before inflation picks up rapidly.

Therefore, the Democratic Party will support Mr LEE Chuck-yan's motion, which seeks to advance the commencement date from 1 May to 1 February. Actually, all of us can see that inflation is fiercer than a tiger. Over the past couple of days, the value of the Renminbi has appreciated, resulting in increases in raw material prices, particularly food prices. There are press reports today about the price of pork having increased substantially, and the prices of vegetables doubled. These low-income workers who earn a shameful income are the first ones to bear the brunt. If we still do not proactively fight for their rights and interests, it will indeed be very shameful of us.

President, under this circumstance, we think that although we cannot overturn this minimum hourly wage rate of \$28, we can fight for its early implementation on 1 February and examine whether this minimum hourly wage of \$28 can be increased as soon as possible because inflation is impending.

President, we definitely hope the Government can take on board our views and all Members will support advancing the implementation date to 1 February. We also hope that a review can be conducted in the near future, and we hope that annual reviews will be conducted, which is not an exacting demand at all. I believe inflation will definitely pick up in the next few months. If a review is not conducted, many members of the public will indeed be hardly able to meet their living expenses with their present shameful income.

Therefore, President, the Democratic Party will support Mr LEE Cheuk-yan's motion.

MR WONG KWOK-HING (in Cantonese): President, regarding Mr LEE Cheuk-yan's motion, the several of us Members from the FTU are supportive of it

because apart from thinking that the information and statistics obtained by the Government are lagging behind, we also think that the issue of the minimum wage has been dragged on for too long.

The Government undertook to launch a wage protection movement before introducing a minimum wage, resulting in a delay of one year. Subsequently, the Government only conducted policy discussions on legislating for a minimum wage after the Wage Protection Movement had failed to yield satisfactory results, resulting in a delay of another year. Then, the deliberations on the bill took almost one year. That was how all these repeated discussions took a total of almost three years, and it is not until now that the Government proposes to implement the law on 1 May. Such delay is indeed unfair to the low-income wage earners, who have thus been suffering from hardship for a few years. If the Government could implement the law at an early date, that is, on the first day of next month, at least they may be able to cope with the strong inflation and realize their aspiration for a pay rise and joyously celebrate the arrival of the Year of the Rabbit. Under this circumstance, it is not too much to ask that the implementation of the law be advanced to February.

Furthermore, as the biggest employer in Hong Kong, the Government employs the largest number of elementary outsourced and temporary workers, most of whom are supplied by employment agencies. If the Government agrees to implementing the minimum wage from 1 February onwards for these temporary or outsourced workers engaged by the relevant departments, I believe that insofar as these workers are concerned, there will not be any difficulties in implementation, and the key lies in whether or not the Government is willing to do so.

I very much hope the Government can consider our request, and I also hope Honourable colleagues will support advancing the implementation of the minimum wage law, so that low-income workers can receive an early pay rise before the arrival of the Year of the Rabbit.

President, this Council will vote on this motion later, and I believe there is considerable difficulty in securing its passage. However, no matter what the outcome will turn out to be, we hope to make a last-ditch effort to strive for its passage. Even if it cannot be passed, President, I still wish to take this opportunity to put to the Secretary and the Government this question: Will the

Government, being the biggest employer in Hong Kong, consider taking the lead to take forward the following proposals so that it can establish the image of an exemplary employer?

First, the Government should implement on 1 February the minimum wage on outsourced workers engaged by various government departments. I believe the Government will not encounter any difficulties because even though some contracts were concluded much earlier, it may pay the difference in wages to the relevant workers at the time of contract renewal later. Is the Government willing to do so? As for workers supplied by employment agencies, I believe the Government will not encounter any difficulties either because they are engaged through open tender. Will the Government take the lead to offer a pay rise to outsourced workers and workers supplied by employment agencies before the arrival of the Year of the Rabbit? I hope the Secretary will give a response on this.

The second proposal is related to subvented organizations and welfare organizations. As most staff of these organizations are employed with subsidies from the public purse, I believe there will not be great difficulties for the Government to take the lead to implement the minimum wage in these organizations. Will the Secretary consider this proposal?

The third proposal is whether the Government will lobby and encourage utilities companies to take the lead to offer a wage increase to outsourced workers or workers taking up elementary positions on 1 February to implement the minimum wage. This is definitely not an excessive request. For example, the MTR Corporation Limited (MTRCL), though having reaped huge gains from taxpayers, can still receive taxpayers' support, and it has also employed many outsourced workers. Other utilities companies, such as the CLP Power Hong Kong Limited and the Hongkong Electric Company Limited, have also received the support of taxpayers. If the Government can motivate these utilities companies and large enterprises to fulfil their corporate responsibilities, even if Mr LEE Cheuk-yan's motion cannot be passed, I believe the cost incurred in implementing the minimum wage a few months earlier will only amount to a drop in the bucket for these large companies and organizations which make huge profits every year. Will the Government consider this proposal?

I hope Secretary Matthew CHEUNG will do something about these three specific proposals for hundreds of thousand low-income workers and refrain from categorically rejecting my requests. I hope the Secretary will give a response later.

President, talking about advancing the implementation of the minimum wage, no matter what the outcome will turn out to be today, I hope the Government will advance the review and conduct it within one year, and it will be meaningful if this one-year period is calculated from February. In case it is not possible, this period should be calculated from May, and the first review should still be conducted within one year. I do not wish to repeat the arguments on the lag, which has resulted in the waste of much time, yet the timing of the Government's first review is crucial. During the discussion on the bill, I asked the Government when the relevant data could be collected, and the Secretary undertook to ask the Census and Statistics Department to provide the relevant data in the first quarter of 2012 — as far as I can remember, it is probably February. Will the Secretary please correct me if I am wrong. Therefore, it is definitely feasible to conduct the review in the last month of the first quarter, that is, March, of 2012. Will the Secretary consider this humble request?

Once the first review is conducted, it will be much easier to deal with subsequent reviews. Besides, it will be fairer to those workers who can enjoy the minimum wage because they will have the hope of an early review if a review can be conducted expeditiously, even though they may feel helpless about the various lagging effects which have been accumulating. Moreover, a wage increase is usually offered annually. It is indeed unacceptable if a review of the minimum wage rate will only be conducted one year after its implementation, that is, in June of the year after next. Therefore, this is an earnest request.

This is also the common request of all trade unions in Hong Kong. I now have in my hand a press release of the "3+6" labour sector conference. It is stated that among the trade unions in Hong Kong, 204 of them, representing 98.5% of all the trade unions in Hong Kong, urged the Government to conduct a review of the initial minimum wage rate within one year of its implementation. Therefore, this is not my personal request, but the mainstream request of all trade unions in Hong Kong. I hope the Government will not take this request lightly.

Besides, I sincerely hope the Government will provide additional manpower to step up inspections after the implementation of the minimum wage to help the disadvantaged workers counter various practices employed by some unscrupulous employers — when I say "some unscrupulous employers", I am trying to avoid making an over generalization. These practices include not offering paid meal breaks anymore, cutting various allowances and discontinuing different kinds of bonus programmes or imposing extremely unreasonable penalty systems to reduce the actual hourly wage of workers who are originally entitled to an hourly wage of \$28. I hope the Government will really provide additional manpower to step up its assistance so as to prevent and forestall the emergence of these practices of worker exploitation in the next few months. I am really worried that, in the months ahead, workers may be fired after taking their Near Year's Eve dinner. This worry is not unnecessary at all.

I hope the Labour and Welfare Bureau and the Labour Department will watch out for these situations. I also hope the Government will take this opportunity to step up its publicity and call on employers to share this social responsibility by joining hands to promote corporate social conscience and responsibilities so as to give regard to low-income workers rather than striving to make the greatest possible gain in every single instance. For otherwise this will only cause more conflicts and confrontations in society, which is contrary to the desired outcome.

Finally, I wish to take this opportunity to call on the Government to advance the implementation of the transport subsidy scheme to tie in with the implementation of the minimum wage regime and refrain from delaying the scheme until the third quarter of this year. If the implementation of the scheme is delayed until the third quarter of this year, the situation of low-income workers will indeed be deplorable during this gap of several months. Very often, workers may only choose either to receive the minimum wage or to apply for the Government's transport subsidy. This problem definitely exists, and there is really such a risk. It does not matter what the scheme is called, after all it is a kind of work subsidy for low-income workers. If this subsidy scheme can be implemented at an early date to tie in with the implementation of the minimum wage, workers will not have to face such great hardship.

In particular, I hope the Government will give regard to those people who were eligible for and received the original subsidy because they will be unable to

receive subsidy under the new transport subsidy scheme, which will be granted on a household basis rather than on the basis of an individual worker. This may arouse fury and discontent among the people concerned. Therefore, I wish to take this opportunity to urge the Government as well as the Secretary to give consideration to the labour sector's request for implementing the two regimes in parallel. Actually, the authorities also wish to offer assistance to wage earners to enable them to secure employment, and they will not abuse the regimes. Therefore, I hope the Government will really consider our requests and proposals, so that the minimum wage regime and the transport subsidy scheme can be implemented in parallel.

Thank you, President.

MR TOMMY CHEUNG (in Cantonese): President, the Low Pay Commission of the United Kingdom began to study the first national minimum wage in July 1997 and determined the first proposed minimum wage rate in June 1998. However, it was not until almost one year later, that is, in April 1999, that this proposed rate came into effect. Whereas in Hong Kong, the industry is only given six months for preparations after the Government has announced the first minimum wage rate. There is a gap compared with the one-year period requested by the industry, but the industry has not raised any opposition. This shows the industry has given regard to the demand and needs of society.

Representatives of the catering industry have repeatedly explained to Members on different occasions, including public hearings, that there is a need to state the wage payment arrangements clearly in contracts to ascertain the methods of calculating the number of hours worked by employees and their wages for compliance with the law. To avoid misunderstandings, in-depth communication and discussion with employees are required. Some Members said as the Minimum Wage Ordinance (MWO) has not brought about any changes to the existing Employment Ordinance (EO), there is no need to introduce any changes to the contracts. They also criticized that this is actually the industry's excuse for slashing employees' welfare benefits. I hope Members will refrain from putting employers and employees in confrontational positions, and I hope Members will try to understand more the industry's practical difficulties in operation.

Among the 14 000 licensed food premises in Hong Kong, most of them are small and medium enterprises (SMEs). As many SME operators started out in junior positions and are not well versed in technical contractual provisions, they usually engage workers using a simple employment contract in which wage payment arrangements for rest days, meal breaks and overtime work are not stated clearly. The contract may only state that the relevant employee has to work according to the duty roster and is entitled to free meals but not the hours of attendance and the meal time.

Although the EO has been in force for years, providing statutory backing for wage payment arrangements, such that these arrangements shall be determined by negotiation between employers and employees, some employers are not fully aware that the relevant details have to be stated in the employment contracts as these wage payment arrangements do not have any impact on enterprises whose workers are employed on a monthly basis. However, now that the MWO requires that the hourly rate shall not be lower than the statutory level, the wage payment arrangements for rest days, meal breaks and overtime work will have a decisive impact on the outcome of the hourly rate computed in each wage period. Therefore, to avoid any misunderstanding and arguments in the Court in future, it is more appropriate for employers to include provisions in the contract to state clearly the relevant arrangements, irrespective of the wage payment arrangements adopted in the past, that is, whether there was any oral agreement on whether the relevant time or days were remunerated and whether any definitions were provided.

Actually, my office has organized three exchange sessions in the past month, attracting over 1 000 participants. By my reckoning, however, these participants only came from at most not more than one third of the restaurants in the catering industry. During these sessions, I found that many members of the industry did not have a thorough understanding of the wage payment arrangements, and some of them even had no idea about these arrangements at all. I am very concerned about the situation of the remaining two thirds of the restaurants, and I can only do my best in this respect. For example, many members of the industry have a misunderstanding that even if rest days are remunerated, the hourly rate may be computed by dividing the monthly wage by 26 days and the number of hours worked by the employee per day. While these erroneous concepts might not cause any serious problems in the past, once the minimum wage is implemented, employers may be vulnerable to miscalculation

without being aware of it and thus pay their employees an hourly rate which is below the statutory level.

Contravention of the MWO is a criminal offence, and is thus a matter of significance. Therefore, how can we implement it in haste, thereby subjecting employers to such a serious crisis? Besides, unlike other industries, the catering industry adopts different modes of remuneration, working hours and wage period. There are peak and non-peak seasons, and their business turnover may vary even within a single month. So, it is not unusual for employers to require employees to work overtime and offer them time off in lieu in the subsequent days. In other words, the number of hours worked by an employee per month may demonstrate great fluctuations. Besides, even if workers are paid on a monthly basis, they may also be entitled to the tips received and various allowances on top of the basic salary. Moreover, restaurants may also offer to employees of different ranks different rates of "shares", as they are commonly called in the industry, and the computation of a "share" is linked to the amount of tips received, profits, and even what we called the "0.05 commission", that is, a commission of 5% on sales secured by the relevant employee, as well as the total number of employees. Each company may have a different way of computation, and most contracts only state the basic salary but not how such items are computed. In other words, the amount of salaries received by an employee in each wage period may fluctuate substantially.

Given the varying amounts of total salary and number of hours worked by an employee, calculating the average wage rate of each employee in a certain wage period to ensure that his wage rate is not below the SMW rate involves complicated computations and a lot of work, particularly for SMEs which lack the relevant computer software support and personnel management expertise.

Some members of the industry even said that suppliers of payroll computer software are still developing the relevant functions and programs for computing the number of hours worked by employees under the relevant computer system. It is impossible for them to finish the study, installation and testing process within a few months, and it is also impossible for payroll staff and staff responsible for keeping records on the number of hours worked by employees, both from the branches and the headquarters, to familiarize themselves with the new system within a few months. I hope Members can be more pragmatic and understanding.

After all, this is the first time the minimum wage is introduced in Hong Kong, and both employers and employees lack knowledge of the implementation details. However, we expect that the monthly-rated system will generally be adopted in the labour market of Hong Kong. To ensure careful computation and recording of the number of hours worked by employees, employers and employees have to make necessary adjustments. For example, employees have to develop the habit of recording their attendance using a timecard machine, and the management of each shop will need to know how to decide in what way the number of hours worked by employees should be recorded when, for example, an employee requests release from work early, suffers from work injury or attends classes. Time is required to instill in employees of all levels the relevant concepts and allow them to develop new practices of operation.

However, these three months are the busiest months for the catering industry. During this critical period, members of the industry are already very busy with their work, and they already have to engage many "helpers" to cope with the workload. So, they will not have much time to conduct training and talk about the minimum wage with their employees. Members of the industry are gravely concerned that if the law is implemented hastily, employers and employees will not have adequate time to thoroughly discuss and come to a consensus on the enforcement details, and so there may easily be misunderstandings, suspicions and conflicts or even labour disputes when problems arise.

In my remarks on the first resolution, I already said that the implementation of the minimum wage will cause a substantial rise in the staff cost of the catering industry. However, it should be noted that the industry is facing severe imported inflation, which has caused a substantial hike in the cost of food. Besides, rental has been increasing as a result of surplus liquidity in the market. Impacted by these unfavourable factors, most operators in the industry have to raise their prices. However, if they raise their prices substantially, consumers will only be driven away. Therefore, they have to adjust the prices gradually to test the acceptability of the market, while at the same time cope with the situation by adopting different measures to generate revenue and achieve savings, in the hope that enterprises and employees can tide over the adversities during this critical period.

We have to understand that there are no simple solutions to the survival of enterprises, and time is required for budgeting, planning, testing, making corrections and then re-testing before they can find a way out. Actually, the industry would not be able to proceed with budgeting before the minimum wage rate was set. The initial minimum hourly wage rate of \$28 was not officially announced until about a month ago, which was only six months before 1 May this year. It is not easy for the industry to make so much preparation in the face of these challenges.

Many SME operators are actually only making profits equivalent to their own shares of wages. My worst worry is that enterprises which lack financial strength, particularly those operating in districts of weak consumption power or grass-roots districts, may neither have adequate time to put in place contingency measures in only a few months nor raise their prices substantially. Therefore, they may eventually be rendered unable to survive the severe blow dealt by the enormous rise in operation cost and close down before the law comes into operation, and thus replaced by enterprises or chain stores requiring less manpower. In other words, this situation will accelerate the shrinking of SMEs and the loss of low-skill and low-education jobs, thereby causing the market in Hong Kong to tilt further.

I hope Members will try to look at the actual situation from a macro perspective and oppose Mr LEE Cheuk-yan's motion, so that the industry will have adequate time for preparation. This will enable the gradual upward adjustment of wages and prices of goods, which will be absorbed by the market gradually. This way, there will be a stable transition for enterprises and employees, such that the latter will genuinely benefit from the minimum wage policy.

President, since there is still some time left, I also wish to speak on Mr IP Wai-ming's motion. Frankly, if Mr IP Wai-ming's motion is passed, the only outcome is that expenditures for employers and the business sector will increase, while workers will not be protected or benefited at all. To put it simply, this motion will not do any good to anyone, but will only bring much harm.

Mr IP Wai-ming explained that his motion is not targeted at employees with an hourly wage below \$28, and he is worried that those employees earning over \$28 per hour will be required to work overtime as a result of the minimum

wage, thereby causing their hourly wage to become less than \$28. Therefore, he considered it necessary to require employers to maintain records as evidence.

I think his worry is undue. In an extreme case, employees engaged in certain occupations may indeed have to work for at most 12 hours per day during peak seasons. However, even if an employee remunerated on an hourly basis receives a wage of \$11,501 per month, his hourly wage will not be below \$28 if he works 12 hours a day. I do not know of any occupation in which an employee will still be required to work for four hours in excess after working a 12-hour day. I believe even if such an occupation exists, the employees concerned will not let their employers do something like that. Besides, after months of discussion, all employees already know that they are entitled to the minimum wage protection, and so employees working long hours and earning some \$10,000 per month will definitely be on the alert to ensure that their hourly wage will not be lower than the statutory wage rate. In the event that their wage is lower than the statutory wage rate, they will definitely record the relevant evidence to recover the difference.

Besides, the Census and Statistics Department (C&SD) will conduct random site checks on a regular basis to find out the average working hours of different positions. We will know clearly whether there is any tendency for an increase of working hours for some positions after the implementation of the minimum wage simply by referring to the statistics of the C&SD without requiring employers to keep separate records of the number of hours worked by employees, which will increase their workload.

As I said in my remarks on the previous resolution, it is not a simple task to keep records on the number of hours worked by employees. We should bear in mind that it is a criminal offence not to keep records of the number of hours worked by employees in accordance with the law, which is very serious. The original aim of this requirement is to prevent employers from evading their minimum wage responsibilities by not maintaining the relevant records. However, it is indeed an overkill to make employers liable to this criminal offence because of such improbable occupations which will require employees to work extra long hours. Should Members be more logical and consider whether it is necessary to waste manpower and resources on something which will not possibly happen?

Under the minimum wage policy, managers as employees are also in a deplorable situation. I am most concerned about SMEs as they do not have a lot of management staff and most of their employees earn a monthly wage of less than \$20,000. Requiring them to maintain records of the number of hours worked by most of their employees will only substantially increase the burden of their operation and costs. If this resolution is passed today, they will face even greater difficulties.

I do hope that Members will be more pragmatic. Workers are easy to please. One only has to advocate wage increases and the strengthening of regulation of employers to please them. However, the problem is some people are over-simplifying the situation as a black and white issue by regarding those who support these aspirations as seeking to protect workers while others who do not do so as trying to exploit workers. Undoubtedly, this is a political reality, but I am concerned that sometimes Members tend to focus only on winning momentary applauses while missing the mark and setting the threshold too high. This will, on the contrary, deal a blow to small employers and SMEs which are striving for development, thereby causing the market to become more lopsided.

President, I wish to stress again that the Government has a duty to strike a proper balance. Rather than simply getting the job done or completing a term of political office, it should be accountable to society as a whole. A policy should carry comprehensive complementary measures and lay a solid foundation for the long-term development of Hong Kong.

President, I would like to mention in passing that the industry-specific guidelines have yet to be issued. Members are now proposing that the law be implemented on 1 February. However, in the absence of industry-specific guidelines, how can the implementation of the minimum wage be advanced?

President, I so submit.

MR WONG YUK-MAN (in Cantonese): President, all the three resolutions today are proposed by Members, and so they must be put to separate voting, the results of which are already crystal clear. There are now less than 10 Members in the Chamber, and if I request the President to do a head count now, he will have to ring the bell to summon Members back in, right? However, when it

comes to the vote later on, all of them will dash back into the Chamber. Therefore, the job of a Member of the Legislative Council of Hong Kong is easy, except for those who are returned through direct elections and have to canvass for the support of voters in an election on a one-person-one-vote basis. This job is particularly easy for functional constituency Members, especially those "zero vote" Members. While they receive the same amount of remuneration and allowance as we do, the three of us have employed more than 10 staff in our district offices. Therefore, the allowance of some \$100,000 is indeed not enough. However, all of us are Members of this Council. Those super Members in future will be even more superior as they may be allowed to incur an election expenditure of \$6 million. Certainly, only rich people can take up this job. A Council like this can chuck out anyone simply by separate voting.

There are now only a few people in the Chamber. They just fled when we began to speak because we would attack them on all fronts. Just now, Frederick FUNG kept fighting back out of spite, saying that we had been firing criticisms at others. Actually, he may also criticize us, and this is how this Council works, right? Theoretically, this is how a high-standard debate should be, with both sides presenting their analyses and advancing their arguments eloquently. In reality, however, this is not the case with debates here, particularly in the debate on minimum wage.

When it comes to the absurdity of separate voting, I have to say that the Secretary must know it very well. I really have no idea what he is thinking now. The placard now on the desk says "At least one review a year". Last year — in the last Session — when the Minimum Wage Bill was read the Second and Third time here, a Member proposed an amendment to require that annual reviews be conducted. Although 32 Members were in favour of it, while 14 Members were against it, and one Member abstained from voting, it turned out that the 32 Members were the losers. Secretary, you should remember it, and you were certainly very glad about it. In the end, of course, a two-year review cycle was adopted, right? I also specifically reminded our great President, who was about to set off for a visit to the Israeli Knesset that day, to ask the Knesset whether there is separate voting in their parliament. President, you have not answered my question after the trip. President, during your exchange with them, did you tell the Knesset the absurdity of our separate voting? I still remember this. Did you tell them about it?

Where does the absurdity lie? People always say that the majority wins, and "head clubbing" should be replaced by "head counting" in a Council. However, it turned out that after "head counting", the majority was the loser, and the 32 Members lost while the 14 Members won. What kind of a Council is this? Besides, those people still made all sorts of remarks here with a seemingly upright sense of justice. If there were equal value in the seats for different groups of Members in this Council, and if all Members of this Council were returned by elections of "one person, one vote", I would have nothing to say. While you represent the group of people with vested interests to which you belong, I represent the group of people with vested interests to which I belong, and we will just confront each other in this Council to win voters' recognition. Why did the Labour Party manage to become the ruling party? Because the Tories were indeed too awful and too rightist in their stance, and so the public had to take up a leftist position. The Labour Party had to step down because it was too leftist in orientation and had caused the economy to falter badly. As the public wanted economic development, they would like the Tories to rule. However, as the Tories could not secure enough votes, they formed a coalition government with another political party. So, the people may decide which doctrines to practise and what social policies to adopt. This is simple and plain enough.

However, is it how this Council works? It works not in this way. Why do people say that we fight for the rights of the grassroots in order to canvass for votes? Buddies, you have posited the effect as the cause, babbled nonsense, distorted the logic and confused right and wrong. What is more, you even assumed a righteous air in censuring those of us who fight for the interests of the working masses. How absurd, President.

In an absurd Council, there are naturally some people who are more ambitious and "absurd" like us. Yet, we are only discharging our duties properly. If we only sit here and act like a hand-raising machine and a rubber stamp just like what you do, what is the fun of serving in this Council? President, if this is the case, you will definitely doze off sitting there. When we speak, everyone will wake up, right? Those people speak in such a disorganized way that they simply lead people nowhere. Besides, they just keep dwelling on the same points. The root of the problem is this Council is absurd, and the next term of this Council will be even more so, President, because there will be five super Members. Members here may be classified into a few groups.

Functional constituency Members can be classified into two groups, one being "zero vote" Members and the other being Members who could secure some votes. For direct elections, that is, Members returned through direct elections, they can be classified into there are two groups of Members among those returned by elections of "one person, one vote". One group are those who got a few hundred thousand votes and joined this Council with much arrogance and contempt, though they required huge election expenditure — even an election expenditure of \$6 million might not be enough. Therefore, this absurd policy has given rise to such absurdity.

Regarding the dispute over the minimum wage, originally Members might find out the mainstream view in society on an equitable basis, and everything could be every clear, right? However, they always based their arguments on such grounds as unemployment and the closing down of businesses. My wife said to me that if the minimum hourly wage rate is \$33, she will have to close down her business. Then, I told her to close it down right away because if she is unable to cope with imported inflation and the rise in rental, and she also has to pay employees at the minimum wage rate of \$33, she will have no choice but to fold. This is transient pain, which is inevitable. Some businesses with improper operation may have to close down, but there will still be people going for business ventures. This is only a possible scenario after the implementation of the minimum wage, and it is only transient pain. If such transient pain was fatal, the Government would have disagreed to legislating for a minimum wage. This is also simple logic.

Besides, after listening to Members' remarks, I think I need to get something off my chest. I wish to ask the Government why it would legislate for minimum wage, and why we, this group of people, have to fight for minimum wage. I found that the two sides have very different purposes. You may notice that right at the beginning of the Minimum Wage Ordinance, it is stated very clearly that "to provide for a statutory minimum wage at an hourly rate for certain employees". In other words, it seeks to provide for a statutory minimum wage for its own sake.

Section 12(3) which is on the criteria for prescribing the minimum wage rate provides that, in performing its functions, the Commission must have regard to the need (a) to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs; and

(b) to sustain Hong Kong's economic growth and competitiveness. This is the Government's stance, and the attitude is extremely passive, right? The Government has not mentioned maintaining social stability to enable workers to live in dignity and maintain a minimum standard of living. There is no mention of this at all.

I am not sure whether the Secretary is aware that the purpose of introducing a minimum wage is stated clearly in the minimum wage law of different advanced countries and places in the world. The others have a vision, right? Whether it be Japan, Korea or Australia — I have listed here a lot of places, but due to the time constraint, I am not going to elaborate on it, and I have already uploaded my article onto the website. Those who are interested may browse through it, and I have already made it available — let us take a look at China. The purpose of introducing a minimum wage is stated very clearly in the first requirement on minimum wage. Article 1 of the Ministry of Labor and Social Security Order No. 21 provides that: This Law is formulated in accordance with the Labour Law and the related State regulations to protect the legitimate rights and interests of labourers to obtain remuneration for their labour and secure the basic life of labourers and their families. This is the relevant legislation on minimum wage, Secretary, and there is a purpose and a vision underlying it.

As for the Fair Labour Standards Act of the United States and the Labour Standards Law of Taiwan, the concepts of fairness and protection of labour interests and rights are highlighted in the first part. What is worth mentioning is that the minimum wage law of France provides great enlightenment to Hong Kong, which is facing the inflation problem. According to the information provided by the Research and Library Services Division of the Legislative Council Secretariat, the French authorities will also consider the needs of workers and their families in prescribing the minimum wage rate. Besides, the national minimum wage rate changes in tandem with the movement of the national price index. On 1 July each year, the national minimum wage rate is adjusted to cover the movement of the national price index since the last adjustment. During the interim period, if the national price index changes by 2% or more, the national minimum wage rate will be adjusted automatically. This way, the real value of the national minimum wage rate will not fall.

Actually, minimum wage laws were enacted before the 1990s in Australia (1907), France (1950), Japan (1959), South Korea (1988), Taiwan (1984), the

United Kingdom (1999) and the United States (1938). Except those of Taiwan and the United States, the minimum wage rates of all these places are adjusted once a year on average. Hong Kong is lagging behind, right? How dare you still brag about this minimum wage? Secretary Matthew CHEUNG, let me tell you that you also talked about this the last time, and you are repeating the same points today. You said this minimum wage was not easy to come by, and so on and so forth. Today, you are repeating the same points like a recording machine, and your remarks are indeed lengthy. While each Member is allowed to speak for 15 minutes at most, you will speak for half an hour or more. However, all your remarks are nonsense. Now, we can make a comparison. Others have their visions and goals. Let us put aside all other places for the time being and draw a comparison between Hong Kong and our Motherland, where socialism is practised. What are the visions of the Hong Kong Government? It only mentioned that the objective is to forestall excessively low wages, and that is all. How ridiculous!

President, at this stage, we have completed the legislative procedure for a minimum wage, yet we may not decide whether the minimum hourly wage should be set at \$28, right? This Council may either say "yes" or "no", and we may not propose any amendment to it, right? All the resolutions actually, except for our request to repeal the legislation, the other two resolutions are only compromises of compromises. As compromises, they seek to implore the Secretary to do something, right? Will the minimum wage law be implemented on 1 May? Shall we advance its implementation for three months, so that workers can, as how WONG Kwok-hing sees it, merrily celebrate the arrival of the Lunar New Year? However, will workers be able to receive such a wage rate before the arrival of the Chinese New Year?

Another Member also made the same points, which do not bear any significance at all. Just now, Frederick FUNG discussed here in this Chamber the principles and some technical issues, which did not make any sense. He said whether the hourly wage would be \$28 or \$33 was only a technical issue, and whether or not a minimum wage would be in place was a matter of principle. Did he mean that we would not have a minimum wage? Is repealing the Notice tantamount to abolishing the minimum wage regime? This is nonsense. When he kept talking on and on, he even forgot who he was and said something that the League of Social Democrats (LSD) and the Liberal Party should say. It was nonsense and illogical. Is this something that someone from the pro-democracy

camp and someone championing the people's livelihood should say? Can I accuse him for this? Albert CHAN said he is among those who have joined the communists, and I think this comment would only be to his credit. He is actually someone who has joined those in power, not the communists, right?

Therefore, in the debate on the previous resolution, I specifically mentioned a veteran member of the pro-democracy camp, Mr SZETO Wah, who made his words the laws of the country and held himself up as the example for posterity. Before he passed away, he criticized us from the LSD as "seemingly leftists but actually rightists, and followers of escapism". This comment can best describe Frederick FUNG, right? Which part of him is leftist? He is seemingly leftist but actually rightist, and he is a follower of escapism. He is now escaping, and he is making pleas. The Secretary is really remarkable now as everyone has to beg him. Those who were originally against him are now begging him to replace the two-year review cycle by a one-year cycle. However, the law has been enacted. "Shall we replace the two-year review cycle by a one-year cycle?"; "Secretary, regarding the minimum hourly wage rate of \$28, as inflation is so strong now, can we raise it a little bit in the next review?"; or "Secretary, shall we introduce other complementary measures and expeditiously introduce the transport subsidy?" All these pleas are irrelevant, right? We are now discussing the proposed minimum hourly wage of \$28 and its implementation date. Why is the transport subsidy discussed here? I might as well digress even further.

President, when he talked about the transport subsidy here out of the blue just now, you did not stop him. I might as well digress even further, and please do not stop me, okay? At this final stage, we are still begging. So, it does not matter whether it is a compromise of a compromise, right? Now that everything is set hard and fast, it is better than gaining nothing at all. Under this circumstance, he just begged the Secretary: "Shall we advance its implementation for three months?" However, all these proposals will be negated in the voting later, and they will not be passed. All these will be reduced to empty talk, President, just like the motion on repealing the Notice proposed by us just now, which was also empty talk. This motion is very important. We Members, that is, Members of the Legislative Council, the legislature of Hong Kong, are known as "lawmakers". It is indeed ridiculous. What exactly are we "making"? In what ways are we qualified to enact laws? In introducing private Members' bills, we are subject to the restrictions under the Basic Law, and then the bills will

be put to separate voting, right? What is more, we will definitely lose in the separate voting, just as in the case in which the 32 Members were the losers while the 14 Members were the winners. When we cannot replace "head clubbing" by "head counting", does it mean that we have to replace "head counting" by "head clubbing"? Does it mean that we have to wage a struggle in this Council? Does it mean that we have to wage a street struggle? It will only be democratic to replace "head clubbing" by "head counting", but now we are forced to replace "head counting" by "head clubbing".

President, the LSD will abstain from voting on the following two resolutions. Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, Mr WONG Yuk-man just now criticized the Government for having no commitment. Why? I already pointed out during the previous debate that it was mainly because the SAR Government was insincere in prescribing the minimum wage. It was forced to do so. How would it have commitment? I think it is extravagant hope on the part of Mr WONG Yuk-man to demand that the Government should have commitment.

Why do I think that the Government is insincere in prescribing the minimum wage? In responding to the motion moved by Mr LEE Cheuk-yan just now, the Secretary said that it was unrealistic of Mr LEE to request that the effective date of the minimum wage be brought forward to 1 February. Why did Secretary Matthew CHEUNG say that? The main reason is that the Government has not made proper preparations for many things. Therefore, it is definitely unrealistic to implement the minimum wage on 1 February.

President, under the Government's present arrangement, the minimum wage will be implemented on 1 May. It is certainly unrealistic for the date to be advanced to 1 February, as all preparations have not been completed properly. The question we should ask is: Why did the Government decide to implement the minimum wage on 1 May rather than 1 February? Let us review the timing of enacting the legislation. It was passed in July last year, five months ago. What has the Government done during these five months? The entire society has not seen the Government conduct any publicity on the implementation of the

minimum wage. It can be said that the Government has failed completely to deliver.

Despite the passage of the Minimum Wage Ordinance (MWO) on 16 July, there were actually repeated discussions before that, and the Government also knew that the vast majority of Members of this Council were in favour of prescribing a minimum wage. Therefore, the Government should have made more preparatory efforts earlier rather than drawing up complementary policies after the enactment. Hence, the responsibility of rendering this proposal today unrealistic lies with the Government, not anyone else. The Government has kept procrastinating because it is insincere in assuring the living standard of the grassroots and ensuring that they can live in dignity.

Mr Tommy CHEUNG kept repeating just now that as the Government was unclear about a lot of things, employers would find adaptation very difficult. Moreover, how could they adapt as concrete policies were absent? This is absolutely true. After all, the question lies in how the Government looks at the implementation of the minimum wage. Hence, it is not an excessive demand for the Government to bring forward the implementation of the minimum wage, just that the demand has been disregarded by the Government. As Members are aware, we hope to bring the minimum wage into implementation earlier mainly because we very much hope to raise wages as early as possible to enable employees to upgrade their quality of life.

President, I believe you also know that traditionally, employers will offer pay rises before or after the Lunar New Year. This is everyone's expectation. In fact, employers should act in this manner. But unfortunately, I have been told by many organizations that, as the minimum wage will be implemented on 1 May, they will not offer any pay rise this year and will wait until 1 May. Under such circumstances, not only are employees who will benefit from the minimum wage affected, even employees who will not be benefited may also be affected because many organizations will follow the Government in withholding pay increases until 1 May. Therefore, the consequences are extremely serious.

As mentioned by a number of Honourable colleagues just now, given the serious inflation now, the New Year wish of the people is not just a new wage rate. What is more, they hope that the new wage rate can enable them to cope with inflation. However, the Government has kept procrastinating.

Notwithstanding the fact that it is only three months, Members should understand that for some families at risk, it is already very painful for them to wait three months. For these families, they can hardly wait even three weeks, not to mention three months. Although people not living in such circumstances may not find this a problem, for families living in dire straits, \$10 or even \$1 may make a difference in alleviating their hardships. Why do we not sympathize with them, rather than sticking to the administrative arrangement?

Just now, I repeatedly pointed out that the complementary measures had been delayed repeatedly because the Government was insincere in enforcing the MWO. In my opinion, the Government must bear this responsibility and cannot pass it onto someone else.

Perhaps it is wishful thinking on the part of the Government in telling us not to blame it, as it is meaningful for the minimum wage to be implemented on 1 May because we can firstly, celebrate the Labour Day and secondly, enjoy the minimum wage. I would like to tell the President and the Secretary that the Labour Day has nothing to do with wages; it is about working hours. At that time, several hundred workers strove for a "8+8+8 system" — eight hours for work, eight hours for rest and eight hours for studies. This system has nothing to do with wages. Therefore, Secretary, if the Government wishes to celebrate the day, the best way is to make an announcement on 1 May to impose maximum working hours rather than implementing the minimum wage on that day. It will be even more meaningful and worthwhile to do so. Moreover, it also meets the aspiration of the Labour Day. We will be very pleased should the Government act in this way.

But unfortunately, President, the relevant ceiling on working hours is still nowhere in sight because the Government has only kept on studying, and there is no knowing when the measure can be implemented. Therefore, the Government should not tell the general public that the minimum wage can be implemented on the Labour Day because the significance does not lie here. On the contrary, we hope that it can make an announcement on restricting working hours on that day. It will be even more worthy and meaningful for the Government to do so.

Here I hope the Secretary can demonstrate his sincerity by explaining to us whether or not the minimum wage can be implemented expeditiously on 1 February, so as to alleviate the hardships faced by the grassroots and

low-income households and assure their quality of living. In addition, the issues of commitment and dignity in living, as mentioned by Mr WONG Yuk-man just now, are even more important.

President, I so submit.

MS MIRIAM LAU (in Cantonese): President, as stated by me earlier, it took the PMWC more than a year to come to the conclusion of setting the minimum hourly wage rate at \$28, whereas the final decision to accept its recommendation was not made by the Government until November last year.

The primary legislation on minimum wage passed by the Legislative Council before the summer recess last year was just a framework, in which many details of implementation were still unclear and grey areas could still be found. Not only was the labour sector unable to fully understand the relevant arrangement, but quite a number of employers or trade representatives were either unclear about or having scanty knowledge of this brand new arrangement. In view of this, the Labour Department (LD) has been making persistent efforts in the last couple of months to promote and explain the arrangement under the new law in order to give both employers and employees a clear understanding and ensure that they will not violate the law.

Just as the explanation given by the Government on why 1 May 2011, the Labour Day, was designated as the effective date of the initial statutory minimum wage (SMW) rate in the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010, the date was chosen because, apart from its symbolic meaning, the Government would like to give the community at least six months to make proper preparations. We consider this arrangement appropriate because the minimum wage rate was finalized at a time when all trades and industries were preparing their year-end accounts. Moreover, it was the peak sales period, and the Lunar New Year also falls during this period. Even if quite a number of trades would like to gain a better understanding of the details of the law, they are unable to spend a lot of time undertaking work in this respect, not to mention making proper preparations.

In fact, the minimum wage law involves many implementation details because it changes the monthly salary system, to which we are accustomed, to an

hourly wage system. Converting the calculation from monthly salaries to hourly wages involves complex administrative and computation arrangements, and this must be handled very carefully. I believe Mr LEE Cheuk-yan, the mover of this resolution today, must have known the difficulties involved. For instance, what circumstances should be counted towards the number of hours worked under the minimum wage law? How should bonuses be spread to ensure compliance with the law? Given that the operating conditions of all trades and industries are different, many people still have a lot of queries. In particular, the situation faced by some trades is more complicated, whereas the mode of operation adopted by some trades is unusual. These trades require clear guidelines before they can fully comply with the minimum wage requirements.

Quite a number of sectors have expressed the hope that clear guidelines can be provided to enable them to better understand the requirements of the law so that they can have rules and precedents to follow and avoid being caught by the law. I believe the Government needs time to address one by one the queries raised by different trades and industries over the past several months. I hope the Government can handle this matter properly and formulate comprehensible operation arrangements in the relevant guidelines for compliance by the trades and industries in the days to come.

What is more, the SMW will have dynastic implications on quite a number of trades and industries, probably involving discussions with staff and the need to revise employment contracts. However, the trades and industries have been given less than six months to understand and adapt to all this. Frankly speaking, such an arrangement is quite hasty. Earlier, the Liberal Party held some briefing sessions to give small and medium enterprises (SMEs) more opportunities to engage in direct dialogues with officials of the LD. We also hope to enable the trades and industries to gain a better understanding of the draft reference guidelines on SMW for employers and employees, namely Statutory Minimum Wage: Reference Guidelines for Employers and Employees, on these occasions. However, after listening to the introductions given by government officials and discussing with them, the SMEs still have a lot of queries and have to wait for further clarifications on the implementation details. Hence, judging from the understanding of the minimum wage law by SMEs or numerous other enterprises, we in the Liberal Party think that it is actually unrealistic for someone to say that enterprises at large have already gained a clear understanding of all the principles and details under the minimum wage law and so the SMW rate can be

implemented next month. In particular, the final version of the reference guidelines is not yet available.

If the relevant law is not yet widely known by the trades and industries and the implementation of the SMW regime is brought forward hastily when clear reference guidelines have yet to be finalized, the trades and industries will be caught by the law very easily due to wrong interpretation of hours worked, unclear understanding of the arrangements for spreading bonuses and records of hours worked, and such side issues as the failure of employers and employees to make proper co-ordination in work arrangements.

I do not know if my understanding is correct. Just now, Mr LEE Cheuk-yan said that there is no reason for the Government not to bring forward the implementation of the minimum wage law by three months, and it depends merely on whether the Government is standing on the employers' or employees' side. The Government can do so if it takes the employees' side into consideration. If it is not standing on the employees' side, it will certainly think otherwise. However, the practical problems will not be resolved simply as a result of the Government standing on either sides. In reality, Mr LEE's motion appears to make things difficult for others because the reference guidelines have not yet been finalized, the implementation details are still unclear, and the trades and industries still have a lot of queries. If the minimum wage law is implemented hastily on 1 February unduly, some potentially scrupulous employers will be led to do an injustice and become the unscrupulous employers frequently mentioned by us. Is it fair? It should be unfair to them.

On the contrary, employers should be given time to gain a clear understanding of the system. As 1 May is not too far away, we had better work hard to get the job done well. Bringing forward the implementation of the statutory minimum wage law unduly will give rise to a lot of sequelae and adverse consequences. I believe no Member would like to see this happen by then.

As previously indicated by Mr LEE and mentioned earlier by Mr LEUNG Yiu-chung, it is hoped that the elementary workers can be given pay rises before the Lunar New Year because of the severe inflation. This is indeed a good intention. Right, inflation before us is strong and fierce. In particular, rent, transport fares and food prices have seen increases again and again. As reported

in newspapers recently, "pigs are so expensive that they are more fierce than tigers", with one dan of pork being sold for more than \$1,400, up 10% from last month. As a result, quite a number of middle- and low- income households have complained of "meatless meals". We all know that they are facing hardships, and we are similarly losing our patience. However, should the effective date of the minimum wage law be brought forward unduly to 1 February because of our impatience, negative consequences may arise though it is still uncertain if the problems arising from inflation can thus be resolved. So, should we act in this manner?

To address the issue of inflation, we think that the Government, given its abundant surplus, should introduce more initiatives to alleviate inflation rather than linking the minimum wage to inflation unduly. It is because Members standing on the side of the labour sector and acting unduly to bring forward the effective date of the minimum wage law by three months are actually like doing something impossible even though they are clearly aware of it. I believe they have treated the matter in an over-simplistic manner.

We think that the Government should act in accordance with the usual procedures, though it may be criticized for slow progress as the draft reference guidelines have already taken several months to formulate with its final version not yet ready. Perhaps the trades and industries have raised many queries and the Government needs some time to deal with the cases cited by them and examine ways to address the cases, which can be quite time-consuming, too. Notwithstanding this, the Government has failed to proceed in accordance with the timetable, and in reality, the reference guidelines have not yet been finalized either. Such being the case, the trades and industries have nothing to follow. So, how can we bring forward the effective date of the minimum wage by three months in an undue manner? It makes no sense at all.

Therefore, for these reasons, President, we in the Liberal Party cannot support Mr LEE Cheuk-yan's motion.

MR RONNY TONG (in Cantonese): President, in general, there are mainly three reasons for deferment of the commencement or enforcement of a law. First, there are some outstanding issues in law and more time is needed for discussion to enable a consensus to be reached in the community; second, the law has a

far-reaching impact, and the community requires more time to adapt to it by all means; and third, the obstacles in connection with the enforcement of the law have yet to be removed.

Insofar as the commencement date of the minimum wage is concerned, do the three factors affecting the commencement date exist? President, are there any outstanding issues necessitating more time to be given to the community for further discussions so that a consensus can be reached? The answers are in the negative. Even the minimum wage rate, the most attention grabbing issue, has actually been resolved. Moreover, the minimum wage rate set is actually within the expectation of the vast majority of people in the community. Therefore, there is absolutely no outstanding issue which requires more time for consultation and discussion, or even the forging of a consensus.

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

As regards the issue of adaptation, does it really exist? Just now, many Honourable colleagues, including those from the business sector, joined in the chorus of complaining, saying that they had absolutely no idea of the application or enforcement of the law because guidelines were not yet available, and they were not well versed in the law. So, under such circumstances, how can it be implemented? I find this argument a bit strange. Generally speaking, the enforcement of a law will not be put on hold because the community has no knowledge of its contents. But more importantly, this law has actually been discussed and debated in the community for more than a decade. For a long period of time, it was on everyone's lips almost every day, and its scrutiny took almost a year. We had even held several round-the-clock meetings before it was passed. Not only has the community paid great attention to its contents, its various details have also been extensively discussed by the community.

This law was passed eight months ago, not yesterday or last month. Deputy President, if my memory is correct, we held at least one round-the-clock meeting here in July last year. Some colleagues even slept in the Ante-Chamber, as we all hoped that this piece of legislation could be passed before the recess. What has the Government done in the past eight months? What have the trades and industries done? Can someone still not understand the law even though he has spent eight months reading it? As regards the argument

that detailed guidelines are not yet available, guidelines are not part of the law. Some people also say that they need someone's help to understand the contents of the law as it was passed not long ago. While I agree that the provision of guidelines can be helpful, but how can one justify himself for failing to understand the details of the law even though it was passed eight months ago?

Deputy President, what remains undecided is only the minimum wage rate. However, the minimum wage rate bears no direct relation to those provisions which may regulate employers and affect employees. One must understand this law if he is to keep records of hours worked, regardless of whether the minimum wage rate is set at \$28, \$33 or \$40. Why do some people still say that proper preparations have not been made yet? Are some employers still playing the "delaying tactic" as it is not yet the critical moment?

Deputy President, it is even more baffling that, over the past several months, we had heard some news and seen some actual circumstances in which we found that some employers in the catering, cleaning services and security sectors as well as certain sectors which deal with consumers direct had declared openly their intention of raising charges. Although the Government says that the minimum wage will not come into force until 1 May, these employers have indicated that, having regard to the implementation of the minimum wage, they have to raise charges with immediate effect. Some employers have even indicated that, due to competition, they will not raise charges this year as the impacts of the minimum wage had already been factored into the prices determined early this year.

Deputy President, you must understand the present situation as I believe you should have made frequent visits to districts recently. When you visited housing estates, their owners' committees would surely complain to you that whenever a fresh appointment of security or cleaning services companies or floral companies responsible for gardening is conducted, those companies would invariably requested charge increases on the ground of implementing the minimum wage. Frankly speaking, when facing their employees, these companies will say that the minimum wage will not be implemented until 1 May because it takes time to adapt. When facing consumers, however, they will say that charges have to be increased having regard to the implementation of the minimum wage. Is it fair for these companies to do so? Are the problems mentioned by colleagues just now not exaggerated? During the past eight months, the Government was half-hearted in promoting the law, whereas

employers adopted an indifferent attitude because they felt that the "scourge" had not yet come close, and yet they chose to "fleece" consumers first. This is where the problem lies. Deputy President, I find these excuses not at all convincing. Given that this law was passed eight months ago, everyone ought to have understood the operation of the minimum wage regime. Now that the minimum wage rate has been determined, I cannot see any difficulties with its implementation. As regards the third factor, that is, whether some hurdles have not yet been removed, I cannot see any insurmountable difficulties from the legal, policy or technical perspective.

Deputy President, besides the fact that there is no reason for the commencement of this law to be postponed, as I said just now, there is actually an even more important reason to justify why we should not postpone the commencement of the law, but we should also not wait until 1 May to implement the law in accordance with the Government's timetable. Why? Deputy President, as many colleagues mentioned just now, the minimum hourly wage rate of \$28 was actually determined according to the data collected more than a year ago, and hence there was lagging effect. In other words, we cannot catch up with the prevailing living standard as well as the rising prices. The later the minimum wage is implemented, the longer the lag. As a result, workers will be treated in a more unfair and unjust manner. It will also be extremely difficult for workers to catch up with the prevailing living standard. If we can implement this law expeditiously, why do we not do so earlier, so that more workers can receive fairer treatment as early as possible.

During the debate on the previous resolution, all Members but a few representing the business sector considered that the minimum hourly wage rate of \$28 was indeed too low. Some Members even requested that it be repealed. As we all know, this rate simply cannot meet the needs of wage earners nowadays. Such being the case, why should its implementation be delayed any longer? Deputy President, the Civic Party absolutely supports Mr LEE Cheuk-yan's resolution, and we hope that this law can be implemented as early as possible, and there must be no more delay.

MS LI FUNG-YING (in Cantonese): Deputy President, I speak in support of Mr LEE Cheuk-yan's motion which seeks to designate 1 February 2011 as the effective date of the minimum wage. Deputy President, I support this motion because of one principle and three considerations. The principle I am talking

about is very clear, and that is, all wage earners in Hong Kong hope to see the early implementation of the minimum wage. Insofar as the three considerations are concerned, the first one is, as mentioned by many colleagues and me just now, the minimum wage rate was set at \$28 with reference to the wage data collected in the second quarter of 2009. There will be a time lag of more than two years even if the minimum wage comes into force on 1 February 2011. Despite the remark made by the Secretary just now, that he had already taken this factor into account, I feel that he has not presented adequate justification to convince us that the Government or the PMWC has taken into account the time lag of two years.

The second consideration is that inflation is more fierce than a tiger. According to the statistics compiled by the Government, after deducting inflation, the income of employees in the third quarter last year rose by -1.5% over the corresponding period in 2009, thus demonstrating that our wage earners have not been benefited because of economic growth. Furthermore, inflation in November last year alone was already close to 3%. These data indicate that a substantial portion of \$28 would have been eaten up, even if the minimum wage took immediate effect. In view of this, we have time and again expressed our hope that the Government can adopt other measures to complement the implementation of the minimum wage. I hope the Government can implement the minimum wage and conduct the review expeditiously.

Deputy President, the third consideration is that 1 February 2011 happens to be the eve of the Spring Festival. As the saying goes, "At the beginning of the year, everything will make a fresh start". I hope the Government's administration or labour relations can see a new scene at the beginning of a new year. Deputy President, in your speech just now, you said that it appeared to be too hasty to implement the minimum wage on 1 February. I think it will definitely not be too hasty to do so because we have had lengthy discussions on the minimum wage, while the primary legislation has been enacted for nearly a year. If the Government really needs more time, I personally would like to request the Secretary to announce that the minimum wage, even if it is to be implemented on 1 May, shall have retrospective effect from 1 February. As a member of the labour sector, I do not mind the Secretary saying that the minimum wage is to be implemented on 1 May, provided that it has retrospective effect from 1 February. I believe wage earners will find this acceptable, too. I hope the Secretary has heard our voices. Thank you, Deputy President.

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

MR PAUL TSE (in Cantonese): It is a surprise that I have to speak earlier than expected. Deputy President, after listening to Mr Ronny TONG's speech just now, I would also like to respond to the several points raised by him. Just now, he raised three points to explain under what circumstances the enforcement of a law had to be deferred. He mentioned I do not think I need to repeat his remarks as Members heard them just a few minutes ago.

Here is a document freshly issued by the Travel Industry Council, which seeks mainly to inform all of its members that the Labour Department has prepared a Subcommittee promotion session for the tourism sector by organizing a consultation and briefing session on the minimum wage for the hotel and tourism industries on 20 January 2011. If Mr Ronny TONG thinks that there is no problem at all, I hope he can try to answer some questions for us. Perhaps we can agree with him sooner and enforce the law earlier.

First, if tour leaders or tour guides are required to provide special services or assistance to their tour members late in the night because the latter feel unwell or because of other special matters, should the time thus spent be counted towards the number of hours worked? Second, if tour leaders or tour guides act according to the requests of their tour members or arrange for additional programmes after the conclusion of their itineraries, such as late-night meals, should the time thus spent be counted towards the number of hours worked? Third, if the tour leaders of short-haul outbound tour groups assembling and disbanding outside Hong Kong are assigned by their travel agencies to perform duty at the same locations outside Hong Kong, such as Shenzhen, on a long-term basis, should the time spent by them travelling from Hong Kong to these places be counted towards the number of hours worked?

I do not want to waste too much of Members' time. However, I would like to point out that, although these are all technical issues, concrete replies have not yet been received since the drafting of the legislation began. During the discussions held by the Bills Committee, the authorities cited 10 cases to pinpoint certain definitions in the Bill. If my memory is correct, five or six of those cases were related to the tourism sector.

Deputy President, why do the tourism sector and I think that the entire minimum wage framework has significant problems? Firstly, the hour, not the

month is used as the unit for calculation of minimum wage. It will be easier for the tourism sector to handle if the month is used as the unit for calculation. However, a lot of problems will arise if the hour is used instead. Secondly, the tourism industry is different from the types of work in many other sectors. For instance, there is a clear definition of working hours for office work. Even the working hours of the cleaning workers or security guards working in factories can be calculated easily, since it is very easy to calculate their working hours depending on the time when they clock-in and clock-out. But insofar as the tourism industry is concerned, as I have repeatedly mentioned, we provide 24-hour services seven days a week. The tourism industry is service-oriented. Very often, we provide round-the-clock services probably for the sake of tips, company requirements or even Hong Kong people's spirit of "giving priority to provision of services". Many problems will arise if an across-the-board method is adopted to force through the implementation of the minimum wage expeditiously. I raised only three issues just now, but actually a lot of questions are not yet answered. Nevertheless, I do not want to waste Members' time anymore.

Just now, Mr Ronny TONG raised this question: Are there any problems pending resolution? I said there were a lot of unresolved problems. He asked: Were there any issues necessitating adaptation? I said a lot of issues necessitated adaptation. He then asked: What hurdles needed to be removed? I said a lot of hurdles needed to be removed. The tourism sector is actually not yet ready to implement the minimum wage.

Just now, Mr Ronny TONG asked us why we should have failed to make early preparations as we had so much time and whether we intended to procrastinate by all means. He even made some extremely humiliating remarks, saying that we "would not kneel down until we reach the court". I do not understand why he should have made those feudalistic remarks. In order to reform the judicial procedure, the legal profession had spent a very long time on discussion and implementation to give practitioners in the profession time for adaptation and implementation by, for instance, training judges, court staff, lawyers, barristers, and so on. A transitional period was required to enable the people involved to make adaptation slowly rather than putting things into implementation immediately and hastily on the ground that the discussion had dragged on for a long time.

Deputy President, why would so many double standards emerge? Mr Ronny TONG always carries the word justice on his lips. In fact, right at the beginning, the Government specified 1 May 2011 as the expected date for the

minimum wage rate to be implemented after the enactment of the law. Many people in the profession consider this as a deadline or a timetable. It is an act of injustice should the deadline be now suddenly brought forward to 1 February, as this is a matter of expectation.

I wonder how Mr Ronny TONG will answer this question about justice. Deputy President, on the whole, we certainly think that it is necessary to protect the interests of employees. However, I have to emphasize once more that our capitalist society is going to adopt a major socialist indicator. As a result, it takes time to adapt and we cannot act hastily. Given that legal reform takes so much time for implementation and adaptation, why can the minimum wage law not given the same amount of time? The Government stated right at the beginning that a timeline would be drawn, but why did some people suddenly propose advancing the implementation? In this respect, even the consultation has not yet begun, and many problems have not yet been resolved.

Recently, there have been exceptionally numerous disputes over the work arrangements between tour leaders and their employers in the tourism sector. Such being the case, we hope to have ample time to enable everyone to adapt to this major reform rather than hastily certainly, from the angle of the labour side, I believe everyone wants to have the minimum wage implemented expeditiously. However, we must strike a balance in everything. This is why I have great reservations about this, for the timetable originally set is, in my opinion, already quite tight. Compared with the situation in the United Kingdom Just now, Mr Tommy CHEUNG mentioned that it took the United Kingdom more than a year to implement a minimum wage. In comparison, Hong Kong is already a lot faster.

In this respect, I hope Members can afford some time to achieve a reasonable, gradual and orderly process to make adaptation easier for the public. In particular, as criminal consequences may be involved, the issue is not simply about whether wages can be obtained before the Lunar New Year. We may possibly face numerous issues of criminality. In this respect, I understand that the catering sector has to face many problems, and so does the tourism sector. If the definition mentioned just now remains unresolved, I believe the minimum wage will meet a lot of difficulties in implementation. I have put forward my personal opinions on this. Moreover, we will oppose the motion which seeks to bring forward the implementation of the minimum wage. Thank you, Deputy President.

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

DR MARGARET NG (in Cantonese): Deputy President, I would like to respond briefly to some of the novel points raised by Mr Paul TSE, and that is, the tourism industry needs to make preparations after the enactment of the law and take various actions for its enforcement. In fact, Members should not act in this manner. This is particularly so for functional constituency Members. Very often, they have to bear the responsibility of explaining to the industry they represent right after a bill or policy has been proposed.

Just now, Mr Paul TSE mentioned the date of reforming judicial and civil proceedings. In fact, the Judiciary already told us the date of commencement a long time ago. Therefore, not only did we consult the sectors a long time ago, but we also arranged for some seminars to enable more people associated with the sectors to make early preparations. Deputy President, perhaps you will also remember that we were worried that people might find it difficult to adapt after the introduction of the bill, particularly the details of its regulations. Therefore, we set up a committee for this special purpose to enable consultation to be held before the regulations are available.

Deputy President, it is perfectly normal for us to make prior preparations having regard to the needs of each bill. For instance, in the case of the fair competition law, the legal profession made a lot of advance preparations. As the concepts and terms and expressions used in the Fair Competition Bill are different from the commonly used concepts, we began making preparations a long time ago. We have indeed examined numerous bills before. Have Members ever heard someone say that a certain law cannot be implemented because the industry has not yet made proper preparations? Of course, there are such cases. However, requests were made in the Bills Committee in most of these cases, and the Government would also strive to make complementary efforts. One of the most recent examples is the arbitration legislation. During the discussion on whether the local arbitration system could be merged with the international arbitration system when the bill was under examination, a very long consultation period was provided as far as I can remember, yet some people in the industry were still not informed. Therefore, after the passage of the bill, there were still requests calling for deferment. Although the Government had thought hard to respond and allow some more time, it fell short of postponing the commencement date of the ordinance as a result of this. Furthermore, there are some bills of great urgency, such as the bill on the special (or extra) stamp duty, which is

currently being scrutinized. Some people in the industry also pointed out during the consultation that legislation had to be enacted in a specific manner, or else they would be affected when the law was to be enforced in future.

Deputy President, I wish to explain that a bill is very often intended to ameliorate or remove certain unfairness in society or respond to certain new needs. Therefore, we cannot afford to wait slowly even after the passage or enactment of legislation. Some laws, such as the law relating to interception of communications, even needs to take immediate effect.

It is simply unfair for us to use the abovementioned logic to call for deferment in handling the minimum wage issue. The issue of justice, as mentioned by Mr Ronny TONG just now, is based on this rationale, unless Members disagree with the prescription of a minimum wage (but prescribing a minimum wage is definitely Mr Paul TSE's basic stance). If Mr TSE agrees, and given the passage of this bill by this Council, the commencement of the Ordinance should not be postponed on the ground that some sectors do not know what to do. It is impossible to wait until proper preparations have been made before the Ordinance can take effect.

Deputy President, now the authorities have proposed that the SMW rate take effect on 1 May. Should the commencement of the SMW rate be deferred if proper preparations have not yet been made? In my opinion, many issues have to be resolved during the examination of the bill to enable it to be implemented smoothly in enforcement, and I consider it our responsibility to do so. However, I find the justification quite weak if certain industries find that some areas in the law already passed are still unclear and thus disagree that the SMW rate should take effect on a certain date.

In fact, there is still time for preparations even it is now proposed that the SMW rate take effect on 1 February. Therefore, Deputy President, I had absolutely no intention to speak originally with respect to this part because I think that the rationale has been stated very clearly — now there has already been a very long delay, and some people have been subject to unfairment treatment continuously. Nevertheless, Deputy President, given the views put forward by someone today, I find it necessary to respond that many such precedents can be found here in this Council, and I think an explanation is in order. I have nothing else to say.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): To begin with, Deputy President, I would like to thank the 13 Honourable Members for their speeches.

I must point out that, when the Minimum Wage Bill was tabled to the Legislative Council the year before last, the Government already made it clear that about six months would be reserved to allow people from all walks of life in the community — I stress that I was referring to people from all walks of life, not just the Government — to make full preparations for the implementation of the statutory minimum wage (SMW). As mentioned by Mr LEE Cheuk-yan just now, we stated six months at the outset, and there was a high degree of transparency in the planning process. Moreover, the six-month period was not announced only recently. As Members are well aware, the notice for the setting of the initial SMW rate was published in the Gazette on 12 November last year, and then it was made clear that the implementation of the SMW rate would commence on 1 May this year to give the community about six months to make full preparations. I really have to emphasize that we are neither procrastinating nor imposing hurdles. If someone asked me, I would say that I earnestly wish to implement the SMW rate expeditiously, but I must take account of the reality. We must act in a pragmatic manner.

SMW is a novelty. It is a new regime, too. Not only will professionals be affected, but various strata in the entire community, including the grassroots, the management, the business sector and the operation of the Government will be affected. Therefore, it is very important that people from all walks of life in the community are really given time to make proper preparations and carry out education. In fact, I already explained to Members on the previous occasion that, after the enactment of the principal ordinance, we received views from a number of deputations indicating that six months' preparation time was essential. This was not only the unilateral thinking of the Government, but also the aspiration of a number of deputations. The reason is, after the setting of the initial SMW rate, a number of organizations need to examine the prices of goods

or services stated in commercial contracts. Some owners' corporations (OCs) also need to make adaptations to new cleaning or security services contracts and management fees. This is a practical issue. In the process, many OCs need to convey special meetings as well as allowing notification periods, for some notifications may take 49 days. Moreover, in some cases, there are a lot of conditions to comply with, and then tenders need to be invited.

Deputy President, increases cannot be effected instantly, as a high degree of transparency is required and a lot of disputes will arise, too. As we all know, it is not easy to raise management fees, and there must be a process. Everything, including building management, has democratic elements, and their constitutions must be observed. Therefore, time cannot be compressed any further. It takes time to make preparations for what was mentioned just now, including tendering, communication, financial arrangements and administrative work.

We also received a lot of views from many deputations at that time, and we share their views. In fact, stakeholders had persistently reflected their views during the consultation held by the Provisional Minimum Wage Commission. We have therefore formed view that having regard to these aspirations, it is necessary and appropriate to allow six months' time. In fact, there is a need to do so.

Just as the previous undertaking made by me, the Labour Department (LD) will launch extensive publicity and promotion before the SMW regime comes into operation in order to deepen the public understanding of various SMW provisions. As the SMW rate of \$28 was not endorsed until two hours ago, the formal announcement of this message can only be made now. We could not jump the gun before that, as we must respect the entire procedure of the Legislative Council. The SMW rate of \$28 was newly passed to become law. In fact, we already started counting six months from November last year when the notice was published in the Gazette rather than today. We are extremely fair in counting six months from the publication in the Gazette, and this is why 1 May has been designated as the effective date.

Furthermore, we must bear in mind that, as rightly pointed out by Mr Paul TSE just now, the tripartite committees in many different trades and industries need to formulate guidelines. In this connection, we have to discuss some details with the trades and industries in the hope of protecting the interest of

employees and pre-empting disputes. If the SMW rate is implemented hastily, we will end up with a string of unresolved problems, and finally, labour disputes, street protests and controversies. Is all this what Members would like to see? In fact, it will not do workers any good by bringing forward the implementation of the SMW rate for three months but leaving the entire community in confusion.

The third point is, we must bear in mind that in Hong Kong we have a lot of small and medium enterprises (SMEs) and elementary employees. We really need more time to conduct publicity and promotion to make both parties understand their responsibilities and rights: while employers of SMEs should know about their responsibilities and rights, employees must be clear about their own rights. Honestly, colleagues in the LD have not had any leave during the past couple of months. Should anyone think that the LD would sneak off or take a short break during the summer holidays, I must tell them that we have taken neither any break nor day-off during the summer holidays. What did we do throughout the summer holidays? We were formulating the guidelines. Comprising more than 30 pages, the extremely thick guidelines was already presented to the Panel on Manpower and the Labour Advisory Board last month. In addition to the guidelines, there are also some trade guidelines focusing on certain individual trades and industries, including the tourism, logistics, retail and catering sectors. There are also guidelines on how to deal with the periods during which employees are required to "leave the field". As Members should know, these are issues we need to address. In many such cases, the issues cannot be resolved by law. So, what is the best solution? The answer is that a consensus must be reached by all parties involved. In fact, this is good for both trade unions and the Government. Hence, it is worthwhile for all of us to wait several months.

As mentioned by me just now, we will prepare the final draft of the guidelines expeditiously (as some of its contents are currently under revision), and the Panel will discuss the matter again before a formal announcement is made. Furthermore, some Announcement of Public Interests (APIs) will be launched shortly, as the minimum wage rate has now been set at \$28. The APIs will be shown during prime time, but we need time to plan for and promote all this.

On the other hand, as Members should understand this very well, we have to take care of the well-being of people with disabilities because we are

concerned about whether the SMW rate will affect their job opportunities. Therefore, we need to make arrangements to evaluate the productivity of people with disabilities. Moreover, we are required to table to the Legislative Council subsidiary legislation on the eligibility of the recognized assessors and assessment methods. As such information has not yet been presented to the Legislative Council, the legislative process is actually not yet completed. So, how can we implement the SMW rate on 1 February? This part is very important. How should the productivity of people with disabilities be assessed? What mechanism should be adopted for conducting the assessment? On what legal basis should the assessment be conducted? Who should play the role as assessors? No guidelines have been formulated on all these.

Therefore, Mr LEE must understand that we have exerted our utmost to push ahead in accordance with the timetable, without idling for even one minute. Members must also understand that we have to spend time recruiting, evaluating and training the assessors. Last month, I explained at a panel meeting that we would undertake a series of work and give another account of the latest progress at the panel meeting to be held on the 20th of this month. Subsidiary legislation will be introduced shortly, but its scrutiny also takes time.

Deputy President, I have time and again emphasized that the six months' preparation time can reasonably balance the interests of the community, employers and employees, and it is necessary to do so. Mr Tommy CHEUNG was right in mentioning the United Kingdom practice at the beginning. The country was given nearly one year's time to implement the minimum wage, whereas we are now given six months only. I recall that when we proposed more than two years ago that a minimum wage be formulated, the first thing my colleagues reflected to me was that the United Kingdom had a transitional period of nearly one year. I told them we could not follow their example as Hong Kong could not possibly wait. I was aware of the great significance of the interest of grass-roots workers, and six months was already the most we could have. Hence, Members should know it very well at that time we did not play any tricks, and the remark that a six-month period would be needed was not made only recently. We already pointed out at the very beginning that six months would be needed. Instead of copying the United Kingdom practice in adopting a one-year transitional period, we have opted for six months. Because of Hong Kong's unique situation and the fact that more grass-roots workers require protection, I think that a six-month period can already strike a balance among all

aspects, and there is really a practical need to do so. Mr LEE, you must understand and sympathize with the difficulties faced by us.

Furthermore, I also hope Members can understand that the timetable for enforcing this law is pretty serious, and no more grace period will be given. I could accede to your request by saying that there would be no problems in implementing the SMW rate on 1 February, but it would be meaningless if a six-month grace period had to be offered. There will be no grace period if the SMW rate is implemented on 1 May. By then, we will exert our utmost to enforce the law. In other words, if employers do not comply with the law on 1 May, prosecutions will be instituted. We are being very serious. The waiting period is absolutely worthwhile, as we will enforce the law very seriously. After 1 May, employers will have no more excuses. Neither can they say they do not understand nor something like "sorry, I am not ready yet". 1 May has to be the day. Therefore, the Labour Day will be an important epoch-making day when the minimum wage will be put into full operation and implementation.

What is more, there is a series of outstanding work, as mentioned by me just now. Mr LEE, please think about this. If the SMW rate were to be implemented on 1 February, we would have only several weeks, or less than a month. There were bound to be chaos and mistakes if so many tasks had to be accomplished within such a short period of time. Neither would it be possible to achieve this. Therefore, having regard to the overall situation, I hope Members can understand that our purpose is to protect employees and balance the practical needs on all fronts. Therefore, it is necessary to do so.

I would like to respond to several points briefly. Regarding the hope expressed by both Mr TAM Yiu-chung and Mr WONG Kwok-hing that some employers need not wait until 1 May if they can implement the SMW rate now, can they implement the SMW rate earlier? In fact, I am absolutely pleased to urge employers to do so, and some employers have already started doing that. According to my understanding, some companies, such as the MTR Corporation Limited, already implemented the minimum wage on 1 January. I will definitely promote this message. If employers are capable of doing so, why don't they do so? This is good not only for everyone, but also for boosting employees' morale, so that they will work with greater dedication.

Secondly, I would also like to say a few words about the annual review mentioned by them. As Members should be aware, I am actually very concerned about the interest of workers. Not only do I hope they can enjoy minimum wage earlier, but I also know that Members are very much concerned about the outdated data. I can tell Members that, according to our timetable, the latest data will be available in February. In other words, after the implementation of the SMW rate in 2011, the data of the second quarter of 2011 will be available around February 2012. I undertake that the review will be activated immediately upon receipt of the data. This is not only my undertaking, but also my greatest effort, as no review can be conducted without the data. Members have often asked: Why does the Government not conduct the review earlier? Now, the review will be conducted in less than a year's time, not one year later, as the SMW rate will not be implemented until May, and the review will be activated upon receipt of the data in February or March next year. This demonstrates our greatest sincerity in getting things done.

Lastly, Mr LEE, I am sorry I have to appeal to Members to vote against your motion. Thank you.

DEPUTY PRESIDENT (in Cantonese): I now call upon Mr LEE Cheuk-yan to reply. This debate will come to a close after Mr LEE Cheuk-yan has replied.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, after listening to the last part of the Secretary's speech, I found that it was exactly the issue mentioned by me in my first speech concerning the review timetable. I find the Secretary's remark unacceptable. Why? Actually, I have all along maintained that if the data are collected after the implementation of the SMW in 2011, this would mean that the data would not be obtained until early 2012. With the data being obtained in early 2012, how much time do Members think, according to our experience, it will take the Provisional Minimum Wage Commission to determine the latest minimum wage level? That will take approximately six to nine months. Fine, if nine months are used as the basis for our calculation, the outcome of the review should be available by late 2012 for tabling to the Legislative Council for examination. When it is tabled to the Legislative Council for examination in 2012, it might already be the new Legislative Council, if things do not work out. Fine, the second review might take place in 2013. Let us imagine this. Now, the SMW rate is going to take effect on 1 May 2011.

There will be a lapse of one and a half years when it comes to early 2013, when the second review should take place. This means that the data will have a lag of two years. The next batch of data will then have a lag of one and a half years. How can we wait for the review to be conducted?

I would like to request the Secretary to listen clearly to the request I made just now: the data for 2010 will actually be available in 2011, which means that the review can already be activated in 2011. Even the Secretary agreed just now that the data for 2010 would be available in February 2011. So, why should I wait until 2012 before the review of the data for 2011 can be conducted? Has the Administration not swallowed the data for 2010? The year 2010 appears to be useless and have been discarded. We were merely hoping to put forward proposals. If the Secretary really hopes to help the workers, he can actually review the data for 2010. If such data are used to review the hourly wage of \$28, it can be seen that the impact of setting the SMW rate at \$28 is actually even smaller. This is because we believe that both inflation and changes in wages since 2009 will bring changes to the data as a whole. In that case, the review can actually be activated. This is why I wish to request the Secretary to activate the review rather than doing so only in 2012 when the data will be obtained. I hope the Secretary can now activate the review immediately after the latest data are obtained in February 2011. Such being the case, the second review will hopefully be conducted in 2012. The Secretary may probably say that the first review will be conducted on 1 May 2012, and then 2020 I have indeed mentioned too many dates, May 2010 the first review in 2011 it is too bad that I have forgotten which year is today. The first review is to be conducted in May 2011, and we have to wait until 2012 if the second review is to take place in 2012, does it not mean that the second review will be conducted in less than a year's time? This is why I request that the review should commence on 1 February 2011. Should we begin collecting the data for 2010 on 1 February this year, the second review can be conducted next year, or one year after. This is why my timetable is different from that of the Secretary on all counts. Concerning the review timetable, I hope this is what the timetable will be like. I must state this point very clearly.

Certainly, I agree with the Secretary that I have proposed a timetable which is very different from his, for he stated right at the beginning that six months would be required, while I pointed out at the beginning that six months would not be needed. Both of us are open and aboveboard, only that the Secretary is using six months to procrastinate. In fact, the guidelines he mentioned just now have

nothing to do with \$28. All those guidelines seek to illustrate one point, and that is, how to interpret the law. Given that the law was already enacted in July, I do not understand why we should have to wait until nearly mid-December last year before the general guidelines for all the trades and industries could be finalized, and then the guidelines concerning all the trades and industries involved were further broken down into smaller items for discussion. If the authorities have been reviewing this law, all these things should have been clarified, and the final draft of the guidelines could have been issued in July. In fact, the enterprises can review the legislation while drafting the guidelines, as the latter are based on the former. Given that the law was already enacted in July, the Secretary now seeks to procrastinate the final version of the guidelines and then tells us that it is not yet ready, as the guidelines have not been sorted out properly. I think it is unfair of the Secretary to act in this manner. Nevertheless, the timetable is controlled entirely by the authorities, and everything is manipulated by them. If they are determined to act slowly in this respect, they can then tell us that things have not been sorted out properly. However, I disagree completely that the situation will turn chaotic if there are no guidelines.

In fact, the employers will examine the law and learn about the relevant requirements. During the discussion held by the Bills Committee over the past year or so, all the problems were already raised and the employers should have gained a pretty clear idea of the problems. For instance, Mr Tommy CHEUNG has explained to the industry represented by him on three occasions. Not only has he done everything, but he is also aware of where the problems lie. All the problems were already raised in the Bills Committee a long time ago, whether by Mr Tommy CHEUNG or other business representatives. So, are there any other problems? All the problems were actually raised a long time ago. Therefore, I think that the Government is controlling the timing of the entire incident. In fact, it has all along intended to postpone the matter until 1 May this year. The Government now tells us again that everything will be in a mess if the SMW rate takes immediate effect. I do not believe that everything will be in a mess if the implementation of the SMW rate is brought forward by three months. I think that the employers have already made preparations. I also mean to say that they have all prepared to raise fee and charges. How can the Government say that there is no enough time for preparations to be made if wages are to be increased when all preparations have been made when it comes to raising fees and charges?

On the other hand, Deputy President, there is one particular point I wish to raise, and I must do so no matter what happens, and that is, I am very worried

about one point raised by Mr Tommy CHEUNG as I think that his views reflect his misunderstanding of the entire law. Mr CHEUNG has suggested that employers should be given time to discuss afresh the contracts they have signed with their employees. The new wage law as a whole does not touch on any original contracts, only that if it is found after calculating the minimum wage rate specified in the original contracts and the number of hours worked that the SMW rate is higher, the shortfall will have to be paid, whereas nothing would need to be done if the SMW rate turns out to be lower. Therefore, it is absolutely unnecessary to revise the original contracts. Fine. Mr Tommy CHEUNG may then say, "No. The catering industry would like to discuss afresh how arrangements can be made for rest days as things were not sorted out clearly in the past and they have to be sorted out clearly now." Should that be the case, I would be very frightened. What does it mean by saying that things have to be sorted out clearly now as they were not clear in the past. Were things not sorted out clearly in the past? In other words, does it mean that rest days were paid in the past, whereas it is now made clearly that rest days are not paid. Should that be the case, we will be in deep trouble, for this means that contracts will have to be revised. The last thing I wish to see is employers taking the opportunity to revise contracts.

Of course, the Secretary will say later in the meeting though he cannot make a response later. Nevertheless, let me guess what he will say as I have discussed with him numerous times before. He will definitely say the employers cannot revise the contracts unilaterally. I certainly understand this. However, the employers may compel their employees to revise the contracts with the consent of both parties, so to speak. On the contrary, I hope that either the Government or Members of this Council can give the community a clear message that the contracts should not be revised because it is unreasonable of the employers to take the opportunity to revise the contracts, saying that the contracts were previously unclear. Even if it was not previously stated that the rest days were paid, this had actually been implied or was evident in the computations. For instance, we can simply tell whether wages are paid for Sundays and rest days from the way wages are paid to employees. If the wages are divided by 30, it means that the rest days are not paid. If the wages are divided by 26, it means that the rest days are unpaid. All these were taken into account in the past, so there was no question of payment of wages being unclear. My worry is the employers may say that the payment of wages was unclear in the past, but now they would like their employees know clearly that the rest days are not paid. Then, they will deduct their workers' wages, reduce their monthly wages and

discount all the wages previously paid for their rest days by first deducting \$500 from their monthly wages and then calculating their hourly wage according to the minimum wage rate. This will lead to exploitation of the employees, and it is my greatest worry.

To a certain extent, the Café de Coral incident is similar, for its employees originally enjoyed paid meal breaks. It was perfectly clear that their meal breaks were paid originally, though revision was made later to render their meal breaks not paid. After the revision, several hundred dollars were deducted from the employees' wages. Even though they can now earn the minimum wage, they may only get back several hundred dollars or even see their wages reduced rather than increased. As a result, they have run into greater trouble. This is why I must tell Mr Tommy CHEUNG and all trades and industries that the new law does not require them to revise the contracts. So, please do not take the opportunity to revise the contracts. This is my hope. Moreover, I would like to urge the employers to respect the minimum wage law and the fact that the new legislation is meant to improve the wages of employees and protect them. Please do not deduct their wages in other respects. Therefore, I hope the Secretary — I have already pointed out during the discussion held by the Panel on Manpower that the relevant guidelines should specify clearly — the guidelines should advise the employers that they need not and should not revise the contracts. Thank you, Deputy President.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

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

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

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

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

Functional Constituencies:

Dr Margaret NG, 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 motion.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Ms Miriam LAU, Mr Timothy FOK, Mr Tommy CHEUNG, Mr Vincent FANG, 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 motion.

Geographical Constituencies:

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

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 motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, seven were in favour of the motion and 13 against it; while among the Members returned by geographical constituencies through direct elections, 24 were present, 16 were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Third motion: Amending the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010.

I now call upon Mr IP Wai-ming to speak and move the motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR IP WAI-MING (in Cantonese): President, I move that the motion under my name be passed.

President, the motion moved by me today seeks mainly to amend the Ninth Schedule as stipulated in the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010 such that the monthly monetary cap for exempting employers from keeping records of the total number of hours worked of employees under the Minimum Wage Ordinance can be raised from \$11,500 per month to \$20,000 per month. President, the monetary cap proposed by the Labour and Welfare Bureau has in fact used the data for the second quarter of 2009. At that time, the median wage was \$11,500 and so the amount was used by the authorities as the exemption cap. This is meant to facilitate enforcement and reduce the administrative work of employers. However, President, this is precisely my concern and the reason why I proposed this motion. And it is also a concern for the Rights and Benefits Committee of the Hong Kong Federation of

Trade Unions as well as many trade unions. It is because only half of the legislative work for minimum wage protection has completed and what we have now is only a minimum wage but no standard working hours. When the Government proposed that \$11,500 should be made the monetary cap for exemption, it did not propose any standard working hours. Just imagine how long wage earners have to work before they can get the minimum wage? For workers whose salary is more than \$11,500, their records of hours worked may not come under such regulation because employers are exempted from keeping records of hours worked by these employees. Hence some employers may ask workers to work longer hours without pay.

In our opinion, with the Government doing this, it is like conjuring up a devil for the employers so that they can offset the minimum wage by working hours. For example, work that is used to be done by two persons in shifts may now be done by one person and the shift system is abolished. The working hours may therefore increase substantially. The result is that workers will work harder, but the hourly wage they get will not be increased. Therefore, I demand in my motion that this monetary cap for exemption be raised so that employers cannot play any tricks with working hours and they are prevented from using this method to offset the minimum wage and hence exploit the employees *de facto*. This proposal can also reduce the disputes among the employers and employees over working hours.

President, some Honourable colleagues and the Government may think that \$11,500 is already a very high level and question why we still want to raise this cap. The fact is, according to what we and the trade unions know, workers engaging in some low-pay jobs actually have very long working hours and their salary may only be somewhere between some \$12,000 and some \$13,000. We can even see that in the logistics trade, the workers may have a monthly salary ranges from \$15,000 to \$20,000, but actually their working hours may be as long as 13 to 14 hours a day or even longer. In this way, their hourly wage may not even reach the minimum wage rate.

President, in the labour market now, the wages of workers may be calculated in different ways. These include monthly salary, hourly wage, hourly wage on a monthly basis, piece rate or wage calculated on a part-time

employment basis, and so on. If the monetary cap for exemption from keeping records of hours worked is set at a level which is too low, some employers may make use of this chance to exploit workers. If the monthly salary of \$11,500 is divided by the minimum wage rate of \$28 per hour, an employee will have to work for about 15 hours a day. Members may think that such things may not happen very often, but in real life, such things do happen. Many employees really have to work such long hours. The trade union of security guards has told us that many security guards and cleaning workers often work continuously for one and a half shifts or even two shifts because they want to earn more money or at the request of their employers. For these employees, it is common for them to work continuously for 10 to 20 hours. Therefore, after the Minimum Wage Ordinance (MWO) has come into force, apart from hoping that the low-pay employees can be protected, we also hope that employers will not use the present exemption cap or other cunning tricks to exploit the workers and evade regulation of the MWO.

For trades in which employees work irregular hours or have to go on business trips very often, such as tour leaders or cross-boundary container truck drivers, their working hours and nature of work are rather special and they may be required to work long hours. Although the Labour Department has published the guidelines on statutory minimum wage (SMW) sometime ago, there are still grey areas in the definition of hours worked and rest breaks. Therefore, we think that a clear record of hours worked will help reduce disputes between both parties. On top of that, the pay for the abovementioned occupations would often exceed the cap of \$11,500.

President, in our opinion, if \$11,500 is specified as the monthly monetary cap for exempting employers from keeping records of the total number of hours worked of employees, for employees earning more than \$11,500, we are afraid that some employers may raise the salary of these employees to \$12,000 so that they can enjoy exemption. These employees may then often be asked by their employers to work overtime without pay. For employees earning less than \$11,500, they may be asked by their employers to reduce their working hours. In this way, the employers can juggle with the pay and working hours to offset the increase in costs brought about by the implementation of minimum wage.

Therefore, with respect to the issue of exempting the keeping of records of hours worked, it is not only workers at the lowest levels who will be affected. What we hope Members to show their concern about are those people with an hourly wage of more than \$28 or less than \$40. They may be the ones who are mercilessly exploited, for they may be asked by their employers to work overtime without pay. We are afraid that these people may be asked to do some work that they were not required to do before in order to make up for the reduced workload caused by the implementation of minimum wage. But irrespective of how long these employees may have worked, there is no record, which is unfair to the wage earners. I am sure the problems of overtime work and hours worked without pay will only worsen.

President, many Honourable colleagues from the business sector may say that raising the monetary cap for exemption may lead to rising costs for companies. But we should note that only a card is required to record the hours worked. The law has not required the employers must use cards and if only a book is used, the purpose of keeping records of hours worked can be fulfilled. Are employers not willing to provide even such cards? If it is said that keeping records of hours worked will cause a great burden in terms of costs, we think that many companies and enterprises should have ceased using the time recorders a long time ago. If even the use of cards to keep a record of the hours worked can increase the costs substantially, I am sure many wage earners will support the idea of stopping the use of time recorders in their companies.

Why is it that it is considered costs for employers to record hours worked but it is not considered as a kind of costs when so many wage earners have to work without pay? In our opinion, when the Government is considering the worries of the business sector, it should also understand the work costs paid by workers. I do not quite believe that keeping records of hours worked will only benefit the employees while the employers will not get any benefits at all.

President, we hold that keeping records of hours worked is good to both employers and employees alike. On the one hand, it can prevent employers from making excessive demands on the employees to work overtime, and reduce the situation of employees coming in to the office late or leaving the office early on the other. We think that it is the most basic requirement in law to require employers to keep records of hours worked. For the employers, the amount of

resources increased is very limited, or it can be said that there is no effect on that at all.

As for the point that there are difficulties in keeping records of hours worked in some trades, such as in the tourism trade which stresses difficulties in relation to mandatory keeping of records of hours worked. However, I wish to point out that it is only a matter of convention such records are not kept in these trades, not that keeping such records is impossible. If tourist guides really have to serve tour members late into the night, that is work done by all means. So why can it not be shown in such records, and why can details of work done not be shown there either? We therefore think that it is only a case of them not wanting to do it, not that it cannot be done.

Finally, President, I wish to talk about the reasons why we want to raise the monetary cap for exemption to \$20,000. There are two reasons why our Rights and Benefits Committee set this amount. First, the amount of \$20,000 is a much higher amount than \$11,500. In our opinion, it is only when an exemption cap with a greater difference is set that employers will not think of making the working hours longer to offset the effect of the minimum wage. This will truly benefit workers earning the minimum wage.

Second, if we review the report on wages and payroll statistics compiled by the Census and Statistics Department (C&SD), we will find that the average monthly salary for trades in general in Hong Kong is less than \$20,000. So if \$20,000 is made the monetary cap for exempting employers from keeping records of hours worked, that should be able to cover the staff at middle and lower levels in most of the trades and reduce the chances of them being asked by their employers to work overtime without pay. This can also provide a basis for our study on the issue of standard working hours and the related legislative work.

It is due to these two reasons that I have proposed this motion. I hope Honourable colleagues can begin to consider the issue of standard working hours apart from caring about the issue of minimum wage. This is because the two issues of wage and working hours cannot be separated. I hope Honourable colleagues can support my motion. Thank you, President.

Mr IP Wai-ming moved the following motion:

"RESOLVED that the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010, published in the Gazette as Legal Notice No. 148 of 2010 and laid on the table of the Legislative Council on 17 November 2010, be amended as set out in the Schedule.

Schedule

Amendment to Employment Ordinance
(Amendment of Ninth Schedule) Notice 2010

1. Section 3 substituted
Section 3 —
Repeal the section
Substitute
- "3. Ninth Schedule amended
Ninth Schedule, before "per month" —
Add
"\$20,000"."."

PRESIDENT (in Cantonese): The time now is 30 minutes past eight o'clock in the evening. I will suspend the meeting at about 10 o'clock until 2.30 pm tomorrow.

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010 specifies \$11,500 as the monthly monetary cap for exempting employers from keeping records of the total number of hours worked of employees. Mr IP Wai-ming's motion raises the relevant amount substantially to \$20,000. I believe Mr IP has proposed this motion entirely out of good intentions. I understand that perfectly, but this practice is totally unnecessary and it will add to the administrative costs of the small and medium enterprises (SMEs). Therefore, we do not support this

motion from Mr IP. President, I will respond in greater detail and in a comprehensive manner to the views put forward by Members when I speak for the second time. Thank you, President.

MR TAM YIU-CHUNG (in Cantonese): President, again in my capacity as Chairman of the Subcommittee on Subsidiary Legislation Relating to Statutory Minimum Wage, I report on the deliberations of the Subcommittee on the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010.

With respect to the monthly monetary cap for exempting employers from keeping records of hours worked by employees, some Members think that the amount of \$11,500 is an appropriate cap. Some other Members think that the cap should be raised to \$20,000. However, there are also some other Members who think that the cap of \$11,500 is too high.

The Administration has explained that \$11,500 is the median monthly wage identified in the 2009 Annual Earnings and Hours Survey covering 50% of the total number of employees. The monetary cap has been determined having regard to the need to enforce the SMW requirements, the initial SMW rate, the working pattern of low-pay sectors and the need to minimize the administrative burden on employers. The Administration has stressed that the monetary cap itself does not affect an employee's entitlement to receiving wages not less than the SMW rate. With respect to the monetary cap, Mr IP Wai-ming will move a motion on the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010 to raise the monthly monetary cap from \$11,500 to \$20,000.

President, the following are my personal view and that of the DAB as well as our suggestions.

The minimum wage regime is a social institution with far-reaching effects. The DAB has all along thought that the implementation of any new institution should minimize the administrative burden of the sectors concerned. The Minimum Wage Bill originally required companies to keep records of the total number of hours worked of all employees. During the consultation exercise we received many views, especially those from SMEs and small shops. They thought that a line should be drawn and there was no need to keep records of hours worked for high-salaried staff. For if not, the policy would cause much

inconvenience to them. Last year, in the Committee stage the Administration moved an amendment to exempt employers from keeping records of the total number of hours worked for employees whose salary reached a certain specified amount. The Employment Ordinance (Amendment of Ninth Schedule) Notice 2010 has confirmed that the specified amount should be \$11,500. I think the amount is appropriate. This is because when the monthly salary of \$11,500 is divided by \$28 for each hour worked the total hours worked will then be 410 hours. When divided by 26 working days, it means 16 hours of work every day. This would be sufficient to reflect the working situation of workers in general. If the specified amount is raised to \$20,000, and if the number of working hours per day is pitched at eight hours, then records of the hours worked for 2.08 million employees will have to be kept. This is much more than the close to 800 000 employees affected by the amount of \$11,500 in the Notice. Hence the cap proposed by Mr IP may lead to a great surge in social cost and in our opinion, this would be unnecessary.

With these remarks, I support the original Notice.

MR VINCENT FANG (in Cantonese): President, many people say that Members of this Council from the business sector are very passive and we would often vote against some issues that have an important bearing on the general public. Even if we have sufficient grounds to oppose such motions, we would be branded by Honourable colleagues who raise such topics that we from the business sector are not caring about the people's livelihood and the life and death of the general public. However, if I am to support a motion, I will have to examine if its contents are reasonable and that the general public can really benefit. If there were such proposals only aimed at winning kudos, without any realistic possibility of implementation, one obvious example must be the motion proposed by Mr IP Wai-ming on the subsidiary legislation relating to minimum wage, which seeks to add "\$20,000" before "per month" in the Ninth Schedule of the Ordinance.

As specified in amendment made to the Employment Ordinance by the Minimum Wage Ordinance (MWO), apart from keeping records of many items of information, employers are required to keep records of the total number of hours worked for their employees earning less than \$11,500 per month after the minimum wage has come into force. Such a monetary cap is listed in the Ninth

Schedule. Upon receiving complaints about this matter, the Labour Department is authorized to check such records of the employers. The main objective is to protect the staff earning a monthly wage less than that specified amount from the exploitation of employers who may ask them to work long hours to offset the payment of a wage that seems to be higher than before.

The motion moved by Mr IP is aimed at raising the monthly monetary cap for exempting employers from keeping records of the total number of hours worked of employees from \$11,500 per month to \$20,000. The aim is obvious enough, that is, to extend the scope of records of hours worked of employees that are subject to checking so as to prevent employers from requiring their staff to work long hours after the implementation of the minimum wage law. Longer working hours may be imposed by employers so that the wages of their employees will not reach the statutory minimum wage rate when it is spread out over the long working hours.

President, \$20,000 is the monthly salary of many people in supervisory positions and such people are not the kind of employees which the MWO seeks to protect. We also agree that the aim of the MWO is to protect employees who are less competitive so that they will not be exploited by unscrupulous employers in terms of wages.

Take someone with a monthly pay of \$11,500 as an example. If he works 30 days a month, then even if the proposed hourly wage of \$28 is applied, he has to work 13.7 hours a day. And if the cap of \$20,000 as proposed in the amendment is used for calculation, and if that person works 30 days a month, it will mean that he has to work 23.8 hours a day, almost 24 hours. The facts show that the proposed amendment is not realistic at all. The present wage cap of \$11,500 is sufficient in protecting the employees from exploitation.

If the monetary cap is raised to \$20,000, as a general rule, many SMEs will need to keep records of hours worked by all of their employees. This will oblige the companies to set aside more resources to cope with the implementation of the MWO and hence more preparations will have to be made. I have great doubts about SMEs can ever sustain such a burden.

In the retail and wholesale sectors, there are many SMEs and trades selling daily necessities to the grassroots, such as those selling fish, meat, vegetables,

fruits, and so on. Recently, my office has received their enquiries and phone calls about how minimum wage should be calculated in order that they would not contravene the Ordinance. As we all know, business in the wholesale markets is getting worse and the employers are unwilling to dismiss employees who have worked with them for years. In a bid to take forward the minimum wage legislation, the Government increases the rents for the wholesale markets, but the tenants dare not raise the wholesale prices. The reason is that the public has become more frugal in the face of inflation. On the other hand, operation costs are rising, leading to falling business income. How can this not lead to a disparity between the rich and the poor? It is the Treasury that is growing rich and those who are poor are not just the wage earners but also the small enterprises. I hope Honourable colleagues can pay attention to this state of affairs.

The amendment will not work. For the companies concerned have to spend more resources, hence their operation will be subject to great pressure. The result is that wage earners will have to suffer the disadvantages before they can ever enjoy the benefits. Would we want such an amendment?

President, when this Council is to enact legislation, often times Members will propose some amendments which are close to the demands of the community or the views of the trades concerned. This is exactly the original function of this Council in including representatives from different trades and social classes. But any amendment proposed by us should carry consideration of the realistic conditions, practicalities and justifications. Unfortunately, in the Council nowadays, Members often make proposals that will not work and only serve to intensify social conflicts. An example is this amendment before us. As I have pointed out in my analysis just now, there is actually no justification for it. But we cannot just ignore it, we have to vote against it. But then they will say that the business sector is opposed to legislating for minimum wage. This makes the wage earners become more hostile to the business sector and employers. Who, I must ask, caused this kind of animosity towards the business sector? In Hong Kong, more than 95% of the companies are SMEs and in the retail and wholesale sectors, 99% of the companies are SMEs and large enterprises account for only 1%. Practically, I need not as a Legislative Council Member fight for any rights for them.

President, I am a Member representing the business sector. I would not mind being chided by people once more, but I will oppose this motion. I so submit. Thank you, President.

MR WONG SING-CHI (in Cantonese): President, the Democratic Party can hardly support the motion moved by Mr IP Wai-ming. We in the Democratic Party hold that we must be very careful in striking a balance between fighting for the formulation of a long-term manpower and labour policy, and implementing the existing measures. As we all know, SMW and statutory standard working hours are the two legitimate rights which workers in Hong Kong have been striving for over the years. This the Democratic Party recognizes, and it is something we will work hard to fight for. Now there is hope that the issue of minimum wage will be solved. Despite the fact that the rate determined is not satisfactory, at least we have a law on minimum wage and a rate. This enables the 300 000 workers in Hong Kong no longer to have to live on a despicable wage. However, no action is yet taken with respect to the issue of standard working hours. At times we do not even know when it will come. In the Question and Answer Session held in October 2009, the Chief Executive mentioned in reply to a question raised by a Member that the issue of minimum wage should be addressed before any study would be conducted on standard working hours. It is the consistent stand of the Democratic Party that the prescription of standard working hours can lead to a work-life balance and hence produce positive effects. Therefore, the Government must speed up its study on legislating for standard working hours so that all the employees can benefit.

However, can the motion of Mr IP push the legislation on standard working hours to a success? The Democratic Party has doubts about it. We think that this may not be possible. Even if it can be done, there would be quite a number of flaws. Mr IP's motion only raises the monthly income cap from \$11,500 to \$20,000 for exempting employers from keeping records of the hours worked of their employees. However, it is doubtful whether this cap can effectively take forward the legislation on standard working hours. On the contrary, the \$11,500 cap is equal to the wage for working 15 hours a day and 26 days a month at an hourly rate of \$28. Will it suffice to prove that an employer has exploited his employees if the hours worked at this wage rate are all recorded? I would think the cap of \$11,500 is enough in monitoring compliance by employers with this minimum wage law. It will also serve to prevent employers from offsetting

expenses on minimum wage by extending the working hours. If employers really have to record the total number of hours worked of employees earning \$11,500, then the minimum wage law would have achieved its aim, the aim being the staff will not be forced to work unreasonably long hours while the employer says that the minimum wage is already given. I think that this is in line with the ideas and requirements found in the present minimum wage law in affording employees protection. As a matter of fact, this figure of \$11,500 is justified and backed up by proof. When employers are required to keep records on the number of hours worked of employees earning this level of pay, it is enough to prevent them from cheating. Besides, it is already most unreasonable if people are required to work 15 hours a day and 26 days a month. The wage in question is the median monthly wage found in the 2009 Annual Earnings and Hours Survey. It is backed up by statistics and covers 50% of the working population. But are there any figures to back up this proposal from Mr IP Wai-ming that the cap be set at \$20,000? Why is it not \$18,000? Why not \$23,000? There is no way we can tell what his reasons are.

Perhaps Mr IP may say that keeping records of hours worked will enable us to know the situation concerning working hours and it can serve as the groundwork for imposing standard working hours in future. But in my opinion, this could lead to some sort of a crisis. Why should the cap be set at \$20,000? Why should it not be extended to cover all wage rates? It would be very bad if it is to cover all wage rates. As mentioned by many Members earlier, it would indeed be very bad if all Members are required to keep records of the hours worked of their staff, or if all companies and enterprises are required to do so. Anyway, let us come back to the sum of \$20,000. Is this an appropriate amount and can it pre-empt the situation of all employers having to keep records of the hours worked of all their staff? No. Most of the people working in welfare agencies earn a salary more than this amount. Therefore, all welfare agencies are required to keep such records. Often the social workers will just hand the record of their hours worked to the employers. The employers may not need to check the working hours of their staff. It is because social workers often need to work overtime and on a voluntary basis. It is not that they want to get overtime pay. However, if the employers do not keep such records, they will end up being caught by the law. The case is similar to that of teachers. Recently, I made a visit to Cathay City, that is, Cathay Pacific, and many people who work there are in the same situation. So the company should do more work on that. The administrative work of many companies, agencies and schools will certainly

become much heavier. On the other hand, the cap of \$11,500 would be quite sufficient in serving the purpose of targeting unscrupulous employers so that they cannot pretend to comply with the minimum wage requirements by resorting to some deceptive means, that is, by increasing the working hours. Hence there is no need to raise the amount to \$20,000.

It follows that the Democratic Party has expressed in the discussions that this amount would be appropriate. If the cap is raised to \$20,000, then it would cause inconveniences to the public. Moreover, there is no guarantee that the labour rights of low-income workers will be protected from exploitation. Therefore and up to this very moment, it is hard for the Democratic Party to support Mr IP Wai-ming's motion. I hope that in the days to come, we can work harder and commence our work on standard working hours and demand that the Government should formulate policies and enact laws in this respect. This would be more effective in offering protection to the workers. I so submit.

MR LEE CHEUK-YAN (in Cantonese): President, on behalf of the Hong Kong Confederation of Trade Unions (CTU), I support Mr IP Wai-ming's motion. Members should know that at the beginning there was no such figure as \$11,500. The Government said right from the beginning that records of hours worked should be kept. But Members raised the point that it would not work to keep such records for people with high incomes. So the Government has set this amount of \$11,500 reluctantly.

The stand of the CTU is very simple. We think that the problem does not lie in setting the monetary cap at \$20,000 or otherwise, but that all employers should keep records of the hours worked of their employees. Before the principal legislation was passed, we had proposed an amendment to the effect that the amount of \$11,500 should not be set at all. We held that it is only right that such records should be kept. I do not know why Members have described the keeping of records on hours worked as such a horrible thing, such a big deal. It seems the requirement will force the SMEs out of business. Mr Vincent FANG said earlier that whenever such matters are discussed, people would snap at the business sector, saying that it does not care about the life and death of the workers. This time I am not going to say that the business sector cares not about the life and death of the workers, I would say that it is too disappointing, that it cannot even keep records of the hours worked. Some people may say that keeping such records would lead to an increase in administrative costs. I would

think that this is a matter of management. When you people have taken so many MBA courses, why do you still argue with me over the question of keeping records of hours worked? Even if you say that these SME employers may not have got an MBA, but they have worked from the lowest levels and they are smart people. How can they not know anything about keeping such records? My stand on this is simple enough. There is no question about it. If you want to manage your company well, you have got to keep records of the hours worked, and doing that is no big deal at all.

I wish to say to WONG Sing-chi that keeping records of hours worked is related to standard working hours. After standard working hours are prescribed, if only the records of hours worked can be kept, then the hours of work done in excess of the eight hours of standard working hours can then be counted as overtime work. By that we can also know whether the work done for the day is more than eight hours.

Actually, you also support the prescription of standard working hours. If Members in discussing the keeping of records of hours worked think that doing so is so difficult, then I really cannot imagine what would be like when it comes to the discussion on standard working hours. After standard working hours are prescribed, not only should we keep records of the hours worked, we also have to count the overtime worked. And we should ask the employers to pay according to the records. I would certainly agree that the sums of either \$11,500 or \$20,000 have not too much to do with minimum wage. But the focus now is not on minimum wage, but the attitude. I think Members have overreacted. Is keeping records of hours worked such a big deal, as if it would mean the end of the world? To pave the way for standard working hours, I think society should get prepared to accept this practice of keeping records of hours worked. This is the most basic thing. If we cannot solve the dispute over this issue, how are we going to fight for the prescription of standard working hours in future?

I hope Members will understand that the issue at stake now is not only the question of minimum wage but also how we are to move forward to prescribing standard working hours. Therefore, we give our full support to Mr IP Wai-ming's motion. But we are more in favour of removing even this sum of \$20,000 and requiring employers to keep records on the hours worked of all their employees. Thank you, President.

MR RONNY TONG (in Cantonese): President, what Mr LEE Cheuk-yan has said just now is right. When the Government introduced the bill, it was true that the monetary cap for the purpose of keeping records of hours worked was not specified. With respect to the origin of this cap, I believe the Civic Party is not the only political party which has made contact with the SMEs or people in the business sector. At that time, commercial organizations and SMEs did contact me and my comrades in my party, asking us to impose a cap for the purpose of keeping records of hours worked in exchange for their support of the bill. This is a point of balance.

President, I pointed out earlier when I spoke on Mr LEUNG Kwok-hung's resolution that in this Council and in the general legislative procedure, we would try to find a point of balance acceptable to all parties. Setting a monetary cap is one of these points of balance, and this point of balance should not be neglected.

Let me make a brief response to the arguments advanced by Mr LEE Cheuk-yan. I agree with his ideas. But I also hope he can understand that for the political party which first raised the idea of setting that cap, to change this point of balance at this moment and for no justification is not a logical course of action, nor something that should be supported.

Those who asked us to prescribe a cap were not just SMEs, some big business organizations like Cathay Pacific had also clearly made their demand to us for setting such a cap. These firms thought that if the bill were passed, they would have to implement a mechanism to keep the records of hours worked for all their employees, and this mechanism might have nothing to do with minimum wage at all. For these firms, this practice was tantamount to wasting their resources and time. They think that if a monetary cap were imposed, they would either support the bill or they would not voice any strong opposition. So from the beginning, this cap is directly linked with the minimum wage rate. This cap is a buffer zone that is acceptable to all parties. If the minimum wage rate reaches a level that cannot be surpassed in any way, and if we still require employers to spend extra manpower and resources to keep records of hours worked, then the employers will find it hard to accept.

To find a point of balance should not only start from the point of view of the employees but also from that of the employers. Mr WONG Sing-chi mentioned earlier that he did not know how this cap of \$20,000 was arrived at.

Honestly, I do not know either. I am very bad at doing sums, but I will try to do some calculations with my calculator. If we take a person who works 26 days a month at a rate of \$28 per hour, he will have to work for 27.5 hours — actually, it should be 27.47 hours — before he earns a salary of \$20,000. Fortunately, no one can ever work 27.5 hours a day. Members may think that it would be better to round off the figure and so it is proposed that the cap be set at \$20,000. But that figure is not a result of some very rational or logical calculations. Since this is the case, then why should the cap be raised to an amount which is so illogical and almost irrational? I stand to be convinced. Why should we require employers to do extra work and set up an extra system under such circumstances?

President, I must stress that, as I have said, this cap is directly linked with the minimum wage rate. In other words, if after one year the Government raises the minimum wage rate after review, it will be absolutely necessary for us to re-examine the level of this cap.

I wish to state clearly here that if we can fight successfully to prescribe standard working hours, we will give our full support to requiring employers to set up this system to keep complete records of hours worked. We support the prescription of standard working hours and there is no doubt about it. But that stage has not come yet in our society. So, at the present stage, I hope Mr IP Wai-ming and Mr LEE Cheuk-yan will realize that, unless the minimum wage rate exceeds \$28 per hour, we can see no reason why this point of balance should be moved. In my opinion, this cap of \$11,500 may be not a point of balance that people will feel most satisfied about, but it is acceptable to everyone. For this reason, we can hardly support this motion.

MR WONG KWOK-HING (in Cantonese): President, I speak in support of Mr IP Wai-ming's motion.

I would not say too much. First, with respect to keeping records of hours worked, nowadays, both large enterprises and small ones all require their employees to record the times they arrive at the office and depart from it. That is to say, they have to punch cards in the time recorder when they arrive at and leave the office. This practice is already in existence and it is nothing new. The employers should not see it as a scourge and there is no need to spend a great amount of money on putting that into practice, for it is already in existence.

For reporters, the way that system works may be somewhat difficult. May be the reporters in our press room do not need to punch any cards, because they may not know when they can be off duty after they have reported in. Right? But for most other wage earners, they have to punch cards when they go to and get off from work, and the employers would be very strict about that. What we are discussing now is the question of keeping records of hours worked. It is not a question of workers not being required to punch cards in the past but now they are required to do so. That is to say, in the past they were not required to punch cards when they left the office, but now they are required to do so. This is not true. Such a practice has been around all the time. What we are discussing is the question of keeping records of hours worked. This is my first point.

The second point is, has there been in-depth discussion in the labour sector on that? I have checked the abstracts of the minutes of meeting of the "3+6" conference and I found that they did discuss the issue. Some participants of the conference proposed \$23,000, some said \$22,000 and some said \$21,000. Most people in that conference agreed to the sum of \$20,000. Why did most of the participants take \$20,000 as the point of balance? This is because the salary of some 2 million wage earners falls into the scope of that amount. The salary of most of these wage earners is a bit higher than the median. So there are a considerable number of employees whose salary falls into that sum. Those employees earning a salary of more than \$20,000 are mostly those at the supervisory level and they need to bear greater responsibilities. Their responsibilities are not to oversee the attendance of staff, but they are in charge of enforcing a system of responsibilities. Therefore, those with a salary of more than \$20,000 are mostly engaged in management work. This is the true factor for consideration. Of course, the sum is not meant to take an across-the-board approach, but simply for the sake of arriving at a point of balance.

Third, as some Honourable colleagues have said, there is no need to make such a delineation in law. As a matter of fact, it is only because someone made a suggestion that this idea of keeping records of hours worked came into being. The best practice would be for all companies to keep records of hours worked of their staff. This is the fairest practice.

Lastly, I think that the motion proposed by Mr IP Wai-ming is undoubtedly a show of stance in the fight with the Government over the prescription of standard working hours. His proposal is a starting point, and there is no hiding

it. It is the view of the labour sector that standard working hours and minimum wage are twins and they cannot be separated. Wages and working hours are interrelated. Certainly, at this present stage we are fighting for the imposition of a minimum wage rate, then when can we reach the stage of legislating for standard working hours? For this we have to depend on the efforts of all wage earners in Hong Kong, the labour sector and Members with or without political affiliations in this Council.

I consider this motion proposed by Mr IP Wai-ming does point to some progress and it can also be seen as a starting point. Members should therefore not think that they should unleash their attack on Mr IP's motion, for it is very likely that it will not be passed. In any case, his motion does point to some progress. I therefore implore Members to support his motion.

Lastly, I wish to point out that in the last debate, Secretary Matthew CHEUNG responded to my urging the Government to undertake the first review of the minimum wage rate after it is implemented for one year. I wish to express my gratitude through the President to the Secretary for his positive response. The Secretary used the word "undertake" in his reply. I watched the expression on the Secretary's face at that time. He undertook that once the information from the Census and Statistics Department (C&SD) is received in February 2012, the review will commence right away. Secretary, am I right about that? If I am wrong, would you please correct it in your reply at once? For it will go down in the Hansard of this Council. I also believe that members of the public watching the TV or listening to the radio will be very mindful of that. If I have not misunderstood it, I am very grateful for the undertaking made by the Secretary. I hope that when the authorities have received the information from the C&SD in 2012, they can undertake a review at once. Then the review can really be completed within one year.

President, the Secretary has said that it has been a very long time since his colleagues last took leave, not even during the summer holidays. If this motion can be passed before 10 o'clock this evening, I hope the Secretary can make arrangements for his colleagues or he himself to take a vacation at a time around the Chinese New Year.

Thank you, President.

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

MR CHAN KIN-POR (in Cantonese): President, as it is quite late now, I would just like to make some comments. I have not prepared any speech, but I would like to say a few words. Now what is the situation? In the business sector, irrespective of whether we are talking about large corporations or small firms, or SMEs, the compliance costs they spend are rising all the time. Therefore, anything that is superfluous or wasteful should not be done.

When the Government passed the minimum wage rate, I was one of the members and I had stressed many times that the rate should be set at a suitable level and that no records should be kept. Now the Government has set the cap at \$11,500 and I think that is appropriate. Many Honourable colleagues have cited figures earlier to show that this can serve to protect the low-income earners. I therefore definitely oppose raising the cap to \$20,000. This is because from the abovementioned cap to this proposed sum of \$20,000, there is much room which superfluous indeed. There is no reason for us to do some meaningless things beforehand because we want to prescribe standard working hours in future. Members should know that when many items of trivial and meaningless work add up together, it will be a waste for big and small companies alike. The result is an increase in compliance costs. Recently, we have been stressing compliance costs, because more and more companies are telling me that they cannot hire lawyers in the compliance department. The compliance costs for the companies are rising, and such costs are required by the law and they must be paid. As a result, resources of the companies are spent on compliance. What the companies can do is only to economize on staff benefits or even close down. Members should know that we should never do anything that will waste social resources while not carrying any meaning in actual terms.

In the event of standard working hours being really put into force, the Government would have to consider what kinds of people should be granted exemption before deciding on what should be done next. There is no reason why certain things should be done now, in anticipation of passing a law on standard working hours only three years later. It is utterly unreasonable to do three years of superfluous work from now on. So Members should realize that even when it comes to standard working hours, there are actually exemptions in places around the world. An example is that certain people in the management

can be exempted. I think the situation in Hong Kong would be quite similar by that time. I only hope that Members would not underestimate the compliance costs and that nothing that is superfluous should be done. Some Honourable colleagues have cited an example and said the current cap would cover 800 000 employees. If this cap was raised to \$20,000, it would cover some 2 million employees, and we would have to do a lot more things every day as a result. I hope Members can understand that we only speak from the practical point of view, not because of any particular reason.

I do not remember whether or not it has been mentioned earlier. To my understanding, most of the banks and insurance companies do not have a card punching system. That is to say, there are no such records now. Even if they have, they may be only records on arrival at the office rather than records on departure from the office. Some Honourable colleagues say that card punching is a very common practice. But I believe this is not the case. In individual trades, such as in the finance sector, the card punching system is seldom used. In many companies, like the company in which I had worked before, flexible working hours are adopted and employees are required to be in the office from 10 am to 4 pm. They can work until anytime they like because the company will only consider the quality of work when deciding on a pay rise and it will not care so much about working hours. If an employee does not work, it will be useless if he sits in the office all day long. Therefore, I hope Members can see the point that flexible working hours have been adopted in many companies. These companies do not keep any records at all and working hours are becoming freer than ever. If this measure is useful, I will definitely support it. But in actual fact, this will only increase the expenses of many large, medium and small companies, and these expenses are not justified. So I will never support it. Thank you, President.

MS MIRIAM LAU (in Cantonese): President, before I discuss Mr IP Wai-ming's motion, I would like to refresh Members' memory of what the original intent of legislating for minimum wage is. Of course, it is to prevent excessively low wages so that wage earners will not get only a meagre income after toiling a whole day.

To meet the requirements of the law, a company has to record and keep records of the hours worked by the employees. The SMEs are having a bad time

meeting this new requirement since it will add a lot to their administrative work. For those SMEs which do not have much manpower, they will certainly face a lot of pressure. And for those employees whose monthly income is higher than the minimum wage and who are targets of such protection, the companies have to record and follow up their working hours every day mechanically and in great detail. The companies may not be able to cope with the work and the employees may not like it. They may think that the employer is monitoring them on the times they start and finish work. Also, not every company uses the card punching system. In the logistics trade with which I am familiar, as the employees need to go to many different places, how can they punch cards or make any records? The tourism trade also has its difficulties. The employees may go to the Mainland or other places, so how can they punch cards or make any records? All these are problems for the trades and many SMEs are disturbed by these problems.

The original intent of legislating for a minimum wage is to protect the low-income workers, not to add to the administrative work and expenses of the employers for no good reason. The Liberal Party suggested to the Government long ago not to adopt the across-the-board approach of requiring companies to keep records of hours worked of all the employees. The Government should be fair and avoid causing inconveniences to the people. It should set a salary cap so that employees with a salary higher than the cap can be exempted from recording their hours worked. This will reduce the unnecessary administrative work of companies, especially SMEs.

We are glad that the Government has accepted our suggestion and specified the cap in the form of a schedule. The cap is set for the purpose of exempting employers from keeping records of the hours worked of their employees. In the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010, it is specified that the monetary cap for exempting employers from keeping records of the total number of hours worked of employees is a monthly income of \$11,500. This amount is fool-proof because as the minimum wage rate is \$28 per hour, the cap can be reached only if someone works 15.8 hours a day and 26 days a month. We think that this cap is appropriate and acceptable. It is because the underlying assumption is that an employee is like an ironman who can work almost 16 hours a day non-stop, except for four days a month. There would not be too many employees of this kind around. And nobody will be prepared to work 16 hours a day to earn \$11,500. If Mr IP Wai-ming knows

people like that, will he please recommend them to me and I will be happy to hire them. I do not think any employee would be willing to work such long hours to earn this sum.

But Mr IP Wai-ming still thinks that this sum is not enough. In my opinion, this cap of \$11,500 is already very lenient. Mr IP thinks that this is not safe enough for there may be employers who may raise the salary slightly to \$11,600 to evade this requirement. Then the employees concerned will be subject to the meanest kind of exploitation. Just imagine, will employees be easily subject to such mean exploitation? I doubt it. However, Mr IP Wai-ming thinks that there are such employers and to avoid keeping records on the hours worked, they will raise the salary slightly higher than \$11,500 and then exploit the employees on purpose. The employees will always be required to work overtime and so their real wage rate will become lower than the SMW rate. And the employees will also be unable to pursue the matter.

I must make it clear that even if such things do happen and when the salary concerned is really slightly higher than this cap of \$11,500, and when the employer concerned is exploiting the employee and that employee is willing to work more than 16 hours a day, 26 days a month, and his hourly wage when worked out is lower than \$28, then the employer concerned has broken the law. I do not think he has the sympathy of anyone. The employee should report him and make him punished by the law. Not everything and not all evidence must be supported by things written. Verbal and circumstantial evidence can also prove that the employer concerned is such a heartless person. I think the law will certainly sanction these unscrupulous employers.

However, Mr IP Wai-ming still has great misgivings and he is worried that there will be plenty of such unscrupulous employers. So he suggests setting a cap and raising it to a monthly income of \$20,000. But this cap of \$20,000 is obviously unrealistic. Later on, I will cite some computations to show that this sum cannot actually protect the employees, nor will it help much in enforcement. If it is really decided that the cap should be set at \$20,000, then it will increase the administrative work of SMEs and other companies enormously, and such administrative work is unnecessary for it cannot protect the workers. Even if workers are not protected well enough or if such protection is not required, there is no reason why employers should be penalized. Is there any justification for doing that? I think the cap of \$20,000 is not realistic at all, because it assumes

that an employee works 26 days a month and 27.5 hours a day. I have no idea how a person can work 27.5 hours a day, for there are only 24 hours in a day. I do not see how the remaining 3.5 hours are worked out.

If that employer concerned deprives the employee of his four rest days and requires him to work 30 days a month, then the employee has to work 23.8 hours a day, leaving 0.2 hour to himself for rest. How can a person work like that? It is very doubtful that a person can work 30 days a month non-stop without sleep and without rest. I would think that if there were really such a person, and if he really could work for the employer 30 days a month without sleeping, Mr IP Wai-ming should not rack his brains to ensure that the records on hours worked for that person are sound and whether he has got a minimum wage of \$28 per hour. I believe Mr IP should have advised this person to be mindful of his health and stop working for this particular employer. The person should really care about his health, for working like that puts his life at risk.

Finally, President, I wish to tender a piece of advice to friends from the labour sector. When talking about issues concerning the welfare of the workers, they will often harbour great suspicions, thinking that every employer is wicked and will try every way to be mean to the employees and exploit them. The Liberal Party will oppose this proposed amendment which is not reasonable, unnecessary and unrealistic.

President, I so submit.

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

MR PAUL TSE (in Cantonese): President, as a number of Honourable colleagues have said earlier, this motion is neither in the interest of employers nor in favour of employees. In proposing any motion or conducting any legislative exercise, we aim to achieve some purposes — let me once again quote the word "mischief" which is often used by Dr Margaret NG. But as a number of Members have analysed, this motion seems to be neither realistic nor reasonable, and even not possible. I am not going to do any calculation again because Members have done it for many times. If a calculation is done on the basis of 30 days, it would be 23.8 hours a day; and if we do the calculation on the basis of 26

days, it would be 27.47 hours a day. This is downright impossible. So, a cap of \$20,000 is basically unreasonable by any standard.

However, if we look at this protection, which is not sensible or the adequacy of which is open to question, from another angle, the proposed monetary cap of \$11,500 is actually equivalent to the median wage of 2 776 600 workers in Hong Kong, which means that 50% of the workforce falls on this level of median wage. According to the Government's projection, which has not been challenged, if the minimum wage rate is set at \$28 per hour, about 11.3% of workers will benefit from it. In other words, if we draw the line at the median wage of 50% of the workforce for the purpose of this exemption, which is above the 11.3% of workers whom we truly wish to protect and benefit in introducing the minimum wage rate, actually there will be 38.7% of workers who are not the target of protection because their wages already exceed the minimum wage rate but as their wages are below the median wage, employers are required to keep records on the hours worked by them. In other words, employers are required to keep records for more than three times of the number of workers because of this 11.3% of workers. The buffer (or the safety zone) is already adequate, or it even causes some nuisance to the public (nuisance to employers). Under such circumstances, especially as minimum wage is a new concept, many things should be avoided by all means to reduce troubles and the social resources involved.

Mr IP Wai-ming said that he would see it as a practice or arrangement which is experimental, preparatory, forward-looking or guiding in nature. Then perhaps I may liken this to the Government saying that in order to make preparations for landfills, the entire Tseung Kwan O might as well be zoned for use as landfills, so that they may be put to such use in future. I have cited this example, and I think Members will see the absurdity of this argument.

President, I would also like to add a few points. Firstly, some colleagues said that this is only a minor management issue which can be handled by people with an MBA. But please bear in mind that the majority of the 95% of the SMEs may be small-scale businesses run by a couple or brothers. They may run on a self-employed basis or they may just hire one employee, and they have to work assiduously to make a living. They choose to start their own business only to enjoy the freedom, not wanting to be under the employ of other people. This is a common thinking of many Chinese people. However, most of them are not

as organized and systematic as those who have read their MBAs, and they do not use computers.

Second, some Members asked why it would be difficult to keep records of the hours worked. A broad-brush or cross-sector approach is adopted under the current mechanism, and to some colleagues, employees or Members representing trade unions, the work pattern that they are accustomed to, whether it is from 9.00 am to 5.00 pm or from 7.00 am to 10.00 pm, has a fixed time limit, and employees are required to record their arrival and departure times. Ms Miriam LAU mentioned a point earlier to which I very much agree and that is, many job types in Hong Kong do not have standard arrival and departure times, especially the tourism sector, and the proposal would be a big problem to us. In this connection, I have read an article written by Mr IP Wai-ming and published in *Wen Wei Po* on 31 December 2010 about prescribing standard working hours as a means to resolve labour disputes. He said that to tour escorts who are often required to work overseas, the guidelines remain ambiguous and fail to resolve disputes over how the hours worked and rest time should be computed. He then made a very interesting conclusion that the Government should consider prescribing standard working hours. Since the computation of the hours worked has yet to be expressly defined and the guidelines are not clear, how can the standard working hours be prescribed? I really do not understand it. Is it because I am stupid? It is impossible to establish a link between the two. This is like suggesting the setting of a standard tax rate or standard tax allowance, but how can this be achieved when there is still endless bickering over the definition of income? I think it is entirely anti-intellectual to justify this motion by this logic. I am sorry. I just wish to speak my mind frankly.

President, as I mentioned earlier, it is difficult to calculate the number of hours worked in the tourism sector. The reason is that the nature, *modus operandi*, requirements and practices of our services are different from those in other industries and apart from this, unlike jobs requiring employees to clock in four times in total when they come into and leave the office, and when they go out for and return from lunch, our job nature often requires employees to work away from office and handle unexpected incidents. For instance, a guest may call a tour escort at 3.00 am complaining that he cannot sleep due to a dripping tap in his room, in which case the tour escort has to follow up. Should he immediately start counting the hours of work by recording the time when he called the front desk until he can go back to sleep after the problem is solved, in

order to be considered as doing extra work? This is the first scenario. Secondly, when he returned to Hong Kong, should he give an account of every detail of the entire process of work as recorded in the log book to his employer and ask his employer which part of his work can or cannot be counted? Is it worth spending too much time on the administrative work required for calculating the hours worked? Please bear in mind that criminal liability is involved and whenever disputes arise, the employer has the duty to produce the records, not to mention cases of unnecessary disputes. So, we cannot adopt a broad-brush approach. This will create many difficulties for us in the tourism sector. For those people who questioned why there is no timecard or why records are not kept on the hours worked, I wonder if it is because they are not aware of this situation or their life experience is not comprehensive enough.

President, all in all, I think I do not need to dwell on this any further. Even though the tourism sector has reluctantly accepted the arrangement for minimum wage, we still have great reservation about various details. I hope that Mr IP Wai-ming will help work out the details of the guidelines for employees in the tourism sector, especially how the working hours can be defined. Having resolved these problems, we can further look into the question of standard working hours gradually.

Thank you, President.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I wish to thank the 10 Members for their speeches earlier. The statutory minimum wage rate is calculated on the basis of an hourly wage. The way to check if employers have met the requirements of a SMW rate is to multiply the total number of hours worked by an employee during the wage period by the SMW rate, and then compare it with the actual wage paid to the employee concerned during that wage period. Therefore, employers must include the total number of hours worked in the wage and employment records required under the Employment Ordinance. However, due to the great concern expressed by some

relevant parties and Members of the Bills Committee for the administrative costs that employers have to bear to keep records on the total number of hours worked, the Government has amended the Minimum Wage Bill and proposed that on the premise of not affecting — I emphasize not affecting — the SMW protection to which employees are entitled, the employers may be exempted from keeping records of the total number of hours worked by employees if the wage paid to the employees concerned during any wage period is not less than a certain specified amount. It can be seen that this arrangement can strike a balance between the need to reduce the administrative burden borne by the employers and protecting the rights of employees. I appreciate Mr Ronny TONG's apt remark that the entire minimum wage issue is about achieving a point of balance.

I wish to stress that when the Government sets the monthly monetary cap at \$11,500, it is backed up by data and full justifications. According to the 2009 Annual Earnings and Hours Survey compiled by the Census and Statistics Department, in the second quarter of 2009, the median monthly salary of the 2 776 600 employees in Hong Kong was \$11,500. Considering that the first minimum wage rate is \$28 per hour, which equals to 48% of the median hourly rate of \$58.5, and the fact that the median monthly salary of \$11,500 covers 50% of the total number of employees, we think that using the amount of \$11,500 as the cap for exempting the keeping of records of the total number of hours worked by employees should be able to achieve a reasonable and suitable balance between enforcement needs and reducing administrative costs for employers.

If this monetary cap of \$11,500 is increased substantially to \$20,000 as proposed in Mr IP's motion, as mentioned by many Members earlier who have done the calculations, based on the fact that employers work eight hours a day and 26 days a month, according to the survey done in 2009, the monthly salary of \$20,000 will catch as many as 75% of the total number of employees in Hong Kong. Therefore, the cases for which employers will need to keep records of the total number of hours worked will increase drastically. This clearly runs counter to the original intent of the Government in amending the Minimum Wage Bill to introduce the arrangement of exempting the keeping of records of hours worked in response to the proposal made by relevant parties and Members of the Bills Committee. As a matter of fact, based on the SMW rate of \$28 per hour, as mentioned by some Members, the total number of working hours will have to reach 714.3 hours a month before this monetary cap of \$20,000 is reached. If it is based on employees working 26 days a month, the number of hours worked for

each working day will have to be 27.5 hours. This can be said to be detached from the reality and it is obviously impossible.

I would like to point out that the monthly monetary cap will not affect the right of the employees to be paid not less than the SMW. This is a very important point to note. The rights of the employees are fully protected. For employees whose wage paid is higher than the monetary cap of \$11,500, although the employers concerned do not have to keep records of the total number of hours worked, they should pay the employees concerned a wage at no less than the SMW rate. I would think that a reasonable monthly monetary cap can reduce the unnecessary administrative costs of employers, especially those of SMEs. Hence, this is important to implementing and enforcing the minimum wage regime. It is the Government's view that using the amount of \$11,500 as the specified monetary cap is fool proof to a large extent. Mr Paul TSE has given a clear analysis earlier that the buffer zone in between is more than 30% or 37.8%. This level is sound enough and it shows that it is a sensible decision. Later on when the Government is to adjust the SMW rate, it will review the monetary cap as per practical needs.

Lastly, I wish to respond to the comments made by Mr WONG Kwok-hing. He asked me to clarify my pledge which I have reiterated repeatedly. He is right in his understanding. I have pledged that in February 2012 once the new data are published, we will activate the mechanism of conducting a review. The data will be able to reflect the actual impact on the market after the implementation of the minimum wage in the second quarter of 2011. Without such data, our findings would not be justified. So this pledge is very clear.

President, I so submit. I hope Members can vote against the motion proposed by Mr IP Wai-ming. Thank you.

PRESIDENT (in Cantonese): Mr IP Wai-ming, you may now speak in reply.

MR IP WAI-MING (in Cantonese): President, in proposing this motion, I have all along hoped that the majority of Honourable colleagues will throw weight behind my motion. A cap of \$20,000 may seem to be a bit high, but as I said in raising a point earlier on, we think that Members should not just look at it strictly

in connection with the hourly rate of \$28. Very often, in the course of our work, when we talk to the "big brothers" of some trade unions or "leaders" of container truck drivers, we learn that they work 13 to 14 hours a day and are likely to make an income of \$13,000, \$14,000 or \$15,000. Take our union in the aviation industry as an example. Many luggage attendants who work underneath the airplanes, so to speak, have a basic salary of \$6,000 to \$7,000 only, but why do they make an income of \$14,000 to \$15,000? I can show Members their pay slips. They have to work overtime every day and sacrifice their rest days every month. Most of these workers often make an income of \$13,000, \$14,000 or \$15,000. Why? Because they have often sacrificed their rest days. Do they really have four rest days? Some workers in the catering sector now work 28 days a month, and the remaining two rest days may even be bought out any time.

Therefore, I hope Members will know that in reality, as far as we know, there are still a lot of people who actually work 12 to 13 hours a day. To some low-pay sectors, it is indeed a luxury to have four rest days a month. As our union in the cleaning service industry has pointed out, some cleaning workers are able to make a little bit more money because many of them work one and a half shifts or two shifts in a row.

In view of this, I hope colleagues will understand that if wages are calculated strictly on the basis of \$28 per hour, true enough, we would agree to setting the cap at this median wage of \$11,500. But let us not forget that we must take precautions, as some workers whose income exceeds \$11,500 may be required to increase their working hours, and these extra hours of work may not be compensated.

Regarding the amendment that I proposed in the motion, I really do not understand why Mr Vincent FANG would link it with animosity towards the businessmen and the rich. I proposed this motion in my capacity as a representative of trade unions, and I think you, being a representative of employers, can also put forward your views. But it beats me indeed as to why, under such circumstances, this can be linked to animosity towards the businessmen and the rich.

Mr Ronny TONG stressed the need to strike a balance. This, I agree. But we think that in the reality of life, we may not be able to truly strike this

so-called balance, the premise of which is that an hourly rate of \$28 should be used as the basis of this cap of \$11,500. I hope colleagues will understand that in our view, keeping records on the hours worked is not a scourge, and as a matter of fact, it has been a practice in many industries to keep such records. There is a diversity of ways for keeping the number of hours worked. There are various types of timecard machines, and there are also e-cards. Even smart cards are used on construction sites, so that basically, records of workers going into and out of the construction site are kept. Moreover, I think the so-called timecard machines or smart cards may not be the only way for keeping such records. Writing them down in logbooks can also be an alternative.

What we are most worried about is Mr CHAN Kin-po said that it is more important to be practical and so, records should be kept on the arrival time but not the departure time, and what matters is that the employees can finish their work. But it is precisely a problem that no records on the departure time are kept. It is common that employees know when they will start to work, but they just never know when to call it a day. I often say that it is not our wish to resort to legislating for everything. As a unionist myself, frankly speaking, my personal belief is that since I am serving on this Council, sometimes we need to talk about making laws, and when we talk about making laws or introducing legislation, we do have to hold discussion. I have engaged in the work of trade unions for 25 years, and my personal belief is that insofar as trade union work is concerned, I think we should all the more refrain from talking about laws. The work of trade unions should focus on mobilization work, or how we can mobilize workers to stand united to fight for interests to which they are entitled.

However, in the reality of life in Hong Kong, CHAN Kin-po said that if the law does not require me to do something, I certainly would not do it. Why should I do so much extra work? Our view is that more often than not, employers do not do it precisely because there is no stipulation in law requiring them to do so, but they are duty-bound to do it. By the same token, why do we have to legislate for a minimum wage? Had the employers truly been self-initiated, when the Wage Protection Movement was launched a few years ago, the Secretary, who was still the Commissioner for Labour back then, would not have to talk himself hoarse in lobbying support for this Movement. But it is proven that the Movement has not been effective

Such being the case, if we continue to expect employers to exercise self-discipline to keep records on the hours worked by their employees, frankly speaking, many employers really will not do it, knowing that they are not required to do so in law. Under such circumstances, many labour disputes will arise from the lack of records of the hours worked.

We consider that a good employer is duty-bound to properly keep records of the hours worked by his employees. Besides, we believe that keeping these records properly can actually facilitate the smoother operation of the company, and it can also be a way to reduce the cost of manpower. We do not wish to see that Members would consider the keeping of these records as dreadful as a scourge, because even if there is no minimum wage, under the existing Employment Ordinance, employers are still required to keep records of the hours worked by employees under certain circumstances.

In this connection, since employers are already keeping these records, we think that this will not impose too big a burden on employers. As to the question of whether it is really difficult to keep these records in some industries, as I said earlier, even for tour guides or tour escorts, during my discussions with some relevant labour unions, they said that in fact, they can discuss this with the employers in their sectors, because it is necessary to hold discussions as there may be guidelines in future. But is it impossible to keep such records? Maybe this is only because operationally, they do not have this practice of keeping records on the hours worked by employees. When there is genuinely a need to keep these records, is it really impossible to come up with a way acceptable to both sides for keeping records of the number of hours worked? As I always say, it is not the case that it is impossible to do it, just that they are unwilling to do it.

We hold that disregarding the state of progress of discussions on legislating for standard working hours in the future, the employers are still duty-bound to keep records of the hours worked. I think we should not refrain from doing this on the pretext that this would lead to an increase in cost; nor do I consider this a nuisance to the public. In the labour disputes that I have handled, there are often cases of unnecessary disputes resulted from the lack of proper records of hours worked. I, therefore, once again call on colleagues here to support my motion. Thank you.

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

(Members raised their hands)

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

(Members raised their hands)

Mr IP Wai-ming rose to claim a division.

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

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

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

Functional Constituencies:

Ms LI Fung-ying, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the motion.

Dr Raymond HO, Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, 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 motion.

Mr CHEUNG Kwok-che abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr Frederick FUNG, Mr WONG Kwok-hing, Ms Cyd HO and Mr WONG Kwok-kin voted for the motion.

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr Alan LEONG and Miss Tanya CHAN voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, three were in favour of the motion, 15 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, six were in favour of the motion and 17 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Ms Miriam LAU will move a motion under Rule 49E(2) of the Rules of Procedure to take note of Report No. 9/10-11 of the House Committee laid on the Table of the Council today in relation to the Human Organ Transplant (Amendment) Regulation 2010 and the Human Organ Transplant (Appeal Board) Regulation.

PRESIDENT (in Cantonese): According to the relevant debate procedure, I will first call upon Ms Miriam LAU to speak and move the motion, and then call upon the Chairman of the Subcommittee formed to scrutinize the subsidiary legislation concerned to speak, to be followed by other Members. Each Member may only speak once and may speak for up to 15 minutes. Finally, I will call upon the

public officer to speak. The debate will come to a close after the public officer has spoken, and the motion will not be put to vote.

I now call upon Ms Miriam LAU to speak and move the motion.

MOTION UNDER RULE 49E(2) OF THE RULES OF PROCEDURE

MS MIRIAM LAU (in Cantonese): President, in my capacity as Chairman of the House Committee, I move the motion as printed on the Agenda under Rule 49E(2) of the Rules of Procedure to enable Members to debate the Human Organ Transplant (Amendment) Regulation 2010 and the Human Organ Transplant (Appeal Board) Regulation in Report No. 9/10-11 of the House Committee on consideration of subsidiary legislation and other instruments.

President, I so submit.

Ms Miriam LAU moved the following motion:

"That this Council takes note of Report No. 9/10-11 of the House Committee laid on the Table of the Council on 5 January 2011 in relation to the subsidiary legislation and instrument(s) as listed below:

<u>Item Number</u>	<u>Title of Subsidiary Legislation or Instrument</u>
(1)	Human Organ Transplant (Amendment) Regulation 2010 (L.N. 143/2010)
(2)	Human Organ Transplant (Appeal Board) Regulation (L.N. 144/2010) "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

MS CYD HO (in Cantonese): President, in my capacity as Chairman of the Subcommittee on Human Organ Transplant (Amendment) Regulation 2010 (the

Amendment Regulation) and Human Organ Transplant (Appeal Board) Regulation (the Appeal Board Regulation), I now report on the deliberations of the Subcommittee.

The purpose of the Amendment Regulation is to make technical amendments to the forms under the Schedule to the Human Organ Transplant Regulation so as to align with the provisions of the Human Organ Transplant Ordinance as amended by the Human Organ Transplant (Amendment) Ordinance 2004 (the Amendment Ordinance).

The Appeal Board Regulation seeks to provide for the rules and procedures of appeals to be made by those aggrieved by the decisions of the Director of Health on their applications for exemption in relation to their intention to make available commercial products for transplant.

The Subcommittee noted that although the Amendment Ordinance was enacted in 2004, the relevant provisions relating to the exemption and the associated appeal mechanism have not come into operation pending the establishment of the appeal mechanism. Members expressed dissatisfaction at the time taken to establish the appeal mechanism. They were concerned that the interests of patients who are in need of the regulated products for transplant might have been adversely affected due to the delay in the introduction of the Regulations. The Subcommittee urged the authorities to expedite the commencement of the relevant provisions.

At the Subcommittee's request, the Administration agreed to try to advance the commencement dates of those provisions of the Amendment Ordinance concerning regulated products that have not come into operation and the two Regulations from the fourth quarter to the third quarter of 2011.

The Subcommittee considered it important to make available information on the operation and decision of the Appeal Board specified under the Appeal Board Regulation. The Administration agreed that in preparing the administrative guidelines for the operation of the Appeal Board, it would include arrangements to make public the date, time and venue of each appeal through such means as the Internet for public information.

As regards the proceedings of appeal, the Administration advised that section 16 of the Appeal Board Regulation provides that a summary of the decision of the Appeal Board and the reasons for the decision must be made in respect of every appeal determined by the Appeal Board. While there is no requirement on the disclosure or publication of records of proceedings by the Appeal Board, the Administration would consider including in the administrative guidelines a recommendation to the Appeal Board to make available for public inspection the relevant information concerning each appeal where appropriate.

The Administration advised that, in accordance with section 15 of the Appeal Board Regulation, the Appeal Board may regulate its own proceedings. As to whether, what and how information may be disclosed or published, it is entirely and ultimately a matter for the Appeal Board to decide. In particular, the Appeal Board may, in accordance with sections 6 and 10 of the Appeal Board Regulation, give directions to prohibit or restrict the publication, disclosure or use of information, including information given to the Appeal Board or produced at a hearing.

Lastly, at the request of the Subcommittee, the Administration undertook to provide a copy of the administrative guidelines of the Appeal Board to the Legislative Council Panel on Health Services for its information once the guidelines are ready.

President, I will now express my views on related discussions arising from the Human Organ Transplant Ordinance. The exposure of a recent case of suspected surrogacy arrangement on commercial basis has sparked an enormous public outcry. The public is concerned about whether a person should be allowed to lease a human organ just because he has the financial means to do so, thereby causing irreversible harm to the health of another person who has leased out the relevant human organ because of financial hardship, or even putting that person's life at stake. Therefore, in order to prohibit the sale of human organs to prevent such selfish and barbarous behaviour as "bloody buns" and "man feeds on man" depicted in LU Xun's novels, we should give special regard to the relevant issue in amending these Regulations. Hence, I proposed at the meeting of the House Committee that a Subcommittee be formed to scrutinize these two Regulations, and I also have to express my views in this Council for the record.

First, we have to examine the meaning of "commercial products" under these Regulations. The two commercial products in question are products made from skin tissues and derived bone products. Both these products are tissues which can be cultured or regenerated by the body, and their trading is already allowed in other countries. Subject to the principle that commercial dealings of human organs are prohibited under the Human Organ Transplant Ordinance, local legislation allows the importation of these commercial products and the payment of the relevant fees and expenses by the importing organizations. Regarding the two products the importation of which is allowed under the Schedule, both the industry and society consider them acceptable.

However, we have to be very careful in contemplating adding any items to the Schedule. During the short scrutiny process in which only two meetings were held, we invited members of the industry to give their views at the meetings. At that time, I also paid close attention to views outside the Council, and I noticed that there were some views the implications of which warrant our attention, though such views were not explicitly expressed. Some members of the industry think that there is demand for human organs for transplant in the market, and many patients have a pressing need for organ transplants. So, if these organs are available abroad, why can we not import them?

President, we consider it acceptable if only products made from skin tissues and derived bone products are involved. However, these views also imply the importation of other human organs. Some members of the industry said that a lot of corneas are available for sale in India. They said this is very common in Third World countries, and there are some Hong Kong people who need to have such organ transplants. However, this Ordinance is concerned with human lives as well as the donors and the recipients. If the industry only considers this issue from the market perspective and regard patients who need organ transplants as consumers and those people from whom the organs will be removed as sellers, it utterly violates the principle that commercial dealings of human organs are prohibited. A civilized society cannot accept the barbarous act of transferring one's pain to another person using money. It is true that we have not relaxed the sale of human organs under the law, and neither have we allowed the sale of human organs across the border. However, I must state it loud and clear at the first instance that I vehemently oppose relaxing the relevant requirements under this law.

Second, during the scrutiny process, some industry representatives attending the meeting introduced to us something known as "domino transplant", which may be literally translated as "骨牌移植" — but I think it is more accurate to translate it as "連鎖移植". To my understanding, some doctors abroad have recently arranged for organ donations among some 20 people. That is, individual A would donate his organ to individual B, who would then donate a certain organ in his body to individual C. This way, each of these some 20 people would donate his organ to another person, and the last person in the group would donate an organ back to individual A. Those doctors were definitely very excited because they regarded this as a major breakthrough in medical technology, and the relevant procedures went well in the end. This case, which is also considered as a major breakthrough by the industry, was published in *The Lancet*, a highly authoritative medical journal.

Actually, a similar case happened in Hong Kong in January 2009. In the relevant case, as the blood types of two healthy people from two families were incompatible with the blood type of the respective family member in their families who were suffering from a certain liver disease, these two people could not donate their liver to their family member although they were willing to do so. Subsequently, their doctors found out about the case and asked the two healthy people concerned whether they were willing to donate their organs to each other's family member because their blood types were compatible with the two patients who needed a liver transplant.

President, the surgeries went well in the end. The two patients who needed a liver transplant have recovered, and the members of these two families have become good friends. This happened because there are far more patients who need human organs for transplant than people who are willing to donate their organs. Even if some members of the public are willing to donate their organs, rejection of transplanted organs may occur in incompatible donor-recipient pairs. Therefore, such an arrangement based on reciprocity is beneficial to both families if the two people concerned are really willing to donate their organs to each other's family member. However, prior briefing, counselling and risk explanation are very important. In 2009, the relevant hospital arranged for the four surgeries to be carried out concurrently just in case anyone would change his mind. This shows that the situation involved is very complicated, in terms of both morals and medicine.

President, we also expressed during the scrutiny process our concerns about this mutually beneficial arrangement. Although no cash transactions are involved, such arrangements will easily evolve into some sort of bartering. It is possible that the doctors may initiate this arrangement and induce organ donation for their own benefits rather than assisting in reciprocal organ donations initiated by the donors themselves.

In particular, when such a precedent of domino transplant and reciprocal organ donation has occurred in society, scientists are poised to grasp such good opportunities to conduct more tests. When there are more than two families which wish to participate in such reciprocal organ donation arrangements in future, the established procedures and considerations under the existing legislation and codes may not suffice.

President, we cannot deal with the issue of organ transplant from the market perspective because it concerns the equitable protection and respect of lives. We should cherish lives, and it is also stated in international human rights treaties and the Convention on the Rights of the Child that every individual has an equal right to life. We cannot allow a person to impede another person's right to life by buying a human organ from that person because he has the financial means to do so.

In the face of death, we may learn about the true nature of a person and find out whether he is selfish, greedy, coward or benevolent. In the recent case involving a civil servant from the Customs and Excise Department, for example, the civil servant concerned donated his liver out of his selfless love for human life to someone who is not related to him in any way. In the face of death, the ugly or glorious side of human nature will be revealed. In enacting laws and regulations, we cannot require people to make selfless sacrifices. However, at least we should strive to protect the health or even the lives of the poor from being threatened due to the disparity in wealth and power.

Law is often unable to catch up with technological and social changes. Therefore, as the relevant cases have already occurred with existing technologies, I hope to urge the Administration to immediately review the procedures and codes of human organ transplants in the light of the latest technological

development to avoid making remedies only after some accidents have sparked a public outcry.

President, I so submit.

MS AUDREY EU (in Cantonese): President, I will not repeat what Ms Cyd HO has said as the Chairman of the Subcommittee on the two regulations. I wish to add a few points on the issues mentioned by her.

Firstly, President, one of these two Regulations is related to appeal, while the other concerns the amendment of the three forms. These also involve derived bone products and skin substitutes mentioned by Ms Cyd HO earlier. They can be regarded as human organs, but as they are used extensively and can be used for commercial purposes, they can apply for exemption, and they can be imported as commercial goods. The two Regulations are about this.

President, I wish to point out that these two Regulations originate from the Human Organ Transplant (Amendment) Ordinance enacted in 2004, and this Ordinance of 2004 was intended to amend the Ordinance of 1995. Why do I particularly mention these two years? President, it is because when these Regulations were submitted to the Subcommittee of the Legislative Council for scrutiny, we were shocked that with regard to this Ordinance which was first enacted in 1995 and subsequently amended in 2004, the relevant subsidiary legislation was tabled to the Legislative Council only in 2010. Why had there been such a long delay? The Government explained at the time that it was because there had not been too many applications.

However, this is not the case in reality. In her speech earlier Ms Cyd HO mentioned that there are such needs in the market. I remember that during a meeting of the Subcommittee, Dr LEUNG Ka-lau, who attended the meeting, said that some time ago, a Member of the Executive Council was injured while skiing and had an operation in which these products were required. So, it is not the case that there is no such need, just that the Government had all along dragged its feet and did not introduce the Regulations to the Legislative Council. I particularly wish to make this point because it is often the case that when the Legislative Council has enacted a law and even if it is enacted after deliberations for a long time, we will find that some parts of the law or even the whole of it

could not be brought into operation. The reason is that the Government has stalled many regulations or guidelines and tabled them to the Legislative Council only at a very late stage. On these issues, such as transplant of human organs, medical development has actually been very rapid, and many such products or equipment are basically developing rapidly every day, but the Government has often lagged behind the times and failed to table the relevant legislation to the Legislative Council.

As mentioned by Ms Cyd HO when she spoke earlier on, during our discussion on the Regulations recently, there was a case which induced much discussion in society. As we all know, the LEE's family may be involved in surrogacy. In view of this, whether it involves triplets or three surrogate mothers, we were worried about whether the transplant of human organs was involved when we discussed these Regulations. Subsequently, it was clarified that this actually involves another ordinance, namely, the Human Reproductive Technology Ordinance.

President, the Human Reproductive Technology Ordinance was also enacted many years ago, but its operation has led to many difficulties, because when infertile couples sought the assistance of reproductive technology, their doctors would tell them that they need to fill in many forms. They have encountered many difficulties in operation, but when they brought these problems to the attention of the Government, the Government replied that amendments to the law have to be submitted to the Legislative Council and this may involve a time-consuming process and so, they had better fill in these forms which are outdated or causing a nuisance to infertile couples.

So, we can see that the medical profession or other sectors often encounter these problems in their daily operation. They all consider the Ordinance outdated but when they asked the relevant government departments to follow this up, the Government responded that the relevant legislation should not be tabled to the Legislative Council because it would take many years for the Legislative Council to complete the scrutiny of the legislation before the legislation can be brought into effect. But this is not true. Let us take a look at the legislation introduced by the Government to the Legislative Council. I have looked up the relevant statistics and found that between 2005 and 2010, 75 bills were submitted by the authorities, 64 bills or 85% of which were passed with a scrutiny period of 140 days on average.

President, I wish to put it on record that the Government has always used the Legislative Council as a shield. When it does not want to do something, it tells people that the legislation should not be submitted to the Legislative Council because the Legislative Council is like a black hole and things would be held up for a very long time. But the truth is that the Government is always stalling, just as it did in introducing these two Regulations to the Legislative Council. We completed the deliberations on the Regulations after holding several meetings and we also listened to the views of the relevant professions. We may sometimes propose amendments after problems are identified, but we have not proposed any amendment this time around. So, President, I think I need to make this point very clear.

In its monthly journal published last month, The Law Society of Hong Kong (Law Society) pointed out that when legislative amendments have to be made, say, through the Law Reform Commission (LRC) — Members of the LRC do not serve on a full-time basis but on a part-time basis, and they need to conduct studies and make amendments and for instance, they had discussed class actions for three years and even though the LRC had endorsed the report — We can see from the statistics provided by Law Society that the LRC has since 1997 published 27 reports but only three of them have been implemented, and some of the views in another report and in one consultation document have been implemented. President, in citing these statistics I wish to point out that the problem lies not in the scrutiny of legislation. The problem is that after the Government has conducted consultation on legislative amendments at an early stage or even after a report is published on the legislative amendments, the Government will still drag its feet in introducing the legislation. There are many other problems that have not even been placed on deck, such as the Government using an excuse at the outset to tell people not to think about amending the law because the amendment exercise will drag on for a long time. I have, therefore, particularly highlighted these problems, and I also wish to make an appeal to the Government. That is, when discussing issues which develop very rapidly every day, whether in respect of the market, medical science, or certain trades or sectors, such as these technologies that we are talking about, there is really no reason for the Government to lag behind for so many years before introducing the relevant legislation or subsidiary legislation to the Legislative Council.

President, I also wish to make another point. Cyd HO mentioned just now that we in the Legislative Council or society actually do not accept commercial

dealings in human organs, especially as this would be very damaging to the disadvantaged groups. So, put it the other way round, President, the community actually encourages unconditional organ donation by people who have the noblest virtues to care for and to help other people. Therefore, it is also a good opportunity to appeal to the public to more actively agree to organ donation when we discuss the Human Organ Transplant (Amendment) Regulation 2010 and Human Organ Transplant (Appeal Board) Regulation.

Cyd HO mentioned cornea when she raised this issue earlier on. In fact, many people are in need of a kidney transplant. In 2009, 1 602 people in need of a kidney transplant were registered but only 95 people were willing to donate their organs. Currently, we need 500 pieces of cornea in Hong Kong but the waiting time is very long. In respect of liver, we can see a queue of 100 people every year, but it is very difficult to find a living person willing to donate his or her liver, and let us further look at the relevant figures. It is stated that members have since 2007 processed and approved 70 applications for transplant of liver from a living donor who is not genetically related to the recipient.

Since we cannot accept commercial dealings in this but there are indeed such needs in society, I call on all Hong Kong people to agree to giving more support for organ donation. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Food and Health to speak. This debate will come to a close after the Secretary has spoken.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I thank Members for speaking on the Human Organ Transplant (Appeal Board) Regulation (HOT(AB)R) and the Human Organ Transplant (Amendment) Regulation 2010. I also thank members of the Subcommittee who have participated in the deliberations on the two Regulations for the views they have expressed.

The Human Organ Transplant Ordinance (HOTO), which is the principal Ordinance of the two Regulations, was enacted in 1995. It seeks to, among other things, prohibit commercial dealings of human organs intended for transplant. The HOTO was amended in 2004, and the relevant amendments are incorporated into the Human Organ Transplant (Amendment) Ordinance 2004.

Under the Human Organ Transplant (Amendment) Ordinance 2004, anyone who intends to make available commercial products made from human tissues such as skin tissues and derived bone products for transplant may apply to the Director of Health for exemption through the mechanism for exemption. Applicants who are aggrieved by the decisions of the Director of Health can lodge an appeal. The HOT(AB)R is made to provide for detailed and clear rules and procedures for appeals on the exemption of products, including the rules and procedures for making, processing and determining an appeal.

President, there are three forms under the Schedule to the HOTO, supplying information on the removal, transplant and disposal of organs. The Human Organ Transplant (Amendment) Regulation 2010 proposes to make technical amendments to these three forms, so as to align them with the provisions of the HOTO as amended by the Human Organ Transplant (Amendment) Ordinance 2004.

The Administration is currently drafting the relevant administrative guidelines. In the course of drafting the guidelines, the Administration will consider the views of the Subcommittee. In respect of the HOT(AB)R, the Administration will consider putting forward feasible proposals relating to the transparency of the operation of the Appeal Board where such proposals are in line with the Regulation. We will also consult the professions on the drafting of the administrative guidelines which is expected to be completed around the middle of this year. Upon completion of the drafting work, we will introduce a Notice on the commencement date to the Legislative Council for negative vetting, in order for the Regulation to officially take effect around the third quarter of this year.

President, I so submit.

PRESIDENT (in Cantonese): Under Rule 49E(9) of the Rules of Procedure, I will not put any question on the motion.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the meeting until 2.30 pm tomorrow.

Suspended accordingly at twelve minutes past Ten o'clock.

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Financial Services and the Treasury to Ms Starry LEE's supplementary question to Question 2

According to the study on the United States as well as South Korea, and the desktop research on some other overseas countries (for example, the United Kingdom and Singapore) conducted by the Hong Kong Mortgage Corporation Limited (HKMC), it has not identified any reverse mortgage scheme that directly links the amount of annuity payment to inflation/deflation or changes in property prices.

Some overseas schemes will make purchase of the elderly people's properties right at the beginning. When a bank disposes of the property upon the death of the borrower, the bank will share the appreciation portion with the inheritors of the elderly people if the property price has increased by over a certain percentage.

In addition, in South Korea, there is an annuity payment option under the reverse mortgage scheme which offers an increase or decrease of annuity payment by 3% every year. The 3% upward or downward adjustments under these payment options are scheme features and are not linked to inflation/deflation or changes in the property price.

Under the Reverse Mortgage Pilot Scheme of the HKMC, banks do not make purchase of the elderly people's properties right at the beginning. The elderly people are allowed to redeem their properties by repaying their loans anytime. Banks will have the right to repossess and dispose of the properties to repay the outstanding loan balance of reverse mortgage upon the death of the elderly people. If, owing to various reasons (including appreciation of the property value), the proceeds of the property sale exceed the outstanding loan balance, the bank will give the surplus to the inheritors of the elderly people.