

立法會
Legislative Council

LC Paper No. CB(2) 2322/00-01
(These minutes have been seen by
the Administration)

Ref : CB2/PL/MP/1

LegCo Panel on Manpower

Minutes of meeting
held on Wednesday, 4 July 2001 at 10:45 am
in the Chamber of the Legislative Council Building

Members present :

- Hon LAU Chin-shek, JP (Chairman)
- Hon CHAN Kwok-keung (Deputy Chairman)
- Hon Kenneth TING Woo-shou, JP
- Hon James TIEN Pei-chun, GBS, JP
- Hon Cyd HO Sau-lan
- Hon LEE Cheuk-yan
- Dr Hon LUI Ming-wah, JP
- Hon CHAN Yuen-han, JP
- Hon LEUNG Yiu-chung
- Hon YEUNG Yiu-chung, BBS
- Hon Ambrose LAU Hon-chuen, GBS, JP
- Hon Andrew CHENG Kar-foo
- Hon SZETO Wah
- Hon LI Fung-ying, JP
- Hon Tommy CHEUNG Yu-yan, JP
- Hon Michael MAK Kwok-fung
- Hon LEUNG Fu-wah, MH, JP
- Hon Frederick FUNG Kin-kee

Member absent :

- Hon Abraham SHEK Lai-him, JP

Public Officers : Item III
attending

Mr LAM Kam-kwong
Acting Deputy Secretary for Education and Manpower

Mr Timothy TONG, JP
Deputy Secretary for Security

Ms Linda SO
Principal Assistant Secretary for Security

Mr Paul WONG
Principal Assistant Secretary for Education and Manpower (11)

Mr LAW Yiu-tung, IMSM
Assistant Director of Immigration

Item IV

Ms Winnie SO
Principal Assistant Secretary for Education and Manpower (5)

Mr S S KWONG
Executive Director
Employees Retraining Board

Item V

Miss Erica NG
Principal Assistant Secretary for Education and Manpower (4)

Mrs Clare SIU
Acting Assistant Commissioner for Labour (Labour Relations)

Item VI

Miss Erica NG
Principal Assistant Secretary for Education and Manpower (4)

Mr William SIU, JP
Deputy Commissioner for Labour (Labour Administration)

Mr CHOW Tung-shan, JP
Assistant Commissioner for Labour (Employment Services)

Mr Michael SCOTT
Senior Assistant Solicitor

Miss Doris LO
Government Counsel

Item VII

Mr LAM Kam-kwong
Acting Deputy Secretary for Education and Manpower

Mr TSANG Kin-woo, JP
Assistant Commissioner for Labour (Occupational Safety)

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Ms Dora WAI
Senior Assistant Secretary (2)4

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I. Confirmation of minutes of previous meetings and matters arising
(LC Paper Nos. CB(2)1836/00-01, CB(2)1950/00-01 and CB(2)1932/00-01(01))

The minutes of the meetings held on 19 April 2001 and 17 May 2001 were confirmed.

List of follow-up actions required of the Administration

2. Members noted the list of follow-up actions required of the Administration.

II. Date of next meeting and items for discussion
(LC Paper No. CB(2)1932/00-01(02))

3. As no item was proposed for discussion at the next meeting scheduled for 10 July 2001, members agreed that the meeting should be cancelled. Members also agreed that no regular meeting would be held during the summer recess.

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4. The Chairman said that the subject on the offsetting arrangement of Mandatory Provident Fund (MPF) Scheme benefits against severance payment and long service payment and survey on age discrimination would be followed up by the Panel in the next session.

III. Progress of the Admission of Mainland Professionals Scheme
(LC Paper No. CB(2)1864/00-01(01))

5. Deputy Secretary for Security (DS for S) briefed members on the progress on the implementation of the Admission of Mainland Professionals Scheme (the Scheme) as detailed in the Administration's paper and the supplementary note tabled at the meeting.

(Post-meeting note : The supplementary note tabled at the meeting was circulated to members vide LC Paper No. CB(2)2033/00-01 on 5 July 2001.)

6. The Chairman asked about the types of jobs offered to successful applicants under the Scheme and whether the skills possessed by them were not available or in shortage locally. He also asked whether the remuneration offered to them was comparable to that of local professionals engaging in similar jobs.

7. The Deputy Chairman said that the information gathered on the types of jobs taken up by Mainland professionals would be a useful reference for the Administration in devising educational and training plans to train up local professionals to meet the needs of the market in the longer term.

8. DS for S affirmed that all successful applicants possessed skills which were not available or in shortage locally; and the remuneration offered to them was broadly comparable to the prevailing market rate for local professionals. In the information technology (IT) sector, the successful applicants were offered jobs in areas of business development, electronic engineering management and software development. In the financial services sector, the jobs offered to successful applicants included top management post, investment consultant and financial analyst for the Mainland market. He supplemented that according to year 2000 statistics, the average salary range for fresh graduates of local university was between \$12,000 and \$15,000 per month for the two sectors in question. The Administration considered it reasonable to set the starting remuneration for Mainland professionals at \$15,000 or more as they had usually acquired several years of working experience.

9. In reply to Mr LEUNG Fu-wah, DS for S said that each application as referred to in the supplementary note involved one person only. Therefore, the eight approved applications involved a total of eight persons. Mr LEUNG Fu-wah asked whether the Administration would tighten up the processing of applications for the IT sector in

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view of the increase in supply of local IT professionals as a result of the recent retrenchments.

10. DS for S said that employers would prefer to employ local professionals should they possess the required skills as local people would be able to contribute to the company quickly because they were familiar with the local environment. However, it seemed that those who were made redundant recently were not the IT professionals currently sought in the market.

11. Mr LEUNG Fu-wah asked what measures the Administration would implement to ensure that the actual salary paid to the Mainland professionals admitted under the Scheme would be the salary as stated in the applications. DS for S said that random inspections would be carried out to deter malpractices. In addition, employers had been warned that those who made a false statement in the application would be prosecuted. He added that Mainland professionals could change employment one year after admission if they were offered a remuneration below the market rate. Assistant Director of Immigration (AD of Imm) said that one of the means to deter employers from such malpractices was to inspect the employer's annual returns of remuneration and pensions to the Inland Revenue Department. Mr LEUNG Fu-wah opined that inspection of employer's returns might not be a reliable method and that more effective preventive measures should be put in place.

12. The Chairman said that the Mainland professionals should be informed, before admission, of their rights and benefits as well as the channels for lodging complaints. He reminded the Administration that the applications for IT posts under the Scheme should be processed with particular care as the supply of local IT professionals should have increased after the recent retrenchments. He considered that the Administration should keep abreast of the development of the manpower demand and supply. He also suggested that the Administration should consider contacting the IT companies concerned with a view to obtaining more information on the supply of IT professionals arising from the retrenchments. AD of Imm responded that ImmD would keep in view of the development of the local employment market. Advice from relevant bodies such as the Information Technology and Broadcasting Bureau would be sought, where necessary, in processing the applications.

13. Dr LUI Ming-wah said that the Administration should not exercise unnecessarily stringent control in processing applications under the Scheme; otherwise the effectiveness of the Scheme would be undermined. In reply to Dr LUI Ming-wah, DS for S said that the remuneration offered to Mainland professionals included salary and all other related benefits such as accommodation and allowance. The Chairman asked the Administration to provide detailed information on the types of jobs, post titles and breakdowns on the remuneration offered to Mainland professionals as well as a comparison on the remuneration for local and Mainland professionals of similar jobs.

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14. Mr LEE Cheuk-yan noted from the Administration's paper that a new section had been included in the Labour Department's (LD) Interactive Employment Services website to provide a forum for employers to display job vacancies so that interested Mainland professionals could approach the relevant employers direct for job application. He asked whether a mechanism was in place to ensure that local professionals would be given priority to apply for such jobs and whether records of unsuccessful applications by local applicants would be kept by ImmD or LD.

15. DS for S said that employers had been encouraged to place their recruitment advertisements on local employment websites to facilitate local people to apply for jobs. He reiterated that employers would prefer to employ local professionals than Mainland professionals should they possess the required skills. The Administration therefore considered it inappropriate to impose procedural hurdles on the Scheme, especially given that the projected manpower shortage was significant. Mr LEE Cheuk-yan considered that effective measures should be put in place to safeguard the employment opportunities of local professionals. DS for S noted his views.

16. Mr YEUNG Yiu-chung noted that some 3 000 application forms were distributed and 70 applications were received during the first month after the Scheme was launched. He asked whether the response was within the Administration's expectation. DS for S replied that the 70 applications received so far, of which eight were approved, broadly matched with the Administration's expectation. The fact that some 3 000 forms were distributed and 1 239 enquiries were received during the first month demonstrated that many employers were interested in the Scheme. He also informed members of the initial response of the Admission of Talents Scheme announced in October 1999. He said that during the first two months since its launch, relatively few applications were received and no approval was made. It was only until the end of March 2000 when eight applications were approved.

17. Mr Tommy CHEUNG asked when the Administration would consider including the admission of chefs under the Scheme. DS for S responded that the Administration had undertaken to conduct a comprehensive review on the Scheme at the appropriate time.

18. Mr James TIEN said that he was aware that the German Government had recently implemented a policy to admit Indian professionals to work in Germany. The German Government had put in a lot of efforts to promote Germany in India with a view to attracting more Indian professionals to take up employment in Germany. He asked whether the Administration would consider devoting efforts to promote the Scheme in major cities of the Mainland such as Shanghai and Beijing. Noting that only Mainland professionals with working experience would be admitted and the remuneration to be offered to them would not be less than \$15,000, Mr TIEN asked whether fresh graduates of Mainland universities would also be considered under the Scheme at a salary level of \$10,000 to \$12,000.

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19. DS for S said that the Office of the Government of the Hong Kong Special Administrative Region in Beijing had assisted considerably in promoting the Scheme in Beijing. Letters introducing the Scheme were issued to well-known universities in the Mainland. In addition, publicity pamphlets and posters were produced. Information on the Scheme was uploaded onto the internet. He said that the Administration had no plan to conduct promotional programmes on the Scheme in Shanghai at the moment. However, the Administration would consider the need to further promote the Scheme as and when necessary. As regards the remuneration for Mainland professionals, DS for S pointed out that according to year 2000 statistics, local university graduates who specialised in IT were remunerated at an average of \$14,500 per month whereas those who specialised in business management, financial services and related areas were remunerated at an average of \$11,750 per month. The professionals now needed by the market generally possessed not only academic qualifications but also experience or expertise.

20. Mr James TIEN suggested that the Administration should step up promotional efforts on the Scheme. For example, the publicity pamphlet should include more information about the assistance that would be rendered by the Government to help Mainland professionals to settle in the local environment. He considered that the spouse and children of Mainland professionals should be allowed to stay in Hong Kong as this was one of the most important factors for a Mainland professional to decide whether he should take up employment in Hong Kong. DS for S said that the Administration would consider Mr TIEN's suggestions positively. He added that the Administration had briefed the eight chambers of commerce on the Scheme. He welcomed members, especially those who had close connections with trade and employers' organisations, to help promote the Scheme. As requested by Mr TIEN, DS for S undertook to provide copies of the application form for the Scheme for members' reference.

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(Post-meeting note : Copies of the application form for the Scheme were circulated to members vide LC Paper No. CB(2)2052/00-01 on 10 July 2001.)

21. Miss CHAN Yuen-han enquired about the reasons for the refusal of the three applications under the Scheme. DS for S replied that these applications were refused on the ground that the skills and expertise required of the jobs were not in shortage locally.

22. Mr Kenneth TING said that the Liberal Party was in support of training up local professionals rather than relying on admission of professionals from other places. Referring to the figures that three of the 50 applications under the IT sector and five of the 19 applications under the financial services sector were approved, he asked why the number of approved applications in the IT sector was relatively small as compared with that in the financial services sector. DS for S explained that the applications under the financial services sector were received earlier than those in the IT sector, as a result of which they were also processed earlier.

IV. Self-employment Business Start-up Assistance Scheme
(LC Paper No. CB(2)1932/00-01(03))

23. Principal Assistant Secretary for Education and Manpower (5) (PAS(EM)5) said that the Administration introduced the Self-employment Business Start-up Assistance Scheme (the Start-up Scheme) to members at the Panel meeting on 15 March 2001, during which members generally supported the objective of the Scheme and asked for more details. She briefed members on further details about the Start-up Scheme as provided in the Administration's paper.

24. Ms LI Fung-ying expressed support for the Start-up Scheme in principle. She noted that the Scheme aimed at helping the unemployed who had completed full-time or part-time self-employment courses organised by the Employees Retraining Board (ERB). She asked whether part-time workers who did not have a full-time job would be eligible to apply for a loan under the Start-up Scheme. She also asked whether the Administration would further negotiate with the participating lending institutions for a lower interest rate as the current rate offered by them at prime rate plus 3% was too high.

25. The Chairman and Mr LEE Cheuk-yan shared Ms LI's view that the interest rate should be lowered. Mr LEE pointed out that as the market nowadays was dominated by large businesses, borrower trainees would face great pressure in running small businesses.

26. PAS(EM)5 explained that the Start-up Scheme aimed at helping the trainees who were unemployed as they were in greater need than those who had a part-time job. Nevertheless, the Administration would consider extending the Scheme to the others in need, such as marginal workers of low skills and low educational attainment. She further explained that the nature of business loan and mortgage loan was different and thus the interest rates for these loans varied. She pointed out that the interest rate for loans under the Start-up Scheme was close to the prevailing interest rate for business loans, which was usually between 2% and 3% above the prime rate. As borrower trainees usually had no collateral, participating lending institutions would normally offer an interest rate at 3% above the prime rate. She said that the interest rate might be lowered with competition should there be more lending institutions participating in the Start-up Scheme in the future. The Chairman expressed worry that the high interest rate offered by the lending institutions might give an impression that the banking sector had no confidence in the Start-up Scheme.

27. Mr James TIEN said that a borrower trainee might lack the sense of commitment if he was not required to shoulder a certain percentage of the capital to run the business. PAS(EM)5 said that the Administration had discussed the issue with the participating lending institutions. The understanding was that the quality of the

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business proposal submitted by a borrower trainee should demonstrate his commitment towards the business. The lending institutions would exercise professional judgment in assessing the viability of the business proposal. As the lending institutions could always approve an amount which was less than the loan applied for, the Administration considered it unnecessary to set a compulsory equity ratio to be met by the borrower trainees.

28. Mr James TIEN expressed great reservations about the mode of operation of the Start-up Scheme. He asked whether the 70% of the loan guaranteed by the Government would also be subject to the interest rate of 3% above the prime rate. PAS(EM)5 replied that there would be no matching deposit by the Government with the lending institutions for loans taken out by borrower trainees. As such, the full loan amount would attract the same rate of interest for the lending institutions. In reply to a further question from Mr TIEN, PAS(EM)5 said that the defaulted amount would be shared between the Government and the lending institution at the ratio of 70:30.

29. Miss CHAN Yuen-han expressed support for the Start-up Scheme as it could help the unemployed. She said that the amount of loan guaranteed by the Government in respect of an application under the Start-up Scheme would be more or less the same as the Comprehensive Social Security Assistance payments to be made to an unemployed person had he not been able to find a job for two to three years. As the businesses financed under the Start-up Scheme were small businesses with limited resources, she asked whether the Administration would consider reviewing some of its policies in order to better achieve the objective. For example, the Administration might explore the possibility of lending tools and equipment to trainees who were engaged in cleansing business. Referring to paragraphs 3(a) to (c) of the Administration's paper, Miss CHAN also asked about the details of the services and facilities to be provided to trainees.

30. Executive Director, Employees Retraining Board (ED/ERB) said that trainees who took a self-employment course organised by ERB would be taught the generic business skills and would be assisted to identify business opportunities and to draw up business proposals. Upon completion of the course, ERB would provide trainees with 12-month follow-up service, during which talks and consultation sessions would be held for trainees to exchange views with trainers, experienced businessmen and representatives of business start-up associations. For those who had successfully secured a loan under the Start-up Scheme, tailor-made support services would be provided to assist them in running the business. A self-employment corner in ERB's retraining resource centre would be set up to provide basic office facilities to trainees to run their self-employment programmes. Trainees could also enjoy the facilities and consulting service available at the self-employment centre of the Vocational Training Council at a low monthly fee.

31. PAS(EM)5 said that as trainees were encouraged to run small business initially, the amount of loan secured under the Start-up Scheme should be sufficient to

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serve the purpose. To help explore more business opportunities for trainees, ERB was considering to provide self-employment courses in areas such as flower arrangement and photo-taking for weddings.

32. Ms Cyd HO did not support the Start-up Scheme. She considered that trainees might not be able to run a business successfully as the market was saturated. She asked the Administration to consider investing the \$50 million earmarked for the Scheme in the waste recycling industry which, she believed, would create more employment opportunities.

33. ED/ERB pointed out that as unemployed retrainees who wished to apply for a loan to start a business did not have income proof or good credit history, lending institutions normally would not consider their applications should there be no guarantee from the Government. With the professional judgment exercised by lending institutions in assessing the viability of the business proposals submitted by borrower trainees before the loans were approved and the guidance and support services available to trainees, the Administration hoped that the success rate of the Start-up Scheme could be enhanced.

34. Mr James TIEN said that the Liberal Party supported the objective of the Start-up Scheme to help the unemployed, but not the mode of operation of the Scheme.

35. In concluding the discussion, the Chairman said that members had different views on the Start-up Scheme.

V. Terminal payment for unreasonable dismissal
(LC Paper No. CB(2)1932/00-01(04))

36. Mr LEUNG Fu-wah pointed out that the Employment Ordinance (EO) did not clearly stipulate that terminal payments should be awarded on a pro-rata basis according to an employee's length of service in the case of unreasonable dismissal. Members had therefore requested the Administration to provide statistics on cases of award of terminal payments made by the court or the Labour Tribunal (LT) in the past few years, with details of years of service of the employees concerned. Principal Assistant Secretary for Education and Manpower (4) (PAS(EM)4) said that the Administration had conveyed to the Judiciary members' request. However, the Judiciary advised that it did not keep record of such information.

37. Mr LEUNG Fu-wah said that to his understanding, the policy intent of the employment protection provisions under EO was to strengthen protection for employees against dismissal by employers to evade their liabilities under EO. The provisions provided that if an employer had not shown a valid reason for the dismissal as specified under section 32K of EO, the dismissal was deemed to be unreasonable.

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Under the circumstance, the court or LT might make an award of terminal payments to be paid to the employee by the employer as it considered just and appropriate. However, the amounts awarded could be less than the employee's entitlement to long service payment or severance payment. As the Administration was unable to provide statistics on cases of award of terminal payments, Mr LEUNG asked whether it would consider to introduce amendments to the relevant provisions of EO to make clear that terminal payments should be awarded on a pro-rata basis according to an employee's actual length of service if the dismissal was established to be unreasonable.

38. PAS(EM)4 said that the provisions on employment protection for employees against unreasonable dismissal under EO clearly stipulated that the court or LT might make an award for terminal payments according to the actual length of service of an employee notwithstanding that the employee had not attained the qualifying length of service required under EO. She invited members to refer to the Administration cases which they felt were not handled along this line so that follow up action could be taken with the Judiciary. She added that the Administration had consulted the Department of Justice (D of J) on the issue and it confirmed that the relevant provisions of EO were clear and in line with the original policy intent. In response to Mr LEUNG's request for a copy of the legal advice on the issue, PAS(EM)4 said that the views of D of J were already reflected in the Administration's paper.

39. The Chairman noted that long service payment or severance payment would be awarded to an employee in the case of unreasonable dismissal regardless of whether the employee had attained the qualifying length of service required under EO. However, in practice, the long service payment or severance payment would be offset against the amount of MPF Scheme benefits. He expressed concern about the possibility of an employee being awarded no payment after the offsetting. Mr LEUNG Fu-wah shared the same concern. He said that theoretically there might be circumstances where an employee would have to make payment instead of being awarded payment if the terminal payments awarded by the court or LT were less than the entitlement of the employee.

40. Acting Assistant Commissioner for Labour (Labour Relations) (Ag C for L(LR)) said that the existing provisions in EO provided that an employer would be presumed to have the intention to evade his liabilities under EO if the employer was unable to show a valid reason for the dismissal. Under such circumstances, the court or LT would make an award of terminal payment to the employee in proportion to his length of service. The terminal payments should include all the benefits that the employee should have been entitled to receive had he not been dismissed, such as long service payment, severance payment and leave pay. Regarding the offsetting arrangement for long service payment, severance payment and MPF Scheme benefits, Ag C for L(LR) said that the offsetting principle was a long standing arrangement which was extended to MPF Scheme benefits when the MPF System was implemented. She added that the situation of an employee having to make payment in the process could not arise as offsetting would be between the amount of severance

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payment or long service payment awarded and his MPF benefits and he would be entitled to the greater of the two.

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41. The Chairman said that members were concerned about the amount of terminal payments which an employee would be able to receive in the case of unreasonable dismissal. He requested the Administration to provide in writing the response given at the meeting.

42. Mr LEE Cheuk-yan pointed out that in practice the length of service of an employee was a key factor for the court to decide whether to award terminal payments on a pro-rata basis. Past cases showed that only employees with around four years of service or more would be awarded terminal payments on a pro-rata basis. The court or LT would normally not consider whether an employer had the intention to evade long service payment if the years of service of the employee concerned were less than four. Mr LEE also pointed out that employees who were dismissed would usually be informed of the practice of the court or LT in handling such cases and would be persuaded to settle the claims by mutual agreement between employers and employees. Mr LEE raised query why members were asked to refer cases to the Administration as he considered that the Judiciary should be clear as to whether the length of service was one of the factors in deciding whether the terminal payment should be awarded on a pro-rata basis. He added that the offsetting arrangement for long service payment, severance payment and MPF Scheme benefits was not agreed by all parties concerned. In his view, the offsetting arrangement was unreasonable.

43. The Chairman suggested that the Administration should consider asking the Judiciary to provide information to demonstrate that cases of unreasonable dismissal were handled in line with the policy intent of the relevant provisions in EO.

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44. Miss CHAN Yuen-han stated that the Hong Kong Federation of Trade Unions (HKFTU) did not support the offsetting arrangement. The problem arising from the offsetting arrangement became more serious after the implementation of the MPF System. She opined that the Administration should consider amending the legislation to rectify the problem. Referring to the figures shown in paragraph 8 of the Administration's paper, she pointed out that the number of cases settled by mutual agreement between employers and employees was much greater than the number of cases handled by the court or LT. She asked whether claimants of cases settled by mutual agreement received their statutory entitlements. PAS(EM)4 responded that the Administration did not have such information on hand and undertook to convey to the Judiciary Miss CHAN's request.

45. Dr LUI Ming-wah expressed support for the offsetting arrangement. In reply to Dr LUI's question, Ag AC for L(LR) clarified that in terms of offsetting the long service payment or severance payment against the amount of MPF Scheme benefits, an employee would receive the former payment or the MPF Scheme benefits, whichever was greater.

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46. Mr SZETO Wah considered the offsetting arrangement unreasonable. He pointed out that the purpose of long service payment or severance payment was to maintain an employee's living before he would be able to find a new job, whereas MPF Scheme benefits were to maintain his living after retirement. As the policy intent was to protect employees against unreasonable dismissal, the court or LT should, in line with the policy intent, award terminal payments on a pro-rata basis in handling cases of unreasonable dismissal. The intention of the employer to evade long service payment should not be a deciding factor for the award of terminal payments and the amount to be awarded. He requested the Administration to provide relevant information of cases of unreasonable dismissal heard by LT, including the amounts of terminal payments awarded.

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VI. Proposed amendments to the Small Claims Tribunal Ordinance, Labour Tribunal Ordinance and Minor Employment Claims Adjudication Board Ordinance

(LC Paper No. CB(2)1932/00-01(05))

47. Ms LI Fung-ying expressed reservations about the proposed amendments. She considered the *So Sai Ming vs The Kowloon Motor Bus Co (1933) Ltd* case (the KMB case) as cited in paragraph 3 of the Administration's paper unfair because the claimant who had won the case in the tribunal had to pay the legal costs after KMB had successfully appealed on a procedural point. She asked whether a litigant who won a case with legal aid would be required to pay his own legal cost to the Legal Aid Department (LAD) under the proposal.

48. Senior Assistant Solicitor (SAS) said that no party would have to pay legal costs to the other party if the costs were capped. In the KMB case, the respondent had to pay the legal costs incurred by KMB as KMB had won the appeal. This followed the existing principle that "costs follow the event" under which the losing party had to settle the legal costs of the winning party. SAS pointed out that had the costs been capped, KMB might consider, before lodging the appeal, whether it was worthwhile to do so as it had to meet some costs. The proposed amendments would bring an advantage to a litigant on lower income so that he would not have to bear disproportionate legal costs that might arise from an appeal that was not due to any of his fault.

49. Mr LEE Cheuk-yan said that the proposal would bring about advantages and disadvantages. He pointed out that under the proposal, it might be easier for an employer to make a decision to lodge an appeal against his employee as the employer would not be required to pay the legal costs of his employee even if the appeal was unsuccessful. The employee, regardless of whether he was successful in the appeal, had to bear his own legal costs. Therefore, those employees with low income would be discouraged from pursuing the case if he was unable to obtain legal aid. Mr LEE

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suggested that the principle of "cheap, simple and informal" should be introduced to the appeal procedure. If LAD considered that there was a case for an appeal, the employee concerned should be granted legal aid to pursue the case with the means test waived.

50. SAS said that the conditions under which legal aid would be granted were matters of policy for LAD to decide. He explained that the objective of the Small Claims Tribunal, the Labour Tribunal and the Minor Employment Claims Adjudication Board was to provide a cheap, simple and informal forum to handle cases where small amounts of money were involved, legal representation was not allowed in such proceedings and thus legal costs were not normally involved and therefore not recoverable. Such protection might be lost if the principle that "costs follow the event" would apply to an appeal. As in the KMB case, the respondent who won \$15,000 on the merits in the tribunal but lost on an appeal made by his opponent was required to pay disproportionate costs amounting to some \$120,000. The risk of having to pay legal costs that were disproportionate to the amount at stake might not pose great problems to large companies with sound financial position. However, it might inhibit a poor litigant from initiating an appeal simply to avoid the risk of being crushed by disproportionate costs. D of J therefore considered it appropriate that the costs should be capped so that each litigant only had to bear his own legal costs. In fact, there were precedents in other jurisdictions that there was a trend to cap legal costs in small claims cases. Moreover, when representatives of D of J attended the meeting of the Panel on Administration of Justice and Legal Services, a member of the labour constituency disclosed that low-paid workers were put off to seek clarification of law on appeal for fear of having to pay disproportionate costs should they lose. The system of having proceedings to be conducted in an inexpensive manner would break down if there was no clear indication that parties would not be required to pay disproportionate costs at the appellate level.

51. Mr LEE Cheuk-yan pointed out that the proposal also had a resource implication as LAD would not recover the legal costs from the losing party. In his view, the Administration should consider removing the means test when granting legal aid to employees on appeal.

52. SAS said that the issue was raised by representatives of employees at the Labour Advisory Board (LAB), and the view of the Director of Administration, who had policy interest in the matter, was that legal aid should not be used as a solution in every case. Although recovery of legal costs for cases handled by the tribunals was limited, it did not prevent litigants from obtaining legal assistance informally through other networks. SAS considered the proposed arrangement fair as long as the parties concerned were well aware of the principle of non-recovery of costs in the first place. As the tribunals and the appellate courts were two components of one system, it was logical that they should apply the same principle. Further, the number of cases on appeal was small compared with the number of cases heard in the first instance. The proposal would not affect the system to a great extent.

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53. Ms Cyd HO said that employees would be discouraged from appealing if the proposed amendments were enacted. She asked whether the Administration would consider reviewing the legal aid system and extending the Duty Lawyer Scheme to help employees lodge appeals and to provide them with greater protection against appeals initiated by opponents. She also asked whether the views of the Judiciary Administrator and the Bar Association on the proposed amendments had been referred to LAB and labour unions for consideration.

54. SAS said that LAB had been advised of the views of the Judiciary Administrator and the Bar Association. He pointed out that employee representatives of LAB were in favour of the proposal because low-paid workers would be free from the risk of having to bear disproportionate costs should they lose on appeal. This was one of the reasons why the Administration initiated the proposal.

55. Mr LEUNG Fu-wah expressed reservations about the proposal as it would bring about advantages and also disadvantages.

56. Mr Kenneth TING did not support the proposal. He queried why employers' associations, such as the Employers' Federation of Hong Kong and the Federation of Hong Kong Industries, were not consulted on the proposal. He also expressed concern about the measures to prevent abuse of the appeal system.

57. Miss CHAN Yuen-han did not support the proposal. Referring to the point made by the Administration in paragraph 12 of the paper that only cases where doubts existed on a point of law or jurisdiction could be brought for appeal and that many of the points or arguments could be and were frequently taken by the court itself, she said that every litigant should have the right to obtain legal representation if he so wished. She considered that the means test should be removed when granting legal aid on appeal.

58. Having regard to the views expressed by members, the Chairman asked the Administration to re-consider the proposal.

VII. Proposed Factories and Industrial Undertakings (Gas Welding and Flame Cutting) Regulation
(LC Paper Nos. CB(2)1279/00-01(07) and CB(2)1679/00-01(01))

59. The Chairman said that LAB and employers' associations were in support of the proposed Factories and Industrial Undertakings (Gas Welding and Flame Cutting) Regulation (the proposed Regulation). As a submission was received in relation to the proposed Regulation, at the meeting of the House Committee on 29 June 2001, Members agreed that the proposed Regulation should first be discussed by the Panel.

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60. Miss CHAN Yuen-han said that HKFTU was generally in support of the proposed Regulation. However, she asked the Administration to consider the views of the Welding Industry Employees Association (WIEA), a member union of HKFTU, as set out in its submission.

61. Acting Deputy Secretary for Education and Manpower (Ag DSEM) responded that the Administration had already considered the views expressed by WIEA. Assistant Commissioner for Labour (Occupational Safety) (AC for L(OS)) said that section 4 of the proposed Regulation provided that a proprietor was required to provide the relevant training to employees who were required to perform gas welding and flame cutting work. The electrical welding work as mentioned in WIEA's submission was not covered by the proposed Regulation. He said that following the tragic explosion in Yuen Long in early 2000 arising from gas welding and flame cutting work, the Administration had consulted the relevant employers' associations, labour unions and training bodies on safety training for employees undertaking such work. The general consensus was that priority should be given to regulating the safety of gas welding and flame cutting work given the high risk involved in such work.

62. As regards WIEA's suggestion that the Government should provide subsidy and tax concession to employees who underwent the relevant safety training courses, AC for L(OS) pointed out that the proprietor concerned had the responsibility to provide safety training to his employees who were required to perform gas welding and flame cutting work. It was also the responsibility of the proprietor to provide the relevant training in other similar mandatory safety training regulations. The Administration, therefore, had reservations about the suggestion.

63. Miss CHAN Yuen-han considered that safety training courses for workers who were required to perform other welding works should also be provided. Ag DSEM assured members that the issue on training for operators of other welding equipment would be dealt with at a later stage.

64. Mr Kenneth TING said the Government should provide subsidy to employees who underwent the relevant safety training courses. AC for L(OS) said that after the proposed Regulation had come into operation, employers could only employ those who already possessed a valid certificate to perform gas welding and flame cutting work should they be required to perform such work. In reply to a further question from Mr TING, AC for L(OS) said that the Vocational Training Council, the Construction Industry Training Authority and the Occupational Safety and Health Council would organise training courses required under the proposed Regulation on a cost-recovery basis. The fee for each participant to undergo a mandatory safety training course on gas welding and flame cutting was estimated to be about \$400 to \$500.

65. Members were generally in support of the proposed Regulation. The

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Chairman would report the deliberations of the Panel to the House Committee on 6 July 2001. Ag DSEM informed members that the Secretary for Education and Manpower (SEM) had withdrawn the notice for moving the motion to seek the Council's approval for the proposed Regulation on 11 July 2001. SEM would give notice for moving the motion in the next session.

VIII. Any other business

66. There being no other business, the meeting ended at 1:10 pm.

Legislative Council Secretariat

20 September 2001