

立法會
Legislative Council

LC Paper No. CB(2) 1836/00-01
(These minutes have been seen by the
Administration)

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LegCo Panel on Manpower

Minutes of meeting
held on Thursday, 19 April 2001 at 2:30 pm
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, JP
Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
Hon CHAN Yuen-han
Hon LEUNG Yiu-chung
Hon YEUNG Yiu-chung
Hon Ambrose LAU Hon-chuen, JP
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Frederick FUNG Kin-kee

Member attending : Hon Bernard CHAN

Members absent : Hon Cyd HO Sau-lan
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon LEUNG Fu-wah, MH, JP

Public Officers : Item III
attending

Mr Philip K F CHOK, JP
Deputy Secretary for Education and Manpower

Mr Paul P W WONG
Principal Assistant Secretary for Education and Manpower (10)

Ms Linda K P SO
Principal Assistant Secretary for Security

Mr Y T LAW
Assistant Director of Immigration

Item IV

Mr Philip K F CHOK, JP
Deputy Secretary for Education and Manpower

Mr LAM Kam-kwong
Principal Assistant Secretary for Education and Manpower (7)

Mr Benjamin TANG
Commissioner of Insurance

Mr William W L SIU
Deputy Commissioner for Labour

Mr LAI Ka-tong
Senior Labour Officer
Labour Department

Attendance by : Item IV
Invitation

The Hong Kong Federation of Insurers

Mr CHOY Chung-foo
Chairman

Mr CHENG Kwok-ping
Chairman
Task Force on Employees' Compensation Review

Mr Jackie CHUN

Deputy Chairman
Task Force on Employees' Compensation Review

Association for the Rights of Industrial Accident Victims

Mr CHAN Kam-hong

Mr NG Chung-wai

Ms LEUNG Kam-oi

Alliance of Professionals for Rehabilitation of Workers with Occupational Injuries

Dr Chetwyn CHAN

Miss Rosa MAH

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

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

Action

I. Confirmation of minutes of previous meeting and matters arising
(LC Paper Nos. CB(2)1280/00-01 and CB(2)1279/00-01(01))

The minutes of the meeting held on 15 March 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)1279/00-01(02))

3. Members agreed that the following items be discussed at the next meeting to be held on Thursday, 17 May 2001 at 2:30 pm -

- (a) Skills Upgrading Scheme; and
- (b) Technical amendments to the provisions on offsetting arrangement of mandatory provident fund scheme benefits against long service payment/severance payment of the Employment Ordinance.

III. Follow-up on the Admission of Mainland Professionals Scheme (the Scheme)

(LC Paper No. CB(2)1279/00-01(05))

4. Referring to paragraph 3 of the Administration's paper which assured members that the Administration would not allow an uncontrolled influx of Mainland professionals under the Scheme, the Chairman asked about the approximate number of Mainland professionals who were to be admitted that the Administration would consider as an influx. He also asked if the Administration had worked out any contingency plan to cope with an influx of Mainland professionals.

5. Principal Assistant Secretary for Security (PAS(S)) said that the number of Mainland professionals to be admitted would be determined by market forces. The following two criteria had to be met for admission of these professionals -

- (a) the skills possessed by them were either not available or in shortage locally; and
- (b) the remuneration offered to them was broadly comparable to the prevailing market rate for local professionals.

She added that a projection suggested that the current shortfall of IT professionals stood at around 4 000 while the projected manpower shortage for the financial services sector might rise to some 16 000 in 2005. With the above-mentioned criteria in place, the Administration did not envisage that there would be an influx of Mainland professionals under the Scheme.

6. Mr LEUNG Yiu-chung remained unconvinced of the Administration's assurance given in paragraph 3 of its paper. He held the view that the worry of the public could not be relieved if no quota was imposed on the number of Mainland professionals to be admitted under the Scheme. He suggested that the Administration should announce an estimated number of Mainland professionals to be admitted. As there were some 600 successful applications out of a quota of 1 000 for the Pilot Scheme on the Entry of Mainland Professionals (the Pilot Scheme) implemented in 1994, he considered that the response was not very low. According to the

Administration, the relatively low response was attributed to various procedural hurdles imposed on the Pilot Scheme which included the difficulties in administering a quota. He asked what practical difficulties had been encountered in implementing the Pilot Scheme which was subject to a quota.

7. PAS(S) explained that in order to ensure a fair chance for all interested companies to utilise the quota for the Pilot Scheme, lots were drawn to allocate the 1 000 places. There were some 3 000 employers who had expressed interest in the Pilot Scheme. A reserve list of employers was kept. Lots were drawn again amongst the employers on the reserve list where employers who had originally secured a place failed to recruit a suitable Mainland professional. The imposition of a quota posed some difficulties in the operation of the Pilot Scheme, e.g. some employers who had secured a place might fail to recruit suitable personnel and some who had found suitable personnel might not be able to secure a place.

8. Mr LEUNG Yiu-chung considered that the said difficulties were solely technical issues. He pointed out that there was usually a quota for similar schemes which were subject to a review after implementation. He questioned why the Scheme deviated from the past practice and asked whether the Administration had explored better means to impose a quota under the Scheme. In his view, the quota system might not necessarily be operated by drawing lots.

9. PAS(S) noted the concern raised by Mr LEUNG. She assured members that the Scheme would be operated with a high degree of transparency. The Administration would provide members with statistics relating to the Scheme on a quarterly basis, which would include the number of applications, academic qualifications and the remuneration of successful applicants. The Administration would answer any questions members might have on the quarterly reports. In addition, the operation and effectiveness of the Scheme would be reviewed one year after implementation. Members would be informed of the outcome of the review.

10. The Chairman commented that the information provided in the reports on the Talents Scheme was too general, e.g. the salary range of \$20,000 to \$50,000 was too broad. Upon his request, PAS(S) undertook to review and provide more detailed breakdown on salaries in future reports on the Scheme and the Talents Scheme.

11. Referring to paragraph 4 of the paper which stated that the Administration would avoid the various procedural hurdles imposed on the Pilot Scheme when re-launching the Admission of Mainland Professionals Scheme, Mr Ambrose LAU asked what procedures would be simplified to enhance the effectiveness of the Scheme.

12. PAS(S) said that firstly, unlike the Pilot Scheme, quota would not be imposed under the Scheme. Secondly, the requirement that only the graduates of 36 key Mainland universities were eligible to apply under the Pilot Scheme would be waived under the Scheme. However, the professionals to be admitted under the Scheme were

required to possess academic qualifications normally at university level or above. Thirdly, the Pilot Scheme required employers to go through designated Mainland recruitment agencies to identify and bring in selected candidates while this requirement would also be waived under the Scheme. In reply to the further question raised by Mr Ambrose LAU, PAS(S) said that as some employers were unable to identify suitable personnel among the 36 key universities under the Pilot Scheme, the requirement was waived in order to enable employers to have more choices of professionals. She added that the Immigration Department (ImmD) would be able to process applications under the Scheme within four weeks upon receipt of all supporting documents, after which an exit permit would be issued by the Mainland authorities within 15 working days.

13. As no quota would be imposed under the Scheme and no estimate on the number of Mainland professionals to be admitted would be made, Mr Andrew CHENG said that there might be no sound basis for the review to be conducted one year after the implementation of the Scheme. He pointed out that, unlike the Admission of Talents Scheme (the Talents Scheme) which was monitored by a selection committee comprising unofficial members, the Scheme would not be subject to any monitoring mechanism as the applications would solely be processed by ImmD. He asked about the role of the Education and Manpower Bureau (EMB) in the Scheme.

14. DSEM said that EMB had all along been working closely with the Security Bureau (SB) on the Scheme with a view to coping with the projected manpower shortfall in the IT and the financial services sectors. He explained that SB would deal with matters concerning the operation of the Scheme while EMB would be responsible for policy issues like manpower planning and training matters. The selection committee for the Talents Scheme was necessary because the talents admitted usually possessed advanced and unique skills. The advice of the selection committee would facilitate ImmD in processing these applications. He added that ImmD had long been processing applications for admission of foreign professionals. There was no sign that the supply of these professionals exceeded the local demand despite the fact that some of them came from cities of a lower standard of living than Hong Kong. Therefore, the Administration did not envisage that there would be an influx of Mainland professionals under the Scheme.

15. In the absence of a quota under the Scheme, Mr Andrew CHENG maintained the view that the Administration should work out an estimate on the number of Mainland professionals to be admitted in order to relieve the worry of the public. Measures should also be taken to prevent abuses of the Scheme. DSEM said that the two criteria for the admission of Mainland professionals as referred to in paragraphs 5(a) and 5(b) above already provided a mechanism to control the number of professionals to be admitted and to prevent abuses of the Scheme. With the two criteria in place, he considered that there would unlikely be an influx of Mainland professionals under the Scheme and thus the local workforce would not be adversely affected. The Chairman shared the worry of Mr CHENG. He opined that EMB

should take the lead to monitor the implementation of the Scheme.

16. Dr LUI Ming-wah considered that the possibility of an influx of Mainland professionals under the Scheme would not be high on the grounds that there was a global surge in demand for skilled professionals; there were only some 600 Mainland professionals admitted under the Pilot Scheme; and the prevailing economy of the Mainland was boosting. In his view, the Administration should consider conducting quarterly or half-yearly review on the Scheme, and the Scheme might be discontinued as and when the situation warranted. He expressed worry that allowing graduates of all Mainland universities to apply under the Scheme might lead to a decline in the standard of professionals to be admitted. He said that the standard of some county or city universities in the Mainland was far below the 36 key universities administered by the Ministry of Education. He remarked that the officers responsible for processing the applications under the Scheme might not be fully familiar with the education system in the Mainland, and suggested that these officers should receive relevant training in order to avoid possible mistakes.

17. DSEM said that in addition to providing regular reports on the implementation of the Scheme, SB would conduct an overall review on the effectiveness of the Scheme one year after implementation. He pointed out that the lifting of the restriction in respect of universities was in line with the current practice for admission of foreign professionals. Assistant Director of Immigration (AD of Imm) said that in processing the applications for admission of professionals, ImmD would seek the views from the Hong Kong Council for Academic Accreditation if the authenticity of an applicant's academic proof was in doubt. For similar doubts in applications from Mainlanders, ImmD would approach The China Academic Degrees and Graduate Education Development Centre, an official body recommended by the Ministry of Education in the Mainland, for advice.

18. In reply to Mr YEUNG Yiu-chung's question, AD of Imm said that the criteria for processing the applications for admission of foreign professionals and Mainland professionals would be the same. The only difference was that the admission of Mainland professionals would be subject to a sectoral requirement. He added that in addition to seeking advice from the Hong Kong Council for Academic Accreditation and relevant professional bodies, field inspections to organizations would be conducted for suspected cases of application. In response to the further question from Mr YEUNG, AD of Imm said that cases of abuse of the admission of foreign professionals in the past had been very insignificant. Indeed, some of these professionals were only employed for a short duration varying from several months to a year. Upon renewal of the work permit of an admitted professional after one year's stay, ImmD would examine his employer's records to see whether the terms and conditions of employment genuinely met the prescribed criteria.

19. Mr James TIEN asked whether the criteria of disallowing the professionals admitted under the Scheme to change employment within the first year of entry also applied to foreign professionals who worked in Hong Kong. He opined that the

policy on the entry of dependants of all persons admitted to work in Hong Kong should be the same. If dependants of foreign professionals were allowed to live in Hong Kong, the dependants of Mainland professionals admitted under the Scheme should also be allowed to do so.

20. PAS(S) replied that successful applicants, regardless of whether they were Mainland professionals or foreign professionals, would be granted permission of stay for one year. Extension of stay would be granted if the professionals were still employed in jobs relevant to their qualifications and expertise. There was no restriction on change of employment within the first year of entry for foreign professionals admitted to work in Hong Kong. However, this restriction was imposed under the Scheme as an additional measure to deter abuses. She said that exceptional applications for change of employment within the first year of stay from admitted Mainland professionals would also be considered on an individual case basis. In respect of admission of dependants, the prevailing policy allowed foreign professionals and successful applicants under the Talents Scheme to bring in their dependants. However, eligible Mainland professionals would be initially admitted without their dependants. Whether they could bring in their families would be considered in the context of an overall review on the policy on the entry of dependants of all persons admitted to work in Hong Kong. The outcome of the review would be announced as soon as the review was completed, which was expected to be at the end of 2001.

21. Mr James TIEN said that the policy on the entry of dependants of all persons admitted to work in Hong Kong should be able to attract and retain talents and professionals. He considered it undesirable and impractical if the dependants of Mainland professionals could only be admitted after the professionals were eligible to right of abode after seven years' residence in Hong Kong. He opined that there should not be a rigid requirement that all professionals to be admitted should possess academic qualifications at university level or above. They should be admitted on their own merits. PAS(S) said that when conducting the review, reference would be made to overseas practices and incentive measures to attract and retain professionals to work in Hong Kong would be considered. Despite the requirement that Mainland professionals to be admitted under the Scheme should possess academic qualifications at university level or above, applicants with specialized skills or outstanding relevant experience would also be considered on a case-by-case basis.

22. Miss CHAN Yuen-han expressed dissatisfaction on the Administration's stance of not adopting any of the suggestions made by members in relation to the Scheme. She stressed that she did not discriminate against Mainland professionals, and urged that factors such as the living standard, the geographical locations, the race and the relationship of the people between Hong Kong and the Mainland should be carefully considered when finalizing the Scheme. Without an effective monitoring mechanism, she was worried that the Mainland professionals admitted under the Scheme might not be the professionals genuinely needed by Hong Kong.

23. PAS(S) assured members that only those who met the two criteria as referred to in paragraphs 5(a) and 5(b) above would be admitted under the Scheme and there would be a high degree of transparency on the operation of the Scheme. ImmD had substantial experience in processing these applications and would adhere to the well-tried monitoring system to administer the Scheme. Surprise field inspections would also be conducted from time to time to deter abuses. The Administration would continue to step up efforts to monitor and enhance effectiveness of the Scheme. She pointed out that as the professionals to be admitted under the Scheme were not low-skilled workers and there was currently a world-wide scramble for professionals, the Administration was confident that no low-cost labour would be admitted under the Scheme. Moreover, if the professionals were offered a remuneration which was below the local market rate, they could change employment one year after admission.

24. As the Administration maintained its stance on the Scheme despite the possible problems raised by members, Miss CHAN Yuen-han was of the view that the responsible Government officials should resign if such problems did arise after the implementation of the Scheme. PAS(S) said that the Administration would welcome the public to report suspected cases to ImmD for investigation. If the professionals were found to have obtained entry permits by fraud or false representation, they would be prosecuted and removed in accordance with the law. Employers who were involved in the fraud or false representation would also be prosecuted.

25. Mr Kenneth TING asked how employers would be considered as having made genuine efforts to recruit suitable local candidates but without success before bringing in Mainland professionals. AD of Imm said that employers would be asked where necessary to submit documentary proof to show that they had advertised the vacancies on newspapers or had sought assistance from the Labour Department, employment agencies or headhunters before they applied for the Scheme. In addition, the nature and duties of the job, the qualifications required of and the remuneration intended to be offered to local candidates should be comparable to that offered to the Mainland professionals. Sometimes, information of local candidates who had attended interviews would also be examined by ImmD.

26. Mr LEE Cheuk-yan stressed that he did not object to the Scheme. However, in implementing the Scheme, the Administration should not only address the need of the trades, it should also ensure that the employment opportunities and career prospects of local people were not threatened. He considered that in addition to the enhancement of economic growth, the emotion of citizens should also be carefully handled. He maintained the view that a quota should be imposed on the number of Mainland professionals to be admitted under the Scheme in order to strike a right balance.

27. Mr LEE Cheuk-yan moved the following motion -

"本委員會要求政府在"輸入內地專業人才計劃"設定輸入名額上限及設立包括勞工界代表的審批委員會，並規定僱主給予受聘來港工作的內地專

業人員的工資，不得低於同等工種的市場工資中位數；本委員會同時促請政府根據人力需求推算的結果，相應地增加本地職業培訓和大學學額，以填補預計出現的短缺人手。”

(The translated version of the motion : "That this Panel requests the Government to impose a quota on the Admission of Mainland Professionals Scheme, set up a vetting committee with representatives from the labour sector, and stipulate that the salaries to be paid by the employers to the Mainland professionals working in Hong Kong should not be lower than the median market wages of the same trade; at the same time, this Panel urges the Government to increase vocational training and university places in accordance with the findings of the manpower projection in order to meet the projected shortfall.")

28. The Chairman put the motion to vote. The following members voted in favour of the motion : Mr LEE Cheuk-yan, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr LAU Chin-shek, Mr Andrew CHENG, Mr SZETO Wah, Mr Michael MAK and Mr Frederick FUNG. The following members voted against the motion : Mr Kenneth TING, Mr James TIEN, Dr LUI Ming-wah, Mr Ambrose LAU and Mr Tommy CHEUNG. Mr YEUNG Yiu-chung abstained from voting.

29. The Chairman declared that the motion was passed.

IV. Employees' compensation system (LC Paper No. CB(2)691/00-01(04))

Meeting with deputations

The Hong Kong Federation of Insurers
(LC Paper No. CB(2)1279/00-01(03))

30. Mr CHOY Chung-foo presented the views of The Hong Kong Federation of Insurers as set out in its submission.

Association for the Rights of Industrial Accident Victims
(LC Paper No. CB(2)746/00-01(01))

31. Mr CHAN Kam-hong presented the views of the Association for the Rights of Industrial Accident Victims as set out in its further submission.

(Post-meeting note: The further submission from the Association which was tabled at the meeting was issued to members vide LC Paper No.

CB(2)1337/00-01(01) on 20 April 2001.)

Alliance of Professionals for Rehabilitation of Workers with Occupational Injuries (LC Paper Nos. CB(2)1279/00-01(04) and CB(2)1308/00-01(01))

32. Dr Chetwyn CHAN and Miss Rosa MAH presented the views of the Alliance of Professionals for Rehabilitation of Workers with Occupational Injuries as detailed in its submission.

Issues raised by members

33. In view of the under-funding situation in the employees' compensation business and following the suggestion of the Association for the Rights of Industrial Accident Victims, Mr LEE Cheuk-yan sought the views of The Hong Kong Federation of Insurers and the Administration on the setting up of a centralized employees' compensation fund. He expressed doubt as to whether the insurance trade would be able to sustain in this business in the longer term as three insurance companies had become insolvent recently.

34. Mr CHOY Chung-foo said that the insurance industry had no right to oppose to the setting up of a centralized employees' compensation fund if it was so decided by the Government. He pointed out the characteristic of risk diversification in the insurance business. For example, if an insurance company suffered a loss in a business with a client in one or two years over a ten-year period, the insurance company would continue the business with that client provided that a loss was not incurred in average over the period. Similarly, an insurance company would continue the businesses with a number of clients even if it suffered losses with one or two of these clients, as the risk was shared out among them. However, if losses persisted over years and among clients, it was inevitable that the insurance companies concerned would withdraw from the business. Nevertheless, he was not in favour of a centralized employees' compensation system on the ground that the change of the operator from private insurance firms to a central statutory body did not address the actual problem. The only difference might be that the under-funding would be met by public money instead of by private operators which, in his view, was unfair and inequitable.

35. DSEM clarified that to his knowledge, the insolvency of the three insurance companies was not caused by the employees' compensation business. He said that as the legal liability to pay compensation to employees for employment-related injuries rested with employers, the Employees' Compensation Ordinance (ECO) required employers to take out insurance policy to cover such liability. In cases where injured employees were unable to receive compensation from employers or insurers, the compensation would be paid from the Employees Compensation Assistance Fund. As regards the suggestion of implementing a centralized employees' compensation system, the Administration considered that the existing employees' compensation

system operated by private companies was running satisfactorily and there was no sufficient justification to change it to a central statutory one. In his view, a central statutory system would lead to monopoly, inefficiency, higher premiums and less competitive service. The risk would also be higher when compared to private operation since insurance companies could diversify their risks in various lines of business. He pointed out that some overseas countries currently operating the system centrally, such as New South Wales of Australia, would convert it to private operation due to rising costs and insufficient funding.

36. Mr LEE Cheuk-yan asked whether the Administration had any plans to cope with the possible situation whereby all the insurance companies engaging in employees' compensation business gradually withdrew from the business. He also asked how the 1 000 outstanding claims relevant to the three insolvent insurance companies would be handled. He expressed worry as the employers who had taken out insurance covers from these companies and their employees who were injured at work might be adversely affected by their liquidation.

37. DSEM responded that the statutory protection to employees in this aspect was sufficient. Under ECO, employers were required to make compensation payments to employees under such circumstances. Employers were eligible to seek reimbursement from the Employees Compensation Assistance Fund. The Administration was exploring ways to restore the financial viability of the Fund in order to enable it to make the necessary claims payments. This subject would be dealt with when the proposed amendments to the Employees Compensation Assistance Ordinance would be discussed. As regards the measures to cope with the withdrawal of insurance companies from the business, DSEM considered that the current underfunding situation was attributed to the intense competition in the industry and inefficient operation of insurance companies. This might be rectified by adopting some feasible suggestions made in the consultancy report released by The Hong Kong Federation of Insurers in late 2000 (the Report). These suggestions included improving the premium-fixing strategy, capping the commission paid to intermediaries and enhancing information management and data collection on occupational safety records. He stressed that unless there was sufficient evidence that the existing employees' compensation system was being abused, the Administration would not reduce the legitimate and reasonable compensation provided to injured employees.

38. At this juncture, the Chairman left the meeting and the Deputy Chairman took the chair.

39. Mr YEUNG Yiu-chung questioned whether the problem now faced by the industry was due to the employees' compensation system or the large amount of compensation. Mr CHOY Chung-foo said that the Report revealed that improvements were required in many aspects such as operating cost, intermediary commission, amount of compensation and so forth. He pointed out that the cost for operating the employees' compensation insurance business in Hong Kong in 1999

doubled that in Singapore. The solution to this might be an increase in the premium so that the risk of the business would be minimized. However, considering that employers might not be able to afford the increase in the prevailing economic situation, the industry decided to alert the society at large of the current problems and hoped that feasible rectification measures could be introduced to address the problem as early as possible.

40. Mr YEUNG Yiu-chung asked whether the Administration considered that there were problems in the existing employees' compensation insurance system. The Commissioner of Insurance (C of I) agreed to the points made by Mr CHOY Chung-foo. He said that the Office of the Commissioner of Insurance (OCI), as a monitoring body, had paid close attention to the development of the insurance trade. He agreed that the transparency of the existing employees' compensation insurance system should be enhanced. Information on compensation payments should be categorized by industries, e.g. catering, construction, etc. Issues such as the level of commission and risk management should be followed up. He said that OCI would meet with the insurance trade the following week to discuss the possible follow-up measures with a view to improving the current system. In reply to the further question asked by Mr YEUNG, C of I said that the industry might consider reviewing the way of presenting the amount of premium, as on many occasions the intermediary commission accounted for 30% to 40% of the premium in which part of the amount was rebated to clients. He further said that the employees' compensation insurance business was extremely competitive as about 90 of some 200 insurance companies were providing such service. Those who were not competitive would be phased out by the market.

41. Mr Bernard CHAN said that insurance companies had lowered the premiums in the past in order to maintain their competitiveness in the market. The Report clearly revealed that these companies would not survive in the business in the long run if this situation persisted. One direct solution to this problem, which was generally accepted by the insurance industry, was to increase the premium to address the under-funding situation. However, he expressed doubt as to whether the "smooth operation" of the current system would be able to continue after such increase.

42. DSEM said that insurance companies engaging in employees' compensation business should be able to enjoy a reasonable profit. As the amount of compensation payments doubled over the past six years but the amount of premium collected decreased by half due to intense competition in the industry, it was understandable that the premium needed to be adjusted in order to rectify the undue situation.

43. In response to the Deputy Chairman, C of I said that Hong Kong had all along been adopting an open market approach. Insurance companies were free to run the employees' compensation business as long as they had the financial resources and expertise required. The Administration considered it inappropriate to limit the number of insurers that could run that business. Furthermore, limiting the number of

insurers might lead to monopoly.

44. Mr Kenneth TING questioned why the commission paid to intermediaries was so high which accounted for 25% of the premium. Referring to paragraph 18 of the Administration's paper, he asked whether the access to common law damages should be restricted only to those employees who had suffered serious injury, such as by introducing an impairment threshold or to require injured employees to elect pursuing either statutory benefits or common law damages as in the case of Singapore.

45. Mr CHOY Chung-foo said that a large proportion of the commission received by intermediaries would be rebated to clients. He pointed out that high commission rates reflected that the competition in the industry was intense. Gross amounts instead of net figures would usually be presented in the accounts in order to show a better financial position. In respect of the handling of compensation practised by Singapore as cited by Mr TING, he said that it was one of the measures suggested by the consultants. Whether it was feasible would depend on a number of factors. Mr CHOY further pointed out that the legal costs involved in claims were very high which on many occasions accounted for 40% of the operating costs. The consultants therefore suggested that the insurance industry might explore the possibility of avoiding unnecessary legal costs so that the operating costs might be reduced. He stressed that the industry was focusing on how to enhance efficiency in the operation rather than to reduce the benefits of employees. He said that each and every suggestion in the Report should be carefully examined in the hope that the whole system might be improved with the implementation of some of the suggestions which were feasible and effective.

46. Mr Kenneth TING asked whether Hong Kong could follow the practice of Singapore in handling employees' compensation. DSEM explained that the main difference was that in the case of Singapore, injured employees were required in the first place to elect pursuing either statutory benefits or common law damages. In Hong Kong, injured employees were entitled to statutory compensation automatically. They also had the right to claim common law damages against their employers' negligence. However, the amounts payable under the statutory compensation would be offset from the amount of common law damages awarded. Therefore, the principle between two places was similar as injured employees would only obtain either statutory compensation or common law damages. He pointed out that the right of a party to claim common law damages against another party for negligence had been an integral part of Hong Kong's legal system and involved important principles in law. Mr Kenneth TING suggested that the Administration should consider the feasibility of following the practice currently adopted by Singapore.

47. The Deputy Chairman asked why the insurance industry did not raise the problem until there was a serious under-funding of more than \$1 billion. Mr CHOY Chung-foo said that it was due to the characteristics of the insurance industry as explained in paragraph 34 above that the overall businesses would be assessed over a

longer period of time.

48. Mr LEUNG Yiu-chung said that employees were reluctant to see employment-related injuries to happen. In fact, such injuries were usually caused by the absence of a safe and healthy working environment. He considered that reduction in the number of employment-related injuries and accidents would effectively reduce the amount of compensation. However, the Report did not include requiring employers to improve workplace safety as a suggested measure for reform. Mr CHOY said that this issue was not included in the Report because the insurance industry had all along been promoting workplace safety and it had already had regard to workplace safety measures when assessing business risks.

49. Mr LEUNG Yiu-chung pointed out that half of the six main reasons causing the under-funding as revealed in the Report were unsolvable problems in the industry. For example, the intense competition was unavoidable in a free market and the high intermediary commission was also inevitable when the competition was intense. The suggestions on restricting the number of insurance companies operating this business and setting statutory limits on commission levels were not feasible as these would contradict the free market principle. In his view, a centralized employees' compensation system would be able to address some of the problems like intense competition and high commission cost. He questioned why the insurance industry did not support for a centralized system. He also asked how the Administration would assist the insurance industry to operate the existing employees' compensation system more efficiently.

50. Mr CHOY Chung-foo said that the root of the problem on under-funding rested with the lowering of premiums by insurance companies as a result of intense competition. In fact, neither the policyholders nor the insured would be adversely affected under the current operation. However, insurance companies would be unable to sustain in this business should there be no reform to the prevailing system. He pointed out that the society at large might not be able to afford the increase in premium if the past premium-fixing strategy was rectified. If the existing system was converted to a centralized one, the advantages that would be brought about by competition through private operation would be driven away. Therefore, he suggested that the feasibility of all possible measures for reform as contained in the Report should be thoroughly examined. The insurance industry was hoping that a fine balance would be struck between all parties concerned and a best solution to the problem would be identified through consultation.

51. DSEM said that in his view, the existing system was working well and the protection to employees was sufficient. The operation of the insurance industry was duly monitored by OCI. In response to Mr LEUNG Yiu-chung, DSEM affirmed that the Administration did not support for any reduction in the compensation provided to injured employees unless there was sufficient evidence that the existing system was being abused.

52. Miss CHAN Yuen-han said that as the increase in premium might not be accepted by the society at large and an effective reform to the existing system might not be easily achieved. She queried why the Administration still did not consider implementing a centralized employees' compensation system despite the requests from the trade and the labour sectors for over ten years.

53. DSEM said that the prime objective of the employees' compensation system was to provide compensation to injured employees. This objective was fully achieved under the existing system. He reiterated that the current problem was caused by the inefficient operation of the insurance industry. The Administration would not consider establishing a centralized employees' compensation system for the reasons explained in paragraph 35 above.

54. Miss CHAN Yuen-han asked whether the Administration would consider imposing statutory limits on commission levels if the problem persisted in the insurance industry. DSEM said that the level of commission paid to intermediaries was solely a commercial decision. Insurance companies should be able to adjust it properly in order to maintain their sustainability in the market. C of I said that the existing legislation did not empower him to fix the commission levels for insurance companies on the spirit of free market. The financial position of insurance companies was closely monitored by OCI and the current operation in Hong Kong was satisfactory. He added that the liquidation of the three insolvent insurance companies was caused by the bankruptcy of their parent companies in Australia.

55. Regarding the financial predicament of the Employees Compensation Assistance Fund Board (the Board), Dr LUI Ming-wah pointed out that there was an increase in the number of assisted cases, which rose from 20 in 1994-95 to a maximum of 35 in recent years. He remarked that the figures were not in proportion to the working population in Hong Kong as some of the industries had moved their operation to the Mainland in the past few years. He said that the levy income had declined from \$30 million to around \$20 million per annum in recent years. However, the amount of common law claims had increased considerably from \$6 million in 1994-95 to between \$15 and \$33 million during the past few years. The legal and operating costs also increased by three to five times. He asked whether the above situations occurred by reason of changes in judicial attitudes and requested the Administration to seriously study these matters.

56. Senior Labour Officer said that the cases assisted by the Board were mostly from the construction and transport sectors. He pointed out that the boom in the construction industry in the past had led to a slight increase in the number of such cases. However, the figure of 35 cases assisted by the Board in 1999, which was the highest figure in recent years, only accounted for a small proportion in the total number of occupational injuries. In fact, most employers had taken out insurance covers for their employees. As for the increase in the amount of damages, one major cause was that the court had changed its criteria in assessing the award of common law damages since 1994-95. The amounts of such damages had increased

considerably. Since that year, there had been one case awarded with damages exceeding \$10 million in a year for three consecutive years. Regarding the levy income, the decline was attributable to a number of factors such as the decrease in the amounts of premium as a result of keen competition in the insurance industry and the completion of major infrastructure projects in the last few years. DSEM added that assistance from the Board would normally be made several years after the occurrence of the work accidents.

V. Proposed amendments to the Employees Compensation Assistance Ordinance

(LC Paper No. CB(2)1279/00-01(06))

57. Owing to time constraint, members agreed that this item be deferred to the next meeting scheduled for 17 May 2001.

VI. Proposed Factories and Industrial Undertakings (Gas Welding and Flame Cutting) Regulation

(LC Paper No. CB(2)1279/00-01(07))

58. Owing to time constraint, members agreed that this item be deferred to the next meeting scheduled for 17 May 2001.

VII. Any other business

59. There being no other business, the meeting ended at 5:05 pm.

Legislative Council Secretariat

12 June 2001