

**立法會**  
**Legislative Council**

Ref : CB2/PL/MP/1

LC Paper No. CB(2) 530/02-03  
(These minutes have been seen  
by the Administration)

**Panel on Manpower**

**Minutes of meeting**  
**held on Thursday, 31 October 2002 at 4:30 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 Cyd HO Sau-lan  
Hon LEE Cheuk-yan  
Dr Hon LUI Ming-wah, JP  
Hon CHEUNG Man-kwong  
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 LEUNG Fu-wah, MH, JP

**Members absent** : Hon CHAN Yuen-han, JP  
Hon Michael MAK Kwok-fung  
Hon Frederick FUNG Kin-kee

**Public Officers attending** : Item III  
  
Mr Stephen IP, GBS, JP  
Secretary for Economic Development and Labour  
  
Mr Matthew CHEUNG Kin-chung, JP  
Permanent Secretary for Economic Development and Labour (Labour)  
  
Mrs Jennie CHOR, JP  
Assistant Commissioner for Labour (Labour Relations)

Item IV

Mr Stephen IP, GBS, JP  
Secretary for Economic Development and Labour

Mr Matthew CHEUNG Kin-chung, JP  
Permanent Secretary for Economic Development and Labour (Labour)

Mrs Pamela TAN, JP  
Commissioner for Labour

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

Mr Fred TING, JP  
Deputy Commissioner for Labour (Occupational Safety and Health)

**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 meeting and matters arising**  
(LC Paper Nos. CB(2)140/02-03 and CB(2)161/02-03(01))

The minutes of the meeting held on 10 October 2002 were confirmed.

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)161/02-03(02))

3. Members agreed that the following items be discussed at the next meeting to be held on Thursday, 21 November 2002 at 2:30 pm -

- (a) Briefing by Secretary for Education and Manpower on the policy initiatives/work plans in relation to the manpower portfolio for the year ahead;
- (b) Setting up a qualifications framework and a quality assurance mechanism;  
and

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(c) Problem of arrears of wages of construction workers.

4. Members also agreed that the regular meeting on 16 January 2003 be re-scheduled to 23 January 2003 at 2:30 pm to avoid a clash with the Council meeting.

5. Ms LI Fung-ying noted that the assessment of qualifications of listed Chinese Medicine Practitioners (CMPs) for registration had been completed and the first batch of CMPs who were eligible for registration had been confirmed. She expressed concern as to whether registered CMPs would be recognised and granted the same status as registered medical practitioners in respect of the certification of sickness day. She enquired about the timing for consultation with the Panel on the implementation arrangements for the issue of sick leave certificates by registered CMPs.

6. Permanent Secretary for Economic Development and Labour (Labour) (PS for EDL(L)) said that legislative amendments were required for recognising Chinese medicine for entitlement to employee benefits under the related labour ordinances. The Administration would closely monitor progress and consult the Panel when the draft amendments were ready.

**III. Financial assistance to the Protection of Wages on Insolvency Fund**

(LC Paper No. CB(2)161/02-03(03) and Legislative Council Brief (Ref: TC10/602/2 Pt. 3))

7. PS for EDL(L) briefed members on the proposal to extend a bridging loan of \$695 million to the Protection of Wages on Insolvency Fund Board (the Fund Board) to enable it to tide over its cash flow problem in meeting its financial commitments under the Protection of Wages on Insolvency Ordinance as set out in the Administration's paper.

8. PS for EDL(L) supplemented that the Labour Department (LD) had, in collaboration with the relevant departments, in particular the Official Receiver's Office (ORO), Commercial Crime Bureau and liquidators in the private sector, worked out measures to better prevent abuse of the Fund. These measures included -

- (a) implementing an intelligence mechanism to enable the enforcement departments to take appropriate action at the earliest possible time if evidence of wrong-doing of an employer was available; and
- (b) writing to labour unions soliciting their help to appeal to employees of insolvent companies to provide to LD, when making application to the Fund Board, as much information on their employers' wrong-doing as possible, if known, as such information was of vital importance to a successful prosecution.

9. Mr CHEUNG Man-kwong considered that lax enforcement and inadequate

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monitoring were major causes leading to the current financial predicament of the Fund Board. He gathered that some unscrupulous employers had intentionally defaulted wage payment before closing down their businesses in order to shift their wage liabilities to the Fund, while some had removed the property of their companies before winding-up with intent to defraud creditors. In view of this, he urged the Government to tighten up the vetting mechanism for applications to better prevent possible abuse of the Fund. Having regard to the fact that safeguards against employers taking refuge under limited liabilities and shifting wage liabilities to the Fund were provided under sections 273 and 275 of the Companies Ordinance, he asked about the enforcement action and number of prosecutions taken in the past in relation to these provisions.

Adm 10. Assistant Commissioner for Labour (Labour Relations) (AC for L(LR)) said that sections 273 and 275 of the Companies Ordinance had unquestionably exerted certain deterrent effects on company directors. However, it was worth-noting that a successful prosecution under these provisions had to depend greatly on the availability of cogent evidence of wrong-doing, such as wilful deception or fraud on the company, of a company director. She pointed out that the authorities in many other countries had also encountered similar difficulties in securing prosecution against company directors for such offences because of lack of sufficient evidence. As regards the prosecution and enforcement action taken against company directors for defrauding creditors, PS for EDL(L) undertook to provide the relevant information as soon as possible after the meeting.

*(Post-meeting note : The Administration's response was circulated to Members vide LC Paper No. CB(2)314/02-03 on 8 November 2002.)*

11. Secretary for Economic Development and Labour (SEDL) said that as sufficient evidence was the key factor to a successful prosecution, the Government had therefore stepped up efforts to encourage employees of insolvent companies to provide the enforcement departments with information on their employers' wrong-doing, if known. He further said that apart from ORO's investigation into individual insolvency cases, LD would also endeavour to gather evidence from applicants for the Fund with a view to enabling prosecution to be instituted against defrauding employers. He assured members that the Government as a whole would continue to enhance the enforcement action in this respect through concerted efforts from labour unions, employees and private liquidators.

12. Mr Andrew CHENG suggested that the wording of the relevant provisions of the related ordinances, in particular sections 168H, 273 and 275 of the Companies Ordinance, should be reviewed in the light of the difficulties encountered in taking out prosecutions against employers or company directors. The review should aim at enhancing the enforceability of these ordinances and their deterrent effect on employers. He said that the Democratic Party would conduct a study on the matter and would forward its proposal to the Administration once it was ready.

13. SEDL said that the Administration was willing to conduct a review on the related ordinances to see if any improvement could be made. However, he pointed out that the

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relevant provisions of the existing ordinances had already conferred the necessary powers on enforcement departments to take action against defaulting employers or defrauding company directors. Prosecution against these employers or company directors could be instituted provided that there was sufficient evidence.

14. Mr LEUNG Fu-wah enquired about the rationale for calculating the cash flow projection of the Fund Board for 2002-03 to 2015-16, in particular the arrangements for offsetting Mandatory Provident Fund (MPF) contribution against claims payment payable by the Fund Board.

15. PS for EDL(L) said that the projection had been compiled in a prudent manner. The estimated MPF savings, which could help meet a large part of the ex-gratia payment for severance payment payable under the Fund, had been taken into account in calculating the cash flow projection. On the other hand, the levy income from Business Registration Certificates (BRC) was envisaged to be relatively steady throughout the coming years. Although the number of applications for the Fund in this year was expected to reach an all-time high of 25 000 as compared with an average of about 13 000 in the past seven years, it was believed that the Fund's financial position would improve in the years ahead following a drop in the number of insolvencies and bankruptcies as the economy of Hong Kong picked up over time. Against this background, the claims payment to be made by the Fund Board was estimated to decrease gradually from 2004-05 onwards.

16. Mr LEUNG Fu-wah queried why only 91 summonses had been issued out of some 4 500 cases of arrears of wages handled by the Labour Relations Division of LD during the period between January and June 2002. PS for EDL(L) explained that the low prosecution rate was mainly attributed to the unwillingness of employees to become witnesses against their defaulting employers when they had recovered their payments from their employers.

17. Mr Kenneth TING asked about the measures to be put in place to prevent the Fund from suffering further financial shortfall. SEDL said that the Government's first and foremost tasks were to step up prosecution and enforcement action against wage offences and to enhance public education and publicity to encourage employees to make early report on non-payment of wages in order to protect their own rights.

18. Noting that the Government had put a lot of emphasis in tackling the problem of arrears of wages of construction workers, Mr Kenneth TING asked about the measures to be adopted in addressing this problem in other industries.

19. SEDL said that apart from the assistance from labour unions, the Government would, through the tripartite mechanism established in certain industries, step up publicity efforts to remind employees of the importance of early report on non-payment of wages. PS for EDL(L) added that as non-payment of wages was a common problem in some industries/trades, such as catering, construction, retail, import and export, and personal services, public education programmes promoting the rights of employees to

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receive timely wage payment would be conducted across the board.

20. Mr Tommy CHEUNG noted that the amount of arrears of wages payable under the Fund was subject to a maximum of four months' wages of the employee concerned. For the purpose of reducing the financial burden of the Fund Board and shortening the time taken for reporting non-payment of wages by employees, he asked whether the Administration would consider lowering the maximum duration for which arrears of wages would be payable to, say, two months.

21. SEDL said that the prevailing maximum duration of four months for arrears of wages had been in force since 1985. In fact, the Administration had sought the views of some Members and political parties on whether such level should be adjusted. The general response was that it might not be an opportune time to introduce change to the maximum duration for arrears of wages given the current economic climate.

22. Mr YEUNG Yiu-chung asked whether the Administration would consider imposing a higher BRC levy on industries which had a higher risk of insolvency. SEDL considered that the proposal might not be feasible as either the Government or the industries themselves might not be able to accurately ascertain which industries were more prone to insolvency.

23. Mr LEUNG Fu-wah asked whether the Administration would consider setting up separate funds to cater for industries with a large number of employees applying for the Fund after their employers had become insolvent. SEDL said that it was not advisable to maintain separate funds for individual industries as this would pose administrative difficulties and create additional costs on the Government. Moreover, it might be difficult for different industries to reach an agreement on which industries should be supported by individual funds.

24. Mr LEUNG Yiu-chung noted that on average 12% of the applications received by the Fund Board had been screened out and the amount of payments approved represented only 64% of the claimed amount. He suggested that the Administration should explore ways to better protect employees' rights to receive full entitlement to wage and related payments in the event of insolvency of their employers.

25. PS for EDL(L) said that the 12% of applications which had been screened out were all unqualified cases. The decision to screen out these applications had been made after detailed examination by LD. He further said that the amount of claims payment payable under the Fund was subject to certain ceilings, e.g. the maximum amounts payable for wages and payment in lieu of notice were \$36,000 and \$22,500 respectively. In view of this, the Fund Board was unable to award the full entitlement to some applicants in cases where the claimed amount exceeded the respective ceiling. SEDL added that the Administration was willing to adjust the level of claims payment if it was considered appropriate and necessary by the wider community.

26. Mr LEE Cheuk-yan said that from his experience in handling cases of arrears of

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wages, LD had not encouraged employees to become witnesses against their employers who defaulted wages. Some employees had even been discouraged from doing so. In his view, the underlying reason for continual abuse of the Fund lay with the ineffectiveness of the existing legislation. He pointed out that section 63C of the Employment Ordinance (EO) provided that an employer who wilfully and without reasonable excuse defaulted wage payment after it was due committed an offence. In actual cases, a defaulting employer would not normally be successfully prosecuted because of failure in satisfying the two tests, namely wilfulness and absence of reasonable excuse, required under section 63C of the EO.

27. PS for EDL(L) explained that it was necessary to impose a more stringent requirement on the burden of proof under section 63C of EO as the penalty for an offence under this provision was heavy, being a maximum fine of \$200,000 and imprisonment for one year. He pointed out that it was not difficult to prove the wilfulness of an employer in defaulting wage payment. Although the onus of proof rested with the prosecution, it would suffice if the prosecution could produce a witness in court to testify that the employee had asked the employer for the wages due but that the wage remained unpaid after the statutory time limit. As to the question of "reasonable excuse", it was for the employer, as the defendant, to explain to and convince the court whether he had reasonable excuse in not paying the wage. PS for EDL(L) stressed that LD had not encountered any problem in prosecuting under this section.

28. PS for EDL(L) reiterated that to tackle the problem of arrears of wages, LD had adopted a new strategy to encourage employees to come forward as witnesses against their defaulting employers as soon as the employees approached the Department for assistance. Prosecution action would proceed immediately if sufficient evidence was available.

Adm 29. The Chairman asked the Administration to provide information, on a monthly or quarterly basis, on the prosecution action taken, whether successful or not, for offences in relation to arrears of wages as well as the difficulties encountered in taking out such prosecutions for members' reference.

30. Ms LI Fung-ying suggested that the procedure for handling cases of arrears of wages should be reviewed with a view to expediting the mediation process and/or enabling prosecution to be taken out at an early stage if situation warranted.

31. PS for EDL(L) responded that the Government had been moving towards this direction. He assured members that the procedure for handling cases of non-payment of wages would be streamlined with a view to speeding up the mediation process and taking prosecution action at an early stage where evidence was available.

**IV. Briefing by Secretary for Economic Development and Labour on the policy initiatives/work plans in relation to the labour portfolio for the year ahead (LC Paper No. CB(2)161/02-03(04))**

32. SEDL briefed members on the work initiatives of the Economic Development and

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Labour Bureau (Labour Branch) and the Labour Department in the year ahead as detailed in the Administration's paper.

33. Mr LEE Cheuk-yan expressed worry that the Government's commitment in the creation of jobs might be affected by the budget deficit.

34. SEDL said that the Government should be able to create a total of about 25 000 jobs out of the 34 000 jobs pledged in the 2001 Policy Address by April 2003. He was confident that the overall target of creating 34 000 jobs through enhanced government services and accelerated works projects would also be met. He informed members that apart from the above, the Disney project would offer some 18 000 jobs in 2005 and the opening of 20 new hotels in the next few years would create another several thousand employment opportunities.

35. SEDL further said that the jobs created by the travel industry, logistics industry, local community economy activities, waste recovery activities and infrastructure projects had a positive and significant effect on the overall employment situation. The Government would continue to make every effort to assist in the development in these areas. He believed that the expected growth in the flow of tourists and the rapid development of the logistics industry would generate even more jobs which were needed by the middle-aged with low skills and low educational attainment. However, he pointed out that the creation of jobs by the Government should not be considered as a long-term measure to address unemployment. The effective way to tackle the problem at source was to improve the business environment in order to attract more investment, thereby enabling the business sector to create more employment opportunities.

36. Mr LEE Cheuk-yan pointed out that major economic development programmes usually had a "time lag effect" on the economy and the overall employment situation. Thus, a majority of the unemployed might be unable to get immediate benefits from these programmes. In view of this, he asked the Administration to explore the feasibility of creating some short-term jobs from within government departments, such as jobs involving the provision of non-skilled services to the public offered by the Leisure and Cultural Services Department or Department of Health. He believed that such jobs would be able to render immediate assistance to the needy, such as the unemployed middle-aged with low skills and low educational attainment.

37. SEDL said that the Administration had implemented a series of initiatives in the past few months to alleviate unemployment. One of the major initiatives was maintaining close contact with the business sector with a view to encouraging enterprises to offer more job opportunities, whether permanent or temporary. After much efforts, the Government had successfully canvassed the local business community to join hands to launch the "One Company One Job" Campaign to provide opportunities for recent graduates to acquire working experience. The Government had also participated in a number of large-scale recruitment fairs for helping the unemployed seek employment in Hong Kong or the Mainland. He assured members that the Government would continue to attach the greatest importance to employment.



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38. Mr Andrew CHENG asked whether SEDL, as a principal official under the accountability system, would consider setting a target unemployment rate to serve as an indicator for the public to measure the effectiveness of his work in solving the problem of unemployment.

39. SEDL considered that it might not be realistic to set such a target as the level of unemployment rate hinged on a great number of factors. The efforts of one person might not be able to bring about a drop in the unemployment rate. He believed that the high degree of transparency of the Government provided sufficient channels to enable the public to monitor the performance of the Administration. He assured members that he and the Administration as a whole would be fully committed to exploring ways to tackle unemployment. They would also, among other things, continue their efforts to actively promote the creation of employment opportunities in the private sector as well as within the Government where possible.

40. Mr Ambrose LAU asked whether the Administration would, under the review of the policy on foreign domestic helpers (FDHs), introduce drastic changes to existing policies relating to FDHs so as to enhance employment opportunities for local domestic helpers. He also asked whether the proposal of imposing levy on employers engaging FDHs would be considered under the review.

41. SEDL confirmed that the exercise would include a review of all existing policies related to FDHs and the proposal of imposing a levy on employers engaging FDHs would also be studied. He added that the review was scheduled to complete by end-2002.

42. Mr LEUNG Fu-wah enquired whether the three-shift system in Government's property management and security service contracts was implemented on a compulsory basis and whether in-service employees were disallowed to work overtime under the system.

43. SEDL said that the Administration had taken on board the views of labour unions that the three-shift system in the property management and security industry should be implemented on a voluntary basis, bearing in mind the likely implications on serving employees. Against this background, there was no question of disallowing workers of this industry to work overtime. However, the Government would continue to encourage its departments and related organisations, such as the Mass Transit Railway Corporation (MTRC) and the Kowloon-Canton Railway Corporation (KCRC), to adopt the three-shift system where feasible and appropriate. The Government would also encourage developers to adopt the three-shift system for their new property developments as far as practicable. In this respect, both MTRC and KCRC had pledged their full support.

44. Mr Tommy CHEUNG pointed out that the number of vacancies in the catering industry amounted to 1 000 to 2 000. He believed that the unemployment situation would be slightly improved if these vacancies were filled.

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45. SEDL understood that some job seekers were reluctant to join the catering industry in fear of hardship and long working hours, while some were unwilling to work in industries with less favourable employment conditions. To improve the situation, he said that the Government would organise more educational programmes with a view to changing people's perception of working in these industries, thereby attracting more people, especially the youth, to take up employment in the field. PS for EDL(L) supplemented that a large recruitment forum focusing on the catering industry would be held in a few weeks' time.

46. Mr Tommy CHEUNG also gathered that some job seekers were unwilling to disclose their addresses and telephone numbers to their prospective employers. The reason might be that they were Comprehensive Social Security Assistance (CSSA) recipients, and as such they were worried that their entitlement to CSSA payment would cease if they were found to have secured employment. He asked whether a CSSA recipient who had secured a job should cease to be eligible for CSSA payment. If the answer was in the positive, he suggested that a mechanism to check whether CSSA recipients were employed, either on full-time or part-time basis, should be introduced to guard against abuse.

Adm 47. SEDL undertook to liaise with the Secretary for Health, Welfare and Food and provide a response on the issues raised by Mr Tommy CHEUNG.

48. Noting that there were quite a lot of vacancies in the catering industry, Mr LEE Cheuk-yan expressed concern as to whether there was a mismatch in the employment service offered by LD in this respect. To better understand the situation, he asked the Administration to provide figures on the number of job seekers with catering experience and the number of vacancies in the catering industry registered with LD.

Adm 49. Commissioner for Labour undertook to provide the relevant figures for members' information. She recalled that both the number of job seekers with catering experience and the number of vacancies in the catering industry registered with LD were high. She added that LD would ensure that information on vacancies would be made available for access by the public within 24 hours upon receipt by the Department. However, she pointed out that the rate of successful placement had to rely on the efforts of three parties, namely job seekers, prospective employers and LD. For example, the mismatch in the conditions of service, such as salary and working hours, offered by employers and expected by job seekers was a common reason for unsuccessful placement.

50. In reply to Ms LI Fung-ying's enquiry, PS for EDL(L) said that the Administration had been actively working on a series of measures to improve employees' rights and benefits, including measures to -

- (a) combat illegal employment so as to protect job opportunities for the local workforce;

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- (b) solve the problem of arrears of wages following the Yau Tong incident in July 2002;
- (c) uphold the tripartite mechanism to enable it to continue its vital role in maintaining a harmonious relationship between employers and employees; and
- (d) amend the Construction Sites (Safety) Regulation to improve the safety performance of construction subcontractors by holding both the principal contractor and subcontractors jointly and severally liable for offences committed on their parts.

He assured members that the Administration would submit concrete proposals to the Panel when the time was ripe.

51. The Deputy Chairman said that he had learned from Yuen Long District Council (YLDC) members that the Police had not taken enforcement action against illegal workers found engaging in renovation work in public housing estates. Some YLDC members had also complained about insufficient manpower within the Government to carry out enforcement action against illegal employment. He questioned why only some 80 employers had been prosecuted out of some 220 who had been arrested for employing illegal workers.

52. SEDL said that at the Legislative Council meeting on 30 October 2002, the Secretary for Security had explained in detail the Government's efforts against persons who took up employment illegally in Hong Kong. SEDL did not share the view that the Government lacked sufficient manpower to carry out enforcement action against illegal employment. He said that, in fact, the over 1 400 operations conducted between July and September 2002 and the arrest of about 3 100 illegal workers during these operations had fully demonstrated the Administration's determination to combat illegal employment. However, whether prosecutions would be instituted would depend on whether there was sufficient evidence. With regard to the views of YLDC members, he suggested that the Administration should be provided with the relevant information to enable necessary follow-up action to be taken.

**V. Any other business**

53. There being no other business, the meeting ended at 6:30 pm.

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Legislative Council Secretariat  
4 December 2002