

立法會
Legislative Council

LC Paper No. CB(2)1785/02-03

(These minutes have been
seen by the Administration)

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Panel on Manpower

**Minutes of special meeting
held on Wednesday, 12 March 2003 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 Cyd HO Sau-lan
Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon YEUNG Yiu-chung, BBS
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
- Members attending** : Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Ambrose LAU Hon-chuen, GBS, JP
Hon SZETO Wah
Hon Frederick FUNG Kin-kee

Public Officers : Mr Stephen IP, GBS, JP
attending Secretary for Economic Development and Labour

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

Mrs DO PANG Wai-yee
Principal Assistant Secretary for Economic Development and Labour
(Labour)

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

Mr Ian WINGFIELD
Law Officer (International Law)
Department of Justice

Ms Roxana CHENG
Senior Assistant Solicitor General
Department of Justice

Mrs Jenny CHAN, JP
Assistant Commissioner for Labour (Employees' Rights and Benefits)

Mr Simon PEH
Assistant Director of Immigration (Visa and Policies)

Mr H Y CHEUNG
Principal Economist
Financial Services and the Treasury Bureau

Attendance by : Hong Kong Employers of Overseas Domestic Helpers
invitation Association

Mr Joseph LAW

Asian Migrants Coordinating Body

Connie Bragas-Regalado (United Filipinos in Hong Kong)

Demi Kasi Darum (Association of Indonesian Migrant
Workers)

Association of Indonesian Migrant Workers

Jamilatun

United Filipinos in Hong Kong

Emmanuel C Villanueva

Mission for Filipino Migrant Workers (Hong Kong)
Society

Cynthia Ca Abdon-Tellez

Corazon A Canete

Coalition for Migrants Rights

Lori G Brunio

Indonesian Migrant Workers Union

Eko Indriyanti

Wahyu

Asia Pacific Mission for Migrants

Aurelio Estrada

Esther Bangcawayan

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

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Stanley MA
Senior Assistant Secretary (2) 6

I. Review of the policy on foreign domestic helpers

(LC Paper Nos. CB(2)1438/02-03(01) and (02) and EDLB/LB/C/36/02)

At the invitation of the Chairman, Secretary for Economic Development and Labour (SEDL) briefed members on the key issues on review of the policy on foreign domestic helpers (FDHs). He highlighted that the proposed reduction of the Minimum Allowable Wage (MAW) of FDHs by \$400 with effect from 1 April 2003 and the proposed Employees Retraining Levy (the levy) of \$400 per month for each FDH with effect from 1 October 2003 were independent policy decisions. He also stressed that the review of MAW was conducted in line with existing practice and was not intended to reduce the income of FDHs. He added that the levy was in conformity with the Basic Law, including those provisions concerning human rights.

Meeting with representative of the Hong Kong Employers of Overseas Domestic Helpers Associations

(LC Paper No.CB(2)1438/02-03(03))

2. Mr Joseph LAW presented the views of the Hong Kong Employers of Overseas Domestic Helpers Associations (the Association). He concluded that the Association supported the proposed reduction of MAW by \$400, but considered the inclusion of importation of FDHs under the Employee Retraining Ordinance (ERO) not justified. However, having regard to the prevailing economic downturn and the large fiscal deficit, the Association reluctantly accepted the levy of \$400 for employment of each FDH on a temporary basis.

Meeting with representatives of the Asian Migrants Coordinating Body, Association of Indonesian Migrant Workers, United Filipinos in Hong Kong and Mission for Filipino Migrant Workers (Hong Kong) Society

(LC Paper No.CB(2)1438/02-03(04))

3. Ms Connie BRAGAS-REGALADO presented the views of the four organisations as detailed in their joint submission. She concluded that the four organisations opposed the proposed reduction of MAW by \$400 and the levy of \$400 on employers for employment of each FDH.

Meeting with representatives of the Coalition for Migrants Rights and Indonesian Migrant Workers Union

(LC Paper Nos. CB(2)1438/02-03(05) and CB(2)1474/02-03(01)).

4. Ms Lori BRUNIO and Ms Eko INDRIYANTI presented the views of the Coalition for Migrants Right (CMR) and the Indonesian Migrant Workers Union (IMWU) as detailed in their joint submission and the statement of the IMWU which was tabled at the meeting. They stressed that CMR and IMWU considered the two proposals discriminative against FDHs and were in violation with the International Labour Convention (ILC). They concluded that CMR and IMWU

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opposed the proposed reduction of MAW by \$400 and the levy of \$400 on employers for employment of each FDH.

Meeting with representatives of the Asia Pacific Mission for Migrants
(LC Paper No.CB(2)1438/02-03(06))

5. Mr Aurelio ESTRADA said that Asia Pacific Mission for Migrants supported the views of the Asian Migrants Coordinating Body and opposed the proposed reduction of MAW by \$400.

Issues raised by Members

6. Miss Margaret NG asked why the imposition of a levy on some 200 000 employers to pay \$400 per month for each FDH was not regarded as a new taxation, and why there was no need to legislate for the proposal.

7. Law Officer (International Law) (LO(IL)) responded that ERO was enacted by LegCo in 1992 to establish a statutory fund which was to be financed by the levy imposed on employers of imported employees under a labour importation scheme (LIS) for the purpose of providing retraining course designed to assist those workers who were displaced as a result of the economic restructuring process to find alternative employment. Section 14 of ERO empowered the Chief Executive (CE) in Council to approve a LIS from time to time to impose a levy payable by the employers to the Director of Immigration (D of ImmD) in respect of each imported worker to be employed under the scheme. In approving the inclusion of FDHs in ERO, CE in Council was exercising the statutory authority and applying the mechanism already approved by LegCo to set a levy of \$400 per month for each FDH in accordance with Schedule 3 of ERO which applied to all imported employees.

8. LO(IL) further explained that since the statutory levy should be paid into the Employees Retraining Fund under ERO and be used for the purposes of the Fund, it was not imposed for the purpose of general revenue and should not be regarded as a new taxation. He also pointed out that when enacting ERO, LegCo had in effect endorsed the mechanism by which the Administration was to decide whether the employment of a certain category of imported foreign workers should be designated under a LIS.

9. Miss Margaret NG considered that the legislative intent of ERO did not cover FDHs as imported foreign workers under a LIS. She pointed out that section 14(4) of ERO specified that an employer should apply to D of ImmD for permission to employ an imported foreign worker under a LIS in accordance with a quota allocated by or with the authority of Secretary for Education and Manpower (SEM). She asked why the Administration considered that section 14 of ERO gave such a power to the Administration to impose a levy on some 200 000 households who were formerly not covered by ERO as employers of imported foreign workers.

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10. LO(IL) said that he believed that consideration had been given to designating the importation of FDHs as a LIS under the ERO when it was enacted in 1992. However, it was not included as a designated LIS. He said that the decision should not prevent the inclusion of importation of FDH under ERO in the light of changing social and economic circumstances, i.e. when there was public support to do so. Furthermore, the proposal to include the importation of FDHs under ERO would not have any retrospective effect. As regards the application of a quota system, LO(IL) said that an employer had to apply to the D of ImmD for the grant of separate visas for employment of two or more FDHs.

(Post-meeting note : The Administration found no record of deliberation on whether importation of FDHs should be designated as a LIS when the ERO was enacted in 1992.)

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11. Miss Margaret NG requested the Administration to provide the Department of Justice (D of J)'s advice on the legal justifications for the imposition of a levy on employers of FDHs without the need to legislate in writing. She also requested the Administration to provide the background for excluding importation of FDHs from a LIS when ERO was enacted in 1992 and whether a quota system would apply to the importation of FDHs. In response to Miss NG, Assistant Legal Adviser 5 undertook that the Legal Service Division would provide as soon as possible the written opinion on whether it was legally in order for the levy to be imposed under ERO as requested at previous House Committee meeting and a response to D of J's advice.

12. Mrs Selina CHOW said that MAW of FDHs after the current adjustment from \$3,670 to \$3,270 was still competitive as \$3,270 was double or treble of the wages earned by FDHs in Singapore, Indonesia, Malaysia and some Middle East countries. She stressed that the Liberal Party was sympathetic to the situation of FDHs in that many of them were actually receiving a salary less than MAW. She suggested that the Panel should focus discussion on how the widespread underpayment of wages in employment of FDHs could be effectively curbed. She urged the Administration to work out effective measures to combat such underpayment and other illegal practices of the employment agencies on overcharging of commission on FDHs. She also encouraged FDHs who were exploited by their employers or employment agencies to come forward as witnesses.

13. SEDL responded that MAW was subject to regular review which took account of the general economic and employment situation as reflected by a host of economic indicators. As a result of his recent visit to Indonesia, the relevant authorities in Indonesia had agreed to provide Indonesia domestic helpers (IDHs) with relevant information on the terms and conditions of employment in Hong Kong. IDHs under training would be briefed on MAW and the complaint channels available in case they were unfairly treated by their employers or the employment agencies. Locally, the Administration had set up an inter-

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departmental task force comprising the Labour Department, Immigration Department and the Police to combat underpayment of wages and illegal practices of employment agencies and local employers. Booklets and leaflets in the FDHs' languages had been published to promote the awareness of FDHs on their rights and benefits in employment, and the criminal nature of underpayment of wages and illegal employment of FDHs under the Hong Kong law.

14. Ms Connie BRAGAS-REGALADO said that FDHs were reluctant to testify against the illegal practices of their employers and employment agencies for fear that they would lose their jobs. Ms Lori BRUNIO supplemented that the long judicial proceedings involved in prosecution would deter FDHs from lodging complaints against their employers and the employment agencies. She stressed that FDHs simply could not take the risk of losing their jobs.

15. Mr LEE Cheuk-yan stated that the Hong Kong Confederation of Trade Unions (HKCTU) was opposed to the proposed imposition of a levy on employers of FDHs and the reduction of MAW of FDHs. Referring to the submission of HKCTU entitled "manipulation of statistics for political reasons", he highlighted the more appropriate economic indicators for assessing the adjustment of MAW. He asked why the Administration had applied different sets of economic indicators for assessing the adjustments of MAW in the last review in 1999 and the current review in 2003 and queried the mechanism adopted. He pointed out that local employees normally received a thirteenth month payment or Chinese New Year bonus in the first quarter of a year. Referring to Annex I of the Administration's paper [LC Paper No.CB(2)1438/02-03(01)], he considered that comparing the fourth quarter of 2002 with the first quarter of 1999 in respect of the decrease in median monthly household income of local households with FDHs was inappropriate and misleading. Mr LEUNG Yiu-chung expressed a similar concern on the adoption of the median values for such comparison.

(Post-meeting note : HKCTU's submission was circulated to members under LC Paper No.CB(2)1474/02-03(02) on 13 March 2003.)

16. SEDL stressed that the downward adjustment of \$400 (10.9%) was reasonable as it was set on the basis of a well-tried and established mechanism. He explained that in adjusting the MAW, the Administration had taken into account of the general economic and employment situation of Hong Kong and made reference to a host of economic indicators including the relevant pay trends, price indices, unemployment rate and labour market situation. Specifically, a basket of economic indicators were included, i.e., the Consumer Price Index (A), the median monthly employment earnings of service workers and workers in elementary occupations, nominal wage index for service workers for all industries, median monthly household income, Gross Domestic Product and unemployment rate. SEDL added that the median employment earnings should be given due reference in considering the adjustment of MAW because

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compared with the median, the average wage was more subject to possible distortions by extreme values.

17. Mr Kenneth TING held the view that MAW of FDHs should follow the mainstream wage adjustments of local households, particularly in a period of economic downturn. He pointed out the changes in currency exchange rates between Hong Kong dollars and those of the FDH exporting countries in November 1997 and in March 2003 to illustrate that the proposed adjustment of MAW was reasonable. He concurred with Mrs Selina CHOW that enforcement against underpayment of wages of FDHs and illegal practices of the employment agencies should be stepped up.

18. Mr LEUNG Fu-wah expressed doubt about the serious accusations such as the violation of ILC and human rights treaties as stated in the joint submission of the deputations and said that Hong Kong was a democratic society with a well-established judiciary system to protect the rights of individuals including FDHs. He stressed that FDHs enjoyed the same employment protection and benefits as their local counterparts. Referring to the alleged high commissions charged by overseas employment agencies, he urged FDHs to report such overcharging of commission to the Labour Department for follow-up and come forward as witnesses.

19. Ms Corazon CANETE said that some FDHs had lodged complaints against their employers and unscrupulous employment agencies. However, the judicial process was so long that FDHs simply could not afford the time to attend the court hearings and suffer the loss of income as a result.

20. Mr LEUNG Fu-wah urged the Administration to review the FDH policy and its implications on the employment of local domestic helpers (LDHs). Given a prevailing 7.4% unemployment rate of the local workforce, he also suggested that the Government should consider suspending further importation of FDHs whilst the review was in progress. In view of the serious accusations in a deputation's submissions, he said that the Administration should also review the existing arrangements and procedures for importation of FDHs with a view to eliminating underpayment of wages and illegal practices of the employment agencies.

21. SEDL responded that the Administration was of the view that there was a genuine need for Hong Kong to continue to import FDHs, given the inadequate supply of full-time live-in local domestic helpers. He pointed out that given the "satisfied customer syndrome", it was difficult to secure sufficient evidence to bring criminal proceedings against employers and employment agencies. He urged the FDHs concerned to report their cases to the relevant authorities and come forward as witnesses. He said that the Labour Department had recently re-deployed resources to set up the Employment Claims Investigation Unit to investigate offences under the Employment Ordinance including wage offences, and had already prosecuted employers for underpayment of wages. Furthermore,

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the relevant authorities in Indonesia would send their labour officers to Hong Kong to advise IDHs of the employment protection and benefits available to them.

22. Permanent Secretary for Economic Development and Labour (Labour) supplemented that the Labour Department had been in contact with FDH representatives and the relevant non-government organisations to establish a reporting system whereby information concerning underpayment of wages could be referred to a designated officer so that investigation and prosecution could be conducted swiftly.

23. Mr LEUNG Fu-wah pointed out that underpayment of wages of FDHs was already a widespread phenomena in employment of FDHs, in particular the Indonesian FDHs, which could hardly be eradicated by a few isolated prosecutions. He suggested that the Administration should set up an effective mechanism for detection and prosecution of underpayment of wages on a continuous basis. He considered that successful elimination of such illegal practice would enhance the image of Hong Kong as a major importing place of FDHs and maintain its reputation as an international city.

24. The Chairman concurred with Mr LEUNG Fu-wah on the need to set up an effective detection and prosecution mechanism to combat underpayment of wages and other illegal practices in employment of FDHs. He considered that the Administration should work out arrangements to facilitate FDHs to lodge complaints and testify in courts. Mr Tommy CHEUNG also suggested that the Administration should collaborate with the Judiciary to simplify the court proceedings so that more FDHs would be willing to come forward to assist in prosecution against underpayment of wages.

25. SEDL responded that the Administration was liaising with the Judiciary on possible arrangements and measures to speed up the proceedings for prosecutions against illegal practices such as underpayment of wage of FDHs by employers and employment agencies. He undertook to follow up on the matter.

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26. Ms LI Fung-ying said that she and Messers CHAN Kwok-keung and LEUNG Fu-wah shared a similar concern about the implications of the existing FDH policy on the employment of local workers. She pointed out that the patience of local workers, particularly LDHs, to tolerate the FDH policy had been pushed to the extreme. She said that according to their questionnaire survey conducted in collaboration with the employee representatives of the Labour Advisory Board in August 2002, more than 90% of the local labour unions had expressed strong dissatisfaction that the FDH policy had not been reviewed after some thirty years of implementation. These labour unions held a strong view that importation of FDHs should be freezed with immediate effect. These labour unions had suggested that a levy be imposed on employers of FDHs and that measures be in place to protect the employment opportunities of local workers. They also pointed out that the FDH policy had been widely abused and the

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Administration should only allow those families who could demonstrate a genuine need, such as for taking care of a new born baby or an elderly suffering from a chronic disease, to employ FDHs.

27. SEDL responded that the Government would have to take into account the interests and concerns of FDH employers and the labour unions on importation of FDHs. Given the current shortage in the supply of full-time live-in LDHs, there was a genuine need for importation of FDHs to continue. He pointed out that freezing the importation of FDHs or establishing a set of "fair criteria" for further admission of FDHs would be fraught with problems. In fact, the Task Force on Population Policy had included a review of the FDH policy in view of its share of the bulk of the transient population in Hong Kong. The review sought to ensure that the FDH policy matched the aspirations of the community and met the needs of Hong Kong's development, and concluded that employers of FDHs should be subject to a new scheme for importation of labour similar to employers under the Supplementary Labour Scheme (SLS).

28. Ms LI Fung-ying stressed that local labour unions had requested the Administration to review its policy on importation of FDH with a view to improving the employment of local workers. She asked how the Administration would assist some 200 000 unemployed local workers in finding employment. She added that her labour union supported the policy of imposing a levy on employers of imported employees including employers under the "Admission of Talents Scheme" and the "Admission of Mainland Professionals Scheme". Mr LEUNG Yiu-chung also asked why the Administration did not impose a levy on employers under the two Schemes.

29. SEDL explained that the levy collected under ERO would be channeled into the Employees Retraining Fund for the retraining of local workers to take up new employment. Unlike a LIS which allowed employers to engage imported workers at the technician level or below, the Scheme for admission of talents and the Scheme for admission of Mainland professionals targeted at candidates normally holding a degree or above. These talents or professionals were allowed to work in Hong Kong on different grounds, including the expectation that they would contribute to economic development which would in turn create more employment opportunities for the local workforce.

30. The Chairman and Mr LEUNG Yiu-chung considered that the Administration should conduct a wide consultation before changing its policy to include the importation of FDHs in ERO. Mr LEUNG also queried the purpose of the proposals to reduce MAW and to impose a levy on employers of FDHs.

31. SEDL explained that Government policies were subject to review in the light of changing circumstances. He pointed out that the report of the Task Force on Population Policy had forecast a surplus of 138 000 semi-skilled and low-skilled workers by 2005. He also pointed out that the Task Force had included a review of the FDH policy in its development of a population policy for Hong

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Kong. It had recommended to impose a levy payable by employers for the employment of FDHs under ERO.

32. Ms Audrey EU pointed out that at the LegCo Sitting on 28 June 1995, the then SEM had, in response to a question on whether the Administration would consider levying retraining charges on employers of FDHs, said that FDHs came under a separate scheme which was different from LIS and that FDHs were imported on the basis of the local demand with no special charges levied or quota set for such employment. She asked why the FDH policy had changed without consultation. She also queried the justifications for including the importation of FDHs under ERO and imposing a levy on employers of FDHs.

33. SEDL explained that although FDHs and LDHs were serving different markets, some families might now consider employing LDHs who had attended the appropriate training and were able to meet their requirements. Given that employers of FDHs were enjoying services offered by foreign workers, and having regard to the current economic situation and high unemployment rate, the Administration considered it reasonable to bring the admission of FDHs on par with the SLS and require employers of FDHs to contribute towards the training and retraining of the local workforce and promotion of job opportunities for local employees.

34. Dr LUI Ming-wah asked why the reduction of MAW could not be more than \$400 a month. He also asked why the levy for each FDH employee could not be more than \$400 a month. SEDL explained that the adjustment of MAW was set on the basis of the existing well-trying and established mechanism, and the levy was set in accordance with Schedule 3 of ERO.

35. Mr MAK Kwok-fung asked why the Association would support the downward adjustment of MAW and the imposition of the levy. He considered that employers would suffer as the adjustment might affect the morale of FDHs and their quality of work.

36. Mr Joseph LAW responded that the Association considered it reasonable to adjust MAW in the light of the prevailing circumstances but had only reluctantly accepted the inclusion of importation of FDHs as a new LIS under ERO in view of the prevailing economic circumstances. He stressed that the Association considered that there was a distinction between imported employees employed by businesses and by domestic households, and reserved the right to urge the Administration to review the justification for the levy when the economic conditions had changed. He also stressed that there was a genuine need for some 200 000 families comprising a population of 900 000 to use the service of FDHs.

37. Mr MAK Kwok-fung asked whether the Administration had assessed whether employers of FDHs would adjust the salaries of their FDHs in accordance with the revised MAW. SEDL responded that it was not possible for

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the Administration to conduct a survey in this regard, but pointed out that so far he had not heard of any employer who would adjust his FDH's salary.

38. Mr YEUNG Yiu-chung said that the Democratic Alliance for Betterment of Hong Kong supported the proposed adjustment of MAW and the imposition of a levy on employers of FDHs. He considered that the Administration should clarify whether the proposals were in compliance with the various anti-discrimination requirements and international treaties on human rights.

39. SEDL responded that the imposition of a levy on employers of FDHs complied with the right to equality and equal protection. There was no inequality of treatment and the levy did not raise any issue of discrimination or non-compliance with the various international treaties on human rights such as ILC and the Migration for Employment Convention (Revised) 1949 (ILC 97) of the International Labour Organisation.

40. Mr Andrew CHENG opined that as FDHs were vulnerable groups, the Government should protect the interests of FDHs who received \$3,670 a month for working some ten-odd hours a day. He queried whether a downward adjustment of MAW by \$400 should be made merely because local workers were having a similar level of reduction in monthly income. He urged the Administration to re-consider the need to set a statutory minimum wage for low income workers in the community as well as to review the FDH policy having regard to the existing supply of LDHs.

41. SEDL reiterated that the Task Force on Population Policy had conducted a thorough review of the FDH policy and recommended the adjustment of MAW and the inclusion of importation of FDHs under ERO. He stressed that the Administration would keep in view the latest developments in the demand and supply of both LDHs and FDHs in the community.

Way forward

42. Mr LEE Cheuk-yan said that he would not move his motion on adjustment of MAW circulated to members before the meeting. He suggested that the Panel should hold follow-up discussion on the subject when the Administration had provided detailed information on the mechanism for adjustment of MAW and a written response to issues raised by Members concerning the imposition of levy. The Chairman added that Members should inform the Clerk of further information to be provided by the Administration. Members raised no objection.

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II. Any other business

43. There being no other business, the meeting ended at 1: 05 pm.

Council Business Division 2
Legislative Council Secretariat
22 April 2003