

**立法會**  
***Legislative Council***

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**Report of the Panel on Manpower  
for submission to the Legislative Council**

**Purpose**

This report gives an account of the work of the Panel on Manpower during the 2003-04 session of the Legislative Council. It will be tabled at the meeting of the Council on 7 July 2004 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

**The Panel**

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000 and 9 October 2002 for the purpose of monitoring and examining Government policies and issues of public concern relating to labour and manpower planning matters. The terms of reference of the Panel are in **Appendix I**.
3. The Panel comprises 16 members in the 2003-04 session. Hon LAU Chin-shek and Hon CHAN Kwok-keung were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

**Major Work**

Impact of implementation of the Mainland and Hong Kong Closer Economic Partnership Arrangement on local employment

4. The Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) was signed on 29 June 2003. The Panel discussed the impact of the implementation of CEPA on local employment.

5. While there was no doubt that the implementation of CEPA would bring about opportunities to Hong Kong business, trade and service sectors, some members were concerned whether its implementation would have negative impact on other business sectors, and whether employment opportunities for local workforce would be created as a result of CEPA. These members considered that the Administration should have conducted a detailed assessment on its impact on local employment, both the positive and negative impact, before CEPA was signed. Such a detailed assessment could facilitate the Administration to map out its strategies and policies to meet with the manpower needs arising from Hong Kong business expansions to avoid the need to import workers.

6. Some members were of the view that with more integration and traders moving their business to the Mainland as a result of CEPA, job opportunities for local workers would be adversely affected. These members queried the basis for the claim by the Administration that CEPA would bring about employment opportunities for the local workforce. Some members considered that the Administration should make use of the opportunities arising from CEPA to identify some backbone industries for development and help enhance their competitiveness with a view to revitalising the economy and alleviating the unemployment problem.

7. The Administration responded that CEPA would open up many more new business opportunities to Hong Kong business, trade and service sectors, thereby creating employment opportunities. CEPA would provide a platform for industries to expand their business and relocate their manufacturing processes to Hong Kong. Additional market access under CEPA would be conducive to improving opportunities for professionals of Hong Kong. There had also been enquiries from overseas entrepreneurs to find out how they could take advantage of the opportunities brought about by CEPA. However, it would be premature at this stage to assess the specific number of jobs created. The Administration would conduct a quantitative analysis on the economic impact of CEPA, including its impact on local employment after CEPA had been implemented for nine to 12 twelve months when more statistics on trade and related aspects became available.

8. Members urged the Administration to map out its strategies to bring about local employment opportunities arising from CEPA.

#### Tackling wage offences

9. Some members expressed concern about the low ratio of prosecution in respect of wage offences. These members considered that to deter wage offences, employers should be prosecuted once they were found to have violated the law irrespective of whether conciliation was in progress. These

members suggested that the Administration should explore the feasibility of amending the legislation to prevent company directors from evading their responsibility on outstanding wages upon the winding-up of the company concerned. They also asked the Administration to consider adopting measures to penalise the unscrupulous employers who deliberately defaulted payment of wages by imposing demerit points in their licence applications or tendering for government projects.

10. Some members pointed out the concern of trade unions about the difficulties faced by workers in making wage claims, having regard to the complicated procedures involved. These members suggested that an one-stop service for handling cases of arrears of wages be handled by the Labour Department (LD).

11. The Administration responded that LD received a total of some 31 000 claims by the end of November 2003. Out of these cases, 9 700 cases were related to wages, which was similar to the figure in 2002. The number of prosecution cases had been much reduced because 65% of the claimants got their wages after conciliation by LD without involving legal process. The Administration informed members that there had been a change in the strategy of LD. Should an employer be found to default payment seriously and deliberately, LD would try to encourage the worker to come forward as witness and prosecute the employer. As a result of LD's efforts, in the first 10 months of 2003, there was a 261% increase in conviction over the same period in 2002.

12. Regarding the provision of one-stop service, the Administration advised that LD had studied the suggestion, but found that it would not necessarily help reduce the amount of time required for the different services and the total time spent. To expedite the wage claim process, the Administration was reviewing whether the administrative procedures involved could be simplified and streamlined. The Administration was also discussing with the Judiciary with a view to speeding the process.

13. To address the problem of company directors evading their responsibility to pay outstanding wages, the Administration was reviewing the need to amend the Companies Ordinance. The Administration pointed out that there were provisions in government contracts which allowed for termination of service contracts and disqualification from tendering government projects if the contractors were found contravening labour laws, for example, committing wage offences. Adopting a demerit point system for employers with records of defaulting payment of wages in licence applications might not work if the relevant legislation did not allow the authorities to consider such records in handling licence applications.

14. A member was of the view that the crux of the problem was that the penalty was too light to have sufficient deterrent effect on employers from committing wage offences.

15. The Administration responded that the maximum fine of \$200,000 and one year's imprisonment should have sufficient deterrent effect. However, the penalty imposed on employers would be a matter for the court, having regard to the merits of individual cases.

#### Special Incentive Allowance Scheme for local domestic helpers

16. The Panel was briefed on the progress of the Special Incentive Allowance Scheme (the Scheme) for local domestic helpers (LDHs), and the Administration's proposals to modify the implementation arrangements to enable more LDHs to benefit from the Scheme.

17. Members expressed support for further relaxing the implementation arrangements of the Scheme. However, members pointed out the practical situation where LDHs would need to travel a long distance even though their workplace was immediately adjacent to the one where they lived, for instance, travelling from Tai Po District to Shatin District. As the demarcation of District Council districts was not the same, the travel distance from one district to another varied greatly. Members asked the Administration to consider providing incentive allowance to LDHs who had to work across districts in the New Territories.

18. The Administration responded that the provision of incentive allowance to LDHs who were willing to take up jobs in workplaces that were far from their residence was to address the problem of geographic mismatch. If incentive allowance was offered to those LDHs whose workplace was immediately adjacent to their residence, it might give rise to the situation where the travel distance between home and workplace was within walking distance. This would defeat the purpose of introducing the Scheme. The Administration would, in two to three months' time, review the effectiveness of the proposed relaxation in the light of the implementation experience and the feedback from the applicants for the allowance. If there was a strong call from LDHs, consideration might be given to further relaxing the criterion for "cross-district" allowance.

19. Members pointed out that the problem of long travel distance between different parts in the New Territories would not be resolved in the near future. Members urged the Administration to relax the eligibility for "cross-district" allowance.

20. Having regard to members' views, the Administration agreed, as a compromise, to relax the criterion for "cross-district" allowance in respect of applications from LDHs who were required to take up jobs across districts in the New Territories, even if the workplace was immediately adjacent to the one where they lived, with effect with 1 November 2003.

21. Members urged the Administration to step up publicity efforts to promote the LDH market.

Employment terms for persons engaged in projects or services contracted out by the Government

22. In May 2001, the Government promulgated new arrangements for procurement of government services (excluding construction services) that relied heavily on the deployment of non-skilled workers and were procured through tender procedures under the Stores and Procurement Regulations. Under the arrangements, Controlling Officers were required to adopt a marking scheme for the evaluation of tenders. They were required to include in their assessment criteria the evaluation of the wage levels and working hours of non-skilled workers included in the tenders received.

23. Some members were of the view that the tendering arrangements were not effective in preventing the exploitation of non-skilled workers by government service contractors and safeguarding the statutory rights of these workers. They pointed out that some cleansing workers engaged in the services contracted out by the Housing Department were remunerated at only \$2,450 per month. They expressed concern that with many government contractors paying their workers such low wages, the Government would become an unscrupulous employer and take the lead in bringing down the wages of non-skilled workers.

24. These members queried why the Administration was so tolerant towards the tenderers who would only be disqualified from tendering after they had a total of three or more convictions under the Employment Ordinance, the Employees' Compensation Ordinance and the Immigration Ordinance during the 12-month period prior to the tender closing date. They urged the Administration to undertake effective measures to monitor government service contractors in offering employment terms to their workers.

25. The Administration responded that the recently adopted demerit point system and the mandatory requirement for assessment of tenderers' past performance in respect of compliance with the three Ordinances were new measures aimed at protecting the low-skilled workers. Setting three convictions as the standard for disqualifying the tenderers was adopted after balancing the views of all parties concerned. The Administration stressed that it was the Government policy that in procuring services, the wage levels of non-skilled

workers should be comparable to the prevailing market wage rates of the industries. However, each department could formulate its own marking scheme to cater for its need. The Administration admitted that there was inadequacy in some departments, and they were reviewing their marking schemes.

26. Some members did not consider that the adoption of a demerit point system in assessing tenders would be effective in tackling the problem. In the view of these members, the average monthly salary of the industry published by the Census and Statistics Department (C&SD) should be adopted as the minimum wage for workers in projects or services contracted out by the Government.

27. However, some other members opposed the setting of a minimum wage. They were of the view that wages should be determined by forces of supply and demand. The right solution to the problem was to identify those government departments or contractors who paid the non-skilled workers extremely low salary and to enhance the competitiveness of non-skilled workers.

28. At its meeting on 22 April 2004, the Panel passed a motion urging the Government to adopt the average monthly salaries of selected occupations published by C&SD as the standard of minimum wage for workers engaged in projects or services contracted out by the Government.

29. On 6 May, the Government promulgated a new mandatory requirement for tender assessment for contracts for the procurement of government services (excluding construction services) that relied heavily on the deployment of non-skilled workers and were procured through tender procedures. Under the new requirement, a tender offer should not be considered if the monthly wage rates offered by the tenderers to their non-skilled workers were less than the average monthly wages for the relevant industry/occupation as published in the latest C&SD's Quarterly Report of Wage and Payroll Statistics at the time when the tender documents were issued. The new mandatory requirement also applied to subcontracting arrangements and procurement of the same kind of government services under direct purchase authority.

30. Regarding the implementation of the new requirement, the Administration informed members that Controlling Officers were required to specify in the tender documents that the successful contractor was required to sign written employment contract with its employees, setting out the terms of employment, including wages. They should also specify in the tender documents the sanctions for dealing with breaches of contractual obligations in respect of employment conditions for the non-skilled workers and breaches of the Employment Ordinance. The sanctions might include the issue of default notices, on the basis of which deductions by way of liquidated damages from the payments to the contractors might be made. A provision should be included

for immediate termination of the contract for serious breaches. In addition, Controlling Officers were required to implement a demerit point system against contractors who had breached their contractual obligations in respect of wages, working hours and signed written contracts with workers.

31. Members urged the Administration to put in place effective monitoring mechanism to ensure that the new mandatory requirement was fully met.

#### Trends and prevention of occupational diseases

32. The Panel was briefed on the recent trends in occupational diseases and the work of the Occupational Health Service of LD in the prevention of such diseases.

33. Members pointed out that the 49 occupational diseases compensable were prescribed a long time ago. The decline in cases of these diseases might be due to the cessation of certain economic activities, and not necessarily because of improvement in occupational safety and health. Members suggested that a comprehensive analysis taking into consideration the economic activities and the mode of operation should be carried out in order to ascertain whether the occupational safety and health level in Hong Kong had improved. Members were also concerned about new occupational diseases arising from the new industries.

34. The Administration informed members that LD would keep under review economic activities in Hong Kong and new diseases for inclusion into the list of compensable occupational diseases. When asked whether Severe Acute Respiratory Syndrome (SARS) would be included in the list, the Administration advised that LD was consulting the Hong Kong Medical Association and the insurance sector on the possible inclusion of SARS and avian influenza as occupational diseases. In the light of their feedback, the Administration would consult the Labour Advisory Board and the Panel.

35. Regarding members' query as to how inspection of workplaces, for instance hospitals, were conducted, the Administration explained that surprise inspections and inspections with prior notice given were conducted. The multi-disciplinary inspection team, headed by a doctor, normally included an occupational safety officer and an occupational hygienist. An audit approach was adopted in the inspection of a hospital. The inspection team would check the documents on occupational safety and health measures taken, the training records, guidelines issued, the internal monitoring mechanism and accident figures. The team would inspect the high-risk places, and then debrief the hospital about its recommendations. A letter would subsequently be issued to the hospital inspected, including the suggested improvement measures.

## Establishment of a qualifications framework and its associated quality assurance mechanism

36. In his Policy Address delivered on 7 January 2004, the Chief Executive announced that a qualifications framework (QF) would be established to provide learners with a clear articulation ladder. The Panel was briefed on the proposed establishment of a seven-level cross-sectional QF and its associated quality assurance mechanism.

37. Members in general supported the direction to enhance the quality of human resources in Hong Kong. However, some members were concerned that the implementation of a QF would have an adverse impact on the employment of senior workers with low educational attainment. These members considered that clear and comprehensive guidelines should be put in place to ensure that the introduction of QF would not cause any loss to the existing workers in terms of job security, wages and benefits. Since each industry would have its own skills and standards required in the outcomes of qualifications, some members considered that there should be a clear yardstick for assessment.

38. The Administration explained that the implementation of QF was not mandatory. Individual industries and workers were free to decide whether or not to develop specific levels of competency within the overall framework. A recognition of prior learning mechanism would be put in place to recognise the skills, knowledge and experience of existing workers that were acquired through previous training, work or life experience. QF could also help identify the training needs of workers and provide clear progression pathways for aspiring workers to upgrade themselves. In addition, the Industry Training Advisory Committees (ITACs) in different industry sectors would be set up to, among other things, help implement QF in the respective industry sector by developing the industry training specifications. To ensure credibility of qualifications awarded by a wide range of education and training providers, a quality assurance mechanism would be established to underpin QF. The Hong Kong Council for Academic Accreditation would take on the role of assuring the quality of qualifications under QF.

39. The Administration stressed that QF merely provided a framework for recognition of qualifications. It would be difficult to see how the implementation of QF could lead to a reduction in wages. The Administration assured members that it would take a modest and cautious approach in implementing QF.

40. Regarding the membership of ITACs, some members suggested that more employees should be represented in ITACs. In response to members, the Administration agreed that the chairman of the respective ITAC could be elected from among its members.



41. The Panel asked the Administration to take into consideration members' views and concerns in the implementation of QF.

#### Other issues

42. The Panel had discussed a range of other issues with the Administration. They included new measures to enhance the employment services, pilot scheme to promote self-employment for the youth, revamping the labour inspection service to strengthen protection of employees' rights and benefits, LD's strategy in promoting good employer-employee relations, measures to promote employment opportunities for people with disabilities, and Youth Sustainable Development and Engagement Fund.

43. The Panel was also consulted on a number of legislative and financial proposals. They included the proposed amendments to the Employees Compensation Assistance Ordinance, the proposed amendments to the reinstatement and re-engagement provisions under the Employment Ordinance, and the proposal to amend the Vocational Training Council Ordinance to empower the Vocational Training Council to engage extra-territorial activities which were consistent with its objectives and functions.

#### Meetings held

44. Between October 2003 and June 2004, the Panel held a total of 12 meetings, including a joint meeting with the Panel on Planning, Lands and Works to discuss the proposed establishment of Construction Industry Council and a joint meeting with the Panel on Administration of Justice and Legal Services to discuss the operation of Labour Tribunal.

Council Business Division 2  
Legislative Council Secretariat  
28 June 2004

**Legislative Council  
Panel on Manpower**

**Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to labour and manpower planning matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Legislative Council  
Panel on Manpower**

**Membership list for 2003-2004 session**

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

(Total : 16 members)

<b>Clerk</b>	Mrs Sharon TONG LEE Yin-ping
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<b>Legal adviser</b>	Miss Kitty CHENG
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<b>Date</b>	9 October 2003
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