

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 2004-05 session of the Legislative Council. It will be tabled at the meeting of the Council on 6 July 2005 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 2004-05 session. Hon LAU Chin-shek and Hon KWONG Chi-kin were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major Work

Proposal for a minimum wage in Hong Kong

4. Some members expressed support for introducing a minimum wage in Hong Kong. They considered that a minimum wage could provide adequate income protection for elementary workers, better protect the livelihood of low income workers, and alleviate the problem of poverty. Some of these members suggested that a minimum wage should be set for workers in the cleansing, security and catering trades first. Another member considered that a statutory minimum wage should be introduced for all trades.

5. Some other members, however, pointed out that while employers attached great importance to the rights and benefits of employees and were willing to assist those in need of assistance, introducing a minimum wage was not the only way to safeguard the benefits of employees. These members considered that before the issue was deliberated by the Labour Advisory Board (LAB), a pre-condition of introducing a minimum wage should not be imposed.

6. The Administration was of the view that the issue of minimum wage was complicated and had far-reaching implications on the future socio-economic development of Hong Kong. The Administration would keep an open mind on the issue, and would explore in depth the feasibility and desirability of introducing a statutory minimum wage in Hong Kong. It would also fully assess the social-economic implications of the proposal, analyse and draw on experience of overseas countries with minimum wage policies. The Administration stressed that it was important to secure consensus among employers, employees and the Government before the proposal could be taken forward. As a first step, the issue would be put to LAB for deliberation.

7. The Panel passed a motion urging the Administration to formulate an implementation plan and timetable for introducing a minimum wage.

Proposal for prescribing the maximum number of working hours

8. Some members pointed out that unduly long working hours would have an adverse effect on employees' health, as well as their family and social life. These members considered that the maximum number of working hours should be prescribed, in order to protect the interests of those workers with the least bargaining power. More jobs would be created if the hours of work were stricted. They urged the Administration to state clearly its stand on the issue, and put concrete proposals to LAB for deliberation.

9. Some other members, however, opposed the setting of maximum working hours, as it would undermine the flexibility of the labour market and business environment, and the competitiveness of the local workforce with neighbouring areas.

10. The Administration stated that the issue of maximum working hours is complicated and had a far-reaching impact on the future socio-economic development of Hong Kong. The Labour Department, together with the Government Economist and the Census and Statistics Department, was assessing the possible impact of introducing maximum working hours in Hong Kong, taking into account the socio-economic implications, as well as the merits and drawbacks of the proposal. In examining the issue, the Administration would keep an open mind, and would strike a balance between the interests of employers and employees, and seek to reach consensus among

employers, employees and the Government. As a first step, the issue of prescribing maximum working hours would be put to LAB for deliberation.

Mandatory requirement for employment terms for non-skilled workers engaged in services contracted out by the Government

11. The Panel followed up closely the implementation of the mandatory requirement on employment terms for non-skilled workers engaged in services contracted out by the Government, which was promulgated on 6 May 2004.

12. Under the mandatory requirement, a tender offer would not be considered if the monthly wage rates offered by the tenderer to their non-skilled workers were less than the average monthly wages for the relevant industry/occupation as published in the latest Census and Statistics Department's Quarterly Report of Wages and Payroll Statistics at the time when tenders were invited.

13. Some members queried why meal breaks were excluded from the normal working hours of non-skilled workers employed by some contractors of government outsourced services. These members pointed out that the working hours of civil servants and many other employees had included an hour's meal break. If meal breaks were not included in the normal working hours, it would mean that these employees had to give up their meal breaks or perform an extra hour's work per day. They urged the Administration to conduct a comprehensive review on the meal break arrangement in the mandatory requirement.

14. A member considered that the Administration should promote good employer's practices, such as the employment of more full-time employees and offering higher wage rates to employees, through awarding higher marks for such employers in the marking scheme for assessment of tenders.

15. The Administration responded that meal break had never been included in the definition of the normal working hours per day as set out in the Quarterly Report since 1982. The purposes of the mandatory requirement were to strengthen the monitoring of the contractors of outsourced services and to ensure that average wage rates offered to non-skilled workers by these service contractors would not be lower than those in the relevant industry or occupation in the market. Whether wages would be paid for meal breaks was one of the terms of employment.

16. At the meeting on 2 December 2004, the Panel passed a motion urging the Administration to require that the monthly wages to be paid by contractors of outsourced services to their workers in the eight-hour service contracts (covering meal breaks) should be stipulated in the average wage rates for relevant industry as published in the Quarterly Report. The Panel also passed a

motion requesting the Administration to submit to the Panel for consideration the parts concerning employment terms in model tender documents for outsourced service contracts.

17. On 17 March 2005, the Panel was briefed on a proposed new standard employment contract for non-skilled workers for use by contractors of government service contracts.

18. Some members suggested that the standard employment contract should set out explicitly that if an employee was dismissed after lodging a complaint against his employer, the procuring department had the right to order reinstatement. The standard employment contract should state that meal breaks were included in the normal working hours of the workers concerned. It should also stipulate that allowance would be paid for workers required to be on duty when black rainstorm warning or typhoon signal number eight or above was hoisted.

19. A member suggested that the standard employment contract should be adopted by all public funded organisations.

20. The Administration responded that including meal breaks in the normal working hours had wide implications. Nevertheless, the Administration would examine the wording used in the standard employment contract.

21. The Administration informed members that it would encourage public funded organisations to adopt the standard employment contract. The Administration had already written to all public funded organisations encouraging them to adopt the mandatory requirement.

Prevention of abuse of the Protection of Wages on Insolvency Fund

22. The Panel was briefed on the measures undertaken by the Administration to prevent, detect and deter abuse of the Protection of Wages on Insolvency Fund, and additional intermediate and long-term measures being considered to further prevent abuse.

23. Among the long-term measures being considered by the Administration, some members expressed concern that requiring restaurant proprietors to provide bank guarantees for the statutory entitlements of employees would pose a problem for small and medium restaurants, as it would be very difficult for such restaurants to obtain bank guarantees. Some other members, however, considered that restaurant proprietors should be required to provide such bank guarantees.

24. Some members were of the view that existing legislation was adequate and the Administration should focus on stepping up enforcement against abuse

of PWIF.

25. Some other members, however, expressed concern that some employers might have transferred assets through transactions which were abnormal but not illegal, such as the sale of assets at a considerably lower price, before liquidation of their businesses. These members considered that effective measures should be introduced to prevent abuse of the Fund.

26. The Administration responded that an inter-departmental task force was formed in November 2002 and a special investigation team was established in May 2003 to address the problem. In the past, prosecution was not instituted once an employer had settled all the outstanding wages. In recent years, prosecution was instituted whenever there was sufficient evidence and the worker concerned was willing to testify in court. The number of successful summons in respect of wage offences had increased substantially.

27. The Administration stressed that any suspected transfer of assets before liquidation would be investigated. As enforcement alone could not address all the problems, additional measures were being considered to further prevent abuse of the Fund. The Administration would carry out in-depth study of the measures and referred those considered to be viable to LAB for consideration.

28. Some members expressed concern that the number of applications for the Fund did not reflect the actual situation, as an applicant had to apply for legal aid before applying for ex-gratia payment from the Fund. These members suggested that applicants of the Fund should not be required to satisfy the eligibility requirements for legal aid. They also suggested that the Labour Department should, on behalf of the employee concerned, apply for a winding-up petition or a bankruptcy petition against the employer so that it would not be necessary for an applicant to apply for legal aid.

Improving the employees' compensation insurance system in Hong Kong

29. The Panel was informed that a three-pronged approach would be adopted to improve the employees' compensation insurance (ECI) system in Hong Kong. The Hong Kong Federation of Insurers (HKFI) would take steps to improve the existing ECI system. To address the problem of non-availability of ECI in recent years, a residual scheme would be launched by HKFI in the first half of 2006 to provide ECI cover for employers who were refused ECI cover by at least three employees' compensation insurers or one broker. The Administration would continue with its study on the viability of a central ECI scheme in Hong Kong.

30. Some members considered that a central ECI scheme should be established, as it would enable the Administration to achieve savings in manpower involved in the handling of employees' compensation. Employers

would benefit from a lower premium achieved from savings in commission and management expenses. Employees, including self-employed persons and casual workers, would also benefit from better protection offered by a central ECI scheme. These members were of the view that the proposed residual scheme could not provide coverage for self-employed persons and part-time domestic helpers. A private scheme also could not provide the rehabilitation as well as promotion of occupational safety and health offered under a central ECI scheme.

31. The Administration responded that the proposed residual scheme would provide the insurance cover required under the Employees' Compensation Ordinance; hence, self-employed persons and casual workers would not be covered under the scheme. Nevertheless, the insurance sector was willing to discuss with the relevant sectors and labour unions how ECI cover could be provided for such persons.

32. A member considered that as the insurance sector had proposed a residual scheme to address the problem of non-availability of ECI cover, the sector should be given the opportunity to try out the scheme. The member pointed out that overseas experience indicated that insurance premium was usually higher under a central ECI scheme. As ECI business currently accounted for one-quarter of the general insurance business, replacing a private market by a central ECI scheme would have significant impact on the employees in the insurance industry.

33. The Panel passed a motion urging the Administration to expeditiously introduce a central ECI scheme.

Work Trial Scheme

34. The Panel was briefed on the Administration's proposal to launch the Work Trial Scheme (WTS) in June 2005.

35. Members expressed concern whether compensation for injury to an employee caused by negligence of the employer would be covered under the insurance to be taken out for WTS participants.

36. The Administration explained that the insurance for WTS participants would indemnify them against damages arising from personal accidents as well as damages arising from any third party litigation arising from the participants' negligence during the course of work trial. The maximum amount of compensation in fatal cases was no less than that provided under the Employees' Compensation Ordinance.

37. Members pointed out that accident insurance did not cover compensation for injury caused by negligence of the employer, and requested the

Administration to consider taking out employees' compensation insurance for WTS participants. Some members considered that problems arising from work injury during work trial, such as that caused by negligence of the employer, could be addressed through the establishment of an employment relationship between a participant and the participating organisation.

38. The Administration responded that a participating organisation could, if so wished, employ a participant at the commencement of work trial. The Administration would encourage employers to employ WTS participants who had successfully completed the work trials. A review on WTS would be conducted six months after its implementation.

Other issues

39. The Panel had discussed other issues with the Administration. They included voluntary rehabilitation programme for employees injured at work, proposal to designate 28 April as the Commemoration Day for Dead and Injured Workers in Hong Kong, review of the occupational diseases in 2004, protection for employees who were not employed under a continuous contract, and enforcement of certificate of origin and its implications on local employment.

40. The Panel was also consulted on a number of legislative and financial proposals. They included the proposal to add Severe Acute Respiratory Syndrome and avian influenza as occupational diseases under the Employees' Compensation Ordinance, review of financial provision for Project Yi Jin, and proposed amendments to the Hong Kong Council for Academic Accreditation (HKCAA) Ordinance to expand the scope of responsibility of HKCAA to undertake quality assurance under the qualification framework.

Meetings held

41. Between October 2004 and June 2005, the Panel held a total of 11 meetings.

Council Business Division 2
Legislative Council Secretariat
27 June 2005

Appendix I

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 2004-2005 session

Chairman Hon LAU Chin-shek, JP

Deputy Chairman Hon KWONG Chi-kin

Members Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Frederick FUNG Kin-kee, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung

(Total : 16 Members)

Clerk Mrs Sharon TONG LEE Yin-ping

Legal adviser Miss Kitty CHENG

Date 12 October 2004