

立法會
Legislative Council

LC Paper No. CB(1)2188/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/PL/HG/1

Panel on Housing

Minutes of meeting
held on Monday, 5 June 2006, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon LEE Wing-tat (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Fred LI Wah-ming, JP
Hon James TO Kun-sun
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon Albert Jinghan CHENG
- Members attending** : Dr Hon KWOK Ka-ki
Hon WONG Ting-kwong, BBS

Members absent : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Dr Hon YEUNG Sum
Hon Patrick LAU Sau-shing, SBS, JP

Public officers attending : Agenda Item IV

Mr Michael M Y SUEN, GBS, JP
Secretary for Housing, Planning and Lands

Mr LAU Kai-hung, JP
Deputy Director (Estate Management)
Housing Department

Mr Deryk YIM
Chief Manager/Management (Support Services)4
Housing Department

Agenda Item V

Mr Michael M Y SUEN, GBS, JP
Secretary for Housing, Planning and Lands

Mr LAU Kai-hung, JP
Deputy Director (Estate Management)
Housing Department

Mr CHIU Kin-chee
Chief Manager/Management (Support Services)1
Housing Department

Mr LEE Kang-sum
Chief Manager/Management (Support Services)3
Housing Department

Mrs CHAN Mak Kit-ling, Jenny, JP
Assistant Commissioner (Employees' Rights & Benefits)
Labour Department

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)6

Staff in attendance : Ms Sarah YUEN
Senior Council Secretary (1)6

Ms Michelle NIEN
Legislative Assistant (1)9

Action

I. Confirmation of minutes

(LC Paper No. CB(1)1649/05-06 — Minutes of meeting on
3 April 2006)

The minutes of the meeting held on 3 April 2006 were confirmed.

II. Information papers issued since last meeting

2. Members noted that no information paper had been issued since last meeting.

III. Items for discussion at the next meeting

(LC Paper No. CB(1)1618/05-06(01) — List of outstanding items for
discussion

LC Paper No. CB(1)1618/05-06(02) — List of follow-up actions)

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting of the Panel to be held on Monday, 3 July 2006, at 2:30 pm:

- (a) Arrangements for selling first-hand residential units; and
- (b) District Open Space adjoining Sau Mau Ping public housing development.

4. On item (a), members agreed to discuss in that context the concerns highlighted in Mr LEE Wing-tat's letter dated 27 April 2006 relating to accuracy of information on property transactions which was issued to members vide LC Paper No. CB(1)1409/05-06(01) on 3 May 2006. In this connection, Mr Albert HO noted that in 2000, the Administration published for public consultation a White Bill on the Sales Descriptions of Uncompleted Residential Properties, which sought to enhance the accuracy, uniformity and transparency of information provided in sales brochures and advertisements regarding the public sales of local uncompleted residential flats. However, the Administration had not introduced the Bill into the Legislative Council (LegCo) after the consultation exercise. Mr HO sought to ascertain whether the Administration had reviewed the subject since then, and if it had, the relevant details; and whether the Administration would reassess the need of introducing legislation to

regulate the sale of new residential properties. The Chairman instructed that Mr HO's request for information be forwarded to the Administration for action.

IV. Marking Scheme for Commercial Premises of the Housing Authority
(LC Paper No. CB(1)1618/05-06(03) — Information paper provided by the Administration)

Briefing by the Administration

5. The Deputy Director (Estate Management) of the Housing Department (DD(EM)/HD) briefed members on the Housing Authority (HA)'s plan to introduce an Enhanced Marking Scheme (the Enhanced Marking Scheme) in its commercial premises including 19 shopping centres and 21 markets at present. He elaborated that HA implemented a Yellow Line Scheme under the Marking Scheme for Tenancy Enforcement in its markets in 2003 to deal with obstruction of public areas, which was in line with the measures to boost hygiene and cleanliness in Hong Kong announced by the Team Clean. In the light of operational experience of the Yellow Line Scheme, HA had decided to enhance and expand the scheme by incorporating breaches of all environmental hygiene-related provisions stipulated in the relevant tenancy agreements to establish the Enhanced Marking Scheme. As in the marking schemes for public rental housing (PRH) estates and HA's flatted factories, the Enhanced Marking Scheme covered a number of misdeeds to which penalty points would be allotted. The number of points to be allotted for each misdeed would depend on its seriousness, and would be valid for two years. Tenants who had accrued 10 points or more would be warned. When 16 points were accrued, HD would decide, having regard to all relevant circumstances, whether the tenancy should be terminated. The misdeeds (the listed misdeeds) to be included under the Enhanced Marking Scheme were as follows:

- (a) Unauthorized sale of cooked food/operation of food factory;
- (b) Denying HD staff or staff representing HD entry for inspection or repairs;
- (c) Disposing of trade refuse/junks/rubbish indiscriminately in public areas;
- (d) Accumulating refuse/wastes inside the leased premises, creating offensive smell and hygienic nuisance;
- (e) Unauthorized tapping/improper use of water from HA's water points;

- (f) Causing obstruction in the public areas;
- (g) Deposit of paraphernalia indiscriminately atop the shopstall;
- (h) Causing blockage of floor drain and refusing to take timely remedial action; and
- (i) Overspill of exclusively used grease trap.

6. To gauge the views of commercial tenants and Estate Management Advisory Committees (EMACs) on the Enhanced Marking Scheme, DD(EM)/HD said that HA had commenced a three-month consultation in May 2006. Preliminary comments from residents and commercial tenants indicated support for the scheme. HA would take account of the outcome of consultation and, if necessary, adjust the scheme before implementation in the fourth quarter of 2006.

Discussion

Justifications for introducing the Enhanced Marking Scheme

7. Mr Albert CHAN queried the need to implement the Enhanced Marking Scheme pointing out that HD could already enforce hygiene-related clauses in the tenancy agreements. He expressed concern that the scheme would be targeted at small shops and stalls in HA's shopping centres and markets which were in business for years and whose operators were elderly tenants without the means or the know-how to take preventive or remedial measures to avoid committing the listed misdeeds. The scheme would be unfair to the helpless elderly operators and could lead to disputes between tenants and HD staff. Mr CHAN further remarked that unsatisfactory hygiene conditions in many of HA's commercial premises were in fact the result of poor management by HD or its contractors. It was necessary for HD and its contractors to improve their management in order to achieve overall improvement in the environment of HA's commercial premises.

8. DD(EM)/HD explained that the Enhanced Marking Scheme was an administrative measure serving as a warning system to urge tenants to rectify hygiene-related problems. It would also facilitate frontline staff of HD in enforcing the termination provision in the tenancy agreement in an objective and consistent manner. For instance, the number of warning letters issued would provide HD staff with an objective standard in enforcing the termination provision in the tenancy agreement. As to the concern about unfairness to small shops and stalls, DD(EM)/HD stressed that the Enhanced Marking Scheme would be applicable to all shops and stalls in HA's commercial premises and was not only targeted at small shops and stalls. He added that in consideration of the special conditions of small

operators in HA's markets, HD had exercised flexibility in implementing the Yellow Line Scheme to allow operators to display and store their goods within the "yellow line", not extending beyond one metre from the front and side of the shop or stall.

9. Mr Albert CHAN was not convinced. Pointing out that the passageways in supermarkets in HA's commercial premises were always blocked while space between stalls in HA's markets were regarded as public areas that could not be obstructed, Mr CHAN re-iterated his concern that the Enhanced Marking Scheme was unfair and too strict to small operators. He therefore indicated his opposition to the scheme. In response, DD(EM)/HD pointed out that the passageways in supermarkets were regulated by relevant provisions under the Fire Services Ordinance (Cap. 95).

10. Dr Joseph LEE noted that some commercial tenants had expressed reservation over the Enhanced Marking Scheme and enquired about the major reasons involved. DD(EM)/HD said that some commercial tenants were concerned that the scheme was too strict and would adversely affect their operation. There were also concerns about justifications for including certain misdeeds under the scheme and inflexibility in implementing the scheme. On the concern about inflexibility in implementing the scheme, DD(EM)/HD emphasized that HD had already exercised flexibility under the Yellow Line Scheme to provide market stalls with extra display space. As regards the concern about negative impact on the operation of stalls, DD(EM)/HD said that tenants of HA's flatted factories had expressed the same concern upon the introduction of the marking scheme. However, tenants subsequently supported the scheme when they noticed the resultant improvement in the safety and cleanliness in the environment. DD(EM)/HD further pointed out that the commercial tenants of Cheung Shan Estate and Fuk Loi Estate had indicated support for the Enhanced Marking Scheme in recognition of the anticipated improvement in the operating environment. The scheme also enjoyed great support from residential tenants and EMACs.

11. While acknowledging commercial tenants' concerns about the Enhanced Marking Scheme, Mr LEE Wing-tat indicated support for the scheme in principle with a view to improving the operating environment of HA's markets. He considered that with implementation of the scheme, market stalls at the end of passageways would no longer be unfairly blocked off by stalls indiscriminately displaying goods in the passageways.

Listed misdeeds under the Enhanced Marking Scheme

12. Mr LEUNG Kwok-hung considered it necessary for HD to provide clear definitions for each of the listed misdeeds to avoid ambiguous interpretation and facilitate consistent enforcement actions. For instance, Mr LEUNG considered it unclear as to what was meant by "paraphernalia" under misdeed (g). As regards misdeed (c), Mr LEUNG opined that it might be unfair to hold the tenant concerned

responsible for the misdeed because he might not be the one who disposed of the junks/rubbish in the vicinity of his stall.

13. Noting that the illegal occupation of vacant stalls in HA's markets had not been included as a misdeed under the Enhanced Marking Scheme, Mr CHEUNG Hok-ming sought relevant figures to ascertain the seriousness of the problem and enquired about measures taken by HD to address it. In response, DD(EM)/HD explained that the problem could be classified under misdeed (f), and be allotted three penalty points accordingly.

14. Mr CHEUNG Hok-ming further sought details on what constituted misdeed (g). In particular, he enquired whether it would be the nature of the paraphernalia or the location it was deposited that would determine the misdeed. In response, DD(EM)/HD elaborated that the major consideration was whether the deposit would cause obstruction to the functioning of the fire-fighting and air-conditioning facilities atop the shopstall. He assured members that the HD would explain the definitions of the listed misdeeds to commercial tenants to avoid ambiguity in enforcement.

15. Mr Tommy CHEUNG pointed out that it might not be fair to allot penalty points for misdeed (h) as the blockage of floor drains might be the result of blockage of the public drains which was not caused by the tenant concerned. Mr LEUNG Kwok-hung shared his view. In response, DD(EM)/HD assured members that if this was the case, the tenant would not be allotted with penalty points. As verbal and written notice would be given before allotting points under this misdeed, the tenant concerned would have the opportunity to explain the above situation to HD. He further explained that misdeed (h) was mainly related to fish stalls, where fish scales left over from handling fish were often the cause for the blockage. The stall operator concerned could easily tackle the blockage by clearing the scales. As to the concern about blockage of the public drains, DD(EM)/HD said that with the help of new equipment, such as high pressure water blasters, HD was able to tackle the problem effectively, hence the problem should no longer be a concern of market stalls.

Allotment of penalty points and the validity period

16. Mr WONG Kwok-hing considered that the two-year validity period of the penalty point too long and was concerned that the commercial tenants would keep worrying for a long time that their tenancy might be terminated as a result of further commission of listed misdeeds. He urged the Administration to consider reducing the validity period to one year. In response, DD(EM)/HD explained that the two-year validity period for the penalty points had been adopted for the marking schemes for PRH estates and HA's flatted factories as well as the Yellow Line Scheme. To ensure consistency, the Administration considered it appropriate to adopt the same validity period for the Enhanced Marking Scheme. DD(EM)/HD re-iterated that the purpose of the scheme was to heighten tenants' awareness of good hygiene and tidy environment in commercial premises. Commercial tenants should not worry about

the allotment of penalty points as their tenancies would not be terminated if they did not repeatedly commit the listed misdeeds.

17. In response to Dr Joseph LEE's enquiry about how the penalty points for each listed misdeed had been worked out, DD(EM)/HD advised that penalty points would be determined according to the seriousness of the misdeed in question and HA's Commercial Properties Committee had been consulted on the matter. He re-iterated that the Enhanced Marking Scheme would serve as a warning system. As long as tenants did not commit the listed misdeeds repeatedly, their tenancy would not be terminated. For instance, even for a misdeed allotted with seven points, the offender's tenancy would not be terminated unless he committed the misdeed thrice.

The need to give notice before allotment of penalty points

18. Mr WONG Kwok-hing asked whether commercial tenants who had committed the listed misdeeds would be urged to make improvement before allotment of the penalty points. DD(EM)/HD advised that verbal and written notices would be given to the tenants before allotting points under misdeeds (b), (h) and (i). Moreover, tenants who had accrued 10 points or more would be warned. DD(EM)/HD further explained that in the case of misdeed (b), there was a need to give the tenants concerned time to respond before it could be established that they had denied the entry of HD staff to the stalls for inspection or repairs. As for misdeeds (h) and (i), it was necessary to provide tenants with the opportunity and sufficient time to take remedial actions.

19. Mr Tommy CHEUNG asked when HD would consider it necessary to allot the penalty points for misdeeds (b), (h) and (i) after giving the verbal/written warning to the tenants. DD(EM)/HD confirmed that penalty points would be allotted under the three misdeeds only after the tenants failed to make improvement despite the issuance of verbal and written notices. To provide tenants with the opportunity to make rectification, Mr CHEUNG suggested that consideration be given to issuing verbal and written notices for all listed misdeeds with deadlines imposed for making improvement. In his view, this approach would be more reasonable and could address the concerns about elderly operators highlighted by Mr Albert CHAN in paragraph 7 above. In this connection, Mr LEE Wing-tat and Mr LEUNG Kwok-hung stressed the need to give notice for each listed misdeed before the allotment of penalty points. In response, DD(EM)/HD explained that certain misdeeds warranted immediate allotment of penalty points given their nature. The misdeeds of spitting, littering, and throwing objects from heights under the marking scheme for public housing estates were misdeeds of this nature.

20. Mr LEUNG Yiu-chung opined that to show understanding of the problems faced by commercial tenants, consideration should be given to issuing notice before allotting penalty points for misdeeds (f) and (g). He further pointed out that misdeed (f) involving acts of obstruction to public places were usually of a temporary nature and very often inevitable during loading and unloading of goods. It would hence be

too stringent to immediately allot penalty points whenever obstruction was found. Mr LEUNG supported Mr Tommy CHEUNG's suggestion in paragraph 19 and urged HD to exercise greater flexibility in enforcing the Enhanced Marking Scheme. The Chairman shared the views and urged the Administration to consider members' views to avoid confrontation between HD staff and tenants during enforcement actions. He also highlighted the need to give notice for misdeed (d). To ensure objectivity and consistency in enforcing the Enhanced Marking Scheme, the Chairman further suggested that HD should specify clearly in the written notice that points would be allotted if no improvement was made after the issuance of a certain number of written notices.

21. Mr Frederick FUNG pointed out that the listed misdeeds under the Enhanced Marking Scheme were different from spitting and littering, which could pose public health hazards and hence should be seriously penalized. He considered that while misdeeds (a) and (b) should be allotted penalty points immediately if there was sufficient evidence, and prosecution should even be taken against misdeed (a), verbal and written notice should be given before allotting penalty points for misdeeds (c) to (i) because there would be grey areas as to who had caused the relevant problems. Miss CHAN Yuen-han shared his views. She agreed that HD should exercise flexibility in implementing the scheme in view of the difficulty in determining the responsible party for causing the hygiene problems in HA's shopping centres and markets.

22. In response, DD(EM)/HD reiterated the need to allot penalty points under certain misdeeds without giving notice in order to ensure the deterrent effect of the Enhanced Marking Scheme. In the case of certain misdeeds, such as spitting, it was necessary to catch offenders red-handed without giving prior warning. Since three points would be allotted for each of the misdeeds under (f) to (i), a tenant would need to commit the said misdeed six times before his tenancy would be terminated. Nonetheless, DD(EM)/HD undertook to consider members' views in finalizing implementation of the scheme.

Considerations for implementing the Enhanced Marking Scheme

23. While endorsing the objective of the Enhanced Marking Scheme, Mr LEUNG yiu-chung stressed the need to exercise care in implementing the scheme to avoid possible adverse impact on the business of the commercial tenants and unintended results and social discords. Hence, he supported conducting thorough consultation on the scheme before implementation.

24. Mr LEE Wing-tat also stressed the need for HD to implement the Enhanced Marking Scheme in a firm but understanding manner. He considered that while enforcement actions should be taken firmly, verbal and written notice should be given before the actual allotment of penalty points. Moreover, HD should step up efforts to enhance public awareness of the need for improving environmental hygiene in HA's commercial premises. In addition, HD should in parallel set a good example by

taking prompt actions to rectify any problems in commercial premises. By doing so, HD would not be blamed for being strict to tenants but lenient to itself. To support his views, Mr LEE referred to a case where HA had failed to rectify the false alarm problem in a commercial premise for more than three months. Mr LEUNG Kwok-hung shared the view and referred to a complaint about blockage of drains in Pok Hong Estate where HD had been slow in following up the case and arranging compensation for affected tenants.

25. While sharing members' views, DD(EM)/HD pointed out that the three-month consultation for the Enhanced Marking Scheme had demonstrated HA's respect for public opinions and enhanced communication with commercial tenants. He assured members that HA would take account of the outcome of consultation and, if necessary, adjust the scheme before implementation. He re-iterated that the ultimate aim of the scheme was to improve the hygiene and operating environment of HA's commercial premises rather than to penalize tenants. DD(EM)/HD also acknowledged the need to implement the scheme in a caring and flexible manner, and to clearly explain the details to commercial tenants. The Administration was confident that the scheme would be implemented smoothly to help improve the hygiene and operating environment in HA's commercial premises.

26. As regards the concern about management of HA's premises, DD(EM)/HD said that HD conducted customer satisfaction surveys every year to gauge tenants' views on its service. The results of the surveys had shown steady improvement in the level of satisfaction on the overall cleanliness in the environment of estates. He assured members that HD would keep up efforts to further improve its service. As regards the concern about the follow-up for the drainage problem in Pok Hong Estate, DD(EM)/HD explained that the slippage was mainly due to the longer time taken than originally expected for assessing the loss caused by the problem and processing compensation claims.

Appeal mechanism for the Enhanced Marking Scheme

27. Mr WONG Kwok-hing and Mr Tommy CHEUNG stressed the need to ensure the impartiality of the appeal mechanism for the Enhanced Marking Scheme. In particular, in recognition that the allotment of penalty points might lead to tenancy termination, Mr CHEUNG urged HA to make reference to other appeal mechanisms which involved outside parties and even the court, such as those for food licences and liquor licences. In response, DD(EM)/HD said that when 16 points were accrued, the concerned tenant would be served a notice-to-quit (NTQ). The tenant would have the chance to appeal to the Appeal Panel on the NTQ, which was independent of HA and consisted of lay persons who were not HA members or HD staff. The Appeal Panel would handle appeal cases in a fair and impartial manner.

28. Dr Joseph LEE asked whether there would be channel for tenants to lodge complaints about allotment of penalty points under the Enhanced Marking Scheme. DD(EM)/HD said that the tenants could appeal to HD's directorate, who would

consider the complaints to determine whether special treatment would be warranted. DD(EM)/HD however emphasized that unless the tenant concerned repeatedly committed the listed misdeeds, allotment of penalty points would not lead to termination of tenancy. Even at the final stage, the tenant still had the opportunity to appeal to the Appeal Panel against the NTQ.

29. Mr LEUNG Kwok-hung highlighted the need to involve independent parties to ensure fairness and objectivity in the implementation of the Enhanced Marking Scheme. He considered it undesirable for HD directorate to handle complaints relating to allotment of penalty point and suggested that consideration be given to involving independent parties, such as the court, in hearing appeals relating to the scheme.

Other concerns

30. Miss CHAN Yuen-han enquired whether similar marking schemes would be implemented in markets managed by the Food and Environmental Hygiene Department (FEHD) or divested commercial premises managed by The Link Management Limited (The Link). In reply, DD(EM)/HD advised that the Enhanced Marking Scheme would not be applicable to The Link's shopping centres and markets. As for markets managed by FEHD, he understood that a similar yellow line scheme had been implemented but the details were different.

31. Miss CHAN Yuen-han was keen to ensure HD would increase its manpower resources to support the Enhanced Marking Scheme so that existing staff would not be overloaded. In response, DD(EM)/HD advised that existing estate staff of the regional management would absorb the additional workload generated by the scheme. He explained that with the success of the marking scheme in PRH estates, the need for taking enforcement under the scheme had diminished and hence, some of the staff originally deployed for implementing the scheme could take up the additional workload generated by the Enhanced Marking Scheme. Coupled with enhanced efforts in promoting tenants' awareness of a clean business environment, it was anticipated that the need for taking enforcement actions under the Enhanced Marking Scheme would be reduced over time. As a result, it would not be necessary to increase the overall establishment of HD for implementing the Enhanced Marking Scheme.

32. Miss CHAN Yuen-han was unconvinced that additional workload arising from the Enhanced Marking Scheme could all be absorbed by existing staff of HD through redeployment. DD(EM)/HD said that staff could also be released for implementing the scheme through streamlining existing work procedures and further enhancement in work efficiency. Moreover, HD had been taking joint enforcement actions with FEHD in tackling problems in markets which had helped sharing out workload of HD.

V. Tightened Measures for Housing Authority's Estate Management Service Contracts

(LC Paper No. CB(1)1618/05-06(04) — Information paper provided by the Administration

LC Paper No. CB(1)1618/05-06(05) — Background brief on “Procurement of services for public rental housing estates” prepared by the Legislative Council Secretariat)

Briefing by the Administration

33. With the aid of power-point, DD(EM)/HD briefed members on the latest management measures adopted by HA to strengthen the protection for non-skilled workers employed under HA's outsourced estate management service (EMS) contracts. He advised that HD had a total of 193 outsourced estate management, cleansing and security contracts at present which employed a total of 13 285 workers and involved an annual contract value of \$1.477 billion. The new and more stringent contract terms, which were introduced in May 2004, were adopted in 98% of these contracts. Since introduction of the new measures, the incidence of contractual non-compliance and contractors taking advantage of ambiguities in the contracts had decreased and workers were more aware of their rights. DD(EM)/HD added that in order to root out labour exploitation and to ensure service quality, HA had decided to further tighten up tender evaluation, contract administration and list management in order to strengthen the deterrent effect against employment-related offences. The tightened measures which were implemented in new tenders and renewed contracts with effect from 1 May 2006, were as follows:

Tender evaluation criteria

- (a) Tenders from contractors convicted under the Employment Ordinance (EO) (Cap. 57), Employees' Compensation Ordinance (Cap. 282), Immigration Ordinance (Cap. 115) or Mandatory Provident Fund Scheme Ordinance (Cap. 485) in the 12-month period prior to the tender closing date would not be considered;
- (b) One demerit point would be allotted for breach in wage payment or working hours, failure to enter into standard employment contracts with their workers, or failure to settle wage payment by auto pay. Tenders from contractors who had been allotted three demerit points or more under HA or Government contract(s) in the 12-month period prior to the tender closing date would not be considered; and
- (c) Contract would not be awarded to a tenderer who was convicted of employment-related offences or had accumulated three demerit points or more during the tender evaluation stage.

Contract administration

- (d) HD would terminate the service contract with the contractor if he had been allotted three or more demerit points or convicted of an employment-related offence during the contract period;
- (e) HD would under the Property Service Agent (PSA) contract conditions, instruct the PSA to remove the cleansing or security sub-contractor who had been convicted of an employment-related offence. The PSA's performance would also be rated as poor in the periodic assessment to reflect its poor management of sub-contractors; and
- (f) To bring the PSA's sub-contractors under management control, HD would require the contractors to choose sub-contractors from the list(s) approved by HA.

List management

- (g) To strengthen list management, upon implementation of the new measures, HD would remove a contractor who had been convicted under the relevant ordinances, or had accumulated three or more demerit points in HA or Government contracts over a three-year rolling period, from the approved list(s) for a maximum period of five years. The barring period would count from the date of conviction or the date on which the third demerit point was allotted.

34. To achieve maximum effectiveness of the tightened measures, DD(EM)/HD said that the tightened measures would be supported by a rigorous monitoring system. HD would continue to adopt a multi-pronged strategy to strengthen the management of outsourced EMS contracts. Furthermore, it would explore the feasibility of establishing an electronic workers' attendance recording system to enhance the effectiveness of monitoring efforts in protecting workers' interests.

(Post-meeting note: The presentation materials were issued to members vide LC Paper No. CB(1)1684/05-06(01) on 6 June 2006.)

Discussion

35. Members indicated support for the tightened measures in general and expressed views on the various measures in the ensuing paragraphs.

Tender evaluation

36. Referring to the existing measure where tender offers would not be considered if the monthly wages offered by the tenderers to the non-skilled workers to be employed for the contract were less than the average monthly wage for the relevant industry/occupation published in the latest Census and Statistics Department (C&SD)'s Quarterly Report of Wage and Payroll Statistics when tenders were invited, Mr Frederick FUNG asked whether the wages paid to workers would be adjusted quarterly or annually in accordance with C&SD's latest figures. If adjustment in wages was made annually and wages went up sharply during the year, Mr FUNG was concerned whether the differences in wages would be made up to the workers. In reply, DD(EM)/HD confirmed that the wages would be adjusted annually instead of quarterly. HA would pay any differences in wages to the contractors concerned for onward payment to workers.

37. Mr Frederick FUNG enquired whether EMACs would be consulted in the evaluation of tenders for EMS contracts. DD(EM)/HD replied in the affirmative and advised that the scores given by EMACs and tenants' surveys would account for 10% to 30% of the marks of the tenderers' performance.

Contract requirements

38. Mr WONG Kwok-hing pointed out that the existing contract requirement of capping the number of part-time workers at no more than three-eighth of the total workforce for each contract (the cap) was too lenient. He was concerned that by engaging part-time workers, contractors could exploit workers by denying them the many benefits otherwise available to full-time workers, such as contribution to the mandatory provident fund schemes, long service payment, severance payment, and double pay, etc. He therefore urged the Administration to reduce the cap.

39. In response, DD(EM)/HD said that the cap was mainly found in cleansing contracts, which by their special nature required the employment of part-time workers. The cap had been determined carefully in consultation with labour unions and trade associations. He added that part-time employment was much sought after by housewives living in PRH estates. Nonetheless, DD(EM)/HD undertook to examine members' suggestion of lowering the cap with labour unions and trade associations.

40. Sharing members' concern about the cap, Mr LEUNG Yiu-chung enquired whether HA would consider imposing additional contract requirements to regulate

the wages and fringe benefits of part-time workers in order to prevent labour exploitation. In reply, DD(EM)/HD assured members that HD would closely monitor the situation to ensure the cap would not be abused and to prevent unscrupulous contractors from circumventing their contractual obligations through employment of part-time workers. Mr LEUNG remained unconvinced and expressed concern that the employment of part-time workers had facilitated labour exploitation since employers could manipulate the working hours of workers so that workers could be defined as employed part-time and be denied of the many benefits entitled by full-time workers. The Chairman echoed members' concern and urged the Administration to review the cap to plug the possible loophole.

List management

41. Mr WONG Kwok-hing expressed concern that contractors removed from HA's approved list(s) could change their names or set up new companies to bid for Government contracts again and asked whether HA would check the registered directors of tenderers to plug the loophole. DD(EM)/HD assured members that the registered directors of delisted contractors would also be blacklisted. Mr WONG welcomed the measure and considered it would address the problem of labour exploitation at root. In this connection, he expressed disappointment that The Link had not taken any measures to protect the interests of non-skilled workers.

42. Mr LEE Wing-tat pointed out that it was the responsibility of PSAs to monitor their sub-contractors to ensure the latter's compliance with the tightened measures. Moreover, PSAs were mostly established management companies which were keen to maintain business relationship with HD in the long run. As such, Mr LEE suggested that to enhance the effectiveness of the list management measure, consideration should be given to removing PSAs from the approved list(s) if their sub-contractors were convicted of employment-related offences. The suggestion would also alleviate the burden for HD in monitoring the sub-contractors employed by PSAs. His views were shared by Mr Frederick FUNG.

43. In response, DD(EM)/HD stressed HA's determination to take a hard line in monitoring outsourced services with a view to strengthening labour protection. As such, under the tightened measures where a cleansing or security sub-contractor of a PSA had been convicted of an employment-related offence, HD would instruct the PSA to remove the sub-contractor. In addition, the PSA's performance would be rated as poor in the periodic assessment to reflect its poor management of sub-contractors, and would be disqualified from tendering new contracts for three months. The Administration considered the above penalties sufficient. Given that the PSA did not have direct employment relationship with the workers engaged by its sub-contractors, there was concern that delisting the relevant PSA would be too stringent. DD(EM)/HD further assured members that the implementation of the tightened measures had already sent a clear message to contractors that labour exploitation would not be tolerated and would be penalized heavily.

44. Mr LEE Wing-tat re-iterated his view that malpractices by subcontractors were the result of poor management of the PSA. In this connection, the Chairman shared members' concern and urged the Administration to consider members' views when conducting review of the tightened measures.

Reporting of and compensation for labour exploitation

45. Notwithstanding implementation of the tightened measures and enhanced education and publicity efforts by HA, Miss CHAN Yuen-han was concerned that workers might still be unwilling to report on cases of labour exploitation due to worries about losing their jobs and discrimination in future employment in the trade. She considered it necessary for the Administration to devise measures to encourage workers to come forward in lodging complaints and testifying against non-complying contractors, and to ensure their employment would not be affected as a result. In her view, legislation to give workers protection in this regard might be a feasible option.

46. In response, DD(EM)/HD pointed out that education and publicity measures on channels of complaint were not only targeted at workers but also PRH tenants. PRH tenants were educated on the importance of preventing labour exploitation so as to ensure satisfactory quality of the outsourced EMS. Where necessary, tenants could report on labour exploitation so that the workers concerned might not need to testify at the court when the contractors were under prosecution. On the other hand, workers' awareness of their rights had been enhanced through publicity and education efforts including posting of notices in the workplaces and workers' common rooms informing them of the committed wages and working hours, setting up and publicizing the complaint and enquiry telephone hotline, and conducting briefings for workers. The Assistant Commissioner (Employees' Rights & Benefits), Labour Department (AC(ER&B)/LD) supplemented that surprise inspections were carried out at HD's workplaces from time to time. When malpractice by contractors was identified, LD would explain the relevant legislation to the workers and contractors concerned and report the cases to HD for follow-up. Since in many cases improvements were made thereafter and the workers concerned were unwilling to testify against the contractors, prosecution was not instituted. Nonetheless, there were cases in 2005 and 2006 where the workers were willing to testify, and as a result successful prosecution and conviction were made. In this connection, the Chairman urged HD and LD to consider measures to protect the identity of the workers who reported on labour exploitation to ensure their interest would not be jeopardized as a result of telling the truth.

47. Dr Joseph LEE asked whether contractors failing to pay the committed wages to workers could be required to pay back the shortfalls. In response, DD(EM)/HD explained that HD carried out random checks on the amount of actual wages received by workers. Under the "batch-payment adjustment" system, if irregularities were found in the samples taken in a particular month, HD would deduct from the total contract sum covering staff salaries for that month payable to the contractor the same percentage of short payment to workers. Since deduction in monthly contractual

payment would be made even if only one irregularity was found, the above measure had a strong deterrent effect. As regards refunding to workers, DD(EM)/HD said that in the absence of employment relationship between HD and the workers concerned, HD had difficulty in refunding the short payment to workers concerned. AC(ER&B)/LD supplemented that HD's contractors were required to use the standardized employment contract published by LD when entering into employment agreement with their workers, which required the contractors to set out clearly the monthly wages. Contractors were also required to put up notices showing the committed wages in the workplaces and workers' common rooms. HD would conduct random checks on workers' salary statements and carry out random interviews with the workers to verify wages shown on the salary statements were the amount actually received by them. Furthermore, LD could conduct inspections to workplaces to ensure contractors' compliance with the provisions of EO. If it was found that workers were not duly paid in accordance with the contractual obligations, prosecution would be initiated against the contractors, and the court could be requested to order the concerned contractors to pay owed wages to workers.

Other concerns

48. Pointing out that the tightened measures would increase the operating costs of contractors, Mr LEUNG Yiu-chung was concerned that if HD still adopted the approach of awarding contracts to the lowest tender bids, the contractors might tend to cut costs at the expense of service quality. In this connection, he expressed concern about a recently awarded PSA contract in an estate at an unreasonably low price. In response, DD(EM)/HD explained that since the implementation of enhancement measures for new tenders procuring services in May 2004, expenditure on property management contracts had gone up by 10% to 15%, which reflected that HA had paid more to improve the quality of EMS. Moreover, since 2004, 80% of cleansing and security contracts were not awarded to the lowest tender bids. Where PSA contracts were concerned, 60% were not awarded to the lowest tender bids. Mr LEUNG urged the Administration to exercise care to ensure the quality of outsourced EMS would not be compromised as a result of the tightened measures. The Chairman shared his view, pointing out that if a PSA contract was awarded at a very low price, the contractor concerned would be tempted to cut costs at the expense of workers as well.

49. Mr Albert CHAN pointed out that the root of the problems related to the procurement of services for PRH estates stemmed from the transfer of EMS to the private sector in 2000. Mr CHAN recalled that during the discussion of the outsourcing proposal, he had already cautioned about labour exploitation. HD had then assured members that they would put in place an effective mechanism to monitor services of contractors. Notwithstanding the assurance, different forms of labour exploitation emerged one after the other, resulting in termination of contracts and hence changes in the management contractors of many public housing estates. The changes had in turn affected the job security of non-skilled workers. Mr CHAN was concerned that despite the tightened measures, contractors might still find ways to circumvent their contractual obligations, workers might still be exploited, and the

management of public housing estates and hence the living environment might still be adversely affected. Noting that HD had formed a dedicated Central Monitoring Team to investigate workers' complaints and suspected cases of malpractice of contractors concerning employment-related matters, Mr CHAN expressed grave concern about the need of putting extra resources and deploying additional staff for monitoring outsourced services, and asked whether HD would re-consider taking up EMS again through direct engagement of staff.

50. In response, DD(EM)/HD emphasized that outsourcing of EMS had enabled HD to reduce its staff establishment and enhance cost-effectiveness and efficiency in provision of services, and hence brought about savings. Above all, there had been improvement in the quality of EMS and increase in the satisfaction level of public housing tenants about the services. He stressed that the monitoring of outsourced services had already been improved. The award of six-year management service contracts in PRH estates had addressed the problem of frequent changes in management contractors.

51. Mr Albert CHAN remained unconvinced and further pointed out that the savings achieved by HD was indeed indirectly effected through labour exploitation by contractors of outsourced EMS. He requested the Administration to provide information on the manpower deployed, including the number of tiers of staff involved, and the annual expenditure incurred by HA and HD for monitoring the performance of EMS contractors.

(Post-meeting note: The information provided by the Administration was circulated to members vide LC Paper No. CB(1)1926/05-06(01) on 4 July 2006.)

VI. Any other business

52. There being no other business, the meeting ended at 4:20 pm.