

立法會
Legislative Council

LC Paper No. CB(2)1274/06-07
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP/1

Panel on Manpower

Minutes of meeting
held on Thursday, 18 January 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon LAU Chin-shek, JP (Chairman)
Hon KWONG Chi-kin (Deputy Chairman)
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 LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Public Officers attending : Item III

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

Mrs DO PANG Wai-yee
Assistant Commissioner for Labour (Policy Support and
Strategic Planning)

Miss CHANG Kar-wai, Carrie
Senior Administrative Officer (Policy Support)
Labour Department

Item IV

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

Mrs CHAN MAK Kit-ling, Jenny, JP
Deputy Commissioner for Labour (Labour Administration)

Mr WONG Kwok-lun, Alan, JP
Assistant Commissioner for Labour (Labour Relations)

Item V

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

Mrs CHAN MAK Kit-ling, Jenny, JP
Deputy Commissioner for Labour (Labour Administration)

Mr WONG Kwok-lun, Alan, JP
Assistant Commissioner for Labour (Labour Relations)

Mr NG Ka-kwong, Stanley
Assistant Commissioner for Labour (Employees' Rights &
Benefits)

Miss CHENG Lai-fan, Candice
Senior Labour Officer (Labour Relations)
Labour Department

Mr CHAN Yun-cheung, JP
Principal Assistant Secretary for Environment,
Transport and Works (Works) 3

Mr CHAN Nap-ming
Chief Architect/Procurement
Housing Department

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

Staff in attendance : Miss Josephine SO
Council Secretary (2) 1

Miss Helen DIN
Legislative Assistant (2) 1

Ms Camy YOONG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)838/06-07)

The minutes of the meeting held on 21 December 2006 were confirmed.

II. Date of next meeting and items for discussion
(LC Papers No. CB(2)840/06-07(01) and (02))

2. Members agreed that the following items would be discussed at the next meeting to be held on 15 February 2007 from 2:30 pm to 5:30 pm -

- (a) Progress of Wage Protection Movement and the proposal for introduction of legislation for a minimum wage and related issues;
- (b) A Review of Occupational Diseases in Hong Kong in 2006; and
- (c) Progress report on the implementation of the Employees' Compensation Insurance Residual Scheme.

3. Ms LI Fung-ying noted that the Focus Group on Maritime, Logistics and Infrastructure (the Group) under the Economic Summit on "China's 11th Five-Year Plan and the Development of Hong Kong" had recommended that the Administration should review the current arrangement with cross-boundary land freight transport undertaken by Hong Kong drivers and study whether the admission of mainland drivers could help reduce the cross-boundary freight transport cost. Ms LI expressed concern about the impact of the recommendation on local cross-boundary truck drivers, and suggested that the issue should be discussed by the Panel at the next meeting. Mr LEE Cheuk-yan and Miss CHAN Yuen-han expressed support for Ms LI' proposal. Permanent Secretary for Economic Development and Labour (Labour) (PSL) responded that the proposal was merely a recommendation of the Group. Nevertheless, he would liaise with the Economic Development Branch of the Economic Development and Labour Bureau to see whether the issue would be ready for discussion at the next meeting. The Chairman requested that the Administration should provide a reply in writing should the issue be not ready for discussion.

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(Post-meeting note : As a number of members indicated after the meeting that they would not be able to attend the meeting on 15 February 2007, on the advice of the Chairman, the meeting in February 2007 was cancelled and the next regular meeting of the Panel would be held on 15 March 2007. Members have been duly notified on 25 January 2007 vide LC Paper No. CB(2)952/06-07. Regarding Ms LI's proposal to discuss the impact of the admission of mainland drivers on local cross-boundary truck drivers referred to in paragraph 3 above, the letter dated 26 January 2007 from the Secretary for Economic Development and Labour (SEDL) was issued to members vide LC Paper No. CB(2)983/06-07 on 1 February 2007.)

III. Progress of Wage Protection Movement and the proposal for introduction of legislation for a minimum wage and related issues (LC Paper No. CB(2)840/06-07(03))

4. PSL briefed members on the progress of the Wage Protection Movement (WPM) for cleaning workers and security guards, as detailed in the Administration's paper. He said that as at 18 January 2007, more than 750 employers/enterprises from a wide cross-section of the business community had already pledged their support for WPM, and since the launch of WPM in late October 2006, the wage level of some 900 vacancies for cleaners and security guards posted by the Labour Department (LD) had been increased to at least the relevant average market rates as published in the Census and Statistics Department (C&SD)'s Quarterly Report of Wage and Payroll Statistics (Quarterly Report) by employers after persuasion by LD.

5. PSL added that according to the latest government statistics, there were altogether about 190 000 frontline staff in the cleansing and guarding services sectors. About 30 000 of them, who were engaged in outsourced services contracts of the Government or employed by subvented organisations and public bodies, had already enjoyed wage protection. It was estimated that 50% of the remaining workers in these two services sectors (i.e. about 80 000 people) were receiving salaries lower than the levels stipulated in C&SD's Quarterly Report. WPM was launched with this group of workers in mind. PSL said that while it took time to foster a culture change, the Administration would make every effort to promote and publicise WPM so as to secure the support of enterprises, employers, owners' corporations (OCs) and other stakeholders. The Administration would also address any possible problems identified during the implementation of WPM.

6. Mr WONG Kwok-hing said that to his knowledge, a number of cleaning workers employed by service contractors of the Hospital Authority, including those working in Tuen Mun Hospital and Pok Oi Hospital, had to accept a pay

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cut with effect from 1 January 2007, upon renewal of their employment contract. Their monthly salaries were slashed by \$158 to \$5,042. Mr WONG held the view that the problem resulted from the mandatory wage arrangement for government outsourced services contracts on which WPM was modeled. This was because the average market rates stipulated in C&SD's Quarterly Report and adopted by the Government were subject to fluctuation, and the market situation could change, calling for a downward adjustment of the rates. In the most exceptional circumstances, employers would take this as an excuse to suppress the wage levels of employees, particularly when they intended to bid for government services contracts through tenders. Mr WONG said that the Administration should introduce legislation for a minimum wage, as it was more effective than WPM in protecting the interests of the low-income group. In addition, a clear definition of minimum wage levels, including the basis for determining the amount, should be put in place in order to root out exploitation of workers as in the cases of outsourced cleaning workers for the Hospital Authority.

7. Mr WONG Kwok-hing further said that the Hong Kong Federation of Trade Unions (HKFTU) had been upholding the line that the minimum wage level should be 50% of the overall median wage, as this could ensure a steady monthly income and provide an incentive for work without the need to resort to Comprehensive Social Security Assistance (CSSA). According to HKFTU's suggestion, the average wage rate of cleaners should be \$25 per hour. If the contractual working hours per day and working days per month were identical to those published in C&SD's Quarterly Report, the wage level of cleaning workers should be higher than the current rate under WPM and the monthly allowance payable under CSSA.

8. PSL responded that the mandatory wage arrangement for government outsourced services contracts had been applied to all government departments and public bodies since 2004, and it was designed to safeguard the rights of non-skilled workers. Under this arrangement, contractors of government outsourced service contracts must offer their non-skilled workers wages not lower than the relevant average market rates prevailing at the time of tender invitation as published in C&SD's Quarterly Report. Any tender offer which did not meet this requirement would not be considered. Under WPM, the Administration was actively encouraging private enterprises and employers to provide similar wage protection to their cleaning workers and security guards.

9. In expressing doubt about the effectiveness of WPM, Mr LEE Cheuk-yan requested the Administration to provide the following information -

- (a) the name, nature and size of the enterprises participating in WPM, and the number of cleaners and security guards employed by them;

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- (b) the impact of wage requirement in WPM on the vacancies placed by employers through LD and specifically, the number of vacancies which LD had rejected after the launch of WPM; and
- (c) the number of private buildings with OCs which had indicated support for WPM.

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10. PSL advised that LD was consolidating and analysing the data collected from participating enterprises/organisations. The information would be made available to members when ready.

11. Mr Andrew CHENG said that to his knowledge, some cleaners engaged in services contracted out by The Link Management Limited (The Link) were earning \$9 to \$10 per hour. He expressed strong reservations about the effectiveness of WPM, as even The Link failed to demonstrate support for WPM and to monitor its contractors from imposing unreasonably low wages for its non-skilled workers. Mr CHENG held the view that there was an urgent need to put in place legislation for a minimum wage. He requested the Administration to show its determination in protecting the rights of low-income group, by shelving the WPM project and setting out to introduce the relevant legislation.

12. PSL responded that LD had been making every effort in enlisting employers' support for WPM in the past few months, and so far, the result was rather encouraging. This was evidenced by the fact that a considerable number of employers had agreed to increase wages of their vacancies offered through LD after persuasion. The number of vacancies which immediately benefited from WPM was about 1 000. PSL believed that WPM would bring about a positive culture change in that the senior management of enterprises would become more aware of the wage levels of cleaners and security guards. As regards the concern about unreasonable wages for workers who were engaged in services contracted out by The Link, PSL said that The Link itself had already pledged support for WPM and would closely monitor its services contractors to ensure that the wages offered would not be lower than the relevant average market rates as stipulated in C&SD's Quarterly Report.

13. Ms LI Fung-ying enquired how WPM could deal with fluctuation of average market rates. She expressed worry about the possibility that employers might suppress the wage levels of their employees, and the average market rates might go further down. To guarantee wage protection for employees in the cleansing and guarding services sectors, Ms LI considered that the Administration should, in taking forward WPM, set a baseline or a minimum wage level for these occupations, instead of applying the average market rates as stipulated in C&SD's Quarterly Report. Ms LI noted with concern that the Administration would refer to the Labour Advisory Board (LAB) the review of WPM, including the mechanism and criteria for assessing the overall

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effectiveness of WPM. She enquired on the time when LAB would start its work in this regard.

14. PSL responded that although the average wage of cleaning workers as at September 2006 (the latest figure published in C&SD's Quarterly Report) was \$5,011, it was indeed the market rate before the launch of WPM, and that of security guards had actually recorded an increase. In view of the generally positive response from participating employers in the past few months, he had confidence that WPM could foster a culture change provided that sufficient time would be given for WPM to be fully tested, and that the wage levels of employees would display an upward trend in the coming two years. PSL said that the Administration had provided a clear timetable for reviewing the overall effectiveness of WPM, and had pledged that it would set out to prepare for the introduction of legislation for a minimum wage in the cleansing and guarding services sectors if WPM failed to deliver satisfactory results in two years' time.

15. Miss CHAN Yuen-han shared the view that the wage rates under WPM should not be lower than the monthly allowance payable under CSSA. She asked whether the Administration would continue its plan to implement WPM if the mid-term review to be conducted in October 2007 showed that WPM failed to gain the support by the vast majority of enterprises, OCs and residents' organisations. Noting that SEDL had, at a recent media interview, said that the Administration would make early preparation for the legislative exercise, Miss CHAN further asked what exactly the preparation work would involve.

16. PSL responded that -

- (a) WPM was modelled on the mandatory wage arrangement for government outsourced services contracts introduced in 2004, under which non-skilled workers should be paid wages not lower than the prevailing average market rates of the relevant industries and occupations published in C&SD's Quarterly Report;
- (b) LAB, which was responsible for monitoring WPM and carrying out the review, would be consulted on the criteria and mechanism for assessing the overall effectiveness of WPM shortly. The evaluation could cover, inter alia, the wage level to which reference was made; and
- (c) in his statement made on the Radio Television Hong Kong (RTHK) in early January 2007, SEDL said that the Administration kept an open mind on the proposal for introduction of legislation for a minimum wage and would consider the need for legislation two years after the implementation of WPM when the overall review was completed.

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17. Mr LEUNG Kwok-hung opined that instead of drawing reference to the average market rates or the overall median, wages for the low-income group should be pitched at levels adequate to maintain a decent living. As such, people would not resort to CSSA.

18. Mr LEUNG Yiu-chung held the view that putting in place legislation for a minimum wage was the only effective measure to safeguard workers against unfair treatment and exploitation. He said that employers' active participation in WPM could be construed as giving support for the introduction of legislation. The Administration should therefore start drafting a bill on minimum wage without further delay, while WPM was in progress. Mr LEUNG hoped that it was not the Administration's intention to delay the introduction of legislation on minimum wage by launching WPM. He enquired about the purpose and the expected effect of WPM.

19. PSL responded that the Chief Executive (CE) had stated clearly in his 2006-2007 Policy Address that the Administration would review the overall effectiveness of WPM in two years' time and would set out to prepare for the introduction of legislation for a minimum wage in the cleansing and guarding services sectors if WPM failed to deliver satisfactory results. He reiterated that as views of different sectors of the community on whether a statutory minimum wage should be introduced remained diverse, the Administration considered that the pragmatic approach at this stage was to provide wage protection through non-legislative measures. Through WPM, the Administration would call for voluntary participation by enterprises/organisations to offer their cleansing workers and security guards wages not lower than the average market rates. The Administration would closely monitor the effectiveness of WPM through LAB. Difficulties encountered during the implementation of WPM would be taken into account in the mid-term review and the overall review to be conducted respectively in 2007 and 2008.

20. Mr WONG Kwok-hing expressed worry about the negative effect of applying the average market rates under WPM, for example, the recent spate of cases of salary reduction as mentioned in paragraph 6 above. He enquired how the Administration would tackle the problem, and whether the wage levels under WPM would be reviewed.

21. PSL said that -

- (a) regarding the wage levels under WPM, the Administration had made reference to the mandatory wage arrangement for government outsourced services contracts to apply the prevailing average market rates as stipulated in C&SD's Quarterly Report. The mandatory wage arrangement had been applied to all government departments and public bodies since 2004 and had worked effectively. The Administration had no intention to

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change the existing mechanism; and

- (b) according to the latest government statistics, the average hourly rate for general cleaners was \$24.1, and that for security guards working on a 3-shift system was about \$30. Whilst government contractors were not allowed to offer wages lower than the prevailing market average level at the time tender was invited, they were free to offer higher salaries. The Administration would step up public education as appropriate to send a clear message to employers to avoid any misunderstanding.

22. In response to Mr LEE Cheuk-yan's enquiry about the impact of wage requirement in WPM on vacancies placed by employers through LD, PSL advised that ever since the implementation of the wage requirement in late October 2006, whereby LD's free employment service for vacancies for cleaning workers and security guards would only be extended to those vacancies offering wages not lower than the relevant average market rates, the number of vacancies received in the last quarter of 2006 was 1 463 fewer than the same period in 2005. Nevertheless, these vacancies could have been advertised through other channels. It was not strictly relevant to compare the two periods given the different labour market situation.

23. Referring to a job advertisement displayed on LD's Interactive Employment Services website, which required services of cleaning workers in a kitchen from 7:00 am to 10:30 pm and offered a monthly salary of \$4,920, Mr Andrew CHENG said that the Administration should address the problem of suppressed wages in the cleansing sector. He remained of the view that only legislation, rather than implementing WPM, could solve the problem and have a deterrent effect against employers who were reluctant to offer a minimum wage. He said that unscrupulous employers would continue exploiting workers and make use of WPM as an excuse to defer the enactment of legislation for a minimum wage. In his view, WPM was doomed to fail.

24. Ms LI Fung-ying enquired about the role of LAB in monitoring the implementation of WPM, and how frequent it would meet so as to work out the criteria and mechanism for assessing the overall effectiveness of WPM.

25. PSL assured members that LAB would start the discussion shortly, and the Administration would press ahead as far as possible to ensure that a set of comprehensive and objective criteria and mechanism for assessing the overall effectiveness of WPM was formulated by, say, the second quarter of 2007. The Administration would keep members abreast of the progress and developments, as and when necessary.

26. Mr LEUNG Yiu-chung asked about -

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- (a) the specific measures that the Administration would take to prevent those employers who did not join WPM from exploiting workers;
- (b) the number of employees in the cleansing and guarding services sectors who had benefitted from WPM; and
- (c) the review results of WPM that would be considered to be sufficient to justify the need for the legislation on minimum wage.

27. PSL reiterated that if WPM failed to yield satisfactory results in two years' time, the Administration would set out to prepare for the introduction of legislation for a minimum wage in the cleansing and guarding services sectors. In the meantime, LD would liaise closely with groups of different sectors of the community, including employer groups and trade unions, to promote WPM. PSL stressed that WPM was a voluntary movement with a view to inducing a culture change among employers. The wage levels of employees in these two services sectors would pick up when more private enterprises and organisations participated in WPM and offered their employees wages not lower than the relevant average market rates as stipulated in C&SD's Quarterly Report. The Administration would, in collaboration with relevant stakeholders, closely monitor the progress of WPM.

28. Mr LEUNG Kwok-hung asked whether the Administration would advance the introduction of legislation for a minimum wage if the mid-term review to be conducted in October 2007 proved WPM to be ineffective in preventing wage exploitation, and whether the Administration would stand firm on the position to put in place legislation, despite that the employer representatives on LAB might have opposing views.

29. Regarding the job advertisement cited by Mr Andrew CHENG referred to in paragraph 23 above, Mr LEE Cheuk-yan asked why LD provided free employment service for the employer when the vacancy concerned failed to offer the average market rate. He also enquired how the Administration would categorise the types of jobs to be performed by cleaning workers and security guards for the purpose of implementing WPM. He pointed out that there was great difference in wages among the jobs offered in the cleansing and guarding services sectors.

30. PSL responded that the Administration had, in implementing WPM, applied the definition and the average wage rates of cleaning workers and security guards as stipulated in C&SD's Quarterly Report. As regards the case referred to in paragraph 23, LD would follow up after the meeting.

31. Mr LEE Cheuk-yan queried whether the Administration was sincere in taking forward wage protection for employees. He urged the Administration to

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kick-start the study on the introduction of a statutory minimum wage and to provide members with a timetable and a roadmap for introducing legislation. Mr LEE referred members to a discussion paper he tabled at the meeting on the preparatory work for legislating for a minimum wage, and suggested that the following key areas of concern, outlined in the paper, should be addressed -

- (a) the scope of application of statutory minimum wage;
- (b) the respective minimum wage rates for workers engaged in various sectors;
- (c) the definition of wage level and the basis for determining the average wage rates;
- (d) the mechanism for setting and adjusting the minimum wage; and
- (e) law enforcement mechanism and procedures, and penalty for non-compliance.

Mr LEE welcomed views from members on his paper and suggested that the Panel should discuss item (a) above at the next meeting.

(Post-meeting note : The above discussion paper from Mr LEE Cheuk-yan, tabled at the meeting, was circulated to members vide LC Paper No. CB(2)918/06-07(01) on 19 January 2007.)

32. PSL reiterated that the Administration was prepared to study and initiate the preparatory work of legislation to give effect to the proposal of setting a minimum wage for only the cleansing and guarding services sectors if WPM failed to deliver satisfactory results. The position of the Administration was that sufficient time had to be given for WPM to be fully tested. As such, employers would be given the opportunity in the coming two years to prove that WPM could solve the problem. Noting the general concern that the review of WPM might take a long time to complete, SEDL had stated in his interview on WPM with RTHK in early January this year that the Administration would consider making early preparation for the legislative exercise in tandem with the implementation of WPM in order to save time.

33. Miss CHAN Yuen-han requested that the transcript of the interview given by SEDL to RTHK should be provided to members for reference.

(Post-meeting note : SEDL's statement made on 2 January 2007 on RTHK, which was subsequently provided by the Administration, was circulated to members vide LC Paper No. CB(2)982/06-07(01) on 23 January 2007.)

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34. Miss CHAN Yuen-han held the view that the Administration should come up with a clear and concrete direction for implementing a statutory minimum wage. To facilitate the Panel's discussion on the subject, she hoped that the Administration could provide members with detailed information particularly on how statutory minimum wage would be implemented with regard to the issues/proposals raised by Mr LEE Cheuk-yan in his discussion paper. Echoing Miss CHAN's views, Mr LEUNG Yiu-chung added that the Administration should be sincere in fulfilling CE's pledge to plan and introduce legislation for a minimum wage, should WPM fail to deliver satisfactory results. He hoped that the Administration could provide a response to the issues raised in Mr LEE's discussion paper at the next meeting.

35. PSL said that the Administration would need time to study the discussion paper prepared by Mr LEE Cheuk-yan. It would keep an open mind on issues/proposals raised therein.

36. Mr WONG Kwok-hing shared the view that the Administration should provide members with details of its work plan and the timetable for legislating at the next Panel meeting.

Admin 37. PSL said that it would not be fair for the Administration to begin the legislative process before WPM was allowed to run its full course. He, however, agreed to provide members with a timetable on the preparatory work for legislation.

38. Mr LEUNG Kwok-hung pointed out that a case concerning minimum wage was pending in court. He cautioned that the court ruling might have impact on the proposal of legislating for a minimum wage. He queried whether the Administration would proceed with the introduction of legislation for a minimum wage, if the Government lost the case.

39. PSL said that it was not appropriate to comment on the case as there was an ongoing legal procedure.

40. As the Administration had indicated that it would consider early preparatory work for legislating for a minimum wage, the Chairman proposed that, before taking a decision on how the Panel should proceed further on the issue, he would first discuss with the Administration in the light of the comments made by members. The Chairman hoped to clarify with the Administration what exactly the preparation work would involve. In addition, he would sort out with the Administration the modus operandi to be employed with a view to improving the effectiveness of discussion at Panel meetings. Members agreed.

41. Mr WONG Kwok-hing moved the following motion -

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"鑒於政府和公營機構的外判招標合約以政府統計處《工資及薪金總額按季統計報告》釐定工資標準，引致在續約或新合約情況下工人被減薪，為此要求政府就「工資保障運動」的工資水平定義提交詳細的討論文件。"

(Translation)

"That as the wage standards in outsourcing contracts of the Government and the public sector are determined in accordance with the Census and Statistics Department's Quarterly Report of Wage and Payroll Statistics, which has resulted in workers having their wages reduced upon renewal or award of employment contracts, the Administration is requested to provide a detailed discussion paper on the definition of wage level under the Wage Protection Movement."

42. The Chairman put the motion to vote. Seven members voted in favour of the motion, and no member voted against it. The Chairman declared that the motion was carried.

IV. Labour Department's overall performance in labour administration in 2006

(LC Paper No. CB(2)840/06-07(04))

43. PSL briefed members on LD's overall performance in various programme areas of labour administration in 2006, as detailed in the Administration's paper.

44. Miss CHAN Yuen-han expressed concern that despite the strong economic recovery and the increase in job vacancies in the past two years, the latest unemployment rate of young people aged between 15 and 24 in September to November 2006 remained as high as 9.8%. She asked whether the Administration had analysed the situation and how the Administration would tackle the problem.

45. PSL responded that the problem of youth unemployment was not uncommon in other economies, especially in the 15 to 19 age group. Comparing with the figure for the period between August and October 2006, the latest unemployment rate had dropped and the number of unemployed young people decreased by half to about 38 000. Although the employment of young people had markedly improved, LD would continue to enhance its youth employment programmes, namely Youth Pre-employment Training Programme (YPTP) and Youth Work Experience and Training Scheme (YWETS), so as to further strengthen employment support for youths. In addition, LD was in the process of setting up two Youth Employment Resource

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Centres to provide one-stop advisory and support services on employment and self-employment to past and current trainees of YPTP and YWETS, as well as all young people aged between 15 and 29.

46. Mr WONG Kwok-hing asked the following questions -

- (a) whether complaints were received by LD since amendments were made to the relevant labour legislation to recognise certification given by, and medical examination and treatment conducted by, registered Chinese medicine practitioners (CMP) for the purposes of employees' entitlement to certain benefits under the law, and if problems were identified, what remedial measures would be taken by the Administration; and
- (b) whether the Administration had considered extending the scope of employees' protection by recognising the certification given by registered chiropractors.

47. PSL responded that -

- (a) the new policy only came into effect on 1 December 2006, and it had mainly triggered some enquiries whether a person was a registered CMP. To facilitate the public in identifying whether a practising CMP was a registered CMP, a list of all registered CMPs had been published and uploaded onto the homepage of the Chinese Medicine Council; and
- (b) a working group, comprising officers from different departments and bureaux, had been set up to study the issues pertinent to the recognition of medical treatment, examination and certification given by registered chiropractors for entitlement of employee benefits under the relevant labour legislation. The Administration would revert to the Panel on its findings and recommendations when the working group completed the study.

V. Latest position on the Administration's effort to tackle wage offences

(LC Paper Nos. CB(2)840/06-07(05) and CB(2)918/06-07(02)-(03))

48. PSL briefed members on the progress of the effort made by the Administration in tackling wage offences, as set out in the Administration's paper at LC Paper No. CB(2)840/06-07(05).

49. Members noted that HKFTU and the Hong Kong Catholic Commission for Labour Affairs had made submissions to the Panel.

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(*Post-meeting note* : The submissions, tabled at the meeting, were issued to members vide LC Paper No. CB(2)918/06-07 on 19 January 2007.)

50. Referring to paragraph 3 of the Administration's paper, Mr WONG Kwok-hing expressed concern about the financial position of those 22 restaurants which had been put under Operation COMBAT and were still in operation. He said that it was a common phenomenon when the Lunar New Year was approaching, there would be a spate of restaurants going out of business without discharging their obligations on wage payments. He considered that the Administration should closely monitor those 22 restaurants identified as being at high risk of closure to prevent them from evading their wage liabilities. Mr WONG further said that although measures to monitor wage payment to workers employed under public works and public housing projects had been in place already, the recent incident in which workers employed by subcontractors in a secondary school project were owed wages had revealed that the problem of uncontrolled multi-layered subcontracting continued to prevail in the construction industry. In his view, the problem should be addressed as a matter of great urgency.

51. In response, PSL made the following points -

- (a) the 22 restaurants which were identified as having financial difficulties had been under LD's close observation and intensive monitoring actions, including site inspection for the purpose of understanding the financial position of the employers;
- (b) LD had employed seven veteran former police officers to strengthen its capacity in intelligence gathering and evidence collection relating to wage offences. This arrangement had proved to be successful in preventing wage defaults from developing into claims for ex-gratia payment from the Protection of Wages on Insolvency Fund (PWIF);
- (c) as regards the case cited by Mr WONG Kwok-hing in paragraph 50 above, it was in fact a commercial dispute instead of a labour dispute; and
- (d) to safeguard employees in the construction industry against wage default, the Environment, Transport and Works Bureau and the Housing Authority had incorporated monitoring measures into Government new public works contracts as well as Housing Department's building contracts since 1 May 2006.

52. Mr WONG Kwok-hing pointed out that many construction workers were forced to become self-employed by their employers who had the intention

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of evading payment of statutory benefits. He was concerned whether the Administration had taken into consideration the situation of false self-employment in the construction industry.

53. PSL responded that the Administration took a very serious view on false self-employment, and that LD would continue to work closely with the tripartite committee of the construction industry to deter such malpractice. He said that according to previous judgments made by the court, the determination of self-employment was not based solely on the surface of a person's title. In deciding whether an employer-employee relationship existed, the court would consider the facts of the case, including who was in possession of production tools, who was responsible for the supply of production material, and whether uniform was required in carrying out the duties etc. PSL stressed that LD would initiate prosecution against unscrupulous employers who defaulted wage payments when there was sufficient evidence.

54. Miss CHAN Yuen-han referred members to the submission from HKFTU, and suggested that the Administration should consider the following measures to combat wage offences -

- (a) to further enhance the deterrent effect against employers defaulting wage payment, LD should adjust its strategies in investigation and prosecution, by taking out prosecution against directors and responsible persons for wage offences committed by limited companies;
- (b) the existing outsourcing mechanism of Government service contracts should be reviewed to facilitate recovery of wages in arrears. Taking the recent case involving 900 retrenched employees of Security Centre Limited as an example, the Government had used part of its service fee to pay the wages in arrears directly to some 150 staff working in premises owned by the Leisure and Cultural Services Department; and
- (c) the Administration should tackle at source the problem of wage arrears arising from subcontracting.

55. PSL said that Miss CHAN's suggestion in paragraph 54(b) above would be conveyed to the Financial Services and the Treasury Bureau (FSTB) for consideration.

56. Mr LEUNG Yiu-chung pointed out that under the existing legislation, employees could apply for ex-gratia payment from PWIF only if they were owed wages, wages in lieu of notice and severance payment by their insolvent employers. As PWIF had an accumulated surplus of \$676.9 million as at end-2006, Mr LEUNG and Mr LEE Cheuk-yan requested the Administration to

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consider extending the coverage of PWIF to include default payment of other statutory benefits under the Employment Ordinance (EO), e.g. annual leave pay. Mr LEUNG further said that while employees could resort to PWIF, the claim process was complicated and lengthy.

57. PSL said that the Administration had no intention of extending the coverage of PWIF. The Administration, however, had adopted proactive and pre-emptive strategies to tackle wage offences at source. An independent committee had been formed to study the issues related to PWIF with a view to coming up with practical recommendations. As regards the average time for processing applications and making payment, PSL advised that the procedures for claiming PWIF had constantly been streamlined and according to the pledge of LD, payment to PWIF applicants could be effected within ten weeks upon receipt of all relevant information and documents required for processing the applications.

58. Mr LEE Cheuk-yan referred to the labour dispute case in which employees of Sing Pao were owed wages for a long time. He said that although the relevant provisions in EO were amended in March 2006 to increase the maximum penalty for wage offences to a fine of \$350,000 and imprisonment of three years, the penalty levels failed to give a deterrent effect on employers, as the average fine imposed on convicted summonses on wage offences only amounted to a few thousands in actual case. In the light of this, Mr LEE suggested that -

- (a) section 64B of EO should be amended to the effect that a director who had no reasonable excuse would be liable for an offence committed by his limited company under section 63C of EO, in order to give a deterrent effect on employers;
- (b) a fixed penalty system should be established for employers defaulting wage payment in that the fine to be imposed on convicted summonses should correspond with the outstanding amount of wages owed;
- (c) as employees might have practical difficulties to serve as prosecution witnesses, the Administration should consider summoning the employees concerned, where necessary, to testify before the court; and
- (d) in view of the complicated procedures involved in making wage claims, LD should consider providing one-stop service, including legal advice, for handling cases of arrears of wages.

59. PSL said that as the court hearing of the Sing Pao case was pending, he was not in a position to comment further on the case. PSL stressed that the

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Administration took a very serious view on employers defaulting wage payment. To enhance the deterrent effect against wage offences, the maximum penalty had been substantially raised. In 2005 and 2006, two employers were heavily fined \$120,000 and \$114,000 respectively. In the same period, three company directors and three other employers were given custodial sentence, with the heaviest being three months' imprisonment. These had sent a strong warning to employers on the seriousness of wage defaults.

60. Mr WONG Kwok-hing said that to his knowledge, many employees were reluctant to serve as prosecution witnesses as they were afraid of losing their jobs. He asked whether the legislation could be amended to authorise LD to initiate prosecution when there was sufficient evidence that an employer had defaulted payment, even if the affected employees refused to come forward as witness.

61. PSL explained that a summons could not be issued without the name of an employee who was owed wages. A statement from the employee concerned would need to be taken. It would be difficult for prosecution to be successfully brought against employers who had defaulted wage payment without the consent of employees to serve as prosecution witnesses.

62. Miss CHAN Yuen-han asked the following questions -

- (a) whether the Administration would consider making amendments to section 64B of EO so as to remove the existing constraints in prosecuting wage offences, and to step up the enforcement actions against employers defaulting wage payment;
- (b) in view of the time and procedures for claiming PWIF, whether consideration would be given to extending the imposition of On-demand Bond to all projects and services contracts of the Government, so as to provide immediate financial assistance to employees who encountered difficulty in recovering owed wages; and
- (c) why the Government continued to award contracts to contractors who had contravened the provisions of EO.

63. PSL responded that -

- (a) as the suggestion to amend section 64B of EO was complicated and had far-reaching implications, it was necessary to seek the advice from the Department of Justice (DoJ). The Administration would revert to the Panel once it was in a position to do so;

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- (b) the suggestion to extend the imposition of On-demand Bond would be referred to FSTB for consideration; and
- (c) FSTB would be asked to look into the issue raised in paragraph 62(c), to ensure that the mechanism whereby contractors would be barred from placing bids for tenders for government outsourcing contracts during the suspension period was well observed.

64. Ms LI Fung-ying noted with concern that the number of employers who had contravened wage provisions under EO and prosecutions taken out by LD had increased in 2006. She was of the view that the penalties imposed by the Magistrate had, however, rendered the law ineffective in protecting employees' rights and benefits. She enquired whether the Administration would step up its efforts to deter employers defaulting on wage payments.

65. PSL responded that LD had been closely monitoring the issues relating to arrears of wages, e.g. through the launch of Operation COMBAT. LD had also strengthened site inspections and intelligence gathering. The Administration reviewed the effectiveness of the existing legislation regularly, resulting in the increase of the maximum penalty for wage offences in March 2006, and would continue to do so. In the event that the penalty imposed by the court was low, the Administration might seek DoJ's advice on whether it would be appropriate to file a review.

66. In respect of the 69 summonses convicted in 2006 on directors and responsible persons of limited companies, Mr LEE Cheuk-yan enquired about the number of employers and cases involved in these summonses, and whether the Administration would consider his suggestion in paragraph 58(b) above.

67. PSL responded that the number of directors/responsible persons and cases involved in the convicted summonses was 14 and 10 respectively in 2006. As fixed penalty system was a brand new concept in the context of enforcement initiatives against wage offences, LD would need to consult DoJ in the first place.

68. Mr LEUNG Yiu-chung asked about the details of the pilot exercise codenamed Operation COMBAT.

69. Assistant Commissioner for Labour (Employees' Rights & Benefits) advised that with the launching of Operation COMBAT, LD had set up an early alert system in collaboration with trade unions in the catering industry to gather intelligence on non-payment of wages. Trade unions would inform LD whenever they were aware of any cases involving wages in arrears so that the department could take proactive action to follow up on the wage offences concerned. The Labour Inspection Division of LD had continued its vigorous

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workplace inspection programmes to clamp down on employers defaulting on wage payments. In addition to regular inspections, targeted inspections were undertaken particularly to establishments of the catering industry which were identified as being at high risk of wage defaults. In 2006, a territory-wide campaign covering a total of 1 338 catering establishments was organised to detect wage offences. This sent a strong message to employers that LD did not tolerate wage offences and would spare no effort in combating them.

70. Mr LEUNG Kwok-hung held the view that the crux of the problem was that employees were afraid of reporting cases of unscrupulous employers and acting as prosecution witnesses lest they would be dismissed. He said that the Administration should address this point.

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71. As regards the right of employees to give evidence in any proceedings, PSL advised that there were relevant provisions under EO to protect employees against unreasonable and unlawful dismissal. He agreed to provide members with statistics on cases in which the employers were ordered to pay remedies under EO in respect of unreasonable and unlawful dismissal in the past few years.

72. Mr LEE Cheuk-yan said that to his knowledge, employees could only take employers to court and claim reinstatement on the basis of unreasonable and unlawful dismissal by way of civil proceeding. He held the view that EO should be amended so that criminal proceedings could be applied under such circumstances.

73. PSL clarified that according to section 72B of EO, it was an offence if an employer terminated or threatened to terminate the employment of his employee by reason of the fact that the employee had given evidence, or agreed to give evidence, in any proceedings in relation to the enforcement of EO or for the reason that the employee had reported the illegal acts of the employer. For a section 72B offence, the employer was liable upon conviction to a fine of \$100,000.

VI. Any other business

74. There being no other business, the meeting ended at 5:37 pm.