

立法會

Legislative Council

LC Paper No. CB(2)2013/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP/1

Panel on Manpower

Minutes of meeting
held on Thursday, 24 April 2008, 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, SBS, JP
Hon LEUNG Yiu-chung
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, 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

Members absent : Hon Jasper TSANG Yok-sing, GBS, JP

Public Officers attending : Item III

Mr TANG Kwok-wai, Paul, JP
Permanent Secretary for Labour and Welfare

Ms CHAN Ching-yuen, Karyn
Principal Assistant Secretary for Labour and Welfare
(Manpower)

Item IV

Mr CHEUNG Kin-chung, Matthew, GBS, JP
Secretary for Labour and Welfare

Mr TANG Kwok-wai, Paul, JP
Permanent Secretary for Labour and Welfare

Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

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

Miss WONG Wai-man, Bonny
Senior Labour Officer (Labour Relations) 1
Labour Department

Item V

Mr CHEUNG Kin-chung, Matthew, GBS, JP
Secretary for Labour and Welfare

Mr TANG Kwok-wai, Paul, JP
Permanent Secretary for Labour and Welfare

Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

Mr IP Yee-cheung, Ernest
Senior Labour Officer (Special Duties)
Labour Department

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

Staff in attendance : Ms Janet SHUM
Senior Council Secretary (2) 8

Miss Helen DIN
Legislative Assistant (2) 1

Action

I. Confirmation of minutes of the previous meeting
(LC Paper No. CB(2)1663/07-08)

The minutes of the meeting held on 20 March 2008 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1662/07-08(01) and (02))

2. Members agreed that the next meeting scheduled for 15 May 2008 at 2:30 pm would be rescheduled to 27 May 2008 from 1:30 pm to 4:30 pm to avoid a clash with the Chief Executive's Question and Answer Session scheduled for 15 May 2008 at 3:00 pm.

3. Members agreed that the following items would be discussed at the next meeting to be held on 27 May 2008 -

- (a) the proposal to adjust the rate and proportion of distribution of the Employees' Compensation Insurance Levy payable under the Employees' Compensation Insurance Levies Ordinance and improve the compensation for persons with occupational deafness under the Occupational Deafness (Compensation) Ordinance;
- (b) Wage Protection Movement for cleaning workers and security guards: Assessment criteria for overall review in October 2008; and
- (c) preparatory work for introducing a statutory minimum wage for cleaning workers and security guards if the Wage Protection Movement fails to yield satisfactory results - Definition of a statutory minimum wage

4. Mr LEE Cheuk-yan suggested that the list of outstanding items should be reviewed so as to prioritise the items for discussion before the end of this legislative session.

5. The Chairman said that it was of utmost importance that priority should be given to the discussion of issues of great concern to members, such as the preparatory work for introducing a statutory minimum wage for cleaning workers and security guards and the enforcement of Labour Tribunal (LT) awards. The Chairman further said that he would discuss with members with a view to identifying the items on the outstanding list of items that could also be given priority for discussion and the items on the list that could be deleted.

Action

III. Retention of a supernumerary post for secondment to the Employees Retraining Board as Executive Director
(LC Paper No. CB(2)1662/07-08(03))

6. The Permanent Secretary for Labour and Welfare (PSLW) briefed members on the proposal to retain a supernumerary post of Administrative Officer Staff Grade B (AOSGB) (D3) in the Labour and Welfare Bureau (LWB) for the continued secondment to the Employees Retraining Board (ERB) as Executive Director (ED/ERB) for a period of two years with effect from 1 August 2008.

7. Mr WONG Kwok-hing enquired whether the strategic review recommendations of ERB to be submitted to the Administration could be implemented within a two-year time-frame and whether consideration had been given to promoting suitable officers from within the Executive Office of ERB to fill the post of ED/ERB.

8. PSLW said that the Administration proposed to retain the supernumerary post to enable the continued secondment of a civil servant with management and administrative experience to fill the ED/ERB post for another two years from 1 August 2008. The secondee, as ED/ERB, had fulfilled a key role expected of her during the past two years of secondment to ERB, in conducting and completing a strategic review on ERB's future role and functions. It was anticipated that another two years would be required for ED/ERB to take forward the review recommendations during the initial stage and to ensure a smooth start. ED/ERB would need to, amongst other things, liaise with the relevant government bureaux/departments and stakeholders and ensure an effective operation of the expanded Employees Retraining Scheme (ERS). The Administration's current plan was to consider an open recruitment for the post of ED/ERB in about two years' time pending the progress of the implementation of the review recommendations.

9. Ms LI Fung-ying said that she was not opposed to the proposal to retain a supernumerary post of AOSGB for secondment to ERB as ED/ERB. Noting that ERB would need at least three years to implement the expansion of ERS and the review proposals in phases, she expressed concern whether there would be a transitional problem as the retention of the supernumerary post would only last for two years, and a new Executive Director would not be in place in two years' time. She asked whether the retention of the supernumerary post would be subject to further extension.

10. PSLW said that the initial stage for the implementation of the review proposals of ERB would include the planning and development of training courses for the new target groups pursuant to the relaxation of ERS, provision of training services to meet the needs of the working population, and enhancement of existing training courses. The Administration would closely

Action

monitor and keep under review the progress of the implementation of the proposals. If the review to be conducted after the first year of the implementation showed that the progress was satisfactory and there was no need to further extend the retention of the supernumerary, ERB would start the preparation work for open recruitment so that a suitable person could be recruited in time to fill the ED/ERB post. Ms LI Fung-ying said that the Administration should report to the Panel on the future recruitment for the ED/ERB post.

Admin

11. Referring to the addition of a Deputy Executive Director in the re-organisation of the Executive Office of ERB, Ms LI Fung-ying asked about the number of existing Deputy Executive Directors, and the need to create the new post. She said that ERB should be prudent in using the substantial accumulation in the Employees Retraining Fund arising from the levy collected from employers of foreign domestic helpers.

12. PSLW said that there was an operational need to create an additional Deputy Executive Director in view of the new role and expanded scope of work of ERB. With the appointment of an additional Deputy Executive Director, the Executive Office of ERB would have three Deputy Executive Directors responsible for training services, business development and corporate communications, and finance and corporate services respectively. He added that ERB was mindful of the need to manage the Employees Retraining Fund effectively and cautiously, and would not expand its manpower without full justifications.

13. The Chairman said that he was a member of ERB and would continue to monitor the work of ERB. In summing up, the Chairman said that the Panel agreed to the Administration's submission to the Establishment Subcommittee the proposal to retain a supernumerary post for secondment to ERB as Executive Director.

IV. Enforcement of Labour Tribunal awards
(LC Paper No. CB(2)1662/07-08(04))

14. The Commissioner for Labour (C for L) said that the Administration would like to seek members' views on the improvement measures proposed by various stakeholders as set out in paragraph 8 of the Administration paper which had also been submitted to the Labour Advisory Board (LAB) for deliberation. While LAB saw merits in each of the seven options, it considered that careful consideration should be given to the feasibility and implications of adopting these proposals. For example, in making non-compliance of Labour Tribunal (LT) awards by defaulting employers a criminal offence, consideration should be given to targeting only those unscrupulous employers

Action

not facing genuine financial difficulties. The Administration would further examine the proposed measures in detail.

15. Mr WONG Kwok-hing welcomed the seven options proposed. He said that apart from the option of extending the coverage of the Protection of Wages on Insolvency Fund (the Fund) to defaulted sums awarded by LT where LAB had yet to reach a consensus, the other six options could be considered altogether non-exclusively. He enquired about the timetable to put in place the improvement measures.

16. PSLW said that the Administration was very concerned about the enforcement of LT awards. As the options proposed involved very complex issues, the Administration would need time to discuss with the relevant parties prior to working out a feasible proposal and timetable for implementation.

17. Referring to the deliberations of the Bills Committee on Mandatory Provident Fund Scheme (Amendment) (No. 2) 2007, Mr LEE Cheuk-yan put forward two suggestions for the Administration's consideration to increase the criminal liability of the responsible persons of a body corporate and the civil liability of the company directors respectively. First, to solve the problem in obtaining evidence to prove that a wage offence was made with the consent or connivance or to be attributable to the neglect of the company director of a body corporate, Mr LEE suggested that the Administration should consider reversing the onus of proof or imposing an evidential burden on the defendant director as to his not having knowledge of or consented to the offence. Secondly, to provide deterrence against those employers who were able but unwilling to pay defaulted wages, Mr LEE suggested that provision could be made under the Employment Ordinance (Cap.57) (EO) to hold the company directors personally liable for default payment. He said that the Administration could make reference to the draft provisions proposed by members of the Bills Committee on Mandatory Provident Fund Scheme (Amendment) (No. 2) 2007 in view of similar provisions under the Copyright Ordinance (Cap. 528).

18. C for L responded that as the legislative proposals raised by Mr LEE Cheuk-yan would involve a change in legal principle and policy, the Administration would need to consult DoJ and the relevant bureaux. She added that provisions under the Copyright Ordinance would have to be interpreted in alignment with requirements stipulated under the Ordinance and might not be relevant in the context of the EO.

19. Mr LEE Cheuk-yan said that the proposed option to relax or waive the means test of legal aid for employees seeking to file winding-up/bankruptcy petition was a comparatively simple and practicable measure to assist employees to take action against defaulting employers failing to enforce LT awards. He enquired about the progress of discussion among the relevant bureaux in this respect.

Action

20. SLW said that he had held preliminary discussion with the Secretary for Home Affairs on the issue. The Administration would need time to further pursue the matter with the parties concerned.

21. The Deputy Chairman noted that section 5AA of the Legal Aid Ordinance (Cap. 91) empowered the Director of Legal Aid to waive the upper limit of the means test and grant a legal aid certificate in proceedings if he was satisfied that a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) was an issue. He suggested that legislative amendment could be made to section 5AA of the Legal Aid Ordinance to include the issue of a breach of EO.

22. Miss CHAN Yuen-han urged the Administration to prioritise the implementation of the proposals on enforcement of LT awards listed out in the Administration paper and amend EO and the Labour Tribunal Ordinance (Cap. 25) accordingly. As employers had also shown their support to improve enforcement of LT awards, Miss CHAN urged the Administration to work out a timetable for the introduction of legislative amendments to the relevant Ordinances and make non-compliance of LT awards a criminal offence as soon as possible.

23. SLW said that the seven options listed out in the Administration paper were improvement measures put forward informally by various stakeholders to assist employees in enforcing LT awards. The Administration had not yet come up with a stance on any of the options. It would listen and gather the views of members and the community, and continue to study each of the options in detail. LAB would be consulted when the Administration had come up with a concrete proposal. He noted that LAB had not yet arrived at a conclusion on the options at its last meeting, for example, members of LAB had different opinions on the proposal to make non-compliance of LT awards a criminal offence.

24. The Chairman said that the enforcement of LT awards had been an issue dragging on for a long time and members had repeatedly expressed their views at Panel meetings. He urged the Administration to revert to the Panel with a concrete proposal within this legislative session and introduce the necessary legislative amendments in the 2008-2009 session; those administrative improvement measures should be implemented immediately.

25. Mr Andrew LEUNG considered that it was inappropriate for employers to owe wages. He asked whether LAB had a conclusive view on the proposed options. He said that the proposal to make non-compliance of LT awards a criminal offence would have significant impact, if implemented, and it would be fair only if employees would be similarly criminally liable if they failed to comply with the court's ruling. As regards the suggestion to waive the means test of legal aid for employees seeking to file winding up/bankruptcy petition

Action

against defaulting employers, Mr LEUNG noted that it might give rise to the question of unfairness to other applicants for legal aid. He asked whether the Administration would seek legal advice from DoJ on the proposal.

26. SLW said that as some of the proposals involved would have an impact on legal policy, DoJ had commenced to study the proposed options in detail. He reiterated that the Administration did not have a stance on which options to adopt. However, LWB and LD would continue to study each of the options in detail and liaise closely with the Home Affairs Bureau and DoJ prior to coming up with a concrete proposal. He shared members' concern that it was an issue which should be resolved as soon as possible, while noting the Administration's genuine need of time to work on it. He assured members that he would follow up the matter and revert to the Panel.

27. C for L said that members of LAB noted the complexity and potential read-across implications of the options proposed by the stakeholders. LAB felt strongly about the need to take action to tackle the problem of non-compliance with LT awards. Nevertheless, it had yet to come up with a view on the priority of the options concerned. LAB agreed that LD should further examine the options in consultation with other government bureaux/departments and relevant organisations, and revert to LAB as early as possible. C for L assured members that LD would make all efforts to study the issue and come up with a concrete proposal as early as possible. She agreed with members that effective measures should be implemented to tackle the problem of enforcement of LT awards while emphasising the need to examine the issue carefully. While there was a need to introduce measures to penalise unscrupulous employers, the impact of such measures on defaulting employers with genuine financial difficulties should also be minimised.

28. Ms LI Fung-ying expressed disappointment that the Administration had not come up with a concrete proposal and SLW had stated that the options listed in the Administration paper were merely informal suggestions. She said that while employers had expressed their support to implement measures to solve the problem of enforcement of LT awards, the Administration should show its determination and sincerity by coming up with a concrete proposal to address the problem. She further said that the seven options should not be considered separately as some could be put in place at the same time. For example, making non-compliance of LT awards a criminal offence and imposing punitive surcharge on defaulting employers should be considered in conjunction with each other.

29. SLW said that the Administration would not treat each of the options as separate from each other, and the feasible proposal could be a combination of the options. He reiterated that the options proposed provided a platform for discussions and the Administration would listen to members' views on the options.

Action

30. Mr LEUNG Yiu-chung said that the utmost concern of employees was to receive the LT awards at the earliest. Hence, it was most important that the Administration should aim to implement practical measures which could assist employees to receive defaulted sum quickly. He enquired whether the Administration would introduce improvement measures in phases and consider extending the coverage of the Fund in the first instance. He also enquired whether the Administration would revert to the Panel on the issue within this legislative session.

31. SLW agreed that measures to tackle the issue should be practicable and the protection for employee's benefit should be of utmost importance. LD had already taken vigorous enforcement actions against wage offences which helped to reduce the incidents of defaulted LT awards.

32. The Deputy Chairman pointed out that it was misleading for the Administration to state that one of the proposed options was to "extend" the coverage of the Fund to defaulted sums awarded by LT. He said that under the existing operation of the Fund, the Fund Board could exercise its subrogation right to act on behalf of employees against defaulting employers. Upon application, the Fund Board could file petition and ex-gratia payment could be made only after the petition availed. Similar to the recent enforcement procedure against Sing Pao invoked by the Monetary Provident Fund Authority (MPFA), the Fund Board could consider initiating winding-up proceedings against defaulting employers. There should be no case that the proposal would give rise to abuse of the Fund as the presentation of a winding-up or bankruptcy petition would be a pre-condition for payment from the Fund. Pursuant to making payment to the employee, the Fund Board could, in exercising its subrogation right, recover any payment made in the course of the proceedings. The Deputy Chairman said that this option was practical and complied with existing legislation. Although the financial position of the Fund should be a factor in considering the option, this option should be feasible in view of the current accumulated surplus of the Fund.

33. SLW said that it would be considered an extension of the coverage of the Fund if its scope was extended to cover LT awards defaulted by employers. He noted that LAB had not reached agreement on this proposal. Nevertheless, LD would continue to explore the feasibility of this option.

34. C for L said that the Protection of Wages on Insolvency Ordinance (Cap. 380) had stipulated the procedure for invoking the Fund. She explained that there was a basic distinction between the roles of MPFA and the Fund Board. The MPFA managed employees' MPF accounts for their benefits and the Mandatory Provident Fund Schemes Ordinance (Cap. 485) empowered MPFA to act on behalf of employees to recover outstanding mandatory contributions. In the case of defaulted wages or defaulted LT awards, the defaulting

Action

employers owed the sum to the employees instead of the Fund Board. The Fund Board could exercise its subrogation rights only after ex gratia payment in respect of wages, wages in lieu of notice and severance payment had been made to an applicant. Pursuant to the ex gratia payment, the Fund Board might, as a subrogated creditor, file a proof of debt for the purpose of recovering any payment made. She further said that to extend the coverage of the Fund, the Administration would need to introduce legislative amendments to the Protection of Wages on Insolvency Ordinance. At the request of the Chairman, C for L agreed to seek legal advice on the proposal and revert to the Panel.

Adm

35. C for L added that some members of LAB suggested that the extension of the coverage of the Fund be considered as the last resort in case other means of enforcement had been exhausted and considered ineffective. However, other members were concerned that the Fund might end up being employees' resort in the first instance. She pointed out that although the current accumulated surplus of the Fund had amounted to some \$1.2 billion, the Fund Board needed to have sufficient reserve as the annual expenditure had reached some \$500 million during the period of the outbreak of Severe Acute Respiratory Syndrome.

36. Mr Andrew LEUNG said that the Administration should ensure the proper use of the Fund as it was stipulated in the Protection of Wages on Insolvency Ordinance that the Fund was to provide ex gratia payment to employees of insolvent employers instead of defaulting employers. While employers were also very concerned about the issue and in general agreed that the problem of enforcement of LT awards should be tackled, the action to be taken should be in compliance with common law. Referring to the enforcement taken by MPFA, he suggested that the Administration should give consideration as to how a winding-up petition could be made to court on behalf of employees of defaulting employers.

37. Mr Alan LEONG considered that the Administration should draw up concrete proposal to improve the enforcement of LT awards as soon as possible. As some of the options proposed would involve very complex issues, the Administration should work out a timetable and implement as soon as possible those options which were practical and less complicated. He pointed out that there was a need for a subrogate to represent employees of defaulting employers to recover the sums owed. Apart from the suggestion for the Fund Board to act on behalf of employees of defaulting employers in filing winding-up petition, the Legal Aid Department or LD could consider taking up such a task on behalf of the employees concerned. Mr LEE Cheuk-yan shared the view of LD filing a winding-up petition on behalf of the employees concerned.

Action

38. Miss CHAN Yuen-han echoed members' view that LD had an obligation to protect the rights of employees and ensure that they would not be exploited by unscrupulous employers. She said that during the deliberation of the Bills Committee on Mandatory Provident Fund Scheme (Amendment) (No. 2) 2007, she had suggested that MPFA should issue warning letters to defaulting employers prior to filing a winding-up petition. LD should be on par with MPFA in providing protection for employees.

39. Mr LEUNG Kwok-hung considered that the Administration should take initiative to implement measures to solve the problem of enforcement of LT awards, as it was a policy decision and should not be hindered by the views of LAB. He urged the Administration to give a timetable for implementation.

Adm 40. The Chairman said that members in general shared the view that the issue of enforcement of LT awards should be tackled albeit there were different opinions on the measures. He urged the Administration to revert to the Panel with a concrete proposal and implementation timetable. He added that he would follow up the matter with SLW.

41. SLW reiterated that the Administration shared members' concern about the need to tackle the problem, and would study in detail various options proposed by members and stakeholders. The Administration would explore ways to implement measures which were practicable and feasible as soon as possible.

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

"本委員會促請政府就改善執行審裁處裁斷提出切實可行方案，在本屆立法會完結前提交本會，並盡速實施以徹底解決現行僱傭條例的漏洞。"

(Translation)

"That this Panel urges the Government to put forward practicable proposal for improving the enforcement of Labour Tribunal awards, submit the proposal to the Panel before the end of this legislative session and expeditiously implement such proposal to thoroughly plug the loopholes in the existing Employment Ordinance."

43. 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.

Action

V. Preparatory work for introducing a statutory minimum wage for cleaning workers and security guards if the Wage Protection Movement fails to yield satisfactory results - Definitions of cleaning workers and security guards

(LC Paper No. CB(2)1662/07-08(05))

44. C for L said that at the LAB meeting on 16 April 2008, members agreed that the Administration should continue to promote the Wage Protection Movement (WPM) while also commencing the preparatory work for the possible introduction of a statutory minimum wage (SMW) for cleaning workers and security guards should the WPM be found ineffective in the overall review scheduled for this October. LAB had not yet deliberated in detail the definitions of cleaning workers and security guards and it would continue discussion on the issue at the next meeting.

45. Referring to paragraph 9 of the Administration paper, C for L invited members' views on the definitions of the two specified occupations. The main issue to be considered included -

- (a) whether the SMW definitions of the two specified occupations should follow that for the WPM or cover a wider scope so as to include all types of cleansing and guarding services;
- (b) whether the SMW definitions should cover workers whose duties involved multi-tasks in which cleaning or guarding work occupied a portion of their duty assignments, and if so, whether a percentage or number of hours needed to be set for the portion involving cleaning or guarding work; and
- (c) whether domestic helpers, foreign or local, currently excluded from WPM should be included in the SMW definition for cleaning workers

46. C for L added that the issue concerning domestic helpers was a complex one as cleaning work normally formed an integral part of the duties of domestic helpers. As for foreign domestic helpers, consideration should be given that they were provided with free accommodation and food by their employers.

47. Referring to an open support of a Member of the Executive Council on a SMW for the two specified occupations, Mr LEE Cheuk-yan enquired whether the Administration had firmed up its decision on the introduction of SMW. He considered that WPM had proved a failure and a SMW should be introduced as early as possible. Mr WONG Kwok-hing and Mr LEUNG Kwok-hung shared the view of an early introduction of a SMW.

Action

48. SLW responded that the Administration would continue to solicit support from different sectors of the community so that more workers would benefit from wage protection before the overall review of the effectiveness of WPM scheduled for October this year. On the other hand, the Administration had commenced detailed study on issues related to the introduction of a SMW for the two specified occupations in case the overall review indicated that WPM failed to yield satisfactory results.

49. Mr LEE Cheuk-yan said that the aim of a SMW would be to address the problem of working poverty. Hence, the definitions of the two specified occupations should be as wide as possible in order to cover as many workers as possible. For example, in the case of cleaning workers, those whose work involved an element of cleaning such as vegetable washing, car cleaning, hair-washing, personal cleaning workers etc. should be covered. It was not necessary to impose a requirement on the percentage and the number of hours as it would give rise to unnecessary disputes. Miss CHAN Yuen-han, Mr WONG Kwok-hing, Mr LEUNG Yiu-chung and Mr Frederick FUNG shared similar views.

50. Drawing reference to the United Kingdom, Mr LEE Cheuk-yan said that domestic helpers who were provided with free accommodation should be excluded from the definition of cleaning workers for the propose of SMW. Miss CHAN Yuen-han said that there was in place a Minimum Allowable Wage for foreign domestic helpers. It would be for the community to deliberate on this issue.

51. Miss CHAN Yuen-han held the view that definitions of the two specified occupations should be as wide as possible so as to cover all workers whose work involved an element of cleaning or guarding work. She suggested that the Administration should obtain such information from the Census and Statistic Department (C&SD) and identify all the low-paid jobs below a monthly salary of \$6,500 which involved an element of cleaning or guarding work. She said that workers providing services in entertainment premises such as mahjong parlour should also be considered under the SMW definitions of cleaning workers and security guards.

52. C for L said that the Annex of the Administration paper had listed out different definitions of cleaning workers and security guards under the Labour Earning Survey (LES) and General Household Survey (GHS) of C&SD. Since the wage data for "cleaners" and "security guards" under WPM were collected from LES based on information provided by employers, it would be technically difficult to compile the data along the lines proposed. C for L welcomed members' suggestion as to how a line should be drawn on the SMW definitions of the two occupations.

Action

53. Mr WONG Kwok-hing enquired about the updated number of participants in WPM.

54. SLW responded that some 1 100 corporations/organisations participated in WPM since its launching in October 2006. He noted that some companies not joining WPM might be paying cleaning workers and security guards a wage reaching the WPM level. He said that the effectiveness of WPM should be assessed by various factors taking into account whether there was a rise in the average wages of the two occupations and the number of cleaning workers and security guards benefited from WPM. Since the launching of WPM in October 2006, a total of some 4 000 cleaning workers and security guards placed through LD's free employment service had benefited, as such service had since been extended to only those vacancies of the two occupations offering wages not lower than the average market rates.

55. Mr LEUNG Kwok-hung considered that the Administration had used WPM as a tactic to delay the introduction of a SMW. He held the view that the introduction of a SMW should not be confined to the two specified occupations but for all low-paid workers of all trades.

56. Ms LI Fung-ying considered that the Administration should not be bogged down in details of the definitions of the two occupations, and should put forward a proposal on the legislative framework for the introduction of a SMW at this stage. She said that the definitions of the two occupations should be as wide as possible, for example, instead of drawing a line, security guards of all the four security personnel permit categories should be covered by SMW. Mr Frederick FUNG expressed the same view and said that a SMW should not have a significant impact on security guards and cleaning workers of the higher skilled and paid.

57. C for L explained that it was necessary to seek members' views on the details of the definitions of the two occupations and specify in the legislative provisions the coverage of the type of workers to be benefited if a SMW was to be introduced. She said it was a fundamental issue that entitlements to legal rights be clearly spelled out. In addition, unless well justified and spelled out, it would be difficult not to handle the coverage of cleaning workers and security guards on par. She advised that, as gauged from LD's consultations with the security and guarding industry, views were diverse on the categories of security guards that should be covered by SMW. If all the security personnel permit categories were to be covered in the definition of security guards, cleaning workers would need to be defined at a scope wider than the types specified under WPM. She added that information on the definitions of security guards under LES, GHS and the security personnel permit categories were at Annex of the Administration paper for members' reference.

Action

58. Mr Frederick FUNG urged the Administration to issue instruction to DoJ for drafting a bill on SMW. Noting that the definition of a SMW would be discussed at the next meeting, Mr FUNG pointed out that it was important that a SMW should be set at a reasonable level to enable the low-income group to have a decent living and that a review mechanism should be available to adjust the level of SMW when needed.

59. Mr LEUNG Yiu-chung referred to the Administration's earlier report on the launch of WPM that there were a total of some 187 000 cleaning workers and security guards in the market. He asked how the Administration arrived at the figure and what definitions were then adopted for the two occupations. He expressed concern about the assessment criteria for the overall review of WPM as the introduction of a SMW would be pending the result of the overall review.

60. SLW said that according to the estimate by C&SD, there were some 187 000 cleaning workers and security guards in the second quarter of 2006. It was essential to study the details of the definitions of the two occupations, such as whether a definition for cleaning workers should cover dishwashers who were not included in WPM. The responsibilities of employers and employees should be clear in the SMW legislation should it be put in place, as a breach would entail criminal liability. He further said that the proposed assessment criteria to be adopted in the overall review of WPM scheduled for October 2008 would be discussed at the next Panel meeting. He pointed out that it was an unusual step for the Administration to advance the preparatory legislative work for introducing a SMW prior to the making of a decision for legislation.

61. Mr LEE Cheuk-yan said that from the perspective of addressing the problem of the working poverty, the main concern for the introduction of a SMW should be to provide protection for all low-paid workers so that they could live in self-reliance without resorting to Comprehensive Social Security Assistance. Hence, the SMW definition of cleaning workers should cover any occupation with an element of cleaning; the definition for security guards should not be confined to the types specified under the four security personnel permit categories. He pointed out that no permit was required for those car park attendants responsible for collection parking fees, and their duties might not be very different from some security guards under the security personnel permit categories. A SMW definition of security guards should also include job types of this nature.

62. SLW referred to the background for providing wage protection for the two specified occupations. He said that in response to the incidents of exploitation of non-skilled workers (primarily cleaning workers and security guards) by unscrupulous government service contractors and the requests of members, the Government had since May 2004 introduced a mandatory wage requirement for government service contracts such that a tender offered should not be considered if the monthly wage rate offered to their non-skilled workers

Action

by the tenderer was less than the average monthly wage for the relevant occupations as stipulated in the Quarterly Report of C&SD at the time when the tenders were invited. Subsequently, public and other relevant bodies were encouraged to follow Government's practice in adopting the wage requirement in procuring outsourced cleansing and guarding services. He said that in WPM, cleaning workers and security guards were defined as specified under LES of C&SD. SLW added that a careful deliberation on the definitions of the two occupations was needed and the advice of DoJ would be sought on the matter.

63. Senior Labour Officer (Special Duties) said that LD had discussed with the guarding trade unions. LD was aware of the fact that car park attendants responsible for guarding work in respect of vehicles were required to hold a permit whereas no permit was required for those responsible for collection of parking fees.

64. Miss CHAN Yuen-han said that narrow SMW definitions for the two occupations, such as that adopted in WPM where those working in retail, entertainment and catering industry whose duties involved cleaning were excluded, would lead to enforcement difficulties and legal uncertainties should SMW legislation be in place. In the light of the complexity of the relevant issues of SMW, she urged the Administration to introduce a bill on SMW as early as possible so that members could further their deliberations in the course of scrutinising the bill.

65. C for L explained that cleaners as defined under LES referred to those whose duties comprising a certain portion of cleaning work. LES categorised workers of mahjong parlours and food establishments under entertainment industry and catering industry respectively. LD would try its best to obtain data from C&SD and identify the relevant industries which would involve cleaning and guarding work.

66. Mr WONG Kwok-hing said that the SMW definitions of the two occupations should be wide enough to cover as many workers as possible in order to address the issue of working poverty. For example, workers whose duties involved an element of cleaning and security guards with a security personnel permit should be covered by SMW. This approach could avoid the possible problem of creative apportionment of duties by unscrupulous employers to circumvent SMW provisions. Mr Frederick FUNG shared the same view.

67. In response to Mr LEE Cheuk-yan, C for L said that LAB noted that SMW definitions of the two occupations would involve complex issues such as diversity in skill levels, remuneration and work arrangements within the two occupations and it would continue discussion on the issue at the next meeting. C for L added that it was a matter of principle as to how the coverage of the two occupations should be set.

Action

68. Ms LI Fung-ying considered that C for L should reflect to LAB members' views on the definitions of the two occupations. She enquired whether the Panel's discussion at this meeting would be a basis for the further deliberations of LAB. She said that the Administration should also have a stance on the issue concerned.

69. C for L said that discussion on the issue would be made in a progressive manner. Members' views expressed at this meeting would be conveyed to LAB. She noted that clarity and certainty in the coverage of the SMW definitions on the two occupations was of paramount importance. The Administration would need to give clear instruction to DoJ for drafting a bill if a SMW was to be introduced.

70. Mr LEUNG Kwok-hung queried the role of LAB in the constitutional regime and the rationale for the Administration to seek LAB's consensus on labour issues before implementation.

71. SLW said that Article 65 of the Basic Law stipulated that the previous system of establishing advisory bodies by the executive authorities should be maintained. LAB, which was chaired by C for L as ex-officio, comprised an equal number of representatives of employees and employers and had been an effective platform for providing advice on labour matters over the past decades. Rights and benefits of employees provided under EO had all been discussed in LAB prior to legislation. He added that members of LAB had been able to reach consensus on many issues related to labour benefits through continuous discussions and mutual understanding.

72. Miss CHAN Yuen-hang said that the Administration should review the advisory role of LAB in the long term and consider the issue of a mandatory collective bargaining system which had been raised by the Hong Kong Federation of Trade Unions since the 80's.

73. Concluding the discussion, the Chairman said that members had clearly expressed their views on the SMW definitions of the two occupations, and they would be conveyed to LAB.

74. The meeting ended at 5:20 pm.