

立法會
Legislative Council

LC Paper No. CB(2)2755/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP/1

Panel on Manpower

**Minutes of meeting
held on Tuesday, 8 July 2008, at 3:00 pm
in the Chamber 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 WONG Kwok-hing, MH Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung
Members absent	: Hon Jasper TSANG Yok-sing, GBS, JP Hon Frederick FUNG Kin-kee, SBS, JP Hon Andrew LEUNG Kwan-yuen, SBS, JP
Public Officers attending	<p>: <u>Item I</u></p> <p>Mrs TSE LING Kit-ching, Cherry, JP Commissioner for Labour</p> <p>Mr TSO Sing-hin, JP Deputy Commissioner (Occupational Safety and Health) (Acting) Labour Department</p> <p>Mr WONG Wing-yau Deputy Chief Occupational Safety Officer (Hong Kong and Islands) Labour Department</p>

Item II

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 NG Kwok-keung, Byron
Assistant Commissioner (Labour Relations)
Labour Department

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

Item III

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 FONG Ngai
Assistant Commissioner (Policy Support and Strategic
Planning)
Labour Department

Miss YIM Lai-kwan, Cindy
Senior Labour Officer (Special Duties) 2
Labour Department

Mr LI Wing-kong, Alvin, JP
Assistant Commissioner for Census and Statistics
(General)

Ms NG Wai-lan, Reddy
Principal Economist (4)
Financial Secretary's Office

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

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I. Safety in the use of tower cranes on construction sites
(LC Paper No. CB(2)2480/07-08(01))

Commissioner for Labour (C for L) briefed members on the safety in the use of tower cranes on construction sites as detailed in the Administration's paper.

2. Mr WONG Kwok-hing queried whether it was sufficient to rely on self-regulation of the construction industry to voluntarily adopt the recommendations set out in the "Guidelines on Safety of Tower Cranes" (Guidelines) published by the Construction Industry Council (CIC) which had no legal effect. He asked whether the Administration would introduce subsidiary legislation to give effect to the recommended safety improvement measures.

3. C for L said that the Labour Department (LD) would step up inspections on tower crane operations and consider the issuance of suspension notices for non-compliance with the Guidelines and where there was an imminent risk of death or serious bodily injury. LD would review the situation in six to twelve months' time and thereby consider whether any refinement to the current regulatory framework was necessary or the recommended measures should be incorporated into the Code of Practice (the Code) for safety use of tower cranes. She added that the issuance of suspension notices would have deterrent effect, as work of a construction site would need to be temporarily suspended upon receipt of such notices.

4. Mr WONG Kwok-hing further asked about the circumstances under which LD would issue suspension notices to the relevant contractors.

5. C for L responded that the Guidelines recommended different groups of measures to be adopted covering the full process involved in tower crane operations from pre-erection, to installation, operation and maintenance. Suspension notices would be issued depending on the specific circumstances of non-compliance with the recommended practices of the Guidelines.

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6. C for L said that under the General Duties provisions of the Factories and Industrial Undertakings Ordinance (Cap. 59), a contractor as the proprietor of an industrial undertaking, was required to ensure the health and safety at work of all persons employed by him at the industrial undertaking. In general, LD would issue warnings/suspension notices or institute prosecution where there was an imminent risk of death or serious bodily injury.

7. Miss CHAN Yuen-han asked about LD's routine inspections on tower crane operations and whether such inspections would be arranged in accordance with the track record of contractors.

8. C for L said that in 2007, LD carried out special enforcement campaigns almost every month scheduled according to the safety performance and number of occupational injuries of the relevant trades in addition to routine inspections. Apart from construction safety, the enforcement also covered safety issues such as safe operation of vehicles and mobile plant on construction sites, safety in wholesale and retail trade, catering safety, cargo and container handling safety.

9. Miss CHAN Yuen-han said that the total number of 123 warnings issued within the two weeks after the tower crane collapse in July 2007 was relatively high in relation to the 215 tower cranes of 113 construction sites inspected. She considered that LD should blacklist those contractors repeatedly in breach of standard requirements so as to protect workers against work hazards.

10. C for L said that of the 113 construction sites, some were given more than one warning in relation to tower crane safety. Deputy Commissioner (Occupational Safety and Health) (Acting) (DC(OSH)(Atg)) supplemented that the focus of the blitz operation launched in July 2007 was to ensure that operation of tower cranes at construction sites was in compliance with the safe system of work specified in the Code. Many of the warnings issued in the two-week inspections were to remind the principal and specialist contractors that they should prepare a method statement in Chinese to define the procedures of tower crane operations.

11. Ms LI Fung-ying asked whether there was any follow-up to ensure that the relevant contractors had taken remedial action to put in place safety measures. She also asked about the ratio of the 450 workers who had attended the two-day safety training course in proportion to the total number of tower crane operators working in construction sites and what incentive would be provided to encourage workers to attend the training course.

12. C for L said that other than one tower crane which had been dismantled, contractors of tower cranes to whom the 122 warnings were issued had put in place remedial measures in compliance with the Code. Pursuant to the tower crane accident, a two-day safety training had been provided for tower crane workers which had gone beyond the minimum set in the law. LD would continue to collaborate with various stakeholders in providing training courses.

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13. DC(OSH)(Atg) added that the 450 workers who had attended the two-day safety training course represented 100 % attendance of the tower crane height-alteration operators of construction sites. As for tower crane operators, the law had specified that the owner of a crane was responsible to ensure that it was only operated by a trained and experienced competent person.

14. Mr LEUNG Yiu-chung enquired whether the recommended measures of the Guidelines would be able to forestall accident at construction sites similar to that occurred in July 2007 and enhance competence of specialist contractors and working crew on safety use of tower cranes.

15. C for L reiterated that the Guidelines comprised groups of measures covering details of the full process involved in tower crane operations from pre-erection, to installation, operation and maintenance. LD had studied the causes of local tower crane accidents and those which occurred in other places. To forestall collapse of tower crane, apart from ensuring safety in the handling of loads, it was also important to ensure safety of other procedures such as installation and maintenance of crane base. The Guidelines had specified the detailed requirements on the qualification and experience of competent persons and workmen. For example, specialist contractors should employ competent persons and workmen with appropriate qualifications, training and experience for performing all operations on tower cranes. The competent persons referred to were those who possessed 10 years of relevant experience and registered as a skilled worker of the relevant trade under the Construction Workers Registration Ordinance (Cap. 583).

16. DC(OSH)(Atg) supplemented that the Guidelines recommended that principal contractors should engage specialist contractors registered on the specialty of "erection, dismantling and climbing" of the tower crane trade of the Voluntary Subcontractor Registration Scheme administered by the CIC to execute tower crane operations. The principal contractor should also appoint a supervising engineer with specific qualifications, experience and competence to control, monitor and supervise operations on tower cranes.

17. Noting that a total of 123 warnings had been issued during the two-week inspections after the accident which was proportionally high, Mr LEE Cheuk-yan queried whether there were adequate regular inspections at construction sites and sufficient number of occupational safety officers to carry out routine operations. He also asked whether legislation would be introduced to enforce the recommended practices of the Guidelines such as the appointment of supervising engineer.

18. C for L said that in 2007, a total of 112 000 inspections had been carried out at working places territory-wide of which some 45 800 were carried out at construction sites giving rise to the issuance of some 13 000 notices. LD would strengthen intelligence gathering and re-engineer manpower resources so as to step up enforcement against non-compliance of occupational safety

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requirements. While routine inspections would be carried out regional-wide, LD's Central Inspection Team had been mobilised to instigate special investigations against complaints of hazardous working conditions launched by workers.

19. In response to Mr LEE Cheuk-yan's enquiry, DC(OSH)(Atg) said that 22 summonses had been issued to the principal contractor and sub-contractor responsible for the tower crane collapse in July 2007. As the case was under legal proceedings, it would not be appropriate for LD to comment on the case. He added that the tower crane involved had been subject to routine inspections. Its collapse was suspected to be related to negligence and non-compliance with safety procedure.

20. Miss CHAN Yuen-han suggested that LD should announce the names of those contractors repeatedly in breach of safety requirements in the use of loadshifting machinery. Heavy penalty such as imprisonment should be imposed on the responsible persons of the relevant companies for committing serious offences.

21. C for L said that employers who were found guilty by the court would be penalised for the offence committed and the relevant details of the judgment would be accessible to the public. As to whether names of contractors committing repeated offences should be made known to the public through announcement, LD had to consider the legal implications involved in the disclosure and maintenance of private data.

22. DC(OSH)(Atg) added that the relevant safety legislation had specified the statutory responsibility of the principal contractor/responsible person who would be liable to criminal offence in case of non-compliance of the relevant safety requirements. He said that while LD would institute prosecution against offenders, the penalty to be imposed for committing the relevant crime would fall within the jurisdiction of the court.

23. Mr LEUNG Yiu-chung enquired about the assessment of the effectiveness of the recommended practices of the Guidelines in forestalling tower crane collapse in future.

24. C for L said that LD had worked closely with the relevant stakeholders who took part in reviewing the full process involved in tower crane operations and supported the recommended practices to be adopted by the trade from pre-erection to installation, operation and maintenance. LD found the Guidelines satisfactory as it had set out good practices for enhancing safety of tower crane operation. Should there be cases in future which revealed insufficiency of the Guidelines, CIC would be requested to consider making amendments accordingly. As the publication of the Guidelines was an industry effort to recommend good practices for ensuring tower crane safety, the effectiveness of such a procedural guideline could not be easily quantified.

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25. C for L added that to forestall unscrupulous employers' exploitation of workers of high-risk work, apart from undertaking stringent enforcement, it was also important to raise the awareness of the stakeholders on occupational safety through education and publicity campaigns.

II. Enforcement of Labour Tribunal awards
(LC Paper No. CB(2)2480/07-08(02))

26. Secretary for Labour and Welfare (SLW) briefed members on the progress in identifying measures to enhance the enforcement of Labour Tribunal (LT) awards with particular focus on employers who were financially able but unwilling to pay.

27. Miss CHAN Yuen-han queried whether the three proposed measures would be effective in solving the problem of defaulted LT awards thoroughly. She urged the Administration to consider making legislative amendment to section 5AA of the Legal Aid Ordinance (Cap. 91) so that defaulting LT awards would be considered as an issue upon which the Director of Legal Aid could waive the upper limit of the means test and grant a legal aid certificate in proceedings.

28. SLW said that in making non-compliance with LT awards a criminal offence, the Administration would be going a long way towards deterring employers from disregarding LT judgments. He stressed that the focus of the issue should be on the identification of measures that would help deter employers from acting irresponsibly. Employees of insolvency cases where employers were financially unable to pay should seek redress from the Protection of Wages on Insolvency Fund (PWIF). The filing of winding-up petition through the Legal Aid Department (LAD) so as to pressurise employers to pay defaulted wages would be a complicated issue involving significant change of policy. It would be difficult policy-wise to waive the means test of all employees of defaulting employers as it would give rise to the question of unfairness to other legal aid applicants. He added that LWB had taken note of members' views and tried its best to work with the relevant bureaux/departments on the issue as far as possible.

29. Miss CHAN Yuen-han held the view that the Administration should relax its restriction and be flexible in exercising discretion to waive the means test of employees of defaulting employers. She stressed that employees should be paid for their work and employees' right should also be considered as an issue under section 5AA of the Legal Aid Ordinance in addition to human rights issue. She said that the Administration should revert to the Panel explaining the reason for empowering the Director of Legal Aid under section 5AA to exercise discretion in cases of a breach of human rights obligations.

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30. Mr LEE Cheuk-yan shared Miss CHAN's view and said that should the Administration refuse to amend the Legal Aid Ordinance to empower the Director of Legal Aid to waive the upper limit of the means test for employees of defaulted wages, LD might consider acting on behalf of employees of defaulted wages to file a winding-up petition when the relevant employers refused to honour LT judgment.

31. SLW reiterated that the Home Affairs Bureau (HAB) had given due consideration to members' view but found it difficult to grant an overall exemption to waive the means test of all employees of defaulting employers as it would be unfair to other applicants for legal aid. In view of members' concern, SLW agreed to convey the suggestion to the relevant bureau/department.

32. The Chairman shared members' views that the Administration should further explore the issue as to how LAD could make discretion in assisting employees to get back the defaulted sum.

(*Post-meeting note:* As instructed by the Chairman after the meeting, the Secretariat had written to the Secretary for Home Affairs to seek information in connection with the discretionary power of the Director of Legal Aid to waive the means tests of legal aid. The Administration's response was circulated to members via LC Paper No. CB(2)2665/07-08 on 21 July 2008)

33. Miss CHAN Yuen-han enquired about the timetable to introduce legislative amendments into the Legislative Council (LegCo) so as to give effect to the improvement measures on enforcement of LT awards. Mr WONG Kwok-hing and Mr LEUNG Yiu-chung raised similar question.

34. SLW said that if members endorsed the proposal, LWB would continue to work closely with the Department of Justice (DoJ) to draw up further details. LWB would resolve the legal issues with DoJ as soon as possible and hope to introduce legislative amendments into LegCo in 2009. He added that the Administration intended to introduce the three proposed measures and the relevant legislative proposal in one go, if possible.

35. Mr WONG Kwok-hing welcomed the Administration's proposal which was a significant improvement policy-wise. He asked about the penalty to be imposed on offenders and whether it would be LT or LD to enforce the court's judgment against defaulting employers.

36. SLW said that in case of deliberate defaults by employers, LD would institute prosecution against employers and the proceedings would be conducted at the Magistracy. LWB would further discuss with DoJ to consider the appropriate penalty. The maximum penalty for wage offences under EO was currently a fine of \$350 000 and imprisonment for three years.

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37. Mr WONG Kwok-hing asked about LD's interim measures to deal with non-compliance of LT awards.

38. SLW said that as an integral part of LD's law enforcement work, enforcement effort had been enhanced to deter employers from committing wage offences. If the employer was a limited company, LD, apart from prosecuting the company for wage offences, would also prosecute the responsible persons of the company for a like offence. The 126 convicted summonses against responsible persons of companies in 2007 represented an increase of 83% over 2006, while the 78 summonses in the first five months in 2008 represented an increase of 70% over the same period in 2007 (46 summonses).

39. SLW added that apart from stepping up enforcement action against responsible persons of the body corporate, LD was putting in place an arrangement whereby an officer in each of its Labour Relations Division branch offices would assume the role of "Award Enforcement Support Officer" to provide necessary assistance to employees with defaulted payment of LT award. The officer would provide assistance to employees such as giving relevant information on various modes of executing the LT awards. The new measure was to assure employees that they could turn to LD for support on defaulted payment.

40. Ms LI Fung-ying welcomed the three measures proposed by the Administration. She asked about the prerequisite for proof of guilty intent against defaulting employers for non-compliance with LT judgment.

41. SLW said that default of LT awards would be a criminal offence against which proof of guilty intent would be one of the requirements for conviction, like default of wages. The broad legal principle used in prosecution against defaulted wages could be considered for cases of defaulted payment of LT awards. The proposal to empower LT to order disclosure of financial details of defaulting employers would facilitate the provision of evidence in the course of prosecution.

42. Ms LI Fung-ying asked what other bureaux/departments were involved in putting forward the proposed measures and whether LWB would need to seek their consensus prior to implementation of the proposal.

43. SLW said that the proposed measures would involve relevant legislative amendments and changes to established procedures. LWB and LD would need to liaise closely with DoJ and the Judiciary to work out further details. He stressed that the proposed measures were a collective decision on the possible way forward to solve the problem of defaulted LT awards. The Administration would revert to the Panel in the 2008-2009 legislative session with concrete details on the legislative proposal.

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44. Mr LEE Cheuk-yan asked whether the proposed additional sums payable to employees in respect of defaulted payment of LT awards would be ordered at the same time the judgment was made or subject to discretion of the relevant adjudicator. He further asked whether any mechanism would be in place to enable LT to order defaulting employers to pay additional sums to the employees without requiring the employees concerned to file a separate application.

45. SLW responded that the proposed measure requiring employers of defaulted payment of LT awards to pay an additional sum aimed to enhance the deterrent effect and put the message across to defaulting employers that there would be a cost for disregarding LT judgments. He agreed that the procedure involved in the enforcement of the additional sum should be simple and efficient. LWB would sort out the relevant details with DoJ.

46. Referring to the deliberations of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007, Mr LEE Cheuk-yan urged the Administration to consider reversing the onus of proof or impose an evidential burden on the defaulting employer as to his not being wilful in his non-compliance with the LT judgment. The same principle should also be adopted in the enforcement against employers of defaulted wages or defaulted provident fund contributions. He said that the suggestion was practicable and the Administration should make reference to similar provisions under the Copyright Ordinance (Cap. 528). Miss CHAN Yuen-han expressed similar view.

47. The Chairman said that the Administration should study the feasibility of members' suggestion. He noted that in case of defaulted severance payment, there was element with onus of proof on employers.

48. SLW said that the initial proposal was to adopt the same legal principle in prosecution against employers defaulting wages and those found to have committed wilful non-compliance with LT judgment. Provisions under section 64B of EO, which specified the criminal liability of the responsible persons of a body corporate with regard to wage offences, were effective in enabling LD to take out enforcement actions against the responsible persons of a body corporate. The issue concerned was not about the adequacy of legislative provisions but the need to strengthen enforcement actions such as evidence collection and intelligence gathering against wage offence.

49. In response to Miss CHAN Yuen-han, SLW reiterated that the suggestion to reverse the onus of proof to make it the responsibility of employers would be an enormous change in terms of legal principle. The Financial Services and Treasury Bureau had explained the Administration's stance on the issue in its response to the proposal of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007. Nevertheless, SLW agreed to convey members' views to DoJ.

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50. Mr LEUNG Yiu-chung said that the Administration should also introduce measures to assist employees of defaulting employers who were not unwilling but financially unable to pay the judgment sum.

51. SLW said that the aforesaid employees could resort to PWIF which served as a safety net in providing ex-gratia payment to employees of insolvent employers so that those who were owed wages, wages in lieu of notice and severance payment could be assisted.

52. Mr LEUNG Yiu-chung pointed out that the ex-gratia payment granted under PWIF did not cover all statutory benefits of employees, hence, it was not a satisfactory answer to employees of defaulting employers who were unable to pay the judgment sum. He considered that the Administration should also introduce measures to assist employees in this respect.

53. C for L said that the major items owed to employees by insolvent employers, which included wages, wages in lieu of notice and severance payment, were covered under PWIF. She added that the Fund Board had been considering the feasibility to broaden the scope of its ex-gratia payment to cover the accrued leave entitlement of employees of insolvent employers.

54. Mr Alan LEONG said that there were in general three elements of "guilty intent", namely "wilful", "reckless" and "negligent" and asked whether the Administration had considered "reckless" as an acceptable condition for finding a defaulting employer criminally liable. Noting that in terms of legal principle, the onus of proof would rest with the prosecution, Mr LEONG asked whether the Administration would, in terms of legal procedure, consider imposing evidential burden on the defaulting employer to prove that the defaulted sum was not due to wilful or reckless act.

55. SLW said that the condition upon which a defaulting employer would be found criminally liable might cover other elements of guilty intent. For example, according to section 64B of EO, "consent", "connivance" or "neglect" were the elements of offence against which an employer could be convicted. He reiterated that the Administration proposed to target at "wilful" non-compliance of LT awards an offence, i.e., the employers concerned were financially able to pay but unwilling to pay. He added that it was important to strike a balance in the drafting of the relevant legislative proposal and necessary to consult DoJ on the appropriate standard.

56. Mr Alan LEONG asked whether the proposed additional sums payable to employees by defaulting employers would be set at a fixed rate or calculated in relation to the amount of the sum owed. Mr LEONG considered the latter option more justifiable.

57. SLW said that apart from deterring irresponsible employers, the proposed additional sum payable by defaulting employer would help increase

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the total sum to \$10,000 thereby enabling an employee to file a winding-up petition. As regards the exact amount of the additional sum payable by employers of defaulted LT awards, the initial thinking was to impose a daily amount ranging from \$ 100 to \$ 300. LWB had no established stance and would work out the details with DoJ.

58. Mr Alan LEONG further asked what mechanism would be introduced to order the disclosure of the financial details of defaulting employers and whether it would be the court or the applicant to invoke such a procedure. To streamline court procedures, he suggested that LT should add a specific term in the judgment ordering the disclosure of the financial details of the defaulting employer should the employer refuse to honour the judgment sum within a timeframe, say, two weeks pursuant to the judgment.

59. SLW said that LWB would further discuss with DoJ as to whether a mechanism could be put in place to enable an automatic disclosure of the relevant employer's financial details or the relevant employee would be required to file separate application in case the defaulting employer refused to honor the judgment sum. He agreed that the mechanism to be implemented should be user-friendly and efficient in its operation.

60. Mr WONG Kwok-hing commended SLW for his consistent effort made to help safeguard the rights and benefits of workers, particularly in providing positive measures to solve the long overdue problem of defaulted LT awards.

61. Mr WONG Kwok-hing said that the responsible persons or company directors of a corporate body might deliberately register the company outside Hong Kong or set up subsidiary companies so as to take advantage of the loopholes in legislation and shed their financial responsibility. The Administration should make provisions to tackle such problems.

62. SLW said that as stated in paragraph 12 of the Administration's paper, the Administration intended to hold directors and other persons responsible for the management of the company criminally liable if they were proven to have contributed to the breaches in question. With members' endorsement of the proposal in making non-compliance with LT awards a criminal offence, LWB would further discuss with DoJ with a view to thrashing out the legislative and implementation details.

63. The Chairman said that with the collaborative efforts of all parties concerned, members and the Administration could work in partnership to solve a long-standing problem. He added that the Panel should continue to monitor the implementation of the proposed measures in future.

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III. Preparatory work for introducing a statutory minimum wage for cleaning workers and security guards if the Wage Protection Movement fails to yield satisfactory results - Composite report on the practical issues discussed
(LC Paper No. CB(2)2480/07-08(03))

64. Miss CHAN Yuen-han commended the Administration's effort in taking proactive steps to move forward the preparatory work for a possible introduction of a statutory minimum wage (SMW) for cleaning workers and security guards. She welcomed the initial participation of the departments concerned and their contribution to the relevant issues pertinent to the introduction of a SMW. She stressed that the Administration should adhere to the timetable for the introduction of a bill on SMW into LegCo no later than March/April 2009. She noted that some representatives of employers' associations had expressed their support for an across-the-board SMW should the overall review of Wage Protection Movement (WPM) found it unsatisfactory.

65. Presuming that the Administration would proceed with the SMW legislation subsequent to the overall review of WPM, Mr LEE Cheuk-yan asked whether the Administration would consider introducing a SMW legislation for all trades in view of the support of the representatives of both labour unions and employers' associations.

66. SLW assured members that the Administration would conduct the overall review on WPM as soon as the relevant data to be provided by the Census and Statistics Department (C&SD) were available. The Administration would proceed immediately with the preparation of a bill on SMW if the overall review on WPM found that it failed to yield satisfactory result. Whether an across-the-board SMW should be introduced would very much depend on the building of consensus of all sectors of the community. The Administration would consider such a possibility if the community at large shared a common consensus. He said that the positive feedback of the relevant employers' associations on an across-the-board SMW reflected an attitude change among the employers.

67. Ms LI Fung-ying said that the Administration should adhere to the timetable for the introduction of a bill on SMW regardless of whether the SMW legislation was to be introduced for two specific occupations or all trades. Ms LI held the view that the Administration should set a minimum wage level no lower than the WPM rate and the level of the Comprehensive Social Security Assistance (CSSA) allowance so as to encourage workable persons to live on self-reliance and enable them to maintain a basic living standard.

68. SLW said that a "basket of indicators" approach was proposed in setting and reviewing the level of a minimum wage and the Administration would further study the issue in detail.

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69. Ms LI Fung-ying also said that the Administration should consider carefully as to whether domestic helpers (both foreign and local) should be covered in the SMW regime as the trade had not reached a consensus on the issue. Mr LEUNG Yiu-chung considered that domestic helpers should be covered in the SMW regime so as to protect them against employers' exploitation.

70. Mr LEE Cheuk-yan said that domestic helpers should be covered in the definition of cleaning workers for the purpose of SMW although foreign domestic helpers who received a minimum allowable wage and free accommodation might be excluded. He suggested that in the event of a SMW legislation for all trades, the minimum allowable wage arrangement for foreign domestic helpers should be reviewed and consideration be given to including them in the SMW regime.

71. SLW said that as SMW defined only the wage floor and most of the local domestic helpers were paid at a relatively high hourly rate of \$40-\$50, the issue as to whether they should be covered in the SMW regime would be of academic interest only. He pointed out that consideration should be given to the fact that foreign domestic helpers enjoyed various unique employment conditions such as free accommodation. The Administration would further study the issue.

72. Mr LEUNG Yiu-chung considered that in the light of the positive feedback of employers' representatives, the Administration should seize the opportunity to liaise with trade associations on the feasibility for a SMW legislation for all trades. Miss CHAN Yuen-han shared the same view.

73. SLW said that the comments of the relevant employers' associations were based on the assumption that a SMW legislation would be introduced, hence, it would not be appropriate to advance the discussion on SMW legislation for all trades before the overall review on WPM. He pointed out that pursuant to the mid-term review on WPM in October 2007, the Administration had moved forward to start the preparatory work for SMW legislation. The Administration would continue to work on the relevant issues such as the mechanism for setting and reviewing the level of a SMW.

74. Mr Alan LEONG said that the Civic Party had all along supported an across-the-board SMW. He asked whether the Administration would consider the possibility of a SMW legislation for all trades and steered the preparatory work to this end. Presuming that the Administration decided to introduce SMW legislation after the overall review of WPM, Mr LEONG asked whether the Administration would commit to adhere to its timetable for the introduction of a bill on SMW, regardless of whether the business sector might call for a delay to study the feasibility of an across-the-board SMW.

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75. SLW assured members that the Administration would follow the timetable set out in the Chief Executive's 2007-2008 Policy Address. The Administration would introduce a bill on a SMW for the two specified occupations as early as possible in the 2008-2009 legislative session if the overall review found that WPM was ineffective. He said that the key issues studied in the course of the preparatory work were fundamental to the implementation of a SMW regardless of whether it would be for two specific occupations or all trades. He added that LD had consistently liaised with the business sector through the Labour Advisory Board (LAB). The Administration would consider an across-the-board SMW should the majority of the community shared a common consensus.

76. Mr LEE Cheuk-yan said that the Administration should -

- (a) consider two main factors in determining the SMW level, i.e., the level set should be no lower than that of the CSSA allowance and able to enable workers to maintain a basic standard of living. Taking into account the recent inflation, the Hong Kong Confederation of Trade Unions suggested that the minimum hourly rate should be no less than \$ 33; and
- (b) review the EO approach in calculating statutory benefits for minimum wage earners using a rolling average of a 12-month period as it might give rise to unnecessary complication. A shorter period to be used for calculating earnings (except commission) for compliance with the SMW legislation should be considered so as to minimise inconvenience to the parties concerned.

77. Noting that the Administration would enhance the current surveys for collection of additional and more precise information for the purpose of implementing SMW, Mr LEE Cheuk-yan requested the Administration to provide the Panel with a list of the revised survey items when ready so that members could provide their input, if any.

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78. Miss CHAN Yuen-han said that experts of C&SD and the Economic Analysis and Business Facilitation Unit should advise LWB and LD on whether it was administratively more cost-effective and efficient to implement an across-the-board SMW.

79. Assistant Commissioner for Census and Statistics (General) said that the current statistical surveys conducted by C&SD were not designed to support SMW. C&SD would, if deemed necessary, improve the existing surveys and conduct a new survey with reference to the information gathered during the visit to the United Kingdom and pursuant to consultation with the relevant departments on their data needs.

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80. Mr LEUNG Kwok-hung stressed that the Administration should proceed with SMW legislation immediately to enable the low-income groups to live with dignity. He asked whether the Administration would need the approval of LAB before proceeding with the introduction of SMW legislation and whether it would withdraw if members of LAB raised objection.

81. SLW said that the Administration would seek the consensus of the LAB, which was composed of representatives of employers and employees, on labour issues. It was the role of LAB to advise the Government on labour-related policies. If consensus could not be reached in LAB, the Administration would make a decision, taking into account the interest of the public and the benefits of the community at large.

82. In summing up, the Chairman said that members had expressed concern that the Administration should adhere strictly to the timetable for introducing SMW legislation and consider implementing an across-the-board SMW. The Chairman expressed appreciation for members' support and the co-operation of the Administration so that discussions at the meetings could proceed efficiently and effectively.

83. The meeting ended at 5:20 pm.

Council Business Division 2
Legislative Council Secretariat
2 September 2008