

立法會

Legislative Council

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Report of the Panel on Manpower for submission to the Legislative Council

Purpose

This report gives an account of the work of the Panel on Manpower during the 2007-2008 session of the Legislative Council. It will be tabled at the meeting of the Council on 9 July 2008 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

The Panel

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000 and 9 October 2002 for the purpose of monitoring and examining Government policies and issues of public concern relating to labour and manpower planning matters. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 14 members in the 2007-2008 session. Hon LAU Chin-shek and Hon KWONG Chi-kin were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major Work

Wage Protection Movement and preparatory work for introducing a statutory minimum wage

4. On 11 October 2006, the Chief Executive (CE) announced in his Policy Address the launching of a Wage Protection Movement (WPM) for employees in the cleansing and guarding services sectors. CE stated in his 2007-2008 Policy Address that if the mid-term review showed that the progress was unsatisfactory, the Administration would further promote WPM as well as proceed with the preparatory legislative work on a statutory minimum wage

(SMW). CE also stated that if the overall review of WPM to be conducted in October 2008 found that the movement had failed to yield satisfactory results, the Administration would introduce a bill on a statutory minimum wage for security guards and cleaning workers as early as possible in the 2008-2009 legislative session. The subject matter had become a standing item for discussion at the Panel's regular meetings.

Wage Protection Movement

5. When briefed on the results of the mid-term review conducted by the Labour Advisory Board (LAB), some members were of the view that WPM had proved to have failed, given the small number of participating entities (1 041 participating entities as at end-September 2007). Instead of further promoting WPM and wasting government resources, the Administration should immediately proceed with the preparatory work for introducing a SMW for cleaning workers and security guards. Noting an increase in the number of female workers of low education attainment in the two occupations, they expressed concern that wages of workers in the two occupations might decrease further.

6. The Administration responded that its analysis of the mid-term review suggested that there were both disappointing and positive indicators for WPM. While there was much room for improvement in terms of the participation of employers, the data indicated an increase in the wage levels of cleaning workers and security guards. The Administration would follow closely the timetable mapped out to put in place minimum wage legislation for cleaning workers and security guards should the overall review find that WPM had failed.

7. Regarding the assessment criteria for the overall review to be conducted in October 2008, some members pointed out that the Administration had merely set out the principles. In the absence of the details of the measuring indicators, whether or not WPM was considered to be satisfactory might be subject to manipulation. They were of the view that the number of entities participating in WPM was one of the most important indicators for assessing the effectiveness of the movement.

8. The Administration responded that LAB had reached consensus on the continued adoption of the six quantitative indicators of the mid-term review in the overall review. The number of participating entities would be an useful reference indicator, but could not be a true measure of the overall effectiveness of WPM. Some employers who had not joined WPM formally were paying their cleaning workers and security guards market average wages or even higher wages. Instead, a more representative indicator was the number of workers receiving market wages or more.

9. The Panel passed a motion urging the Administration to immediately proceed with the preparatory legislative work on a SMW for cleaning workers and security guards.

Preparatory work for introducing minimum wage legislation

10. The Panel was consulted on the key issues identified by the Administration for introducing a SMW for cleaning workers and security guards if WPM failed to yield satisfactory results.

11. Some members considered that as the aim of a SMW was to address the problem of working poverty, the definitions of cleaning workers and security guards should be as wide as possible to cover as many workers as possible. For instance, in the case of cleaning workers, those whose work involved an element of cleaning, such as vegetable washing, car cleaning, hair-washing etc., should be covered. It would not be necessary to impose a requirement on the percentage or number of hours of cleaning work to avoid unnecessary disputes. Security guards of all the four security personnel permit categories should be covered by SMW. A member was of the view that domestic helpers who were provided with free accommodation should be excluded from the definition of cleaning workers for the purpose of SMW. The member also pointed out that no permit was required for those car park attendants responsible for collection of 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 type of this nature.

12. The Administration informed the Panel that overseas experience suggested that SMW could be set on an hourly, daily or monthly basis, with hourly basis being the most common practice. The Administration favoured the adoption of an hourly rate approach for assessing the wage level. This would help forestall exploitation of employees by ensuring that their pay would be commensurate with the duration of work, with wages no lower than the SMW level.

13. Some members considered the hourly-rate approach acceptable, but queried how the Administration would determine the rate of SMW, given that there was no standard working hours in Hong Kong. They considered in general that the level of SMW should not be lower than the monthly allowance under the Comprehensive Social Security Assistance Scheme, or the median wage and should enable the low income groups to maintain basic living standard. A member further suggested that SMW should be set at a level to be able to support the living standard of two persons.

14. Regarding the mechanism for reviewing the level of SMW, some members suggested that a review should be conducted at least once a year. The

frequency of review could increase if necessary. A member suggested that an independent statutory body should be established for conducting such reviews.

15. On the issue of enforcement and penalty, some members considered that sufficient penalty level should be imposed to deter non-compliance with the requirements under SMW. They agreed with the Administration that the relevant provisions should be in line with the Employment Ordinance (Cap. 57) (EO). They pointed out that the issue of false self-employed would need to be tackled in enforcement of SMW.

16. The Administration assured the Panel that it would keep an open mind and consider the views and suggestions of members.

Enforcement of Labour Tribunal awards

17. Non-compliance of Labour Tribunal (LT) awards by employers was one of the major concerns of the Panel. The Administration consulted the Panel on seven improvement measures put forward by various stakeholders to assist employees in enforcing LT awards.

18. While welcoming the seven options proposed, some members considered that the Administration should draw up concrete proposals to improve the enforcement of LT awards and implement as soon as possible those options which were practical and less complicated. For instance, 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 practical measure to assist employees to take action against defaulting employers who had failed to enforce LT awards. They pointed out that under section 5AA of the Legal Aid Ordinance (Cap. 91), the Director of Legal Aid could waive the upper limit of the means test if he was satisfied that a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) was an issue. They suggested that legislative amendment could be made to section 5AA of the Ordinance to include the issue of a breach of EO.

19. These members also considered that there was a need for a subrogate to represent employees of defaulting employers to recover the sums owed. They pointed out that under the existing operation of the Protection of Wages on Insolvency Fund (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 after the petition avail. 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 option of extending the coverage of the Fund to defaulted sums awarded by LT was practical. Apart from the Fund Board, the Legal Aid Department or the Labour Department (LD) could

consider taking up the role of filing winding-up petition against defaulting employers on behalf of the employees concerned.

20. However, a member was of the view that the suggestion to waive the means test of legal aid for employees seeking to file winding-up/bankruptcy petition might give rise to the question of unfairness to other applicants for legal aid. The member also considered that the proposal to make non-compliance of LT awards a criminal offence, if implemented, would have significant impact, and it would only be fair if employees would similarly be held criminally liable should they fail to comply with the court's ruling. In addition, the member pointed out that it was stipulated in the Protection of Wages on Insolvency Ordinance (Cap. 380) that the Fund was to provide ex gratia payment to employees of insolvent employers and not defaulting employers. The Administration should ensure the proper use of the Fund.

21. The Administration shared members' concern that the issue of non-compliance with LT awards should be resolved as soon as possible. However, given the complexity and potential read-across implications of the options proposed by the stakeholders, the Administration would need time to study in detail various options in consultation with other government bureaux/departments and relevant organisations before coming up with a feasible proposal. The Administration would explore ways to implement measures which were practicable and feasible as soon as possible.

22. The Panel passed a motion urging the Government to submit a practicable proposal for improving the enforcement of LT awards to the Panel before the end of the current legislative session.

Criminal liability of the responsible persons of a body corporate with regard to wage offences

23. The Panel was briefed on the findings on a review of section 64B of EO on the criminal liability of the responsible persons of a body corporate with regard to wage offences.

24. Some members considered that the Administration should amend section 64B of EO by removing the required elements of offences, i.e. "consent", "connivance" or "neglect", so as to hold all responsible persons strictly liable criminally for wage offences committed by the body corporate. A member pointed out that adding "act without reasonable excuse" or "failure to act without reasonable excuse" to section 64B as an element of offence would exert pressure on the defence to provide "reasonable excuse" in his case.

25. On the other hand, a member held the view that there was no need to amend section 64B. The member considered that if all the responsible persons

would be presumed to be liable or strictly liable for the wage offences committed by the body corporate, it would have a negative impact on the business environment and the employment opportunities of workers.

26. Another member suggested that as the issue involved was to make it easier to hold the responsible person of a body corporate criminally liable for wage offences, the Administration could consider introducing new provisions, such as requiring employers to specify the names of the responsible persons in control of corporate finance similar to that required in the Societies Ordinance (Cap. 151), or confine payment of wages within a regulated framework.

27. The Administration advised that according to section 64B, the prerequisite of holding responsible persons criminally liable was evidence to prove that they had committed either one of the three elements of offences, namely "consent", "connivance", or "neglect". To remove these elements would have the effect of imposing strict criminal liability on all the responsible persons for wage offences committed by the body corporate which would be a significant change in terms of legal principle. As the responsible persons of a body corporate might have no role to play in wage default cases, imposing on them strict criminal liability was not considered fair and reasonable and would likely be in conflict with the Hong Kong Bill of Rights Ordinance and the Basic Law.

28. The Administration explained that according to legal advice, the addition of the two proposed elements, i.e. "act without reasonable excuse" or "failure to act without reasonable excuse", would not in any way lessen the burden of proof on the prosecution for establishing section 64B offences. It would thus be redundant to add the two elements. The Administration would need to give careful consideration and conduct wide consultation regarding any legislative proposal which would have implications on the operational procedures of the business sector. The Administration stressed that it would not tolerate unscrupulous acts on the part of responsible persons of companies and would continue to enforce section 64B of EO vigorously.

29. Some members considered that the number of convicted summonses was low in comparison with the total number of wage default cases. In view of LD's difficulty in locating the responsible persons, a member suggested that the Administration could tackle the problem by prohibiting the responsible persons of a corporate body committing wage offence from leaving Hong Kong.

30. The Administration responded that from January to November 2007, five company directors and one employer were given jail sentence or suspended jail sentence, and one company director was imposed a community service order. With the implementation of LD's new enforcement strategies, the investigation skills of LD's enforcement officers were enhanced and this had resulted in more

prosecutions and successful prosecutions. LD had employed ex-police officers as Investigation Officers who would help locate the whereabouts of the responsible persons through various means, such as visiting other establishments still operated by them and contacting parties who might have their new addresses.

31. The Panel passed a motion urging the Government to amend section 64B of EO for better protection of employees' lawful rights and benefits.

Survey on "Benefits of employees under the Employment Ordinance"

32. The Panel was briefed on the result of the survey on "Benefits of employees under the Employment Ordinance" conducted by the Census and Statistics Department in the first quarter of 2006.

33. Some members expressed concern that the survey findings indicated a substantial increase in the total number of non-"4-18" employees (i.e. employees not employed under a continuous contract of employment by the same employer for four weeks or more or not having worked for 18 hours or more in each week) working less than 18 hours per week (52 400) in comparison with that of 2001 (28 900), in particular, of which around 74.9% were female. These members urged the Administration to plug the loopholes of EO to minimise unscrupulous employers' exploitation of part-time workers.

34. A member enquired whether the Administration would consider removing the "4-18" threshold and extending the rights and benefits of "4-18" employees under EO to part-time employees on a pro-rata basis. Another member considered that removing the threshold might have a positive effect and enable non-"4-18" workers to work for longer hours and help simplify the task of human resource management.

35. The Administration responded that the recent economic growth might be conducive to the increase of non-"4-18" employees. While employees engaged under a continuous contract were entitled to additional benefits under EO compared to non-"4-18" employees, the latter, irrespective of their hours of work, were also entitled to basic rights and benefits under EO. In fact, as revealed in the survey, some employers of non-"4-18" workers had voluntarily provided their non-"4-18" employees with benefits exceeding the statutory requirements of EO.

36. The Administration pointed out that as revealed in the survey, the majority of the non-"4-18" employees working less than 18 hours per week did not work longer hours on account of personal reasons. In addition, from the perspective of human resource management, some trades such as the retail and catering industries might prefer to employ part-time workers to cater for their

operational needs. The employment of part-time workers could also provide opportunities for those who preferred to work on a flexible basis. Removal of the threshold might have a negative impact on employment.

37. The Administration advised that it would conduct an in-depth study based on the statistics obtained and explore the feasibility of introducing amendment to EO to enhance the rights and benefits of non-"4-18" employees. The issue had to be discussed by LAB, and the tentative schedule for the completion of the review would be end of 2008.

38. The Panel passed a motion urging the Government to proceed immediately to amend EO for protection of non-"4-18" employees so that they would be entitled to the statutory employment rights and benefits.

Future directions of the Employees Retraining Board

39. CE announced in his 2007-2008 Policy Address that the Employees Retraining Scheme (ERS) operated by the Employees Retraining Board (ERB) would be expanded to cover young people aged 15 to 29 and people with education level at sub-degree or below, and that ERB was conducting a strategic review with a view to upgrading its services and operation.

40. When the Panel was briefed on the proposals of the future directions for ERB, some members expressed concern that there had not been any consultation with the stakeholders prior to the strategic review of ERB and the relaxation of the eligibility criteria of ERS. They were also concerned that there would be an overlap between courses provided by ERB and the training programmes offered by other stakeholders, e.g. the Vocational Training Council (VTC). Expressing doubt on the policy to relax the eligibility criteria of ERS to cover people as young as aged 15, a member pointed out that these young people should be either continuing their mainstream senior secondary education or receiving vocational training as an alternative path under the Government's education framework. The expansion of ERS to include young people aged 15 would upset the current system operated by various stakeholders including secondary schools and VTC.

41. Members in general considered that ERB should give careful consideration in identifying its role and those of the stakeholders in view of the expansion of its scope to cover people aged 15 to 29 and with education level of sub-degree level or below, consider carefully whether people aged below 30 taking Qualifications Framework Level One and Level Two full-time placement-tied courses should all be eligible for the retraining allowance (about \$150 per day), avoid competing with the stakeholders in organising similar courses, and give attention to enhancement in quality rather than quantity in ERB's training provision.

42. The Administration responded that statistics had shown that there was a relatively high unemployment rate among young people aged below 30. There was also a need to assist those relatively less educated in adjusting to the changing needs of the manpower market. The new strategic role of ERB was to offer more comprehensive and diversified training and retraining services for the local workforce. Under the pilot Youth Training Programme targeting non-engaged youth aged from 15 to 20, ERB would, in collaboration with experienced training institutions particularly VTC, provide vocational skills training and foundation skills training emphasising on training of personal attributes. The pilot Youth Training Programme, which would be different from courses provided under the mainstream education framework, aimed at providing a safety net for young people who slipped through the mainstream education system.

43. The Administration further advised that ERB's training programmes were market-driven and employment-oriented to meet the needs of employers and economy. VTC would become ERB's important and strategic partner in serving the younger target group. The Administration agreed that ERB should give careful consideration to its future plans and draw up concrete proposals in respect of the development of training and retraining programmes for people with education level at sub-degree and below and young people aged 15 to 20. ERB would discuss with the relevant stakeholders, including VTC, before introducing new training programmes to avoid any duplication of services. ERB had embarked on extensive consultation with all the stakeholders on the future direction of ERB and would meet with parties concerned. As regards the proposed retraining allowance for young trainees, ERB would gather more views from the public during the consultation period.

Proposed relaxations under the Transport Support Scheme

44. While welcoming the proposed relaxations under the Transport Support Scheme (TSS), some members considered that the Administration should extend TSS to low-paid workers not living in the four designated districts (i.e. Yuen Long, Tuen Mun, North and Islands Districts). They also considered that the requirements of personal asset value at no more than \$44,000 and an average of 18 working hours per week should be removed. A member pointed out that the original intent of TSS as deliberated by the former Commission on Poverty was to help combat poverty. It was discriminatory to deprive low-paid workers living in other districts of the opportunity to be eligible for the transport subsidy.

45. The Administration responded that TSS was launched in June 2007 on a one-year pilot basis in response to the recommendation of the former Commission on Poverty. The objective was to provide a time-limited transport subsidy as an incentive to encourage the unemployed and low-income

employees with financial difficulties living in the designated remote districts to seek jobs and work across districts. The Administration had no intention of discriminating low-paid workers living in the non-designated districts. To relax TSS to cover all low-paid workers in the territory would be a departure from the objective of the Scheme. The Administration had already made significant improvement in proposing to raise the monthly income ceiling to \$6,500, cover transport cost for intra-district travels and extend the duration of transport allowance to 12 months.

46. The Administration further advised that the personal asset limit requirement of no more than \$44,000 was far less stringent than that under the Comprehensive Social Security Assistance Scheme which was set at \$22,000. As the target groups of TSS were the unemployed and low-income employees living in the designated districts, the Administration did not consider it appropriate to relax the personal asset limit. Nevertheless, the Administration agreed to consider reviewing this requirement one year after the implementation of the proposed relaxations of TSS.

47. Regarding the requirement on working hours, the Administration explained that the applications would be approved as long as the applicants had fulfilled the 72 hours per month requirement and other requirements.

48. Members urged the Administration to consider further relaxing TSS to cover low-paid workers not living in the four designated districts.

Other issues

49. The Panel had discussed other issues with the Administration. These included Hong Kong's occupational safety performance in the first half of 2007, progress of setting up Youth Employment Resource Centres by LD, and review of occupational diseases in Hong Kong in 2007.

50. The Panel was consulted on a number of legislative proposals, including the proposal to make mesothelioma a compensable disease under the Pneumoconiosis (Compensation) Ordinance, proposal to revise the rate of Business Registration Certificate levy for the Protection of Wages on Insolvency Fund, and provision of a further sum for non-compliance with compulsory order of reinstatement or re-engagement. The Panel was also consulted on a funding proposal for the retention of a supernumerary post for secondment to ERB as Executive Director.

Meetings held

51. Between October 2007 and June 2008, the Panel held a total of 11 meetings.

Council Business Division 2
Legislative Council Secretariat
3 July 2008

**Legislative Council
Panel on Manpower**

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to labour, manpower planning, vocational training and education, and qualifications framework.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Legislative Council
Panel on Manpower**

Membership list for 2007-2008 session

Chairman	Hon LAU Chin-shek, JP
Deputy Chairman	Hon KWONG Chi-kin
Members	Hon LEE Cheuk-yan Hon CHAN Yuen-han, SBS, 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, 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

(Total : 14 Members)

Clerk Mrs Sharon TONG LEE Yin-ping

Legal adviser Miss Kitty CHENG

Date 11 October 2007