

立法會
Legislative Council

LC Paper No. CB(2)865/08-09
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Thursday, 18 December 2008, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon LI Fung-ying, BBS, JP (Chairman)
Hon WONG Kwok-kin, BBS (Deputy Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Andrew CHENG Kar-foo
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou

Member absent : Dr Hon LEUNG Ka-lau

Public Officers attending : Item III
Mr Matthew CHEUNG Kin-chung, GBS, JP
Secretary for Labour and Welfare

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

Mrs Tonia LEUNG SO Suk-ching
Senior Labour Officer (Employment Services)
Labour Department

Mrs Carrie LAM CHENG Yuet-ngor, JP
Secretary for Development

Mr MAK Chai-kwong, JP
Permanent Secretary for Development (Works)

Ms Ada FUNG Yin-suen, JP
Deputy Director (Development & Construction)
Housing Department

Ms Joey LAM Kam-ping
Deputy Commissioner for Tourism
Tourism Commission

Miss Belinda KWAN
Assistant Director-General (Industries Support)
Trade and Industry Department

Item IV

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

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

Mr Byron NG Kwok-keung, JP
Assistant Commissioner for Labour (Labour Relations)

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

Item V

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

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

Mr Byron NG Kwok-keung, JP
Assistant Commissioner for Labour (Labour Relations)

Miss Mabel LI Po-yi
Senior Labour Officer (Wage Security)
Labour Department

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Miss Josephine SO
Senior Council Secretary (2) 1

Miss Helen DIN
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)481/08-09)

The minutes of the special meeting held on 23 October 2008 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)480/08-09(01) & (02))

2. The Chairman said that the next regular meeting of the Panel originally scheduled for 15 January 2009 at 2:30 pm had to be rescheduled to give way to the Chief Executive's Question and Answer Session to be held at 3:00 pm on the same day. Members agreed that the next regular meeting be rescheduled to 21 January 2009 at 4:30 pm.

3. Members agreed to discuss the following items at the next meeting -

- (a) Measures to enhance the efficiency of the employment market;
- (b) Hong Kong's occupational safety performance in the first half of 2008 and renovation works safety; and

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- (c) Transport Support Scheme.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, item (a) above was subsequently deferred to a future meeting.)

III. Creation of job opportunities and employment-related support services

(LC Paper Nos. CB(2)480/08-09(03) & (04))

4. Secretary for Labour and Welfare (SLW) briefly introduced the Administration's paper which set out the measures put in place by different policy bureaux and departments of the Government for the creation of job opportunities and the provision of employment-related support services in the face of economic downturn. He said that these measures aimed to stabilize the economy, to support enterprises, to preserve employment and to create jobs. In the coming year, over 60 000 jobs would be created through expediting major and minor infrastructure projects, recruiting civil servants and creating temporary and other jobs.

5. Secretary for Development (SDEV) said that she had briefed Members on the infrastructure works projects at the Council meeting on 10 December 2008 when the motion on "Promoting infrastructure development" was debated. She added that in addition to the 10 Major Infrastructure Projects, the Administration would also implement more minor works projects to create additional jobs. The Administration would brief the Development Panel on the proposals at its meeting in January 2009 and seek Members' support for a total funding of \$900 million. Thereafter, the proposals would be submitted to the Public Works Subcommittee for approval.

6. Mr LEE Cheuk-yan said that he supported the Government's policy of preserving employment and supporting enterprises so that layoffs and closures could be reduced. He expressed concern that the jobs created were mainly for the construction sector and urged the Administration to explore job opportunities for other sectors. He said that the Hong Kong Confederation of Trade Unions had proposed in its submission, which was tabled at the meeting, measures to stimulate the economy and create job opportunities.

(Post-meeting note: The submission from the Hong Kong Confederation of Trade Unions was issued to members vide LC Paper No. CB(2)528/08-09 on 19 December 2008.)

7. SLW undertook to forward the submission to the Financial Secretary (FS) who was consulting the public on the budget in the coming year.

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8. Mr IP Kwok-him expressed concern that the jobs to be created were mainly for the construction sector, and those hit hardest by the financial tsunami, namely the financial and real estate sectors, were not covered. He asked whether the Administration would consider offering a subsidy to encourage employers of these two sectors not to lay off their staff.

9. SLW said that in the face of economic restructuring and uncertain economic conditions, skills upgrading was conducive to facilitating employment. For people who had become unemployed and who had obtained qualifications of sub-degree or below, they could consider taking retraining courses offered by the Employees Retraining Board (ERB) with a view to equipping themselves with other skills to work in a different sector. For instance, people who used to work in the real estate sector could consider taking up employment in the insurance sector where more jobs were available. To assist job seekers of different background to enter or re-enter the labour market, LD had adopted a variety of measures to ensure efficient dissemination of job vacancy information.

10. Mr IP Kwok-him said that the recent computer fair held in Sham Shui Po indicated that the purchasing power of people was not as weak as envisaged. He asked whether the Administration would consider organizing district-based economic activities, in the form of thematic fairs or bazaars, to stimulate the economy. He also asked whether the Development Bureau would offer sites at an affordable rental for holding these activities.

11. SDEV said that in his 2008-2009 Budget Speech, FS had stated that the Administration would adopt a more proactive and flexible approach in the use of land resources. For example, land that had not been earmarked for long-term use could be made available for short-term use for economic activities or community purposes in the district. The Lands Department had identified some 1 000 such sites in 18 districts for short-term use and such information had already been disseminated to district officers and social welfare officers of the relevant districts. So far, 10 sites covering different projects had been identified for such use. This included a new cycling path in Tseung Kwan O and an organic farm in Tung Chung. The Financial Services and the Treasury Bureau had also agreed that the rental for these sites could be offered at concessionary prices if they were let to non-profit organizations. In response to Mr IP Kwok-him, SDEV said that the Home Affairs Department and Social Welfare Department (SWD) were responsible for handling applications for short-term leases. The Administration would examine how such information could be made available to District Council members.

12. Mr WONG Sing-chi said that greening works, which would create job opportunities, could be carried out in some of these sites to turn them into sitting out areas for the public.

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13. SDEV said that the Administration welcomed District Council members to make suggestions for better utilization of land. She recalled a successful case in Tsuen Wan where the site had been used by the Green Produce for community farming. Many elderly people had participated in and enjoyed the activity.

14. Mr WONG Kwok-hing commended SLW and SDEV for their conscientious effort in stepping up measures to create employment opportunities and to stimulate the economy. However, he was concerned that while individual government bureaux and departments were making effort to create jobs at their respective policy portfolios, there was no co-ordination among them. He quoted a number of examples whereby the lack of co-ordination had resulted in measures not achieving the desired result. Mr WONG further said that the Hong Kong Federation of Trade Unions had proposed measures to stimulate the economy, among which was the setting up of a committee on employment to oversee and coordinate unemployment issues. If the Administration did not support the setting up of such a committee, it should at least set up an internal working group to co-ordinate the efforts of all the government bureaux and departments. He expressed disappointment at the work of the Task Force on Economic Challenges (TFEC). He pointed out that although banks would benefit from the introduction of the Special Loan Guarantee Scheme which provided a total government guarantee up to \$100 billion, some banks had taken the lead to lay off employees. He also expressed concern about the adequacy of temporary jobs created in government departments.

15. SLW assured members that there was close co-operation among different government bureaux and departments in implementing the measures to boost the economy and employment. He reiterated that FS would take account of all the views received during consultation in formulating the budget. As regards the adequacy of temporary jobs created by government departments, SLW said that the 4 000 temporary positions would be adjusted in the light of market needs.

16. Mr LEUNG Kwok-hung said that although the Government had engaged a number of bodies such as the Commission for Strategic Development and TFEC to study measures to stimulate the economy, it did not appear to him that the Administration had implemented any effective measure.

17. Dr LAM Tai-fai said that there were three measures to stabilize the unemployment rate, namely, to minimize job losses, to create jobs directly and to create jobs indirectly. He made the following points -

- (a) it was easier to introduce measures to reduce job losses than to create new jobs. The recent non-binding charter signed by more than 100 small and medium enterprises (SMEs) pledging that

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they would not lay off employees for a year was a positive measure. He urged the Administration to explore with consortia other measures to reduce job losses and to appeal to them to exercise great care if layoffs became inevitable. He expressed particular concern about the middle aged unemployed, who being the bread winner of the family, was not easy to find another job or accept retraining by ERB at that age. He also cautioned about the prudent use of public money by ERB;

- (b) he supported the measure to create jobs directly by accelerating the implementation of various major and minor infrastructure projects. However, he cautioned that expeditious implementation should not be achieved at the expense of fewer jobs in the future or inefficiency in work. He enquired whether the large recruitment of 7 700 civil service vacancies from now to 2009-2010 was absolutely necessary; and
- (c) he supported promoting tourism which would indirectly create more job opportunities in various sectors, such as retail, catering and hotels. He urged the Administration to explore with the Mainland authorities to increase the number of cities whose residents were allowed to visit Hong Kong under the "Individual Visit Scheme" (IVS).

18. Deputy Commissioner for Tourism said that IVS was a policy of the Mainland. Nevertheless, the Administration had been actively liaising with the Mainland authorities on the possibility of extending the IVS to facilitate more Mainland visitors to come to Hong Kong. The Government would announce any new initiatives in this regard.

19. Mr WONG Sing-chi said that the jobs created by the Government should not be too temporary or else the job holders would face another difficulty two to three years later. He added that although the Administration had stated in its paper that it would assist the disadvantaged to obtain employment, there was no definition of "disadvantaged". It was also uncertain whether retraining would help them find a job. Mr WONG said that he had received complaints from some members of the public about the services provided by officers of SWD. He suggested that the Administration should consider creating the post of service ambassador for front-line departments with a view to improving government services and the position should be established on a long-term basis.

20. SLW said that the concept of service ambassador had been adopted in the job placement centre of LD. Young people were hired to help job seekers use the computer and the Internet. If service ambassadors were to be implemented in all the front-line departments, it was necessary to discuss with

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the various heads of department. As regards temporary jobs, they were created to meet short-term needs only. Creating temporary jobs that were not absolutely necessary would not be meaningful and would be a waste of resources.

21. The Deputy Chairman said that the Administration's paper covered a lot on job creation but less on prevention of job losses. He made the following points -

- (a) the Administration should step up its measures to prevent job losses. Apart from the catering and retail sectors, the transport sector was affected by the economic slowdown. The throughput of containers had dropped by 30% to 40% and some 4 000 lorries had been laid idle in the street. The relocation of factories from the Guangdong Province to the inner part of the Mainland and the direct link between Taiwan and the Mainland had further aggravated the problem;
- (b) many of the minor works involved simple tasks where the projects could be completed in three to four months' time. He expressed concern whether the figures on job opportunities provided by the Administration had been inflated. For instance, whether there was double counting of jobs when the Administration stated that the Government's Capital Works Programme would provide job opportunities for 40 900 labourers; and
- (c) the Administration should provide information on the commencement dates for large-scale construction projects such as the cruise terminal, the Shatin to Central Link, and the Guangzhou-Shenzhen-Hong Kong Express Rail Link.

22. Permanent Secretary for Development (Works) (PSW) assured members that there was no duplication in the calculation of job positions. The expenditure of the Government's Capital Works Programme and the Housing Authority in 2009-2010 was about \$40 billion. Based on the works scale and nature of each project, the total working hours and the corresponding number of positions required for completing the Programme were calculated. He added that the Administration would set out the commencement dates and budget for each of the works projects when seeking funding approval from the Public Works Subcommittee.

23. Dr PAN Pey-chyou said that he supported the implementation of minor works projects involving environmental protection and greening works. However, he did not support the Government opening too many temporary positions which, in his view, could be exploiting workers. He pointed out that

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temporary jobs were not effective in stimulating spending as the income of workers was unstable. He believed that with better coordination among government departments, some short-term jobs could last for a longer term. For instance, a cleaning worker could work for one department after another if relevant departments made the effort to co-ordinate their work schedules.

24. SLW responded that short-term jobs were temporary in nature and transitional. Such jobs sought to provide temporary relief to the unemployed who was expected to take up employment in their original sector when the economy revived. He further said that turning a temporary job into a permanent one would impact on public expenditure.

25. Mr Frederick FUNG suggested the following measures to create job opportunities -

- (a) the construction of public housing units should be increased from 15 000 to 20 000 a year;
- (b) having regard to falling property prices, the Urban Renewal Authority should adjust its five-yearly plan with a view to expediting the resumption of land and hence creating jobs in construction and other related works;
- (c) the Government should render assistance to industries involved in conservation, manufacturing of prefabricated components and greening works by offering land premium or tax concession;
- (d) if banks were not willing to help SMEs, the Government should consider setting up a community development bank to provide loans to SMEs at low interest rates. The Government could choose to set up a community development bank by itself, by acquisition of a small bank, or by expanding the function of the Post Office;
- (e) the Government should inject \$500 million to set up a social enterprise (SE) company. Under the "Enhancing Self-Reliance Through District Partnership (ESR) Programme" implemented since June 2006, the Administration had provided a total grant of about \$76 million to some 80 new SE projects creating some 1 400 jobs for the socially disadvantaged. He envisaged that about 70% of SEs would be operating at a loss and would be closing down. The SE company set up by the Government could submit bids for larger projects. If it won the tender, it could collaborate with other SEs, complete the project on its own, or set up smaller SEs to assist in the project; and

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- (f) the Administration should provide short-term unemployment allowance to individuals who were out of job for six months and had financial difficulties. The amount of subsidy should be equivalent to about 70% of the standard Comprehensive Social Security Assistance rates for a period of six months.

26. Mr IP Wai-ming expressed concern that there was no concrete measure to help those who lost their jobs in the financial and real estate sectors. He suggested that the Administration should consider lining up the unemployed financial experts with SEs so as to help SEs develop their businesses. Mr IP also pointed out that some women had to enter the labour market because of the financial hardship faced by their families. He urged the Administration to step up its effort in developing personal services such as community nannies and domestic helpers.

27. SLW said that for those with sub-degree qualifications or below, ERB had relaxed its admission requirements. They could equip themselves with other skills by taking ERB courses if they wished to change their field of work. In addition, LD provided market information to assist job seekers. As regards the proposal for financial experts to help SEs to develop their businesses, SLW undertook to relay the suggestion to the Home Affairs Bureau. SLW added that the Administration's paper covered all the measures that had been announced earlier and the Administration would continue to explore other new measures, including the development of personal services.

28. Mr LEUNG Yiu-chung pointed out that the 60 000 jobs to be created would not be opened at the same time as the major and minor projects would be implemented under different timeframes. He suggested that the Administration should consider other measures to create employment. He made the following points -

- (a) the Government should expedite the construction of community buildings, such as hospitals in Tuen Mun and Tung Chung, so that more jobs in the construction and other sectors, such as nursing, could be created. He noticed that the Government had granted a site near the Wetland Park to the Hong Kong Housing Society for building an elderly home for the middle class. He enquired whether the same site could be allocated to the Tin Shui Wai hospital instead. He said that the early construction of the hospital would enable Tuen Mun and Tung Chung residents to work in the vicinity instead of traveling a long distance for work;
- (b) he recalled that during the outbreak of the Severe Acute Respiratory Syndrome, the Administration had introduced a poverty relief scheme creating some 15 000 jobs. He urged the

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Administration to introduce a similar scheme to assist the grassroots; and

- (c) the Government should renovate government buildings in the community.

29. SLW responded that -

- (a) he was given to understand that the Tin Shui Wai hospital project had been planned to commence in 2011 and to be completed in 2015. At present, the Government was identifying a suitable site for the hospital. He explained that owing to environmental considerations, the site near the Wetland Park had to be a low rise building and that matched with the requirements of the elderly home proposed to be built by the Hong Kong Housing Society. He would relay Mr LEUNG's concern to the Secretary for Food and Health regarding the early construction of the hospital;
- (b) government bureaux and departments would, through various measures, help provide some 4 000 temporary and other positions, the number of which would be adjusted in the light of the market needs; and
- (c) the Government would expedite minor works projects, i.e. those with project cost not exceeding \$21 million each item, at district level.

30. PSW supplemented that the minor works projects had covered the items mentioned by Mr LEUNG Yiu-chung. They included renovation of government buildings, greening and conservation works, landslip preventive measures, and assets management.

IV. Legislative proposals to enhance the enforcement of Labour Tribunal awards

(LC Paper Nos. CB(2)480/08-09(05) & (06))

31. SLW said that in addressing the problem of some employers' failure in honouring Labour Tribunal (LT) awards, the Administration had presented to the Labour Advisory Board (LAB) and the Legislative Council (LegCo) in July 2008 three proposed enhancement measures, which were -

- (a) making non-payment of LT awards a criminal offence;
- (b) empowering LT to order defaulting employers to pay additional sums to the employees; and

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- (c) empowering LT to order disclosure of the financial details of defaulting employers.

SLW informed members that the Labour and Welfare Bureau (LWB) and LD had since been working closely with the Department of Justice (DoJ) and consulting the Judiciary on various legal and implementation details with a view to introducing legislative amendments to give effect to the measures. On 10 December 2008, LAB discussed the relevant issues relating to the first measure and supported the principles and way forward for criminalising non-payment of LT awards. The Administration intended to take forward the measure as a matter of priority. As regards the proposals to empower LT to order defaulting employers to pay an additional sum to employees concerned and to disclose financial information, more time was needed to study in detail the legal and implementation issues with DoJ and the Judiciary.

32. Mr WONG Kwok-hing expressed support for the Administration's proposals. He asked about the timetable for introducing legislative amendments to criminalize non-payment of LT awards and about the interim measures, if any, to deal with unscrupulous employers before non-payment of LT awards became a criminal offence.

33. SLW responded that the Administration planned to introduce a bill into LegCo by July 2009. Before the bill was enacted, LD would continue to carry out vigorous enforcement to deter employers from committing wage offences, thereby helping to reduce the incidence of defaulted LT awards. In addition, noting that some of the employees aggrieved by LT defaults might not be fully aware of the different avenues for enforcing civil awards and seeking assistance, LD had put in place since July 2008 one-stop service whereby an officer in each of its Labour Relations Division branch offices would, in addition to his existing duties, assume the role of "Award Enforcement Support Officer" to provide necessary information and appropriate assistance to employees with defaulted LT awards. The officer would provide relevant information on various modes of executing LT awards, assist in the procedures of applying ex gratia payment from the Protection of Wages on Insolvency Fund and make appropriate referrals to other government departments, including the Legal Aid Department and SWD, for assistance.

34. Mr WONG Sing-chi said that the Democratic Party supported the Administration's proposals. He questioned the need to introduce a new law to make non-payment of LT awards a criminal offence, given that the Employment Ordinance (Cap. 57) (EO) already required employers to pay wages to employees within seven days from the day on which they became due, failing which employers would be subject to criminal sanction. An employee who did not receive payment of the LT award after the prescribed period could institute legal proceedings against the employer under EO for default payment.

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35. SLW and Commissioner for Labour (C for L) explained that civil and criminal proceedings were governed by different legal procedures and principles. LT, set up in 1973, was dedicated to adjudicate employment-related civil claims. Being civil in nature, the litigating parties bore the responsibility of enforcing the LT judgment if it was not complied with. Under EO, however, default of wages and other statutory entitlements carried criminal liability. The mere existence of guilty act by failure to observe statutory obligations was a necessary but not sufficient condition for finding an employer criminally liable. The proof of *mens rea* (i.e. guilty intent) was in general cardinal requirement for a criminal offence. C for L said that some employees had resorted to resolve disputes in LT but because they were concerned about employer-employee relations, they did not want to act as witnesses in criminal proceedings. The case quoted by Mr WONG was no different from civil debts adjudicated by the Small Claims Tribunal where criminal proceedings could not apply.

36. SLW and C for L further said that the enforcement of LT awards had been a long-standing issue. There had been concerns about employees having little means to enforce LT awards and inadequate measures to deter employers from defaulting payment. The Administration felt strongly about the need to take action to tackle the problem and had come up with the measure to enhance deterrence. The current criminal offences under the EO provided the basis for criminalization of defaulting employment-related civil debts awarded by LT. To turn defaulting LT awarded payments from a purely civil matter to a criminal offence, the proof of *mens rea* would be necessary. .

37. Mr LEE Cheuk-yan expressed support for the Administration's proposals. Referring to paragraphs 11 to 15 of the Administration's paper, Mr LEE noted that "wilful and without reasonable excuse" would be adopted as the key elements of the new offence. In addition, consideration would be given to holding directors and responsible persons of body corporate who had consented to, connived at or been neglectful to the non-payment of LT awards personally liable so as to enhance deterrence. Mr LEE expressed concern that the time taken for investigation and prosecution could be long and requested the Administration to simplify the procedures for adducing evidence. He also enquired about the process for instituting criminal proceedings against non-payment of LT awards and urged the Administration to shorten the process.

38. C for L said that if an employer did not pay the award, the employee could lodge a complaint to LD. Upon receipt of such a complaint, LD would invoke its investigation mechanism. If investigation revealed that the company had committed an offence, LD would further see if any responsible person of the company should be made culpable. Prosecution would be instituted against directors and responsible persons of the body corporate concerned if there was sufficient evidence.

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39. C for L further said that it was important to differentiate the criminalization of non-payment of LT awards from the enforcement of other civil judgments firmly and solely on the basis of the uniqueness of criminalization of certain employment-related debts as currently provided for in EO. The Administration was wary of the possible read-across implications for the execution of other civil remedies and actions to be taken to follow up defaults of other civil debts. As a corollary, prudence was needed to ensure that the criminal offence should only apply to the non-payment of LT awards comprising wages and entitlements underpinned by criminal elements under EO. C for L informed that, as legal provisions, efficacy of section 64B of EO in convicting irresponsible persons of body corporate had not been cast in doubt. Rather, the crux were the problems frequently encountered in criminal investigation, e.g. collection of admissible evidence and willingness of those affected to stand as witness. In the first 11 months of 2008, LD secured 157 convicted summonses against responsible persons of limited companies, which represented an increase of 37% over the same period in 2007.

40. Mr LEUNG Yiu-chung supported the Administration's proposals. He expressed concern that the litigation process could be time consuming and meanwhile, workers had difficulty in supporting their living. He enquired whether it was possible to enact a law with retrospective effect.

41. SLW said that the enactment of law with retrospective effect for a criminal offence departed from the established legal principle. The Administration had been committed to relieving the problem of defaulting payment of LT awards and the proposal for making it a criminal offence was an important breakthrough. In an effort to expedite the implementation of the proposals, LWB and LD had been working in full swing with DoJ and the Judiciary and would proceed if any of the proposals was ready.

42. C for L supplemented that while it was difficult in legal principle to introduce a law with retrospective effect, the Administration was exploring possible means with DoJ to make the new offence effective, e.g. whether the new offence could be made a "continuing" one similar to wage offence.

43. Mr Andrew CHENG expressed support for the Administration's proposals. He said that the enforcement of similar awards in Taiwan and New Zealand had been effective because the court had the power to sequester the property of defaulting employers. He said that unless LT was given similar power, or the power to order the disclosure of the financial information of defaulting employers, the enforcement of LT awards remained difficult. Mr CHENG further pointed out that the evidence to prove an employer had "wilfully and without reasonable excuse" defaulted payment was difficult to produce. In this connection, he considered that the three measures mentioned in paragraph 31 should better be implemented in one go. Mr LEUNG Kwok-

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hung echoed the view and said that the other two measures should be made mandatory.

44. SLW responded that the Administration considered the three measures were all important but the first measure was crucial to improving the enforcement of LT awards, while the other two were supporting measures. While the Administration had accorded priority to the first measure in order that employees could benefit from the new measure as soon as possible, LWB and LD were also working closely with DoJ and the Judiciary on details of the other two measures. He assured members that the Administration would make all effort to expedite the preparation for the legislative amendments. As regards the financial position of defaulting employers, SLW said that the defence of "reasonable excuse" had been tested for a long time under existing offences of EO. It would be the judgment of the court on whether the defaulting employer had a reasonable excuse.

45. Mr IP Wai-ming said that he supported the three measures and considered that they should all be implemented. He pointed out that some employees were unwilling to stand as witnesses because they had to work and could not spare the time to attend all the court hearings. He expressed concern that workers had to shoulder too much responsibility in such proceedings. He enquired about the progress of the study on disclosure of financial information of defaulting employers.

46. SLW clarified that the Administration had not given up the two supporting measures but was merely prioritizing on the first one. C for L added that it was difficult to take out prosecution against defaulting employers without the testimony of the worker concerned. She explained that resting the onus of proof on the prosecution was one of the cardinal principles upheld by Hong Kong. C for L further said that the progress of the study on the two supporting measures required more time because the Administration noted and shared members' concern for the measures to be user-friendly for workers. Under the existing arrangement, District Court was the venue for enforcing LT awards and which would be difficult to access without legal representation. The Administration was dedicated to exploring means to introduce procedures as accessible to workers as possible, such as not requiring workers to appear in court to make applications for disclosure of financial information of defaulting employers and dispensing the need for legal representation. LD was studying earnestly with DoJ and the Judiciary and that would unavoidably take time.

47. Mr Alan LEONG said that the Civic Party supported the proposals presented in the Administration's paper. He noted that the Administration was trying to tailor-make a new criminal offence to deter unscrupulous employers from evading their responsibility. He asked the following questions -

- (a) what were the "possible read-across implications" brought about

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by the criminalization of non-payment of LT award;

- (b) what were the difficulties envisaged by the Administration in implementing the two supporting measures, e.g. whether the imposition of additional sums on defaulting employers by a civil court, if punitive, was an issue of concern; and
- (c) when the bill on making non-payment of LT awards would be ready for scrutiny by LegCo.

48. SLW responded that -

- (a) LT was but one of the branches of the Judiciary involved in civil judgments. In taking forward the proposal to criminalize non-payment of LT awards, there were possible read-across implications for the execution of other civil remedies and actions to be taken to follow up defaults of other civil debts. The read-across implications were complex and could not be explained in a few words. For instance, the Administration had to ensure that the principle of criminalizing non-payment of LT awards would not affect other similar judicial platform such as the Small Claims Tribunal;
- (b) the Administration strived to make the implementation process of the two supporting measures as user-friendly as possible. The two measures required detailed study on the legal and implementation issues and more time was needed; and
- (c) DoJ would need to draft the bill and it was hoped that the bill could be introduced before the end of the current legislative session.

49. Mr Alan LEONG said that the problems he raised in paragraph 47 were not insurmountable. He made the following points -

- (a) the read-across implications would be eliminated if the wording of the tailor-made provisions was clear and precise;
- (b) consideration could be given to vesting LT with the special power to order disclosure of financial information of defaulting employers; and
- (c) although it was uncommon for a civil court to impose punitive sum on litigating parties, there were common law rules regulating serious and deliberate misconduct of a party by imposing additional fines that were punitive in nature.

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50. SLW noted the views of Mr Alan LEONG. He reiterated that the Administration was working on introducing the bill before the end of the legislative session.

51. The Chairman concluded that members in principle supported the Administration's proposals. Mr IP Wai-ming suggested that representatives of DoJ should attend a future meeting of the Panel when the draft bill was presented.

V. Latest financial position of the Protection of Wages on Insolvency Fund

(LC Paper Nos. CB(2)480/08-09(07) & (08))

52. Members noted that the Protection of Wages on Insolvency Fund (the Fund) was set up to provide timely relief in the form of ex gratia payment to employees of insolvent employers. The Fund was mainly financed by a levy at the rate of \$450 per annum on each Business Registration Certificate issued under the Business Registration Ordinance (Cap. 310). LD was responsible for processing the applications and operation of the Fund.

53. SLW briefed members on the latest financial position of the Fund as set out in the Administration's paper. In gist, the reserve of the Fund stood at \$1,460.8 million by the end of November 2008. Due to the financial tsunami, the number of applications for the Fund had increased during the first eight months of the 2008-2009 financial year. Between April and November 2008, 4 461 applications were received, representing an increase of 42% over the same period of 2007-2008.

54. Mr WONG Sing-chi enquired about the amount of payment involved in the 4 461 applications. He noted that 1 000 companies had signed a charter pledging not to lay off employees for a year and asked about the measures taken by the Administration to prevent companies from going bankrupt so as to preserve employment.

55. SLW said that the Fund provided a safety net to protect the interest of employees of insolvent employers. As regards the first eight months of the current financial year, the Fund incurred expenditure of \$86.4 million, vis-à-vis its reserve of \$1,460.8 million. The Administration had introduced a scheme that would provide \$100 billion in loan guarantees to companies, aiming to save struggling firms and protect jobs. He further said that the Administration had all along paid attention to the situation at the front-line and would offer assistance to employees of insolvent employers in the first instance.

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56. Mr LEUNG Kwok-hung asked about the preventive measures to deter abuses of the Fund and whether a mechanism was in place to trigger off reviews of the levy rate to ensure that the Fund had sufficient reserve.

57. SLW said that front-line officers of LD had stepped up inspection and investigation to prevent abuses of the Fund. Apart from hiring experienced retired police officers to assist in the investigation, LD also collected intelligence from trade unions. As a result of these measures, some unscrupulous employers were convicted with imprisonment terms imposed.

58. SLW explained that the financial position of the Fund was subject to the amount of its levy income and ex gratia payment. LD, together with the Fund Board, would monitor the financial position of the Fund closely to ensure there was sufficient reserve for the rainy days. An objective mechanism was put in place to decide whether it was necessary to review the rate of levy. Accordingly, where the accumulated fund fell below \$800 million by 20% or more for four consecutive quarters, the Fund Board would consider whether to review the rate of levy to recommend a levy increase.

59. Mr IP Wai-ming expressed concern whether LD could meet the performance pledge for granting ex gratia payment to employees, in view of the increasing number of applications. He also expressed concern whether LD would work with liquidators to shorten the liquidation process. He pointed out that liquidators sometimes took a long time to calculate the amount of wages in arrears and severance payment and as a result, the ex gratia payment to employees had been unduly delayed.

60. SLW informed members that the performance pledge of LD was to effect ex gratia payment to successful applicants within 10 weeks upon receipt of all relevant information and documents required for processing the applications. LD was currently able to effect payment in 2.5 weeks on average after receipt of all relevant information. C for L added that LD had all along maintained close liaison with liquidators. There was further improvement in major liquidation cases recently in which, preparation work had been made beforehand so that upon a company declaring its closure, application forms for the Fund were distributed to the affected employees in the first instance. Some applications, however, might take longer time to process because there were complications. LD had effective liaison with employers, employees and liquidators to resolve disputes in insolvent cases and would study each case and ascertain whether an employer-employee relationship could be established to prevent abuse of the Fund.

61. The Chairman said that in March 2008, the levy was reduced from \$600 to \$450 because of the improved financial position of the Fund. At that time, the Administration had undertaken to consider expanding the scope of ex gratia payment. She expressed concern whether the Administration would honour its

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undertaking in view of the financial turmoil.

62. SLW responded that the Fund Board had given support to the proposal to expand the scope of ex gratia payment to cover accumulated annual leave pay subject to the ceiling of \$10,500 and the limit of one service year of 7 to 14 annual leave days. The Administration planned that the proposal would be presented to LAB for consideration in the coming year.

63. The meeting ended at 5:16 pm.

Council Business Division 2
Legislative Council Secretariat
18 February 2009