

立法會
Legislative Council

LC Paper No. CB(2)1566/08-09
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Thursday, 19 March 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : 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
Dr Hon LEUNG Ka-lau
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou

Member absent : Hon LI Fung-ying, BBS, JP (Chairman)

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

Mr Stanley NG Ka-kwong, JP
Assistant Commissioner for Labour (Employment Services)

Mr Raymond HO Kam-biu
Senior Labour Officer (Internship Programme for
University Graduates)
Labour 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)

Mr Ernest IP Yee-cheung
Chief Labour Officer (Labour relations)
Labour Department

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

Staff in attendance : Mrs Eleanor CHOW
Senior Council Secretary (2) 4

Miss Helen DIN
Legislative Assistant (2) 1

Action

I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1079/08-09)

The minutes of the meeting held on 21 January 2009 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1078/08-09(01) & (02))

2. Members agreed that the following items proposed by the Administration would be discussed at the next regular meeting to be held on 16 April 2009 at 2:30 pm -

Action

- (a) A review of occupational diseases in Hong Kong in 2008; and
- (b) Statutory minimum wage - Coverage of employees.

3. Mr WONG Kwok-hing suggested that the item in paragraph 2(a) above should be discussed in conjunction with the guidelines for outdoor work in very hot weather. Members agreed.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, the item in paragraph 2(a) above was deferred to the meeting on 21 May 2009 and replaced by "Future directions of the Employees Retraining Board".)

III. Measures to enhance the employment services of the Labour Department

(LC Paper Nos. CB(2)1078/08-09(03) & (04))

Briefing by the Administration

4. Secretary for Labour and Welfare (SLW) briefed members on the measures to enhance the employment services of the Labour Department (LD) as detailed in the Administration's paper (LC Paper No. CB(2)1078/08-09(03)).

5. Assistant Commissioner for Labour (Employment Services) (AC for L) briefed members on the Internship Programme for University Graduates (IPUG). He said that IPUG would provide 4 000 places for interested university graduates to work as interns and receive training in local or Mainland enterprises for six to 12 months. Employers participating in IPUG were required to provide LD or the participating tertiary institutions with training plans for the posts offered. For local internship, graduates would receive internship training in their capacity as employees, and would be paid wages commensurate with the duties, responsibilities and training contents of the posts and in any case not less than \$4,000 per month. During the period of internship, an employer would be eligible to receive from the Government a training subsidy of \$2,000 per intern per month. AC for L said that it was a misunderstanding that employers could hire a university graduate at \$4,000 per month under IPUG. Drawing reference to the Youth Work Experience and Training Scheme (YWETS) and the Employment Programme for the Middle-aged (EPM), respectively 80% and 94% of the participants received wages of more than \$5,000 per month, despite the stipulation of a similar wage protection of \$4,000 per month. AC for L stressed that IPUG required employers to pay wages on a par with the market wage levels.

Action

Overall employment services

6. Mr WONG Kwok-hing expressed concern that the unemployment rate had already reached 5% and was expected to rise in the near future. He urged LD to put in more effort to fight for additional resources to tackle the problem of unemployment. He enquired about the total number of places offered by various employment programmes under LD. He also expressed concern about inadequate employment services provided to workers who resided in Tung Chung. He noted that a Vacancy Search Terminal installed in the public library of Tung Chung, which operated longer hours, had been relocated to an office of the Social Security Field Unit of the Social Welfare Department, which opened from 9:00 am to 5:00 pm only. Given that Tung Chung was one of the low-income districts, employment services rendered to its residents should only be enhanced rather than reduced. He urged the Administration to consider installing Vacancy Search Terminals at places managed by the Housing Authority or the Link Real Estate Investment Trust, which operated longer hours.

7. SLW informed members that the employment programmes set out in the Administration's paper would provide some 48 000 places for job seekers in the next two years. These included 35 000 places for young people under the Youth Pre-employment Training Programme (YPTP) and YWETS, 8 000 places for the middle-aged under EPM, 800 places for persons with disabilities (PWDs) under the Work Orientation and Placement Scheme and 4 000 places for university graduates under IPUG. Apart from IPUG which was a time-limited programme to assist university graduates to seek employment during the financial tsunami, the places offered under other employment programmes were demand driven and not subject to any ceiling. On the provision of the Vacancy Search Terminal in Tung Chung, SLW explained that its relocation was necessary because the public library was too small. He noted Mr WONG's view and would explore other suitable sites for installing Vacancy Search Terminals in Tung Chung.

8. Mr LEUNG Yiu-chung enquired whether the figure of 48 000 referred to the number of places for employment and on-the-job training opportunities or the number of positions available.

9. SLW responded that as every training opportunity might result in employment, it was not necessary to be too concerned about the difference between the number of places for employment and on-the-job training opportunities and the number of job positions. She said that LD had operated programmes for young people and the middle-aged for a number of years and had established an extensive employer network. For instance, LD had established strong partnership relations with over 10 000 employers to canvass on-the-job training vacancies of a wide variety for trainees under YPTP and YWETS. Since its inception, YPTP had trained more than 85 000 young

Action

people, with 70% of participants having secured employment on completion of training, whereas YWETS had assisted about 60 000 young people to find jobs, including 40 000 who were placed into training vacancies under YWETS. It was important for young people to equip themselves with the necessary skills through training with a view to gaining a foothold in the job market. As for the middle-aged, the employment of many participants under EPM had continued after the three-month on-the-job training period.

10. Commissioner for Labour (C for L) supplemented that the 48 000 places referred to in the Administration's paper were for budgeting purposes only. There was no limit on the number of places offered to young people, the middle-aged and PWDs. Although under the current economic environment, LD could not guarantee that sufficient employment and on-the-job training opportunities would be made available to meet the demand of job seekers, experience indicated that LD's programmes had been successful. Many participants had secured a job after on-the-job training. An officer-in-charge of a firm engaged in aircraft maintenance had reflected to her that he had confidence in LD's employment programmes, as each trainee was followed up by a case manager. The firm had offered 160 places to young people in the past few years and the overwhelming majority continued their employment with the same firm on completion of training.

11. Dr PAN Pey-chyou expressed concern that the unemployment rate had reached 5% and enquired about the measures taken by the Administration to help the sectors which were most affected by the financial tsunami. He expressed particular concern that the unemployment rate in the construction sector had reached 10%. He also asked whether the Administration had examined whether there were certain groups of people who had particular difficulty in finding a job.

12. SLW responded that the unemployment rate for construction workers had indeed risen quickly, especially for those engaged in decoration, renovation and maintenance works. The Administration had pressed ahead with major infrastructure works projects and undertaken more minor works projects to create additional employment opportunities in the construction sector. Some of the newly created jobs in minor works had already been taken up by construction workers who returned from Macao. Funding for minor works projects would be increased to \$8.6 billion in 2009-2010, representing a 25% increase over the level in 2008-2009. The new minor works projects included the renovation of 1 000 dilapidated buildings which would create 10 000 jobs in the next two years, and advanced implementation of redevelopment projects in the welfare sector, such as an elderly home under the Tung Wah Group of Hospitals.

13. SLW further said that the financial tsunami particularly impacted on the unemployed middle-aged with low qualifications and low skills. It was

Action

important to equip them with new skills through retraining so that they could re-enter the labour market as early as possible. To this end, the Employees Retraining Board (ERB) provided 128 000 training places for the middle-aged and, in view of the uncertain economic outlook, 20 000 additional places would be provided in the coming year. There were also training programmes targeted at new arrivals from the Mainland, the ethnic minorities and job seekers in low-income districts. The Administration was adopting a holistic approach to upgrade the skills of job seekers on various fronts.

14. Mr IP Wai-ming expressed concern that the pressure faced by the unemployed middle-aged was immense and enquired whether there was any limit on the places offered under EPM. He also expressed concern that the unemployed middle-aged receiving Comprehensive Social Security Assistance (CSSA) had been labelled by the community as lazy people.

15. SLW responded that the creation of job opportunities for the middle-aged topped the agenda of the Government because they were the bread-winners of their families. LD had therefore enhanced and integrated the various employment programmes so that resources could be allocated flexibly to help the vulnerable groups. SLW assured the meeting that the places offered under EPM could be increased in response to market demand. Apart from LD and ERB, the Vocational Training Council also offered training programmes to help the middle-aged. At present, ERB was carrying out a strategic review with a view to enhancing the support provided to middle-aged job seekers.

16. Noting that the Administration had explored various means to create job opportunities, the Chairman suggested that the Administration should consider running more residential care homes for PWDs and the elderly. This would resolve the problem of inadequate care places for PWDs and the elderly and create more job opportunities at the same time. SLW responded that the Administration would consider the proposal put forward by the Chairman.

17. Mr LEE Cheuk-yan asked whether the \$400 million earmarked for implementing the proposed measures on enhancement and integration of various employment programmes for young people, the middle-aged and PWDs would require the approval of the Finance Committee. SLW responded that the provision of \$400 million had been included in the Draft Estimates of Expenditure for 2009-2010. The Administration would need to seek funding approval from the Finance Committee.

Programmes for young people

18. Mr LEE Cheuk-yan said that although AC for L had clarified that wages offered to university graduates under IPUG would not be less than \$4,000, the message received by the public was that the \$4,000 level would become the minimum wage for university graduates. To avoid further confusion, he urged

Action

the Administration to stop mentioning the wage floor of IPUG. Instead, LD should convey a clear message to participating employers that it would not approve applications if the wages offered to interns were below the market rate. Mr LEE further said that the Administration's statement that there was no limit on the number of places offered to young people under YPTP and YWETS was not meaningful because the demand of such places would hinge on job vacancies available. The Labour and Welfare Bureau should address this problem by introducing measures to encourage employers to create more positions. For instance, if the Administration increased the subsidy to employers from \$2,000 to \$4,000 per job vacancy, employers would have the incentive to create more jobs.

19. SLW reiterated that offering wages of \$4,000 for hiring a university graduate was a misconception of the community. Employers who participated in IPUG must offer wages commensurate with the duties, responsibilities and training contents of the posts. SLW further said that the Administration had introduced measures to support enterprises, preserve employment and 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.

20. Dr LAM Tai-fai held the view that IPUG was not beneficial to university graduates and the society. In his view, the right thing for a university graduate to do was to find a job and apply in his work what he had learnt. This was the tradition and he wondered why the Administration considered it necessary to provide further training to university graduates. In his view, that was a waste of the society's resources. Since it was uncertain when the economy would revive, he queried whether the Administration intended to continue the programme year after year. It appeared to him that the programme was introduced solely for the purpose of bringing down the unemployment rate. He considered that if the Administration wanted to help university graduates at all, it should tackle the problem at root by providing support to enterprises so that they could maintain their businesses and create more jobs. He also expressed concern that Mainland interns might choose to stay on the Mainland after the internship, which was tantamount to exporting talents abroad. He added that the minimum requirement of paying a university graduate at \$4,000 per month not only created a misconception, but would also label participants of IPUG as those who failed to secure a job. He urged the Administration not to implement IPUG.

21. Mr IP Wai-ming, Mr LEUNG Kwok-hung and Mr WONG Kwok-hing shared the views of Dr LAM Tai-fai. Mr IP Wai-ming expressed concern that Mainland interns would have difficulty in finding a job after returning to Hong Kong, and they might not be eligible for applying for CSSA for low-income workers, if their duration of stay in Hong Kong was less than the prescribed period. Mr LEUNG Kwok-hung said that since there was a misunderstanding

Action

among the community that the minimum wage for university graduates was \$4,000, there was bound to be such offers made in the market place. He expressed concern that under the circumstances, the wages offered to graduates of secondary school would be even lower. Mr WONG Kwok-hing enquired how LD would clarify the misunderstanding with students and chambers of commerce.

22. SLW responded that IPUG was introduced to provide university graduates with an additional option and more opportunities. The Administration considered it necessary to introduce targetted measures during this difficult time to help fresh graduates broaden their horizon, equip them with more skills, boost their confidence and gain more experience. The Administration had introduced similar measures during the outbreak of the Severe Acute Respiratory Syndrome but not during a period of buoyant economy. Some employers who could not hire university graduates owing to resources constraint had offered to provide internship training. In his view, this was a win-win situation for the two parties. As regards Mainland interns, the experience gained during the six to 12 months' attachment on the Mainland should be seen as "upfront investment" and would stand them in good stead in the long-term. SLW stressed that IPUG was a temporary measure to help university graduates establish a foothold in the job market. He reiterated that \$4,000 was not the minimum wage for university graduates. The Administration would enhance communication with tertiary institutions and students to clarify the misconception. He added that the Administration would continue to explore measures to support enterprises and preserve employment.

23. Mr Fredrick FUNG said that unemployment should be tackled by introducing measures to support small and medium enterprises, to create job opportunities and to provide temporary financial assistance to the unemployed. He shared the views of Dr LAM Tai-fai on IPUG. In his view, IPUG should be offered on a voluntary basis and should take effect three months from now when university students were due to graduate. He also enquired whether resources would be provided to tertiary institutions for implementation of the programme. On the creation of job opportunities, Mr FUNG suggested that LD should collaborate with District Councils, social enterprises and non-government organizations to create 2 000 to 3 000 jobs for young people in each district. The job holders would perform duties such as rendering assistance to students at schools, performing greening and conservation works, and promoting tourism. They would be paid wages at \$6,500 per month so that they could still be eligible to claim transport subsidy. The proposal would cost only \$2.8 billion to \$4.2 billion a year and was worth pursuing.

24. SLW informed members that IPUG would commence on 1 August 2009 to provide an extra option for graduates to secure employment and internship opportunities. About \$140 million had been earmarked for subsidizing the internships and meeting related expenses, including resources for the 12

Action

degree-awarding tertiary institutions to provide job-matching and follow-up services to their graduates. He noted Mr FUNG's proposal on creating job opportunities for young people and pointed out that the diverse elements within YPTP and YWETS could cater for the very different needs of youths with different educational attainment and interests.

25. Mr WONG Sing-chi expressed concern that IPUG would become a tool for employers to exploit university graduates, unless LD could ensure that the internships offered by participating employers were new positions. On Mainland internships, since there were past cases whereby interns were asked to perform duties different from their job specifications, Mr WONG asked whether a monitoring mechanism would be put in place to protect the interests of interns.

26. SLW said that the programme stipulated that participating employers must not displace existing employees with interns. Employers had to submit training proposals for internships and the respective tertiary institutions would provide follow-up services to their graduates, while overseas graduates who were Hong Kong citizens would be taken care of by LD. If problems arose, relevant tertiary institutions and LD would follow up the matter.

27. C for L supplemented that to ensure that existing job openings would not be replaced by internships, IPUG would commence operation on 1 August 2009. Applications and training proposals submitted by Mainland enterprises would be vetted and considered by tertiary institutions and LD. To protect the interests of interns, participating companies would undertake to include training elements in the jobs offered. Given the wide territorial coverage of the Mainland, tertiary institutions would accept offers in cities where they were confident that they could provide assistance to their graduates when needed, e.g. cities where they had established network. Tertiary institutions would provide a list of such cities to LD in early April 2009. Under IPUG, tertiary institutions would be provided with the necessary resources to help their graduates working on the Mainland. C for L assured members that LD and tertiary institutions would liaise with Mainland interns closely.

28. Mr Alan LEONG referred to paragraph 18 of the Administration's paper which stated that LD had approached business chambers and enterprises and their feedback on IPUG was positive and supportive. He said that the remarks made by Dr LAM Tai-fai, who represented the industrial sector, were contrary to those stated in the paragraph. Mr LEONG enquired whether the Administration had indeed received positive responses from business chambers and enterprises. SLW replied in the affirmative.

29. Mr Alan LEONG expressed concern about the possible overlapping of training courses offered by ERB, YPTP and YWETS, and asked how the Administration would ensure that these programmes were coordinated to

Action

prevent a waste of resources. AC for L responded that the training and employment support offered by ERB, YPTP and YWETS should complement each other and there should be no duplication. LD would take into account the training courses offered by ERB when developing programmes for YPTP and YWETS. The Administration would ensure optimal use of resources to foster the provision of coordinated training and employment support for young people.

30. Dr LEUNG Ka-lau enquired whether the Hospital Authority could apply for IPUG and receive a subsidy of \$2,000 per houseman per month. He also queried about the need to help university graduates find a job given that they had a competitive edge over other young people with lower qualifications. In his view, the Administration should use the resources allocated to IPUG to help those in a disadvantaged position.

31. SLW clarified that IPUG primarily targetted employers of the private sector. In addition, the Hospital Authority was not eligible for participation in IPUG because vacancies for housemen should have already been funded by an appropriate source. As explained earlier, the Administration would not provide assistance to university graduates during a period of buoyant economy. The Administration had also allocated resources to assist young people with educational attainment at sub-degree or below level through YPTP and YWETS.

IV. Labour Department's response to the recent labour relations scene amidst the financial tsunami

(LC Paper Nos. CB(2)1078/08-09(05) & (06))

32. SLW briefed members on the measures taken by LD in response to the recent labour relations scene amidst the financial tsunami as detailed in the Administration's paper (LC Paper Nos. CB(2)1078/08-09(05)).

Labour relations

33. Mr LEE Cheuk-yan held the view that the Administration had a labour policy of suppressing trade unions. Noting that the Administration had appealed to employers to hold constructive dialogue with their staff when important decisions affecting staff interests were to be made, Mr LEE pointed out that employers should hold dialogue with trade unions. While the International Labour Organization Convention Nos. 87 and 98 provided that the Government had the responsibility to promote collective bargaining between employers and trade unions, the Administration had not done so. He pointed out that in the recent labour disputes involving big consortia, such as PCCW Limited, Hong Kong and Shanghai Banking Corporation and Television Broadcasting Limited, LD had failed to persuade employers to hold dialogue with respective trade unions.

Action

34. SLW responded that the Administration would not comment on individual cases. He said that LD had made efforts to detect potential labour disputes and to forestall them before they erupted into full-blown conflicts. As for labour disputes such as the ones mentioned by Mr LEE, had LD not intervened and promoted holding dialogues among the parties concerned, a mutually acceptable solution would not have been reached. At present, LD promoted communication between employers and employees and their respective organizations through the following avenue -

- (a) the Labour Advisory Board (LAB);
- (b) the industry-based tripartite committees;
- (c) the 18 Human Resources Managers Club formed in various trades and industries; and
- (d) advice to employers on good people management practices and the importance of staff consultation in handling wage reduction and retrenchment.

35. C for L advised that the settlement rate of disputes and claims handled by LD was 72% in 2008. She said that if conciliation and direct dialogue between employers and employees had been futile, LD would not have been invited by both employers and employees to intervene in labour disputes case after case.

36. Mr LEE Cheuk-yan said that the Administration should not confuse conciliation with collective bargaining. In past cases, trade unions were able to reach collective bargaining agreements with employers because employees went on strikes. He requested the Administration to provide information on the following -

- (a) the number of companies which had recognized the status of trade unions;
- (b) the number of cases where LD had successfully appealed to employers to hold dialogue with trade unions; and
- (c) the number of collective bargaining agreements signed between employers and trade unions.

37. SLW said that the Administration would provide a written response after the meeting.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)1415/08-09 on 24 April 2009.)

Action

38. Mr IP Wai-ming said that trade unions had hoped that apart from conciliation, a mechanism would be put in place to establish a regular dialogue between employers and employees so as to safeguard the interests of both parties, in particular during the financial tsunami.

39. Mr LEUNG Yiu-chung said that collective bargaining would help improve labour relations. He asked whether the Administration would reconsider its position on the matter.

40. SLW responded that the Administration had made clear its position on collective bargaining when the motion on "Assisting grassroots workers in counteracting economic adversities" moved by Mr IP Wai-ming was debated at the Council meeting on 4 February 2009. The Administration's stance of supporting voluntary collective bargaining had not changed.

41. Dr PAN Pey-chyou held the view that a comprehensive, systematic and statutory collective bargaining system would help alleviate labour disputes. In the absence of such a system, employees were afraid to speak out and fight for their rights for fear that they might lose their jobs. Dr PAN asked whether assistance had been sought from the Administration to resolve potential labour disputes in the financial sector which was hit hard by the financial tsunami.

42. C for L responded that when LD had gathered intelligence that there were plans for wage reduction and retrenchment in some financial firms, LD would immediately approach the senior management of these firms and with its early intervention, there were successful cases that the level of wage reduction and the size of retrenchment had either been reduced or deferred. In other cases, LD's early intervention had resulted in consensus reached between employers and employees on labour issues.

43. Mr LEUNG Kwok-hung expressed concern that employees were not protected by law under collective bargaining, strikes, and unreasonable and unlawful dismissal by employers. He doubted whether LD had done anything to improve labour relations. He cited the examples that LD's intervention had not been successful in resolving labour disputes between employers and the steel bar benders, and preventing PCCW Limited from forcing employees to take no pay leave.

44. SLW said that the Administration would not comment on individual cases. Since the settlement of the dispute between the employers and the steel bar benders, the labour relations within the sector had remained stable. C for L added that the strikes undertaken by steel bar benders were about wage increase and not wage reduction. Given the different perspectives taken by the employers and the steel bar benders, it had taken some time for the two parties to engender mutual understanding and reach consensus. In fact, SLW had

Action

tactically rendered appropriate assistance behind the scene while LD had endeavored to resolve the dispute in the conciliation process.

Protection of Wages on Insolvency Fund (PWIF)

45. On PWIF, Mr IP Wai-ming noted that in order to recover debts owed by an insolvent employer, employees would need to present a bankruptcy or winding-up petition against their insolvent employers, usually with the assistance of the Legal Aid Department (LAD). He pointed out that while C for L had the discretionary power to waive the requirement for a bankruptcy or winding-up petition if the insolvent employer had less than 20 employees, she did not have such a power when the number of employees exceeded 20. In addition, an employee whose assets exceeded the threshold of \$165,700 would not be eligible for legal aid. He requested the Administration to consider introducing measures to help these employees. For instance, LAD should be given the discretionary power to waive the financial eligibility limit of these employees so that it could render assistance in filing the bankruptcy or winding-up petition against the insolvent employer.

46. C for L said that given that PWIF was collectively funded by employers to compensate employees, a mechanism was put in place to balance and protect the interests of both parties. To prevent abuse of PWIF, the presentation of a bankruptcy or winding-up petition was a prerequisite for payment from PWIF. In handling insolvent cases where there were more than 20 employees, LD would approach each of them to ascertain who could meet the financial eligibility criteria for legal aid. Once such a person was identified, LD would refer him to LAD for assistance in presenting petition against the insolvent employer and all other employees would benefit. In her view, the existing mechanism was flexible enough to assist the employees.

47. Mr IP Wai-ming enquired about the number of cases where payment from PWIF was not made because the employee could not get legal aid to file bankruptcy or winding-up petition against the insolvent employer. C for L said that the Administration would examine whether the requested information was available.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)1415/08-09 on 24 April 2009.)

48. Mr LEUNG Yiu-chung said that the financial tsunami had caused some financial firms winding up their business. Given that many of their employees received high wages, they were unlikely to be eligible for legal aid. He asked whether the Administration would consider raising the financial eligibility limit for legal aid.

Action

49. SLW responded that given that legal aid involved the use of public money, LAD had to take into account policy and other considerations in setting the eligibility criteria for legal aid. In this connection, legal aid would not be provided to those who had the means to afford legal costs. Assistant Commissioner for Labour (Labour Relations) added that the financial eligibility limit for legal aid was based on asset rather than wages. In past cases where insolvent companies had employed more than 20 persons, LD was usually able to identify an employee who could meet the means test for legal aid.

V. Any other business

Employment (Amendment) Bill

50. Members noted that the Administration had explained in its paper (LC Paper No. CB(2)1094/08-09(01)) the reasons for deferring the introduction of the Employment (Amendment) Bill (the Amendment Bill) to the next legislative session. The Amendment Bill sought to remove the requirement for an employer's consent to the making of an order for reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully, and to ensure the employer to pay a further sum to the employee for failing to comply with such an order.

51. Mr LEE Cheuk-yan, Mr IP Wai-ming, Mr LEUNG Yiu-chung and Mr WONG Kwok-hing considered the reasons for deferring the introduction of the Amendment Bill unacceptable. Mr LEE Cheuk-yan expressed disappointment that after a lapse of nine years, the Amendment Bill was still not in place. He recalled that the introduction of the Amendment Bill was one of the initiatives set out in the Chief Executive Policy Address for 2000-2001. Mr IP Wai-ming said that he was a former member of LAB and pointed out that LAB had reached consensus on the draft Amendment Bill in late 2007 and workers were looking forward to seeing its implementation. Members requested the Administration to provide a specific timetable for introducing the Amendment Bill into the Legislative Council (LegCo).

52. Mr LEUNG Kwok-hung asked whether it was LAB, the Administration, the employers or the employees who had caused the delay in reaching a consensus on the draft Amendment Bill.

53. C for L said that she had started dealing with the legislative proposal in 2007 when she took up the current post. At that time, the draft Amendment Bill had already been ready for scrutiny by LAB for some time. LAB had held a number of meetings to discuss the policy aspects of the draft Amendment Bill before proceeding to examine the implementation details. In the course of discussion, questions were raised on whether the further sum to be paid by the

Action

employer for failure to comply with the order for reinstatement or re-engagement of the employee should be decided by the court. The Department of Justice and the Judiciary held the view that the court should be provided with guidelines on how the sum should be set. LAB subscribed to that view having considered that a tense employer-employee relationship would make the reinstatement or re-engagement of the employee not meaningful. LAB then took some time to deliberate on the guidance, especially the amount of the sum. As the issue was controversial, a consensus was not reached in LAB until the end of 2007.

54. SLW said that following the drastic increase in labour disputes and redundancy/winding-up cases arising from the financial tsunami, immense pressure was exerted on the manpower resources and top management of LD. Given that the Administration had decided to focus on, and accord priority to, introducing within this legislative session the complex and major draft bills on putting in place a statutory minimum wage and enhancing the enforcement of Labour Tribunal awards, the introduction of the Amendment Bill into LegCo had to be deferred. SLW undertook to introduce the Amendment Bill into LegCo before the end of 2009.

55. The meeting ended at 4:37 pm.

Council Business Division 2
Legislative Council Secretariat
14 May 2009