

立法會
Legislative Council

LC Paper No. CB(2)1086/09-10
(These minutes have been seen by
the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Thursday, 21 January 2010, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon LI Fung-ying, BBS, JP (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
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou

Members absent : Hon IP Wai-ming, MH (Deputy Chairman)
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Sing-chi

Public Officers attending : Item III

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

Mrs Erika HUI LAM Yin-ming, JP
Deputy Commissioner for Labour (Occupational Safety and
Health)

Mr TSO Sing-hin, JP
Assistant Commissioner for Labour (Occupational Safety)

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 Alan WONG Kwok-lun, JP
Deputy Commissioner for Labour (Labour Administration)

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

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

Ms Camy YOONG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)766/09-10)

The minutes of the meeting held on 19 November 2009 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)765/09-10(01) and (02))

2. Members agreed to discuss the following items proposed by the Administration at the next regular meeting to be held on 23 February 2010 at 4:30 pm -

- (a) Review of the levels of compensation under the Employees' Compensation Ordinance and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance; and
- (b) A review of occupational diseases in Hong Kong in 2009.

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3. The Chairman said that Mr IP Wai-ming had written to her requesting the Panel to discuss issues arising from the case of 140 trainees from Fujian who were allegedly hired as workers in the name of trainees by the Hong Kong Aircraft Engineering Company and were forced to work two extra hours per day without overtime pay. Given that visa applications for working in Hong Kong were dealt with by the Immigration Department, the Chairman said that she would discuss with the Chairman of the Panel on Security on the possibility of holding a joint Panel meeting to discuss the issue after the Chinese New Year.

III. Safety in the use of tower cranes on construction sites
(LC Paper Nos. CB(2)765/09-10(03) and (04))

4. Commissioner for Labour (C for L) briefed members on the regulatory regime on the use of tower cranes on construction sites as well as recent initiatives by the construction industry and the Labour Department (LD) to enhance the safety of tower crane operations as set out in the Administration's paper.

5. Members noted that the general duties provisions of the Factories and Industrial Undertakings Ordinance (FIUO) (Cap. 59) imposed a duty on a proprietor of an industrial undertaking to ensure the safety at work of all persons employed by him by providing these persons with a safe workplace, safe plants and safe systems of work. Such duties applied to employers and contractors in the construction sector, and to the use of tower cranes. The Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations (the Regulations) (Cap. 59J) further provided the statutory framework to ensure the safe use of lifting appliances and lifting gear, including tower cranes, in Hong Kong. To provide practical guidance to the industry on how to use tower cranes safely and properly, a Code of Practice for Safe Use of Tower Cranes (the Code) was issued in 2002.

Effectiveness of the regulatory framework

6. Referring to the tower crane accident at a demolition site in Causeway Bay on 10 July 2007 resulting in the death of two workers and injury of five others (the Causeway Bay accident), Mr WONG Kwok-hing expressed concern that the defendant was fined \$35,000 only. He enquired whether the Administration had lodged an appeal against the sentence and queried whether the present regulatory regime could deter non-compliance with safety measures.

7. C for L responded that the Department of Justice (DoJ) was following up on the case, and had subsequently lodged an application for review of the sentence. A response from the court was pending.

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8. Mr LEE Cheuk-yan said that the low penalty level in respect of the Causeway Bay accident had conveyed a misleading message to the public that the offence was not serious. Noting that the Informal Task Force on Safety of Tower Cranes under the Construction Industry Council (CIC), having concluded its study of the Causeway Bay accident, had formulated a set of Guidelines on Safety of Tower Cranes (the Guidelines) for adoption by the construction industry, Mr LEE enquired whether the Administration would consider introducing legislation to enforce the practices as recommended in the Guidelines to enhance deterrence.

9. C for L explained that the broad scope of provisions in existing legislation on safety of tower cranes had the advantage of casting a wider net to hold employers accountable for non-compliance with safety measures at construction sites. At present, there were different tower crane models, and as technology advanced and improved models introduced, the Guidelines which dealt with the detailed process of tower crane operations might not be applicable to all models. Legislating the Guidelines could be counterproductive as unscrupulous employers might translate them into convenient clues to circumvent the law.

10. Assistant Commissioner for Labour (Occupational Safety) (ACL(OS)) supplemented that the Guidelines sought to elaborate on the requirements of the relevant legislation. Although failure to observe the Guidelines was not in itself an offence, that failure might result in prosecution under the relevant legislation.

11. Mr Andrew CHENG said that the Administration had all along been reluctant to legislate codes of practice and guidelines. While he noted that some recommended practices in the Guidelines were difficult to enforce, other practices were essential and crucial which warranted their incorporation into legislation to enhance deterrence. He suggested that the Administration should consider adopting a two-pronged approach. For instance, the practices set out in paragraph 16(a) and (b) of the Administration's paper should be made mandatory, while other practices could remain in the Guidelines as appropriate.

12. C for L explained that the Guidelines sought to provide practical guidance for the construction industry to follow. Having regard to the education level of construction workers, the Guidelines contained checklists requiring simple answers to facilitate workers' easy understanding of safety procedures in operating tower cranes. It was inappropriate to make the checklists statutory. Nevertheless, LD was considering to incorporate some of the important practices set out in the Guidelines into the Code. Although non-compliance with the Code in itself did not lead to any liability, the court would take into account any relevant parts of the Code in determining cases.

13. Mr LEE Cheuk-yan said that the Administration should consider imposing a limit on the life span of tower cranes. He noted that some cranes

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were made of old parts from scrapped cranes. Owing to metal fatigue, such assembled cranes could be unsafe to use.

14. C for L and ACL(OS) responded that it was difficult to draw a line on the life span of tower cranes which had hundreds of components. In addition, their degree of wear and tear varied from model to model and from brand to brand. At present, a number of measures had been put in place to ensure the safe use of tower cranes. These included -

- (a) tightening up the requirements for inspection and certification of tower cranes to include, among others, checking of key components before delivery to site;
- (b) tightening up the requirements for site supervision. These included requirements for the appointment of a supervising engineer with qualifications, experience and competence to control, monitor and supervise operations on tower cranes, the conduct of a risk assessment and the carrying out of pre-installation checking;
- (c) requiring the owner of a tower crane to provide a checklist of components for inspection. A competent mechanical engineer would verify the components of a tower crane against the list provided by the manufacturer of the tower crane. He would also conduct non-destructive tests on the key components of a tower crane;
- (d) mandating proper keeping of maintenance and operations record to facilitate checking and verification by a competent examiner; and
- (e) mandating non-destructive testing on no less than 10% of the welded parts of a tower crane which had been used for 15 years. If cracks were identified, all the welded parts would be tested.

15. Mr LEUNG Yiu-chung noted that LD had conducted a total of 45 800 inspections resulting in the issuance of some 13 000 notices in 2007. In 2009, 50 801 inspections were made resulting in 1 222 prosecutions against contractors for non-compliance of safety legislation. He enquired whether the Administration would increase manpower to conduct more inspections at construction sites with a view to reducing the numbers of accidents and hence the number of prosecution cases. He also enquired about the nature of notices issued by LD.

16. C for L responded that enforcement was the key to ensuring the efficacy of the regulatory regime. Occupational Safety Officers of LD were responsible for conducting surprise workplace inspections to help induce compliance with

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safety legislation. Improvement notices or suspension notices were issued to employers or contractors to secure prompt rectification of irregularities or removal of imminent risks. Prosecution would be instituted against duty holders who breached the law. For instance, an owner of a tower crane who contravened the relevant provisions of the Regulations was liable to a fine of \$200,000 and imprisonment for 12 months, and an employer or a contractor who contravened the relevant provisions of FIUO was liable to a fine of \$500,000 and imprisonment for six months. C for L further said that apart from conducting regular planned inspections at construction sites, LD had conducted four special inspections on tower cranes at construction sites in 2009. As the operation in construction sites changed from day to day and from process to process, regular planned inspections alone were inadequate to ensure construction safety. LD adopted a multi-pronged approach which included carrying out education and promotion campaigns to enhance the occupational safety awareness among employers and employees, gathering intelligence, and receiving complaints against and referrals on hazardous working conditions.

17. In response to Mr LEUNG's query on the effectiveness of the education and promotional campaign, C for L said that since she took up the post of C for L some 30 months ago, the number of accidents at construction sites arising from workers not wearing safety belt was on the decline. Most of the cases in the past six months were mainly caused by failures to attach the belts to suitable anchorages. Publicity had therefore helped enhance occupational safety awareness among workers. The number of accidents caused by fall of person from height, however, was expected to rise owing to an increase in repair, maintenance, alteration and addition (RMAA) works. RMAA works were mostly small-scale and scattered by nature, undertaken by small contractors or workers who were self-employed. They were generally less familiar with the occupational safety and health legislation and their workers were less aware of safety precautionary measures. To tackle the problem, LD had collaborated with District Councils to promote RMAA safety. It had also established with the Hong Kong Association of Property Management Companies, Housing Department, Hong Kong Housing Society and Urban Renewal Authority referral mechanism to enable the collection of intelligence on RMAA works, in order to facilitate prompt and targeted enforcement actions on such high-risk activities.

18. The Chairman enquired about the number of cases convicted out of the 1 222 prosecution cases and the heaviest and lightest penalty imposed on those convictions. She said that to her understanding, the sentence in many cases were light. She expressed concern that the level of penalty imposed was disproportionate to the amount of enforcement work done by LD, and queried the effectiveness of the regulatory framework to achieve deterrence.

19. C for L responded that the heaviest penalty imposed for non-compliance with work-at-height safety was \$150,000 and the average level of fine was in the range of \$10,000 to \$12,000 between 2007 and 2009.

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20. ACL(OS) supplemented that following the Causeway Bay accident and the publication of the Guidelines, the requirements with respect to the professional competence of specialist contractors and working crew had been tightened up. In this regard, principal contractors should only engage competent specialist contractors registered on the specialty of "Erection, dismantling and climbing" of tower crane trade of the Voluntary Registration Scheme administered by CIC to execute tower crane operation. Specialist contractors should employ competent persons and workmen with the appropriate qualifications, training and experience to perform all operations on tower crane taking into account the requirements set out in the Guidelines.

21. The Chairman said that while the specialist contractors should employ competent persons and workmen with the appropriate qualifications, training and experience, the specialist contractors themselves were only required to register on a voluntary basis with CIC. She urged the Administration to consider requiring them to register on a mandatory basis. Pointing out that no one was sentenced to imprisonment between 2007 and 2009 despite the occurrence of accidents that led to serious injuries and even deaths, she expressed concern that the penalty imposed could not achieve deterrence against malpractices. She requested the Administration to provide details of the case which involved a fine of \$150,000.

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22. C for L undertook to provide the requested information after the meeting.

On-site safety officer

23. Mr WONG Kwok-hing said that in order to reduce accidents in construction sites, there was a need for the Administration to review the employment policy of on-site safety officers. At present, an employer or a contractor was required to employ an on-site safety officer to monitor compliance with safety measures in the construction site. Given that an on-site safety officer who reported his employer's non-compliance with safety measures might result in his dismissal, he could hardly discharge his duties with due diligence. Mr WONG suggested that on-site safety officer should be recruited by LD and be accountable to LD, while his wages would be paid by the employer or contractor. He requested the Administration to consider the proposal.

24. Mr LEUNG Yiu-chung concurred with Mr WONG. He said that if LD intended to increase the number of Occupational Safety Officers to conduct more workplace inspections, it might as well employ more on-site safety officers who would have first-hand information on the situation on site. He said that the problem of construction safety should be tackled at root. He also requested the Administration to consider employing more supervising engineers who would inspect lifting appliances to ensure that they were made of strong material and were structurally safe.

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25. C for L responded that in accordance with the law, a registered safety officer who was employed to take care of occupational safety and health matters at workplaces was duty-bound to provide professional advice to the employer and help ensure that effective measures had been implemented. An employer was ultimately accountable for the safety and health of his employees at the workplace. Since Mr WONG came up with that proposal at the Panel meeting in October 2009, LD had collected information and examined the current duties of an on-site safety officer. The Administration would need more time to study the proposal and discuss it with relevant stakeholders.

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IV. Overview of Labour Department's efforts in labour administration in 2009

(LC Paper Nos. CB(2)765/09-10(05) and (06))

26. Secretary for Labour and Welfare (SLW) briefed members on the various programme areas in labour administration in 2009 as detailed in the Administration's paper.

Unemployment

27. Noting that the unemployment rate in Hong Kong had dropped, Dr LAM Tai-fai enquired about the industries that had benefited from the measures to create employment. Pointing out that the problem of unemployment should be resolved with inter-departmental efforts, he suggested that SLW should liaise with the Secretary for Development on how to revitalise industrial buildings with a view to creating more employment opportunities.

28. SLW responded that although the unemployment rate was still high, the labour market had improved with the unemployment rate having dropped by 0.2 percentage point recently. The financial services, hotel and tourism industries had benefited from the festivity of Christmas and the policy implemented by the Central People's Government to allow non-Guangdong residents in Shenzhen to visit Hong Kong under the Individual Visit Scheme. The construction sector had also benefited from the implementation of major infrastructure works projects and minor works projects. He would relay Dr LAM's concern to the Secretary for Development about the revitalisation of industrial buildings.

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29. Mr WONG Kwok-hing commended the work of LD and called for LD to continue making improvements on various aspects of employment services. Pointing out that poor town planning in Tung Chung had resulted in paucity of job opportunities despite the economically active population, he urged the Administration to provide more support services to help job seekers who resided in remote areas.

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30. SLW responded that the Administration was not complacent and would continue to improve its employment services. As far as Tung Chung was concerned, these included the forthcoming provision of more vacancy search terminals connected to the extensive job vacancy database of LD to non-government organizations (NGOs) in the district, organization of job fairs and district-based promotional activities, reaching out to the unemployed and offering them services and assistance through programmes such as those launched under the Community Investment and Inclusion Fund, as well as liaising with major local employers with a view to helping low-skilled workers seek employment in the areas of cleaning, catering, etc.

Recruitment centres and job fairs

31. Noting that LD had set up a Recruitment Centre for the Catering Industry (RCCI) in Wanchai in February 2009 to provide tailor-made job-matching service and on-the-spot interview arrangements for catering establishments and job seekers, Dr PAN Pey-chou enquired about the success rate of the 14 185 job seekers who attended on-the-spot interviews.

32. C for L responded that given that job seekers would not relay to LD their interview results, the success rate of on-the-spot interviews could not be reliably captured. Nevertheless, the effectiveness of RCCI was reflected by the 24.1% increase in the number of catering vacancies posted by LD in 2009 over 2008, despite the overall drop in job vacancies by 12.2% amidst the economic downturn. In addition, on-the-spot interviews were conducted in RCCI in over 90% of the working days.

33. Dr PAN Pey-chou noted that the problem of unemployment in some districts were more serious than others. He expressed concern that people who lived in remote areas and were interested in working in the catering industry would have to travel afar to attend on-the-spot interviews in RCCI. If they were successful, he wondered whether they could stay on the job for long, given the high transportation costs involved.

34. SLW responded that some districts, especially those populated with low-skilled job seekers or new arrivals from the Mainland, had a higher unemployment rate. The Administration had adopted a two-pronged approach to tackle the problem. Apart from setting up one-stop Recruitment Centres such as RCCI, LD also organized mini-job fairs at LD's 12 Job Centres in different districts to cater for the needs of employers and job seekers in the area. The number of job vacancies offered in mini-job fairs might be less than that in the Recruitment Centre, and companies conducting interviews in the Recruitment Centre might be larger in size as compared with local companies participating in mini-job fairs. With a variety of job vacancies offered by large establishments in the Recruitment Centre, job seekers would have a better understanding of the development of the relevant industry and the associated career path. In view of the effectiveness of RCCI, LD planned to set up in mid-

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2010 a Recruitment Centre for the Retail Industry to provide dedicated support for job seekers and employers of the industry concerned. While some job seekers preferred to work in their own districts, some did not mind travelling to other districts for a job with better pay and better prospect.

35. In response to Dr PAN Pey-chou's question about salary variations among districts, C for L explained that, to her knowledge, the level of pay was commensurate with the skills required. For instance, the pay and qualifications required for a waiter working in a restaurant inside a public housing estate would be lower than those working in Central as the latter was expected to perform multi-tasks in light of the more demanding customers.

Assistance to young people

36. Dr LAM Tai-fai enquired about the employment opportunities for young people under LD's different programmes and about the measures to be taken by the Administration to tackle the problem of unemployment arising from the implementation of the new academic structure for senior secondary and higher education (the 3-3-4 structure) in 2012.

37. SLW and C for L responded that LD administered the Youth Pre-employment Training Programme (YPTP) and the Youth Work Experience and Training Scheme (YWETS) to provide a full range of pre-employment and on-the-job training to young people aged 15 to 24 with educational attainment at sub-degree level or below. The two programmes had been revamped to provide a through-train service. LD had promoted the revamped Programme to secondary schools and educational institutions offering sub-degree programmes. It had also co-ordinated with the Vocational Training Council and the Employees Retraining Board to ensure that the programmes offered to young people would complement each other. During the 2008-2009 programme year, YWETS received around 11 000 training vacancies from about 3 300 employers. LD would review and adjust the revamped Programme to prepare for the challenge brought about by the 3-3-4 new secondary school academic structure.

38. SLW and C for L further said that the Internship Programme for University Graduates (IPUG) was a special and time-limited measure to assist recent university graduates to establish a foothold in the job market. At the onset of the financial tsunami, the number of job vacancies for university graduates had dropped substantially but job positions received by tertiary institutions between September and November 2009 had increased by 10%. According to tertiary institutions, the worst time for university graduates to secure employment could be over. Under IPUG, so far over 1 300 and 200 graduates had landed on internship positions in Hong Kong and the Mainland respectively. In the coming months, IPUG would also benefit graduates from the southern hemisphere.

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39. Mr CHAN Kin-por enquired about LD's target, in terms of the number of applicants, to join YPTP. Mr CHAN expressed concern about the difficulty of young people in holding on to a job and enquired about the measures to change their attitude towards work and life. He also enquired about the measures to help the "hidden youths".

40. SLW explained that YPTP was targeted at youths aged 15 to 19 who were unemployed. The current youth unemployment rate for this age group was 20%, amounting to 10 200 young people. As 5 300 young people out of 10 200 had attended training under YPTP in the 2008-2009 programme, the response was encouraging. To proactively assist young people in navigating their career journey, YPTP and YWETS had been revamped to provide a through-train service. The revamped Programme enrolled trainees on a year-round basis in place of two phases of recruitment per annum in the past so as to meet the training and employment needs of young people in a more timely and flexible manner. The skill they acquired would stand them in good stead in the long term. The revamped Programme also extended the provision of personalized career guidance and counselling services by 12 months for trainees who had secured employment.

41. Assistant Commissioner for Labour (Employment Services) (ACL(ES)) supplemented that as trainees of the revamped Programme were of diversified needs and characteristics, case managers would provide them with personalized career counselling and support services so as to assist them in overcoming any impediments to employment. On measures to support "hidden youths" facing employment difficulties, LD had collaborated with NGOs providing outreaching services for youth in launching special training programmes tailor-made for them. Under these special programmes, courses were designed with ample flexibility, including the provision of small-size classes with shorter durations and evening classes, in order to sustain trainees' interests in receiving pre-employment training and not to exert undue pressure on them.

42. C for L said that changing the mindset of young people would require the concerted effort of young people, employers and relevant stakeholders. She had visited classes organized by course providers and observed that young people had learnt the importance of perseverance and co-operation through games. Every year, LD would organize a ceremony awarding trainees with outstanding performance. On past occasions, employers and supervisors of the awarded trainees had shared their experiences, including how some young people had regained self-esteem and their performance in work had changed others' perception towards them, and how some trainees had later become mentors of other trainees. C for L stressed that patience and loving care were the keys to change the mindset of young people.

43. Mr CHAN Kin-por enquired whether resources were put in place to facilitate social workers to identify "hidden youths" on the Internet and to provide assistance to them proactively.

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44. SLW responded that the Administration was aware of the need to keep abreast of time. At present, some social workers in the Social Welfare Department (SWD)-funded NGOs were already working on the Internet to keep track of the hidden youths and identify any unusual behaviour or activity of young people on the Internet. SWD would keep in view the need to enhance this area of work in the future.

Assistance to the middle-aged and unemployed

45. Mr LEUNG Yiu-chung expressed concern that some middle-aged people, especially those between 50 and 55 years old, had difficulty in finding a job. SLW responded that a survey by the Census and Statistics Department indicated that work ability was the major consideration in recruitment, while age was a major consideration of only 6.4% of the employers. SLW further said that LD had enhanced the Employment Programme for the Middle-aged (EPM) by increasing the financial incentives to employers and extending the subsidy period. In the past six months, 2 400 placements were secured under EPM. He said that the middle-aged unemployed who had difficulty in seeking employment could call LD's hotline for assistance.

46. Noting that there were about 280 000 Hong Kong residents working on the Mainland at present, Mr WONG Kwok-hing expressed concern that those who returned home unemployed were not eligible to apply for the Comprehensive Social Security Assistance (CSSA) and public housing. In addition, their Mainland wives giving birth in Hong Kong would be required to pay a higher obstetrical fee. Mr WONG urged the Administration to provide more assistance to this group of people.

47. SLW explained that to be eligible for CSSA, an applicant must satisfy the residence requirement and the means test. A Hong Kong resident who returned from the Mainland must have resided in Hong Kong continuously for at least one year before the date of application in order to be eligible for CSSA. The Director of Social Welfare might, at his discretion, grant assistance to applicants who did not satisfy the residence requirements, but were in genuine hardship. He would relay Mr WONG's concerns over public housing and medical expenses to the relevant bureau.

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Labour relations

48. Mr LEE Cheuk-yan expressed dissatisfaction that the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance was repealed in 1997. He said that in accordance with Article 39 of the Basic Law, the Administration had the constitutional duty to implement International Labour Convention No. 98 (ILC No. 98) as applied to Hong Kong. While ILC No. 98 provided that the Government should promote the full development and utilization of machinery for collective bargaining between employers and trade

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unions with a view to reaching collective agreements, the Administration had not done so. He enquired about the number of collective agreements reached between employers and trade unions which were still in force.

49. SLW responded that ILC No. 98 did not impose an absolute obligation on the HKSAR Government to implement collective bargaining by legislation. ILC No. 98 allowed the State parties to take measures appropriate to national conditions to promote voluntary negotiation between employers and trade unions. In fact, the Administration had never stopped its work in promoting harmonious labour relations. At the central level, the Labour Advisory Board (LAB) was an important platform for discussions on an equal footing between employers and employees. At the industry level, LD established industry-based tripartite committees in nine major industries including, among others, catering and construction. At the enterprise level, LD maintained regular communication with more than one thousand human resources managers of different trades to facilitate information sharing and discussion on labour relations and good people management practices. It was noted that after voluntary negotiation, agreements had been reached between employers and employees engaged in the airline, printing, construction and transportation industries in respect of salary adjustments and paid leave.

50. Mr LEE Cheuk-yan said that while the Administration recognized the merits of collective bargaining, it had not implemented any substantive measures to promote it. He pointed out that the collective agreements involving the printing and airline industries were made years ago, while the agreements on salary adjustments for bus drivers and for steel bar benders were drawn up under the influence of employers and thus strictly speaking were not collective agreements. In addition, an airline operator had ceased consulting the trade union on salary adjustment. Mr LEE said that collective bargaining involved the establishment of a long-term relationship between employers and employees who would hold regular discussions with a view to reaching collective agreements on the terms and conditions of employment. Given that many employers did not recognize the status of trade unions and the practice of collective bargaining was not prevalent in Hong Kong, Mr LEE urged the Administration to introduce legislation on collective bargaining.

51. SLW responded that the Administration had no intention at that juncture to legislate for collective bargaining and that it would continue to promote voluntary conciliation and harmonious labour relations. He said that given the predominance of small and medium enterprises (SMEs) which accounted for 98% of the companies in Hong Kong, introducing legislation on collective bargaining would pose problems to local businesses.

Rights of employees

52. Expressing concern about the proliferation of false self-employment, Mr WONG Kwok-hing urged the Administration to enhance measures to protect

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the rights of employees. SLW responded that since the Panel meeting in November 2009 at which the subject was discussed, the Administration had been collecting statistics on cases relating to claims of false self-employment. The Administration would analyze the statistics to facilitate better understanding of the problem and revert to members. For the time being, the Administration adopted a three-pronged approach to tackle the problem which included strengthening promotion and publicity work to enhance public awareness, providing a more user-friendly consultation and conciliation service to employees in false self-employment in case of disputes, and stepping up enforcement action to safeguard employees' statutory rights. SLW cautioned that attempts to set out categorically in the law what constituted self-employment might be counterproductive since it would inadvertently provide guidance to those who intended to circumvent it.

53. Mr WONG Kwok-hing expressed dissatisfaction that the Government had set the trend to use agency workers in the delivery of government services under which no contractual or employer-employee relationship could be established between the Government and the agency workers. Noting that there were about 2 400 agency workers in some 50 bureaux and government departments and some workers' monthly pay was quite low, Mr WONG queried the appropriateness of the Administration to use agency workers.

54. SLW responded that the Civil Service Bureau planned to provide broad guidelines to bureaux and departments on the use of agency workers. To address the concern on the wages of agency workers, which were determined by their employers, bureaux/departments would be advised to require all bidders of such service contracts to state what wages they would pay to agency workers who would be assigned to work in the procuring bureaux/departments should their bids be successful. Their bids would not be considered if the quoted wages was less than the average monthly salary of miscellaneous non-production workers in all selected industries published in the latest Census and Statistics Department's "Quarterly Report on Wage and Payroll Statistics" at the time when bids were invited.

55. Mr LEUNG Yiu-chung expressed concern that with long working hours, employees could not find time to attend training to upgrade their skills or could not spend more time with their families. In addition, the introduction of a statutory minimum wage (SMW) could not resolve this problem.

56. SLW and C for L said that while the Administration was concerned about the long working hours of employees, legislating against long working hours could be counterproductive for it would entail far-reaching socio-economic implications such as reducing labour market flexibility crucial to the vitality of our economy while the public's views on this matter remained highly divergent. The Administration envisaged that the implementation of SMW would help alleviate the problem, as employees would be paid for the hours worked and there was no advantage for employers to prolong the working

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hours of employees. In addition, employers might also streamline the workflow so as to minimise overtime work.

57. Mr LEUNG Yiu-chung enquired about the protection for workers during the journey to and from work in inclement weather such as when black rainstorm warning or typhoon signal number eight was hoisted.

58. SLW explained that an employee who drove as a means of transport arranged or provided by or on behalf of his employer, including driving his own car at the instruction of his employer or taking company-operated/arranged transportation, would receive compensation if an accident occurred during his journey to or from work under normal weather. In inclement weather such as when red/black rainstorm warning or typhoon signal number eight or above was hoisted, an employee who travelled between his place of residence and his place of work within a period of four hours before the commencement of his working hours or after the cessation of his working hours for that day would also be protected. C for L supplemented that it was necessary to strike a balance between the interests of employers and employees. It would be unfair to require an employer to take responsibility of an accident that had caused bodily harm to the employee by a third party during the employee's journey to or from work under normal weather. Employees were already protected by existing law which regulated road safety and third-party insurance.

V. Any other business

59. The Chairman enquired when the Administration would revert to the Panel about the outcome of the review of the Transport Support Scheme. SLW responded that the Administration was working hard on the review. It would revert to the Panel at the earliest time possible.

60. The Chairman enquired when the Administration would introduce a legislative proposal to expand the scope of the Protection of Wages on Insolvency Fund (PWIF) to cover untaken annual leave pay under the Employment Ordinance (EO) (Cap. 57). SLW responded that the Administration had relayed issues raised by members at the Panel meeting on 18 June 2009 to the PWIF Board which had requested for more statistical information to facilitate discussion at the PWIF Board meetings to be held in February 2010.

61. Mr LEE Cheuk-yan enquired about the progress of the introduction of a legislative proposal to amend EO 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 require the employer who failed to comply with such an order to pay a further sum to the employee.

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62. SLW responded that LAB would need more time to review the legislative proposal as the Employment (Amendment) Bill 2009, which sought to create an offence relating to an employer's failure to pay any sum payable under an award of the Labour Tribunal and was currently being scrutinized by the Bills Committee, would have implications on the details of the proposal on compulsory reinstatement or re-engagement.

63. The meeting ended at 4:42 pm.

Council Business Division 2
Legislative Council Secretariat
15 March 2010