

立法會

Legislative Council

LC Paper No. CB(2)2200/09-10
(These minutes have been seen by
the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Monday, 12 July 2010, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon LI Fung-ying, SBS, JP (Chairman)
Hon IP Wai-ming, MH (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
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Alan LEONG Kah-kit, SC
- Member absent** : Hon LEUNG Kwok-hung
- Public Officers attending** : Item II
Mrs Erika HUI LAM Yin-ming, JP
Commissioner for Labour (Acting)

Mr Andrew YAM Kim-cheung
Chief Occupational Safety Officer (Support Services)
Labour Department

Mr HO Ho-leung
Deputy Chief Occupational Safety Officer (Support
Services Division) (Development Unit)
Labour Department

Item III

Mr Edward MAK Chun-yu
Principal Assistant Secretary for Labour and Welfare (Manpower)

Mr Leo AN Ka-lim
Controller, Student Financial Assistance Agency (Acting)

Ms Vivian CHAN Wai-yan
Assistant Secretary for Labour & Welfare (Manpower)

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

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

Ms Kiwi NG
Legislative Assistant (2) 1

Action

I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)2003/09-10)

The minutes of the meeting held on 20 May 2010 were confirmed.

II. Factories and Industrial Undertakings (Loadshifting Machinery) Regulation - Implementation of the Second Phase Certification Requirement
(LC Paper Nos. CB(2)1987/09-10(01) and CB(2)2005/09-10(01))

2. Commissioner for Labour (Acting) ("C for L") informed members that the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Cap. 59AG) ("the Regulation"), which was passed by the Legislative Council on 5 April 2000, set out the training and certification requirements for operators of 11 types of loadshifting machines as specified in the Schedule to the Regulation. Having regard to the limited training capacity available at the time of the introduction of the Regulation, the Administration had decided that the Regulation should be implemented in two phases. The first phase would apply to operators of forklift trucks, bulldozers, loaders, excavators, trucks and lorries. Subject to satisfactory progress of the first phase, the statutory requirements would be extended to the operators of compactors, dumpers, graders, locomotives and scrapers in the second phase. The first phase of the Regulation had been implemented in two stages. The provisions concerning the training requirements came into operation on 20 November 2000,

Action

empowering C for L to recognize training courses for operators of machines under the first phase. After a sufficient number of operators of loadshifting machines in the first phase had been trained and issued with valid certificates, provisions requiring those machines to be operated only by persons in possession of valid certificates came into operation on 1 September 2002. C for L said that as with the first phase of the Regulation, the second phase would be brought into operation in two stages. The first stage concerning the training requirement came into operation on 1 September 2006. The proposal to implement the second stage concerning the certification requirement was set out in the Administration's paper.

3. Mr WONG Kwok-hing enquired about the number of industrial accidents, including accidents caused by reversing vehicles, caused by loadshifting machines operated on construction sites since training was provided under the second phase in September 2006.

4. C for L responded that forklift truck accounted for more industrial accidents than other loadshifting machines. As to accidents involving loadshifting machines under the second phase, there were a total of three such accidents during the five-year period from 2005 to 2009. The Labour Department ("LD") was very concerned about accidents involving reversing vehicles on construction sites and had been collaborating with the construction industry to implement safety measures. It had joined hands with the Occupational Safety and Health Council ("OSHC") to provide financial assistance to self-employed drivers of heavy vehicles to install reversing video devices.

5. Mr WONG Kwok-kin expressed concern that loadshifting machines in the second phase, such as graders, locomotives, dumpers and scrapers, were not commonly used in the construction industry and there was a lack of interest in the market to run such courses. He enquired how LD would ensure that adequate training was provided to operators of those loadshifting machines and whether workers not working for the owners of those machines could attend the relevant courses so as to obtain the relevant certificates.

6. C for L responded that 100 out of the 108 operators of locomotives would complete their training in November 2010. As regards training for the operation of loadshifting machines not commonly used in the construction industry, owners of those machines would need to provide "in-house" training for their own operators and LD would recognize the courses and monitor the training. Given that owners of those machines were not running courses on a commercial basis, they would not normally offer training to workers of other companies. As a further measure to assist the industry, the Administration had secured the commitment of the Construction Industry Council Training Academy and OSHC to develop off-the-shelf training packages so that operators of loadshifting machines not commonly used on construction sites could receive the necessary training and certification in a timely manner in future. LD would conduct inspections to ensure quality of those training courses.

Action

7. The Chairman enquired about the validity periods of the certificates for operating the various loadshifting machines and how the validity periods were determined. C for L and Chief Occupational Safety Officer (Support Services) explained that the validity periods of certificates for different loadshifting machines were determined according to the complexity and hazardous operation of the machines, technological improvements made to the machines, and the views of relevant stakeholders. The certificates were generally valid for five years except for forklift truck which was 10 years given its comparatively simpler operation.

8. Mr WONG Kwok-hing enquired whether tower crane was covered by the Regulation. C for L replied in the negative as tower crane was not a loadshifting machine under the Regulation. She said that, however, following the collapse of a tower crane at a demolition site in Causeway Bay in July 2007, the Construction Industry Council had, after reviewing the operation of tower cranes on construction sites, issued in June 2008 the Guidelines on Safety of Tower Cranes which set out the good practices for enhancing the safety of tower crane operations for adoption by the construction industry. The Guidelines had served its intended purpose as there was full compliance with the safety standards during site inspections conducted in the previous year. In addition, workers were required to complete the relevant training in order to operate tower cranes on construction sites.

III. Monitoring of courses registered under the Continuing Education Fund

(LC Paper Nos. CB(2)2005/09-10(02) and (03))

9. Principal Assistant Secretary for Labour and Welfare (Manpower) ("PASLW") briefed members on the monitoring of courses registered under the Continuing Education Fund ("CEF") as set out in the Administration's paper.

Objectives and funding of CEF

10. Dr LAM Tai-fai enquired about the purpose of CEF and whether applicants could take courses not related to their work. He expressed concern that courses registered under CEF would lack focus if applicants were allowed to take any courses that interested them.

11. PASLW explained that the aim of CEF was to encourage people to pursue continuing education as Hong Kong became increasingly globalized and knowledge-based. Learners were eligible for CEF subsidy for the work-related and non-work-related courses they had pursued. CEF enabled people to take up continuing education or training that might stand them in good stead in the job market if they wanted to pursue new job types or add value to their current jobs, as well as further studies for personal interests or fulfilment. Meanwhile, there were other sources of training and retraining services for people to upgrade work-related skills which included, for instance, the courses offered by

Action

the Employees Retraining Board.

12. Mr WONG Kwok-hing enquired whether the Administration had conducted surveys to gauge learners' satisfaction towards courses registered under CEF and assess the effectiveness of CEF. He suggested that learners should be requested to fill in a standard questionnaire upon completion of a course so that the Office of CEF ("OCEF") could take prompt and appropriate follow-up actions.

13. PASLW responded that the Administration had commissioned Policy 21 Limited of the University of Hong Kong to conduct a survey on CEF applicants and those applicants who claimed reimbursement of course fees in 2009. The results were as follows: 76% of the respondents considered the CEF courses useful in arousing their interest in continuing education; 74% of the respondents who were employed considered that the knowledge they acquired would be put into good use; 91% considered that the courses had improved their vocational skills, and 79% considered that the courses had enhanced their self-confidence in work. PASLW added that to better protect the interests of CEF learners, course providers had been required to collect fees for CEF courses by equal monthly instalments since April 2010. In the survey, which was conducted before the implementation of the aforesaid measure, 74% of CEF applicants envisaged that the new measure would help protect their interests. At the request of Mr WONG, PASLW undertook to provide details of the survey findings after the meeting.

Admin

14. Controller, Student Financial Assistance Agency (Acting) (CSFAA) supplemented that each successful claimant of CEF would be asked to complete a questionnaire for the purpose of gauging their views on CEF and the feedback had been general.

15. Noting that the Finance Committee had approved a commitment of \$5 billion in 2002 to launch CEF and an additional injection of \$1.2 billion into CEF in 2009, Mr CHAN Kin-por enquired whether CEF would cease to exist upon depletion of the fund.

16. PASLW explained that the provision of \$5 billion for launching CEF was approved by the Finance Committee in 2002 as a non-recurrent commitment. The injection of additional funding of \$1.2 billion to CEF in July 2009 was one of the relief measures introduced by the Financial Secretary during the financial tsunami. The Financial Secretary had made it clear that the proposed injection was a special one-off arrangement and CEF should not be considered as a standing fund in the long run. Taking into account the applications received and that each eligible applicant was entitled to a total reimbursement amount of \$10,000 within a four-year period for a maximum of four claims from the date of opening of his account, it was expected that the funds of CEF would be fully committed by around the end of 2012.

17. Mr CHAN Kin-por enquired about the number of new companies formed for the purpose of running CEF courses and the staff establishment of

Action

the existing 290 course providers of CEF courses. CSFAA explained that as course providers were required to have at least two years' continuous experience in delivering similar courses in applying for registration of CEF courses, he was not aware that there was new company formed specifically for the purpose of running CEF courses. He added that the Administration did not have information on the staff establishment of the existing course providers.

18. Mr CHAN Kin-por expressed concern that some course providers would have to lay off employees when CEF applications ceased around late 2012 when the funds of CEF became fully committed. PASLW noted his concern.

CEF courses

19. Members noted that OCEF was responsible for vetting applications of CEF learners while the Hong Kong Council for Accreditation of Academic and Vocational Qualifications ("HKCAAVQ") was responsible for processing applications of courses to be registered under CEF. Courses might be registered as reimbursable courses under CEF after assessment by HKCAAVQ and approval by the Labour and Welfare Bureau ("LWB").

20. Mr Alan LEONG enquired whether courses falling outside the eight specified domains under CEF, namely, business services, financial services, logistics, tourism, creative industry, design, language, and interpersonal and intrapersonal skills for the workplace, could be registered as reimbursable courses under CEF. He held the view that the criteria for course registration under CEF should not be too rigid to deter course providers from developing new courses.

21. PASLW explained that following the review of CEF in 2007 and upon the implementation of the Qualifications Framework ("QF") in May 2008, all new courses were required to undergo formal accreditation by HKCAAVQ and be uploaded onto the Qualifications Register before they could be registered under CEF. Courses designed in accordance with the Specifications of Competency Standards ("SCS") developed by the respective Industry Training Advisory Committees under QF but falling outside the eight specified domains could also be registered under CEF. Since May 2008, over 400 courses had passed HKCAAVQ's accreditation and had been registered under CEF. PASLW added that the existing assessment criteria for registration of CEF courses had allowed for certain flexibility as HKCAAVQ would consider granting accreditation to a new course if at least 50% of its contents covered the sector-specific competencies applicable to the specified domain to which it belonged, while the remaining contents related to the industry sector and skill domains. The inclusion of SCS courses had also expanded the scope of courses offered under CEF.

Terms and conditions for CEF course providers

22. The Deputy Chairman expressed concern about the credibility of course providers and enquired about the criteria for assessing whether a course

Action

provider was suitable for running CEF courses.

23. PASLW explained that before any new courses might be registered under CEF, they had to undergo formal accreditation. The accreditation was a quality assurance process whereby the academic or vocational standard of the course, the governance and management structure of the course provider, the quality assurance mechanism, etc. would be examined. The courses to be registered by a course provider under CEF must be within the scope of the eight specific domains or SCS-based. *Inter alia*, HKCAAVQ would also consider the fitness and propriety of the course director and responsible person of the course provider concerned. The course provider was required to comply with a set of terms and conditions laid down in the Letter of Approval issued to it after the approval and registration of the respective courses under CEF ("the CEF Terms and Conditions").

24. Dr PAN Pey-chyou expressed concern about the quality of courses and qualifications of course instructors under CEF. PASLW explained that course providers were required to recruit an adequate number of appropriately qualified and experienced instructors under the CEF Terms and Conditions. When course providers applied for registration of their courses under CEF, they had to submit to HKCAAVQ the appointment criteria of the instructors. Generally, they had to provide specific information on the qualifications of the instructors for assessment. After a course had been registered under CEF, the course provider had to obtain written approval of the Administration before changing the instructors.

Student admission

25. Referring to the complaints he had received involving more than 20 learners, Dr PAN Pey-chyou expressed concern that some training providers had admitted students indiscriminately. If course providers had admitted learners who did not meet the admission requirements and consequently the learners could not pass the relevant examination, the learners were not eligible to apply for the reimbursement of 80% of the course fee from CEF. He enquired about the number of learners lodging complaints against such course providers.

26. PASLW explained that the CEF Terms and Conditions required course providers to specify in their applications for registration as CEF reimbursable courses the admission requirements of learners for the concerned courses. HKCAAVQ would assess if the admission requirements were appropriate in accordance with the levels and requirements of the respective courses. If approved, course providers were then required to conduct admission according to the requirements and maintain related documentary records. The transparency of the courses was enhanced by publication of updated records on CEF courses onto the OCEF website so as to facilitate learners to choose courses which suited their ability and needs. During the period from April 2007 to end-May 2010, OCEF received a total of 88 complaints against CEF reimbursable courses, involving 76 course providers. Altogether 38 of those

Action

complaints were substantiated or partially substantiated after investigation, involving 27 course providers which had failed to comply with the CEF Terms and Conditions, mainly in relation to publicity and promotional practices, course quality and delivery, refund of course fees as well as suspected fraud. For suspected fraudulent cases, OCEF would refer them to the relevant law enforcement agencies ("LEAs") for follow-up actions. In recent years, there was a decreasing trend in the number of complaints against CEF courses, which had dropped progressively from 59 in 2006-2007 to 25 in 2009-2010.

27. Dr PAN Pey-chyou said that remedial measures to penalize course providers for non-compliance with admission requirements could not compensate the financial loss of learners. He pointed out that many victims had low educational attainment and might not know how to access information via the OCEF website. As they might be misled to sign up for courses, the Administration should consider stepping up measures to protect the interests of learners. He enquired whether OCEF would consider deploying undercover agents to monitor admission malpractices of course providers.

28. CSFAA responded that there were practical difficulties to deploy undercover agents. PASLW added that OCEF had stepped up the monitoring mechanism by conducting more surprise inspections apart from regular inspections. OCEF would also expedite inspections of the records on new learners kept by course providers to ensure that they would comply with the admission requirements. In addition, the following measures had been implemented to step up protection for learners -

- (a) OCEF operated a 24-hour hotline answering enquiries relating to course information and handling complaints. The hotline number appeared on all the application forms, confirmation letters and the OCEF website;
- (b) OCEF had enhanced promotion to educate learners on how to select courses and course providers and alert them to the possible traps in admission. It had recently collaborated with the Consumer Council to increase learners' awareness of improper promotion tactics of course providers. In its May 2010 issue, an article in the Choice magazine had set out the essential steps for enrolling in CEF courses;
- (c) course providers were required to adhere to the CEF Terms and Conditions in respect of promotion of CEF reimbursable courses. OCEF might ask a course provider to withdraw or cease using promotional materials which it considered inappropriate and undesirable. In the past, some courses had been de-registered because of the course providers' malpractices in carrying out promotional activities; and
- (d) course providers had been required to collect course fees by equal monthly instalments since April 2010 so as to minimize the

Action

possible financial loss to learners.

29. Mr LEUNG Yiu-chung said that not many learners would take a comprehensive look at the courses available prior to enrolling in a course. The course fees of some popular courses, such as English language, were high and learners might have signed contracts requiring them to pay for the course fees by instalments for admission. By the time a learner realized that an unscrupulous course provider had deceived him or he was dissatisfied with the quality of the course, he had already paid for the course fees and his intention not to settle the outstanding amount might constitute a breach of the contract. Mr LEUNG enquired whether the Administration would consider setting up a central fund requiring every course provider to contribute its share so that learners could recover their losses for deceptive cases.

30. PASLW said that to address learners' concern, course providers registering their courses under CEF were required to collect fees for CEF courses by equal monthly instalments. At present, 70% of the courses registered under CEF were charging a fee below \$10,000. OCEF had stepped up promotion advising learners not to hesitate to make enquiries with the course provider about the course contents, the total amount of tuition fees, the number of instalments for tuition fee payment, etc. and to study the contractual terms carefully before signing any contract. In the case of language course, if a learner was unable to complete the course with the course provider due to its liquidation, he could still be eligible to claim reimbursement under CEF if he had attained the specified benchmark test requirement. PASLW added that the proposal to require course providers to contribute to a central fund departed from the established practice of CEF. He explained that CEF was learner-oriented. While subsidy was given by the Administration to the learner, there was no monetary transaction between the Administration and the course provider. In addition, Mr LEUNG's proposal might deter course providers from registering courses under CEF.

Inspection of CEF courses and other monitoring measures

31. Mr WONG Kwok-hing and Dr LAM Tai-fai expressed concern whether the monitoring of OCEF and HKCAAVQ on course providers had been effective.

32. PASLW explained that CEF course providers were subject to the on-going monitoring of OCEF and HKCAAVQ to ensure compliance with the CEF Terms and Conditions. During inspection, OCEF and HKCAAVQ required course providers to provide documentary proofs (such as enrolment forms, attendance record, assessment test and answer sheets, course evaluation forms, receipts of course fees and promotional brochures) of students who had applied for CEF reimbursement. In addition to regular inspections, OCEF also conducted surprise inspections during classes to check the attendance record and the number of learners present. A written warning would be issued to a course provider in case of any non-compliance with the CEF Terms and Conditions. If the breach was serious or repetitive in nature, LWB would, in

Action

consultation with OCEF and HKCAAVQ, consider de-registering the concerned courses from the list of CEF reimbursable courses.

33. Mr Alan LEONG enquired about the qualifications and turnover of inspectors. Dr LAM Tai-fai enquired about the inspection mechanism and the manpower involved.

34. CSFAA explained that the requirements of inspectors included, among others, university graduate having at least one year's post-qualification full-time working experience. They were employed on contract terms. Training would be provided to new recruits and they were required to familiarize themselves with the guidelines on inspection which set out the steps to take during inspection. Based on the observations they made during inspections and the documentary proofs and student records collected from course providers, inspectors were required to report its findings in a standardized format to ensure consistency in evaluation. To enhance the effectiveness of inspection, a risk-based approach had been adopted since 2007 under which course providers were categorized into high and low risk based on their previous performance. In general, those against which repeated and/or serious complaints had been lodged, those providing incorrect information to HKCAAVQ, LWB and OCEF, and new course providers would be grouped under the high risk category. At present, about 120 out of the 290 course providers were categorized as high risk and placed on a monitoring list. For course providers categorized as low risk, information on learners collected by OCEF in the previous six months would be despatched to course providers for verification. For high risk course providers on the monitoring list, inspections would be conducted every six months and the list would be reviewed every three months. If an inspector was satisfied with the performance of a high risk course provider after a couple of inspections, the course provider would be removed from the list. There were altogether four full-time inspectors who would carry out about 240 inspections a year. Including those conducted by HKCAAVQ, the number of course inspections reached 295 in 2009.

35. Noting that LWB had de-registered 34 courses involving six course providers and issued written warnings to 21 course providers since April 2007, Mr WONG Kwok-hing enquired about the reasons for de-registration. He pointed out that the issuance of written warnings would not help victims who had already paid the course fees. He enquired about the measures to deter course providers from breaching the CEF Terms and Conditions recklessly.

36. PASLW explained that some courses had been de-registered because of the course providers' malpractices in promoting their courses, providing misleading course information and improper administration of courses. In case of any suspected criminal activities, such as fraud, deception or bribery, OCEF would immediately refer the case to the relevant LEAs for follow-up. Between June 2002 and May 2009, OCEF had referred 14 suspected criminal cases to LEAs in which four cases had resulted in prosecution and one case was under investigation.

Action

37. Mr WONG Kwok-hing said that convicted cases should be reported in a press conference or a press release to make the public aware of the precautions in enrolling in courses. Mr CHAN Kin-por enquired whether LWB could revoke company licence of a course provider who had breached the law. Mr Alan LEONG enquired about the measure to prevent CEF learners from enrolling in courses offered by course providers which had been involved in running previous de-registration courses. The Deputy Chairman shared the concerns about the criteria for becoming a CEF course provider.

38. PASLW and CSFAA said that LWB did not have the power to revoke the company licence of a course provider which breached the CEF Terms and Conditions. LWB, however, would issue press release after each de-registration. In addition, the list of the de-registered courses would be published on the OCEF website for public information. As stated in the Guide to Assessment of Courses available to all course providers, the Administration would consider the responsible person and course director of a course provider in vetting applications for course registration under CEF, including whether the persons running the course were involved in previous de-registration cases. In considering whether or not a responsible person or course director was fit and proper to run a CEF course, HKCAAVQ and LWB would take into account, for instance, his track record, such as de-registration of courses. Where an application nominated an individual to serve as responsible person or course director but who had acted as responsible person or course director in courses which had been disqualified from registration within one year prior to the application, such nomination would normally be rejected. Even if the application was lodged one year after the relevant deregistration, the Administration would take into account the relevant individual's connection with the defaulting course provider and the seriousness of the breaches. At the request of the Deputy Chairman, PASLW undertook to provide written information on the related vetting criteria.

Admin

39. PASLW added that it was important for learners to be vigilant in selecting courses that suited their needs. OCEF had enhanced the transparency of CEF courses by including detailed information on CEF courses including names of courses and course provider, course outline, duration, the level of assessment result and attendance required in order to get CEF subsidy, tuition fees and refund mechanism on its website. A set of tips on selecting course providers and courses had also been uploaded onto the OCEF website since December 2009.

40. The meeting ended at 4:14 pm.