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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 17 June 2010**

Labour relations

Purpose

This paper summarizes past discussions of the Panel on Manpower ("the Panel") on labour relations.

Deliberations of the Panel on Manpower

2. According to information provided by the Administration, the work of the Labour Department ("LD") in labour relations includes, among others, promoting harmonious labour relations, conciliating labour disputes and claims, promoting good management practices and strengthening tripartite cooperation. The Panel discussed the overall labour relations at its meetings on 20 May 2004, 19 February 2009 and 19 March 2009, as well as labour relations in the construction industry at its meeting on 5 July 2007. The main concerns raised by members are summarized below.

Overall labour relations

3. Some members considered that legislation should be enacted to strengthen employees' right to collective bargaining. They asked whether the Administration would introduce legislative amendments to strengthen its role in settling labour disputes. The Administration responded that it had reservations about the enactment of legislation on collective bargaining for a number of reasons. First, 98% of the companies in Hong Kong were small and medium enterprises, and a collective bargaining system would pose difficulties to many small and medium enterprises. Second, collective bargaining would not be meaningful if employers were reluctant to participate. The Administration had addressed labour disputes mainly by conciliation under

which both employers and employees were encouraged to narrow differences through communication and resolve conflicts with mutual understanding. LD had closely monitored the labour relations scene and rendered timely assistance to employers and employees. In many cases, LD's early intervention had helped defuse many potential labour disputes.

4. Some members expressed doubt whether employer-employee relations had improved in recent years. They pointed out that in the face of the financial tsunami, pay cuts and layoffs had become prevalent and many employees were even forced to take unpaid leave.

5. The Administration responded that the financial tsunami had adversely impacted the economy of Hong Kong, triggering a series of business closures, insolvencies and redundancies. For instance, the number of labour disputes between October 2008 and January 2009 had risen by 64% over the corresponding period in the preceding year. The Administration noted that some companies had to lay off staff to maintain their businesses. It had appealed to all employers that they should reduce operating costs by redeployment of resources and increasing revenue by opening new markets. Redundancy and dismissal should only be the last resort.

6. A member 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, the member pointed out that employers should hold dialogue with trade unions. Furthermore, 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.

7. The Administration responded that it had made efforts to detect potential labour disputes and to forestall them before they erupted into full-blown conflicts. Had LD not intervened and promoted holding dialogues among the parties concerned in labour disputes, a mutually acceptable solution would not have been reached. LD was promoting communication between employers and employees and their respective organizations through the following avenues -

- (a) the Labour Advisory Board;
- (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.

8. The Administration advised that the settlement rate of disputes and claims handled by LD was 72% in 2008. 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.

9. A member considered 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. The member 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.

10. The Administration advised that when intelligence indicated that there were plans for wage reduction and retrenchment in particular 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.

Labour relations in the construction industry

11. Some members expressed concern about the problem of arrears of wages in the construction industry. The Administration responded that it had adopted a number of measures to clamp down on employers defaulting on wage payments. This included the conduct of vigorous workplace inspection, stepping up efforts to educate construction workers on their rights, gathering intelligence on non-payment of wages from trade unions and stepping up prosecution.

12. Some members considered that the Administration should introduce more severe measures to combat wage offences by contractors/subcontractors. A member enquired about the possibility of principal contractors making wage payments direct to their subcontractors' workers.

13. The Administration responded that to improve workers' protection, principal contractors were required to be responsible for any arrears of wages at their construction sites. In cases of wage default, the Government had the right to pay directly to the workers who were owed wages after the Labour Tribunal had awarded in favour of workers and to recover the payment so made

from the contract fees due to the principal contractor under the contract. While special provisions could be included in the subcontracts to facilitate the deduction of contract fees due to the subcontractors for wage payments by the principal contractors, the issue could be very complicated. The Administration would explore the viability of the proposed arrangement with other large property developers of Hong Kong.

14. A member expressed concern that some construction workers were forced to become self-employed as a means for their employers to evade their statutory responsibilities. The Administration responded that it would be for the court to decide whether an employer-employee relationship existed based on the facts of the case. Prosecution would be instituted when there was sufficient evidence of contravention of the relevant legislation.

15. Referring to the requirement for principal contractors to employ on-site labour relations officers ("LROs"), some members held the view that the Government should employ LROs direct in order to prevent conflict of interests. The Administration responded that LROs would be employed either by the consultant or by the principal contractor, depending on the nature of the projects concerned. LROs were required to be stationed on site to monitor payment of wages, check employment records, receive complaints and enquiries about wage payment from workers, and report irregularities to the engineer/architect supervising the contract.

Relevant papers

16. Members may wish to refer to the following minutes and papers for further details -

Minutes

- (a) minutes of meeting of the Panel on Manpower on 20 May 2004 [LC Paper No. CB(2)3203/03-04];
- (b) minutes of meeting of the Panel on Manpower on 5 July 2007 [LC Paper No. CB(2)2636/06-07];
- (c) minutes of meeting of the Panel on Manpower on 19 February 2009 [LC Paper No. CB(2)1273/08-09];
- (d) minutes of meeting of the Panel on Manpower on 19 March 2009 [LC Paper No. CB(2)1566/08-09];

Papers

- (e) Administration's paper entitled "Labour Department's Strategy on promoting good employer-employee relations" for the meeting of the Panel on Manpower on 20 May 2004 [LC Paper No. CB(2)2371/04-05(04)];
- (f) Administration's paper entitled "Measures to promote harmonious labour relations in the construction industry" for the meeting of the Panel on Manpower on 5 July 2007 [LC Paper No. CB(2)2355/06-07(02)];
- (g) Administration's paper entitled "Overview of Labour Department's efforts in labour administration in 2008" for the meeting of the Panel on Manpower on 19 February 2009 [LC Paper No. CB(2)864/08-09(03)]; and
- (h) Administration's paper entitled "Labour Department's response to the recent labour relations scene amidst the financial tsunami" for the meeting of the Panel on Manpower on 19 March 2009 [LC Paper No. CB(2)1078/08-09(05)].

17. The above minutes and papers are also available on the website of the Legislative Council (<http://www.legco.gov.hk>).

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