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**Panel on Manpower**

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for the meeting on 19 November 2009**

**Rights and benefits of the self-employed**

The issue of rights and benefits of the self-employed has not been discussed by the Panel on Manpower. However, Hon LEE Cheuk-yan asked a question on the labour protection for employees forced to become self-employed at the Council meeting on 20 December 2000. Hon CHAN Yuen-han also asked a question on the provision of social protection for the self-employed at the Council meeting on 18 December 2002. The wordings of the questions and the Administration's replies are in **Appendices I** and **II** respectively.

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Government will determine whether a rebate should be granted or surcharge imposed after having considered these three factors. Thus there has been no change in the purpose of the mechanism since it was first established.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, I think there is some inconsistency in the Secretary's reply. She said in the first part of her reply that the purpose of fuel rebate is to stabilize tariff. But in the final paragraph, she said that any future adjustments to the rebate will only be effected after going through the established procedure and with the Government's agreement. This gives us an impression that the Government is helping the HEC to play games of figures. Can the Government affirm that the rebate is an independent item? What criteria are adopted in effecting the agreement?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): *Madam President, I have to state clearly that the Government has not played any game of figures. In fact, the purpose of the basic adjustment mechanism is to pass the actual fuel cost onto consumers. However, in doing so, when fuel price suddenly surges or falls and if we do not take into account the need to stabilize tariff, the tariff that the public has to pay may fluctuate like a roller-coaster. Thus, when considering the fuel rebate for the power companies, the Government must also consider the factor of tariff stability before coming to a decision on fuel rebate or surcharge.*

**PRESIDENT**(in Cantonese): *Third question.*

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### **Labour Protection for Employees Forced to Become Self-employed**

3. **MR LEE CHEUK-YAN** (in Cantonese): *Madam President, A lot of employers have arranged for their employees to become self-employed before the implementation of the Mandatory Provident Fund (MPF) Scheme. As a result, these employees are deprived of their right to the contributions made by their employers, and no longer enjoy the protection of labour legislation such as the Employment Ordinance and the Employees' Compensation Ordinance. In this connection, will the Government inform this Council:*

- (a) *of the respective current numbers of construction workers, container truck drivers and massage workers joining the MPF schemes as employees and self-employed persons;*
- (b) *whether it knows the measures the Mandatory Provident Fund Schemes Authority (MPFA) will take to compel those de facto employers to make MPF contributions; and*
- (c) *of the measures the Labour Department will take to ensure that those persons who have a self-employed status but are actually not self-employed will enjoy the labour protection and rights provided in the various labour ordinances?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President,

- (a) According to the Mandatory Provident Fund Schemes Ordinance, the MPFA requires approved MPF trustees to provide relevant information on employees, including their names and business registration numbers. However, such information is not categorized according to the types of business. Therefore, we cannot provide detailed data on employees of different industry enrolled in MPF schemes. A breakdown by industry is, however, available from the two Industry Schemes as these schemes are established specifically for the catering and construction industries.

On the basis of the Census and Statistics Department (C&SD) figures, the MPFA estimates that there are about 16 700 employers, 21 600 self-employed persons and 239 400 employees in the construction industry who are required to participate in MPF schemes.

Up to yesterday, the number of employers, self-employed persons and employees in the construction industry having participated in the two Industry Schemes were 6 820, 13 550 and 69 300 respectively. These figures do not, however, fully reflect the actual participation, as some employers and self-employed persons may choose to join the master trust schemes or employer sponsored schemes under the MPF system, instead of the Industry Schemes.

According to Transport Department statistics, 36 000 persons were holders of container truck driving licences. However, the number of employees and self-employed persons who are actually engaged as container truck drivers have enrolled in MPF schemes are not available.

According to the statistics of the C&SD, massage workers (masseurs) are grouped under the "Personal Services Industries" category. The MPFA has to estimate the number of relevant employees and self-employed persons on the basis of the general category of "Personal Services Industries" and cannot arrive at a separate estimation of the number of masseurs in the category. Hence, the MPFA does not have the number of masseurs enrolled in MPF schemes nor the information on their employment status.

- (b) Under the MPF legislation, employers are required to enroll their employees in MPF schemes and make contributions to the relevant scheme to fulfill their legal obligations. As long as there is a *de facto* employer-employee relationship between the employer and employee, it will be an offence under the MPF legislation if the employer fails to enroll the employee in an MPF scheme and make contributions for him. Upon conviction, the employer may be fined \$100,000 and imprisoned for six months. The MPFA's enforcement team is responsible for inspection and investigation into non-compliance cases in order to protect the interests of scheme members. For those complaints related to labour relations, the MPFA is working closely with the Labour Department and will take joint actions where appropriate. Moreover, the MPFA has stepped up its public education and publicity efforts to remind employers of their MPF responsibilities.
- (c) The Honourable LEE Cheuk-yan asks what measures the Labour Department will take to ensure that those persons who have a self-employed status but are actually not self-employed will still enjoy the labour protection and rights provided in various labour legislation.

Under the Employment Ordinance, employers cannot vary their employees' employment terms without seeking the latter's prior

consent. If an employer unilaterally varies the employment terms, for example, changing his employees' status into self-employed to the detriment of the employees' protection and rights, the employees concerned may claim remedies for unreasonable variation of employment terms under the Employment Ordinance, which include reinstatement or terminal payment compensation. Since varying employment terms unilaterally is a breach of employment contract which may amount to constructive dismissal of an employee under common law, the employee concerned may, alternatively, claim compensation for dismissal in accordance with the contract and the Employment Ordinance against the employer.

Most importantly, even if an employer has changed the status of his employee into self-employed, he still has to fulfill his obligations under the various labour legislations, including the Employment Ordinance and the Employees' Compensation Ordinance, if the relationship between the parties remains essentially an employer-employee relationship.

Previous Court rulings indicated that the Courts would not simply look at the labelling of the person to determine the employment relationship. In determining employment relationship, the court has to consider a number of factors, for example, controlling power, that is, who is responsible for employing and terminating employees? Who pays the wages of the employees? What is the method of payment? Who decides the production procedure, production time and work practice, and so on? The other factor for consideration is the ownership and provision of essential elements for production, that is, who owns the production tools, who provides production materials and the workplace. Another factor is economic consideration, that is, is the person-in-control or personal-in-charge conducting a business. Who is responsible for the "profit and loss" risk? Therefore, if the relationship between the employer and employee involves employment relationship in essence, an employer cannot evade the responsibilities stipulated in the labour legislation or Mandatory Provident Fund Schemes Ordinance.

The Labour Department takes a serious view and has widely publicized the distinction between self-employed persons and

employees in respect of their rights and protection entitlement under various labour legislation. Employees are reminded to be aware of the fact that they will be deprived of their rights and protection once they become self-employed. They are also encouraged to approach the Labour Department for assistance whenever they are in doubt or difficulties.

Finally, the Labour Department actively provides conciliation services to help resolve disputes between employers and employees. If breach of labour legislation is detected, the Labour Department will take positive measures to gather evidence for taking out prosecutions to uphold justice for the employees. The Labour Department received a complaint against an employer who asked his employee to become a contractor instead of continuing to be employed under an employment contract during the year. The Labour Department has carried out conciliation for the case and subsequently referred it to the Labour Tribunal for arbitration as both parties failed to reach agreement. Moreover, the Labour Department is actively following up on the complaint case(s) put forward by the labour side on the tripartite meeting with the MPFA and labour representatives on employers' act of turning employees into self-employed to avoid making contributions to the MPF. If the employers concerned are found to have contravened the provisions of the Employment Ordinance, the Labour Department will certainly take thorough follow-up and investigation actions.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the figures show an unusual phenomenon, that is, of all the participants of MPF schemes, over 70% are self-employed persons while only 30% are employees. Why is there such a phenomenon? In fact, the reason is very simple. It is because the employers have changed the status of all the employees into self-employed, therefore the number of self-employed persons participating in MPF schemes is particularly high. We have learnt from cases reported to us that a lot of construction workers were changed to self-employed status by their employers. If these workers were changed to self-employed status, they will also lose the work injury protection under the Employment Ordinance. The Secretary mentioned in part (c) of the main reply that the Labour Department would take follow-up actions on complaint cases. However, I consider it futile and helpless. I would like to*

*ask either of the two Secretaries present in this Chamber this question: Is it possible to modify the existing system by means of discussing with the Hong Kong Construction Association and see whether they can provide self-employed persons with protection like labour insurance protection, or drawing up legislation to demand principal contractors of all construction sites to make contributions for their employees and self-employed persons regardless of their status, so as to enable them to enjoy labour insurance protection? It is because when the existing employees are turned into self-employed status, they will lose their entitlement to work injury compensation, thus it will become a very serious problem. I therefore hope that the system can be modified in this respect.*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I think employed persons and self-employed persons are different in nature. We have explained repeatedly that the Mandatory Provident Fund Schemes Ordinance does not allow employers to change the status of his employee into self-employed arbitrarily. If the persons concerned can prove their *de facto* employee status in light of some criteria used in Court precedents, employers will be unable to evade all the responsibilities under the employment contract. I think what we have to do now is not forcing the employers to discharge their obligations in order to keep the rights of self-employed persons level with the rights of the employed persons, as the working conditions of both groups of people should not be the same.

On the other hand, I think the figures mentioned by Mr LEE were inaccurate. I have to stress that we are now talking about the percentage of participation, and the number of employed persons enrolled in MPF schemes has in fact outnumbered self-employed persons. Notwithstanding we have heard a lot of stories about many employers apparently having changed the status of employed persons into self-employed; in fact, we have not received many complaint cases, as there are only 12 cases referred by trade unions. The Labour Department has conducted active follow-up action on these 12 cases. Moreover, it is found in several cases that some employers have denied of such actions. As a result, we have to carry on the follow-up action and investigation. However, the stance of the Government is very firm and clear, that employers

are not allowed, and I wish to remind employers not, to change the status of their employees arbitrarily.

We also call on all employees to bring along the evidence and report their cases to the Labour Department as soon as possible if they consider themselves employed persons but are treated unfairly by their employers who forced them to become self-employed persons. Undoubtedly, we will conduct thorough follow-up action. In fact, other than the case which has been referred to the Labour Tribunal as mentioned by the Secretary in the main reply, we will also refer the second case to the Tribunal for arbitration.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I would like to clarify the figures mentioned by Mr LEE Cheuk-yan a moment ago. Overall speaking, as of yesterday, 86% of the total workforce in Hong Kong has joined MPF schemes. It can be said that it is a rather high percentage. In the meantime, about 64% self-employed persons have joined MPF schemes. In other words, employees have already outnumbered self-employed persons. However, when I mentioned Industry Schemes in my main reply earlier, I said that those figures did not fully reflect the actual participation rate, as some employers might choose the Master Trust Schemes for their employees instead of the Industry Schemes.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, I would like the Secretary for Education and Manpower to reply this supplementary question. Will she hold discussions with the Hong Kong Construction Association? It is because in her explanation, she has just explained repeatedly how the complaint cases were handled.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, in fact, there is already a tripartite consultative body for the construction industry under the Labour Department, which consists of representatives of employers, employees and government officials. Through this tripartite body, we have been continuously promoting all kinds of rights and requirements under the labour legislation to employers and employees. At the same time, we have launched a series of MPF-related publicity efforts through this body. However, I think we cannot agree that the employment terms and

conditions of self-employed persons are identical to those of employed persons. It is incorrect to amend the legislation so that self-employed persons will enjoy the same benefits as employed persons.

**MISS CYD HO** (in Cantonese): *Madam President, thank you for allowing me to follow up this question once again. In case the MPFA enforcement team obtains evidence on the spot which proves that certain self-employed persons are actually employed by some employers during the inspection of some organizations, can the Government take some summary procedures to protect the rights of the employees? Or is it just like what the Government has said before, that the relevant employer will only assume its obligation and make contribution required by the MPF system after going through some procedures of the Labour Department or the Court?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, in fact, the MPFA enforcement team will have certain figures at hand when it conducts inspections, such as whether or not the relevant employer has enrolled its employees in MPF schemes, and so on. Actually, I mentioned in my main reply earlier that the trustee is obliged to provide the information of the employer to the MPFA enforcement team, because when it conducts inspections, it will focus on whether or not the employer has enrolled its employees in MPF schemes. Certainly, the concern of Miss HO is whether some self-employed persons are actually not self-employed, but *de facto* employed persons. If this is the case and if the enforcement team finds it suspicious, it will leaf through the former accounts of the company and check the previous conditions of the relevant persons before the change of status as I have just mentioned in my main reply, such as who is in charge of the work schedule, who purchases production tools and how the proceeds are split. Certainly, some information can be obtained after looking up these accounts. However, the most important thing is whether or not the employees are forced to have their employed status changed into self-employed status against their will. If that really happens, we very much encourage the relevant persons to lodge their complaints with the MPFA or the Labour Department, because it will only make our follow-up action easier if

they come forth and testify against the relevant employer. I can assure them that we will follow up each and every case if such complaints are received. Mr LEE has helped us a lot by referring over 40 cases to us. We can reassure that we will follow up these cases one by one.

**PRESIDENT** (in Cantonese): Miss Cyd HO, which part of your supplementary has not been answered?

**MISS CYD HO** (in Cantonese): *Madam President, I thank the Secretary for a detailed reply. However, my supplementary is: Does the Government have any summary procedure in place to make the relevant employer assume its obligation of making MPF contributions for its employees immediately, instead of following the old practice of settling the case through the Labour Department or court proceedings?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, perhaps I shall add a few points here. Currently, personnel from the Labour Department will jointly inspect some workplaces of higher risk (where the occurrence of such cases is possible) together with the MPFA enforcement team, including construction sites. Why do they have to carry out inspection together with personnel from the Labour Department? It is because Labour Department staff understand employment contracts better, so they can identify more clearly whether the workers are of self-employed status or employed status. As to whether there is any summary procedure in place to deal with these cases, I should say that the existing procedure is quite simple. If a worker files a complaint with the Labour Department, the Department will arrange a meeting with the relevant employer immediately and conduct conciliation work. If both parties come to agreement upon the completion of the mediation, then we may say that the complaint case has been resolved there and then. If the mediation fails, the case will be referred to the Labour Tribunal for arbitration. The waiting time for the Tribunal to handle such cases will not be too long, as the first hearing can take place after seven or eight days. As a result, the existing procedure is relatively simple. So far, we have only received 12 complaint cases from self-employed persons, in which only two have to be referred to the Labour Tribunal for arbitration.

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. However, only two Members have been able to ask supplementaries. The questions of Members are quite long, the replies of officials are also very long, and everybody has spoken in detail, but it ought not happen. Supplementaries should be as concise as possible. As we are running short of time, I can only allow two more supplementary questions, even though many Members in the queue will be disappointed.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, my supplementary is very simple. I know that as the unemployment rate in the construction sector is quite high, therefore even if the abovementioned cases exist, most of the workers will only choke with silent fury. As a result, not many complaint cases have reached the Labour Department. However, can the Government consider some practices similar to the work injury compensation system, which requires principal contractors to supervise their sub-contractors to enroll in MPF schemes, just as the one proposed by Mr LEE Cheuk-yan a while ago? I think this is also the proposal of our union, the Hong Kong Construction Industry Employees General Union. I hope the Government will consider this proposal seriously and see if the approach is workable. I hope the Government will respond to this question.*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I shall be brief. I hope employees will give vent to their fury. The most important thing is, they have to lodge their complaints. According to the relevant legislation, they can certainly identify who their employers are. This is my advice from beginning to end: the most effective regulatory mechanism is for the relevant persons to stand forth and complain.

**PRESIDENT** (in Cantonese): Last supplementary.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, there is a big difference between the number of people in the construction industry and the number of participants enrolled in MPF schemes. May I ask the Secretary if a concrete timetable and list of participants are already in place for the implementation and enforcement of the MPF Scheme?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I think I have already answered the supplementary of Mr LAU in my main reply. Concerning the figures, I have already made clear that they are not so representative. Overall speaking, as of yesterday, 86% of the total workforce in Hong Kong has joined MPF schemes. Since employers have the right to choose, therefore, it is not necessary for them to choose the two Industry Schemes, as they can opt for the Master Trust Schemes for their employees. In other words, the participation rate seems to be quite low in the light of the figures, but it does not necessary reflect the whole truth. On the other hand, the closing date for participation in the Master Trust Schemes is 29 January. In this respect, MPFA staff will certainly conduct inspection in due course in order to ensure that all employers have enrolled their employees in the schemes.

**PRESIDENT** (in Cantonese): Fourth question.

**PRESIDENT** (in Cantonese): Persons in the public gallery who wish to use a pager please leave the Chamber. I am sorry, Secretary, please go on.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:** Thank you, Madam President. Thus, it is not possible for us to put in a licensing renewal condition in order to raise the standards concerned, because the quality of a programme can be very subjective. Something which is of good quality to one Honourable Member may not be of good quality to another Honourable Member. Therefore, it is not possible for us to take subjective standards as a renewal condition.

**PRESIDENT** (in Cantonese): This Council has spent more than 16 minutes on this question. Now we shall proceed to the second question.

### **Provision of Social Protection for the Self-employed**

2. **MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, regarding the persistent rise in the number and percentage of self-employed persons in the working population over the past two years, will the Government inform this Council:*

- (a) *whether it will consider compiling cohort statistics on self-employed persons by items relating to their age, income, educational attainment, trades and job positions, and so on, and releasing such statistics on a regular basis; if it will, of the start time for that; if not, the reasons for that;*
- (b) *whether it will consider collecting relevant information on these people prior to their becoming self-employed, including the labour force categories (that is, "employer", "employee" and "unemployed", and so on) they belonged, and the trades and job positions they held; and*
- (c) *given that self-employed persons are not entitled to statutory rights and benefits applicable to employees and various types of employee compensation, and as quite a large number of them do not have*

*stable income, whether it will review the existing labour and social policies with a view to providing them with appropriate protection?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President,

- (a) Statistics pertaining to self-employed persons have already been compiled from the data collected in the General Household Survey (GHS). The statistics pertaining to self-employed persons analysed by sex and age, educational attainment, industry, occupation, monthly employment earnings and hours of work for 2000, 2001 and the first three quarters of 2002 are given in the Annex.

Statistics on the number of self-employed persons are published regularly in the "Quarterly Report on General Household Survey". In order to contain the volume of the report, the aforesaid statistical breakdowns pertaining to self-employed persons cannot be fully included in the report. Nevertheless, members of the public can enquire about such statistics from the Census and Statistics Department (C&SD) in person or via mail, telephone, fax or email.

- (b) At present, information on the economic activity and employment status, and so on, of the self-employed persons before they became self-employed is not collected in the core questionnaire of the GHS. The C&SD is planning to conduct a special topic enquiry on self-employed persons via the GHS around mid-2003. The enquiry will collect information on the situation of self-employed persons prior to their becoming self-employed.
- (c) Like the employers, self-employed persons are not employees and there is no need for the labour legislation and policies to give them any special protection. As regards social policies which cover areas such as medical care, health and social security, we determine the eligibility to such benefits with reference to income, assets and needs and ensure that those in need will be covered. The status of the applicant, whether self-employed or otherwise, is not part of the consideration. Also, self-employed persons are offered retirement protection under the Mandatory Provident Fund (MPF) System.

We are of the view that the current labour and social policies have already accorded protection to the needy self-employed persons.

## Annex

Table 1: Number of self-employed persons by age and sex, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

<i>Age group</i>	<i>Male ('000)</i>	<i>Female ('000)</i>	<i>Both sexes ('000)</i>	<i>Male ('000)</i>	<i>Female ('000)</i>	<i>Both sexes ('000)</i>	<i>Male ('000)</i>	<i>Female ('000)</i>	<i>Both sexes ('000)</i>
15-29	9.3	5.8	15.1	13.1	7.4	20.5	14.9	7.7	22.6
30-39	31.5	7.9	39.4	38.7	10.0	48.7	39.6	11.7	51.3
40-49	50.1	8.4	58.5	63.3	11.9	75.2	71.9	13.8	85.7
50-59	30.6	4.8	35.3	37.3	4.8	42.2	41.1	7.7	48.8
60 and over	12.1	2.2	14.3	14.0	2.2	16.2	15.5	3.1	18.6
Total	133.5	29.1	162.6	166.4	36.3	202.7	183.1	44.0	227.0
As a percentage of total employed population			(5.1%)			(6.2%)			(7.1%)

Table 2: Number of self-employed persons by educational attainment, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

<i>Educational attainment</i>	<i>2000 ('000)</i>	<i>2001 ('000)</i>	<i>2002 Quarter 1 to Quarter 3 ('000)</i>
No schooling/Kindergarten	3.4	4.0	4.5
Primary	40.5	48.8	52.6
Secondary/Matriculation	95.6	123.0	134.3
Tertiary			
- non-degree	8.4	9.1	12.9
- degree	14.7	17.9	22.8
Total	162.6	202.7	227.0

Table 3: Number of self-employed persons by industry, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

<i>Industry</i>	<i>2000 ('000)</i>	<i>2001 ('000)</i>	<i>2002 Quarter 1 to Quarter 3 ('000)</i>
Manufacturing	8.5	9.8	9.8
Construction	8.7	23.9	31.3

<i>Industry</i>	<i>2000</i> <i>('000)</i>	<i>2001</i> <i>('000)</i>	<i>2002</i> <i>Quarter 1 to Quarter 3</i> <i>('000)</i>
Wholesale, retail and import/export trades, restaurants and hotels	54.1	59.8	61.7
Transport, storage and communications	54.7	60.3	64.2
Financing, insurance, real estate and business services	11.7	18.4	23.1
Community, social and personal services	21.6	28.4	33.4
Others	3.3	2.0	3.4
Total	162.6	202.7	227.0

Table 4: Number of self-employed persons by occupation, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

<i>Occupation</i>	<i>2000</i> <i>('000)</i>	<i>2001</i> <i>('000)</i>	<i>2002</i> <i>Quarter 1 to Quarter 3</i> <i>('000)</i>
Managers and administrators and professionals	3.5	4.4	6.4
Associate professionals	42.2	53.6	60.9
Clerks	0.9	1.8	2.0
Service workers and shop sales workers	33.0	38.0	40.9
Craft and related workers	15.4	30.3	35.6
Plant and machine operators and assemblers	56.9	61.5	64.5
Elementary occupations	7.5	11.2	13.4
Others	3.2	2.0	3.4
Total	162.6	202.7	227.0

Table 5: Number of self-employed persons by monthly employment earnings, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

<i>Monthly employment earnings</i> <i>(\$)</i>	<i>2000</i> <i>('000)</i>	<i>2001</i> <i>('000)</i>	<i>2002</i> <i>Quarter 1 to Quarter 3</i> <i>('000)</i>
< 3,000	9.8	15.4	23.1
3,000-3,999	5.2	7.7	10.6
4,000-4,999	5.3	7.2	10.3

Monthly employment earnings (\$)	2000 ('000)	2001 ('000)	2002
			Quarter 1 to Quarter 3 ('000)
5,000-5,999	8.7	10.9	17.5
6,000-6,999	9.5	13.0	19.4
7,000-7,999	9.9	13.7	19.1
8,000-8,999	17.4	22.7	23.5
9,000-9,999	9.2	13.5	13.8
10,000-14,999	47.1	53.3	43.4
15,000-19,999	17.9	20.5	19.7
20,000-29,999	15.5	16.7	16.9
≥ 30,000	7.2	8.1	9.7
Total	162.6	202.7	227.0

Table 6: Number of self-employed persons by hours of work during the seven days before enumeration, 2000 to 2001 and 2002 Quarter 1 to Quarter 3

Hours of work during the seven days before enumeration	2000 ('000)	2001 ('000)	2002
			Quarter 1 to Quarter 3 ('000)
< 20	12.3	14.0	21.3
20-29	5.3	7.8	9.5
30-34	3.0	4.2	5.4
35-39	10.2	16.5	20.4
40-44	23.1	34.5	40.0
45-49	30.2	36.0	35.9
50-54	22.4	24.1	23.5
55-59	7.9	7.9	8.3
≥ 60	48.3	57.7	62.8
Total	162.6	202.7	227.0

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, the Secretary stated in his reply to part (c) of my main question that the Government was of the view that the current labour and social policies had already accorded protection to the needy self-employed persons. However, according to the government figures we have at hand (although the Government has already provided detailed information, some parts are still missing, and I hope the Secretary will further supply the supplementary information later), we see clearly that the number of self-employed persons engaged in construction industry has multiplied several times, from some 8 000 in 2000 to over 30 000 in 2002, since the implementation of the MPF System. In fact, I have received many complaints regarding construction workers being forced to become self-employed after the*

*implementation of the MPF. What worries the trade is that being self-employed, they will be at a loss if they sustain injuries in the course of work. Therefore, when the Secretary replied just now that the Government considered the current labour and social policies had already accorded protection to the needy self-employed persons .....*

**PRESIDENT** (in Cantonese): I am sorry, Miss CHAN, please put forward your supplementary question and do not express your opinion.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, my emotions are only a bit worked up with this. (Laughter) The figures have already indicated that the number of self-employed persons in the construction industry has increased by multiples, why does not the Government make consideration in the policy aspect? If self-employed persons sustain injuries in accidents, what should they do?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, there are many self-employed persons engaged in the construction industry. In Miss CHAN's view, some of them are forced to become self-employed. However, I believe the most important concern is to ascertain whether they are self-employed, or they are indeed employees. To prove the employee status of a person, various evidence certainly have to be taken into account, and the evidence required is subject to each case, but I am not going to explain the details here. For those who are not given the job title as employee but are employees by nature, and have entered into an employment contract with the employer, or able to provide evidence to prove their status, their employer definitely cannot evade their responsibility as employer, such as the liability of paying employees' compensation as mentioned by Miss CHAN earlier. In fact, as indicated by the prosecution cases initiated by the Mandatory Provident Fund Schemes Authority, if the person concerned was proved to be an employee but not a self-employed person, the Court would order the employer to hear his responsibility. On the other hand, self-employed persons have to take out personal accident insurance policy to protect themselves. The Labour Department is negotiating with insurance companies to see if they can offer a special category of insurance cover for self-employed persons.

**MS LI FUNG-YING** (in Cantonese): *Madam President, I would like to raise a supplementary on the main reply of the Secretary. The Secretary simply said that like employers, self-employed persons were not employees and the current labour and social policies had already accorded sufficient protection to them. What I wish to ask is, at present, some self-employed persons who are engaged in high-risk industries have failed to obtain insurance cover. Does this illustrate that there is a need for the current policy to be reviewed?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): *Madam President, like other employers, self-employed persons in fact have to run the risks incurred in business and economic activities. Self-employed persons, certainly, should also have their protection, for example, they have to take out their own insurance cover. In this connection, self-employed persons, like employers, should consider taking out insurance from insurance companies. However, as risks are involved, I believe this has to be left to the market to decide. In answering Miss CHAN Yuen-han's supplementary question just now, I have already said that if self-employed persons encountered difficulties in obtaining insurance cover, or if the premium involved is too high, we are ready to provide assistance. For example, we could negotiate with the insurance sector to see if they can develop some products for self-employed persons priced at reasonable levels.*

**MR LEUNG FU-WAH** (in Cantonese): *Madam President, I wish to ask the Secretary did he notice that in Table 3 of the Annex to the main reply, the number of self-employed persons has increased by 3.6% over the past two years, from 8 700 to 31 300? Was the Secretary aware that since the MPF System came into operation, insurance companies would check the names of victims against the list of the MPF schemes on the occurrence of accidents at work involving injuries; and if the persons concerned are self-employed, no workmen's compensation would be offered? The Secretary said earlier that special categories of insurance cover would be offered to the self-employed, could he provide the timetable for this?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): *Madam President, in fact, the Labour Department has been*

negotiating with insurance companies during the past couple of months. I understand that Members are concerned about this, and I hope a solution would come by without delay within the next few months.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary said that negotiations with insurance companies were carried out, but I think he might have got the wrong tone. Everyone can take out a life insurance, but the primary concern is whether the Secretary will amend the Employees' Compensation Ordinance (ECO) to extend the compensation coverage to self-employed persons? If so, insurance companies will naturally have to provide such insurance policies. Under the negotiations between the Secretary and the insurance sector, the insurance companies will only provide life insurance or other insurance products for the self-employed. Is the Secretary going in the wrong direction? Should the ECO be amended first to extend the coverage to the self-employed? If amendments are made, disputes and litigation can be avoided. Otherwise, if an employer who loses the case cannot afford to pay the compensation out of his own pocket, both the employer and the employee will have to suffer. Will the Secretary have some far sight and consider amending the relevant ordinance?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, as I have stated in my reply to Miss CHAN Yuen-han earlier, this is a matter of view and perspective. Should self-employed persons be regarded as employees? Or are they in fact running a business of their own who should bear risks as other employers do? We should remember that under the definition of self-employed persons in the Mandatory Provident Fund Schemes Ordinance (MPFSO), a partnership or a sole proprietor, as well as any person engaging employees to work for him are included. Under the Ordinance, self-employed persons may be employers themselves, thus we can see such a great number of these people in this category. I think this is merely a matter of principle. It seems to me that Mr LEE Cheuk-yan considered that if self-employed persons also include employers, it should be mandatory for them to take out insurance, or for insurance companies to undertake their insurance. However, I think self-employed persons and employers are actually similar by nature, they should also undertake the risk incurred in commercial activities. In respect of insurance, we are certainly not talking about life insurance but accident insurance. In fact, personal accident

insurance policies are offered in the market, however, as I have just said, the construction trade may have to pay a much higher premium for personal accident insurance. What we can do is to negotiate with the insurance sector, and see if they can offer specific products for self-employed persons at reasonable prices.

**MR MICHAEL MAK** (in Cantonese): *Madam President, there are many enticements for the relevant persons to choose to become self-employed, and the main one is to seize the opportunity to evade tax and MPF contributions. Will the Administration inform us of the effective measures in place to plug the loopholes in this respect? On the implementation of relevant ordinances and policies, so that those people who are self-employed understand that they should not evade tax even if they are self-employed.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): *Madam President, I have to thank Mr MAK for his question. However, Mr MAK might have get it wrong, as self-employed persons are also liable to taxation. Moreover, under the MPFSO, the self-employed are also obliged to make MPF contributions. In fact, self-employed persons in Hong Kong represent about 7% of the labour force or working population, while in Britain, United States and Canada, the relevant figures are 7%, 11% and 15% respectively, thus I do not find the figures in Hong Kong too high. Moreover, I believe there is nothing particularly amiss about being self-employed, and Miss CHAN Yuen-han and many other Members have provided much assistance to the self-employed. Take the local community economy or the Dragon Market as an example, those operators are also self-employed persons. Self-employed persons may also make their business a success, and it is also a good thing for them to develop their own business and make money.*

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, perhaps the Secretary is not fully aware of some of the problems involved. I know that owners, business associations and trade unions of the construction industry are conducting negotiations on obtaining insurance cover for construction workers. However, the insurance sector said that such workers do not fall within the definition of labour. The construction industry has thus urged the Government to amend the ordinance. Insurance companies said that it was the underwriters who refused to underwrite such insurance other than they and thus urged the*

*Government to amend the ordinance to provide protection also to such workers in case of they sustain injuries in the course of work. May be my question so broad that the Secretary cannot grasp the focus all at one time. In this connection, is the Government prepared to amend the relevant ordinances to provide protection to construction workers?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I have to thank Miss CHAN for her question. In fact, I am replying the question all along, and I think there is only a difference in perspective. I have said earlier, it is a fact that an employer must take out insurance for his worker or employee. However, if such persons are self-employed instead of being employees, then should we amend the relevant ordinance to require for the procurement of insurance for such persons? I have repeatedly stated that, if they are self-employed, they are by nature similar to other trade operators or self-operating businessmen. If they are only self-employed persons in name, and their employee status remain in substance, then such employers cannot evade their responsibility.

**PRESIDENT** (in Cantonese): This Council has spent more than 14 minutes on this question. This is the last supplementary question.

**MR HENRY WU** (in Cantonese): *Madam President, the Secretary has provided the number of self-employed persons by industry in Table 3 of his main reply, and I notice that the number of self-employed persons has increased across the board. However, some of the industries are quite big, in particular the financing and insurance services industry which the Secretary is very familiar with, and which we know that a number of companies in that industry has closed down. Will the Secretary inform this Council of the many industries listed in Table 3, what are the trades in which the number of self-employed persons has decreased? Moreover, will the Secretary list the number of self-employed persons engaging in the financial, insurance and real estate industries respectively?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, in fact, the relevant figures, Mr Henry WU are interested in, of the financing, insurance and real estate trade in 2000, 2001 and the first three quarters of 2002 in which Mr Henry WU is interested, have

already been listed in Table 3. Those figures indicate a growing trend in the number of self-employed persons, and I believe Mr WU has probably noticed that. In the year 2000, there were about 11 000 self-employed persons; in 2001, there were about 18 000, and in the first three quarters of 2002, there were about 23 000. The relevant figures have been listed out.

**MR HENRY WU** (in Cantonese): *Madam President, will the Secretary provide a breakdown on the number of self-employed persons grouped under the head of financing, insurance, real estate and business services. Does the Secretary have such figures?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I have to approach the C&SD for such breakdowns, and will provide a written reply to Mr WU if they are available. (Appendix I)

**PRESIDENT** (in Cantonese): Third question.

## Appendix I

## WRITTEN ANSWER

**Written answer by the Secretary Economic Development and Labour to Mr Henry WU's supplementary question to Question 2**

Please find below a breakdown on the number of self-employed persons in the financing, insurance, real estate and business services sector for Members' reference.

Number of self-employed persons engaged in the  
financing, insurance, real estate and business services sector by industry,  
2000 to 2001 and Quarter 1 to Quarter 3 2002

	<i>2000</i>	<i>2001</i>	<i>2002</i> <i>Quarter 1 to</i> <i>Quarter 3</i>
	<i>('000)</i>	<i>('000)</i>	<i>('000)</i>
Financing	0.6	1.1	1.4
Insurance	2.9	7.3	9.5
Real estate	1.2	1.6	2.1
Business services	6.9	8.4	10.2
Financing, insurance, real estate and business services*	11.7	18.4	23.1

\* Figures may not add up to the corresponding totals owing to rounding.