

立法會
Legislative Council

LC Paper No. CB(2)1005/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Thursday, 16 December 2010, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon LEE Cheuk-yan (Chairman)
Hon LI Fung-ying, SBS, JP (Deputy Chairman)
Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Alan LEONG Kah-kit, SC
- Member attending** : Hon Albert CHAN Wai-yip
- Member absent** : Hon LEUNG Kwok-hung

Public Officers attending : Items III to V

Mr Matthew CHEUNG Kin-chung, GBS, JP
Secretary for Labour and Welfare

Mr Paul TANG Kwok-wai, JP
Permanent Secretary for Labour and Welfare

Mr CHEUK Wing-hing, JP
Commissioner for Labour

Miss Mabel LI Po-yi
Assistant Commissioner for Labour (Special Duties)

Item III only

Ms Betty NG Shuk-fong
Senior Labour Officer (Employment Services)
(Transport Support Scheme)
Labour Department

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

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Miss Josephine SO
Senior Council Secretary (2) 1

Mr Ian CHOW
Council Secretary (2) 1

Ms Camy YOONG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)521/10-11)

The minutes of the meeting held on 21 October 2010 were confirmed.

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II. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)533/10-11(01) and (02))

2. Members agreed to discuss the following items proposed by the Administration at the next regular meeting to be held on 20 January 2011 at 2:30 pm -

(a) An overview of the latest position of redundancy, business cessation and the Protection of Wages on Insolvency Fund ("PWIF"); and

(b) Hong Kong's occupational safety performance in the first half of 2010.

3. The Chairman asked whether the Administration would provide under the agenda item in paragraph 2(a) above a progress report on its preparatory work for introducing a bill to give effect to the proposal of extending the scope of PWIF to cover untaken annual leave pay. Secretary for Labour and Welfare ("SLW") advised that the Administration would strive to complete all necessary preparatory work for the introduction of a bill as soon as practicable, and would keep the Panel informed where necessary.

III. Work Incentive Transport Subsidy Scheme

(LC Paper Nos. CB(2)533/10-11(03), CB(2)343/10-11(02) and (CB(2)593/10-11(01))

4. Members noted that in addition to the papers issued before the meeting, a submission from Hong Kong Council of Social Service on the Work Incentive Transport Subsidy ("WITS") Scheme was received and tabled at the meeting.

(Post-meeting note: The submission from Hong Kong Council of Social Service was issued to members vide LC Paper No. CB(2)621/10-11 on 16 December 2010.)

5. SLW briefed Members on the details of the proposed WITS Scheme, as set out in the Administration's paper.

Eligibility criteria

6. Mr WONG Kwok-hing noted with concern that applicants were subject to a household-based means test on income and asset. Referring

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to the income and asset thresholds for the WITS Scheme as set out in Annex 1 to the Administration's paper, Mr WONG pointed out that a couple each earning \$6,000 a month would no longer be eligible for applying for subsidy under the proposed WITS Scheme as a result of the restrictive income limit of \$8,500 for two-member families, despite the fact that they were qualified respectively for receiving allowances under the Transport Support Scheme ("TSS"). He said that the income limits for different household sizes were set at too low a level, which in his view should be raised in order to benefit more low-income employees. His view was echoed by Mr WONG Kwok-kin, Dr PAN Pey-chyou and Mr CHEUNG Kwok-che.

7. Mr CHEUNG Kwok-che suggested that the Administration should make reference to the income and asset limits for households applying for public rental housing, in determining the thresholds for the WITS Scheme. He was concerned whether the Administration had formulated any mechanism to review and adjust the household income and asset limits under the WITS Scheme.

8. In response, SLW made the following points -

- (a) for the purpose of the WITS Scheme, different income and asset thresholds for households of different sizes were set having regard to income statistics and the prevailing thresholds for comparable financial assistance schemes administered by the Government, such as student financial assistance, medical fee waiver, public rental housing and Comprehensive Social Security Assistance ("CSSA"). The income thresholds for the WITS Scheme were in general close to 60% of the median household income for the corresponding household size as reflected in the General Household Survey ("GHS") conducted by the Census and Statistics Department ("C&SD") in the second quarter of 2010, and that for one-member households was close to the median household income;
- (b) regarding asset limits, they were not too stringent as they were two to three times of those under the CSSA Scheme for the same household size;
- (c) income included earnings from employment and other income. An employee's mandatory contribution to a Mandatory Provident Fund Scheme and financial assistance provided by the Government would be disregarded; and

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- (d) asset included land/properties, cash, bank deposits, vehicles, transferrable vehicle licences, cash value of insurance policies, investments and other readily realizable assets including those within and outside Hong Kong. A self-occupied property was, however, not included.

9. SLW further advised that to recognize the fact that elders tended to hold on to some assets for meeting unforeseen expenses and as a form of old age security, households with elderly members could enjoy a higher asset limit. For each elderly member, aged 60 or above, of the household, the household asset limit would increase by \$35,000.

10. Mr IP Wai-ming queried the sincerity of the Administration in helping the low-income groups, given the high income and asset thresholds for applying transport subsidy under the WITS Scheme. He shared the view that the Administration should raise the eligibility limits to benefit more low-income employees.

11. In response, SLW advised that in designing the WITS Scheme, the Administration had adopted a targetted approach in an endeavour to assist those who were in genuine need on the one hand, and to minimize the chances for abuse on the other. Against this background, the Administration decided that applicants should be means-tested on a household basis. Subject to all the eligibility criteria being met, a monthly subsidy of \$600 would be provided to each qualified applicant. SLW stressed that the WITS Scheme was designed to benefit as many people as possible and its coverage was extended to include self-employed people. It was considered that the new scheme was more comprehensive and would benefit more people.

Conducting means test on a household basis

12. Mr WONG Sing-chi cautioned that there was a possibility that some low-income workers who were qualified recipients of transport subsidies under the existing TSS might be left out from the proposed WITS Scheme owing to the significant difference in the ways of assessing applicants' income and assets under the two schemes. He shared the view of Mr WONG Kwok-hing that applicants should be given the choice of undergoing a means test on a household basis or individual basis.

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13. Echoing the view of Mr WONG Sing-chi, Mr Andrew CHENG considered the household-based means test requirement far from desirable, especially when the measure would have impact on the entire family and that the harmony of the family would be adversely affected. He said that if the application processing procedures and assessment criteria for the grant of transport subsidy under the WITS Scheme were clear and transparent, the chances for abuse would be quite unlikely. Mr CHENG queried the rationale for adopting the household-based means test requirement.

14. SLW explained that to ensure that public resources were channelled to low-income earners genuinely in need, applicants should be means-tested on a household basis. A household-based means test was considered more equitable than one that assessed only the individuals' income and assets because the economic situation of the household was taken into consideration. This also accorded with the aim of the Administration to identify low-income families as the target recipients. There would also be less room for abuse through transfer of assets among different household members.

15. Notwithstanding the Administration's explanation, Mr LEUNG Yiu-chung and Mr Albert CHAN considered the WITS Scheme a retrogressive proposal when compared with TSS which assessed only the individuals' income and assets, especially when considering that it might result in some eligible recipients under the existing TSS being driven out of the net or lead to conflicts and disputes among family members. They strongly requested the Administration to retain the existing individual-based mechanism for applying transport subsidy and allow applicants the choice of undergoing a means test on a household basis or individual basis, in implementing the WITS Scheme.

16. In response, SLW reiterated the Administration's stance that public resources should be targetted at helping those with a greater need. He further advised that there would be practical difficulties and confusion in implementation if applicants were allowed to choose whether to be means-tested on a household or individual basis.

17. The Chairman said that the eligibility criteria for the proposed WITS Scheme reflected that the Administration was unclear as to whether the scheme should be intended as a work incentive or a form of welfare measure to address the problem of working poverty and assist the working-poor households. The Chairman further said that the need to pass a restrictive income and assets assessment would only increase the

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psychological pressure on applicants. He considered that the Administration should drop the means test requirement.

18. Mr WONG Kwok-kin and Mr IP Kwok-him enquired about the meaning of "household". Mr WONG expressed concern whether married children who continued to live with their parents were regarded as members of the relevant household for the purpose of applying transport subsidy under the WITS Scheme. He cautioned that if the definition of "household" was unclear, it might lead to disputes between the authorities and the aggrieved parties.

19. SLW pointed out that, when implementing the WITS Scheme, the Administration would publicize the eligibility criteria widely to avoid unnecessary disputes. Permanent Secretary for Labour and Welfare ("PSLW") added that there were already a number of on-going government financial assistance schemes administered on a household basis. Therefore, he did not see that a household-based means test approach for the proposed WITS Scheme should cause great difficulties for applicants.

Working hours requirement

20. Mr IP Wai-ming and Dr PAN Pey-chyou noted with deep concern that an applicant must work a minimum of 72 hours a month in order to be eligible. They held the view that applicants who worked less than 72 hours per month should also be eligible for transport subsidy calculated on a *pro-rata basis*.

21. Sharing a similar view, Mr CHEUNG Kwok-che said that the Administration should make reference to the eligibility criteria for financial assistance under the New Dawn Project and consider providing transport subsidy to people who worked less than 72 hours per month, with a view to benefiting part-time employees.

22. SLW responded that providing allowance on a *pro-rata basis* according to the actual number of working hours was not practicable, since it would increase substantially the workload for verification and result in disproportionately high administrative costs. SLW stressed that it was the intention of the Administration to keep the WITS Scheme relatively simple and user-friendly and the administrative costs at a relatively low level.

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23. Regarding the working hours requirement, SLW advised that the 72-hour requirement was the same as that under TSS and should cover many part-time workers.

24. SLW added that the Labour Department ("LD") would work in concert with the Employees Retraining Board ("ERB") to provide enhanced services to local domestic helpers. LD would on its website provide a special section on part-time jobs in future. ERB would step up its matching and referral services on its "Smart Living" platform for local domestic helpers. This would provide direct and practical assistance to those looking for more part-time jobs.

Scope and coverage

25. Mr WONG Sing-chi noted with grave concern that unlike the existing TSS which provided transport allowance for needy job-seekers to encourage them to "go out" and seek employment to achieve self-reliance, the WITS Scheme did not cover job-seekers. He asked about the reason for excluding job-seekers from the scope of the new scheme.

26. In response, SLW explained that job-seekers were not covered because there was little proven demand for Job Search Allowance ("JSA") payable under TSS. Statistics indicated that as at the end of September 2010, 91.3% of admitted TSS applicants were already in employment at the time when they were admitted. In addition, over 99% of the TSS payment was made for On-the-job Transport Allowance and an insignificant proportion of only about 0.3% was for JSA. To enable the WITS Scheme to have a clear focus, the Administration did not intend to extend the new scheme to job-seekers.

27. The Deputy Chairman expressed dissatisfaction that in devising the WITS Scheme, the Administration had not taken into consideration the views and suggestions raised by Members during the motion debate on the scheme at the Council meeting on 10 November 2010. She said that the design of the current proposal, in particular the income and asset thresholds, the household-based means test requirement and the working hours requirement, was far from satisfactory and deviated greatly from Members' expectation. She called upon the Administration to review and improve the scheme before putting it into operation.

28. The Chairman added that at the special meeting of the Panel on 23 November 2010, many deputations attending the meeting had expressed concern about the WITS Scheme and made suggestions that it should allow greater flexibility. However, the Administration had not

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paid heed to the views of the deputations before putting forward the proposal to the Panel.

29. In response, SLW emphasized that the Administration was fully aware of Members' concerns. As a matter of fact, the WITS Scheme was designed taking into account the experience gained in the implementation of the pilot TSS and the views received from Members and the community over the past few months. SLW reiterated that the WITS Scheme was a territory-wide scheme without any deadline for application. As a long-term commitment to assist the working poor, it was of paramount importance that the scheme was implemented in a fair and equitable manner to ensure that public money was used properly.

Implementation

30. Mr WONG Kwok-hing noted that the Administration planned to submit the funding proposal to the Finance Committee ("FC") for consideration on 28 January 2011. Subject to the approval of FC, LD would work towards implementing the WITS Scheme in the third quarter of 2011. He enquired whether the implementation date could be advanced to 1 June 2011.

31. In response, SLW explained that the Labour and Welfare Bureau, supported by LD, would be responsible for implementing the WITS Scheme. LD planned to set up a new WITS Division to perform all operational functions, including receiving and processing applications, handling appeals, effecting subsidy payments, identifying and investigating fraudulent cases. Given that the WITS Scheme was a new territory-wide scheme, time was needed for developing the necessary information technology infrastructure to facilitate case processing and guard against abuse, finalizing the operational arrangements, setting up new offices, recruiting and providing training to staff, etc.

32. SLW informed Members that in view of the significant financial implications and the new approach to assist low-income families, a comprehensive review of the WITS Scheme, including its objectives, eligibility criteria, *modus operandi* and effectiveness, would be conducted three years after implementation.

33. Mr CHEUNG Man-kwong was concerned about the financial implications of the proposed WITS Scheme. He enquired whether the Administration had, in its estimate, taken into account the possibilities of fare increase in public transport facilities.

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34. SLW responded that it was difficult to have an accurate estimate of the take-up rate and the actual number of persons who would benefit from the WITS Scheme. According to the findings of GHS conducted by C&SD, there were about 330 000 employed persons working 18 hours or more a week living in households which fell within the income thresholds for WITS in the second quarter of 2010. Assuming that 165 000 people would apply for WITS and could meet the eligibility criteria, the Administration estimated that the implementation of the WITS Scheme would require a non-recurrent commitment of \$3,703 million for the first three years of operation.

Motion

35. Mr CHEUNG Kwok-che moved the following motion, seconded by Mr LEUNG Yiu-chung, on the WITS Scheme -

"本委員會認為政府的「鼓勵就業交通津貼計劃」未能達到鼓勵就業的政策目的，並要求——

- (一) 推行以個人和家庭為單位的鼓勵就業交通津貼計劃，保留現有交通津貼計劃的個人申請制度；及
- (二) 為每個工作少於72小時的兼職工人，同樣提供交通津貼。具體要求是少於72小時而高於32小時的申請人，津貼額為每人每月不少於\$300。"

(Translation)

"That, this Panel considers that the Administration's "Work Incentive Transport Subsidy Scheme" has failed to achieve the policy objective of encouraging employment and requests that -

- (a) a work incentive transport subsidy scheme on individual and household bases be implemented, and the existing individual-based mechanism for applying transport subsidy under the Transport Support Scheme be retained; and
- (b) transport subsidy should also be provided to each part-time worker working less than 72 hours, with a specific requirement that the subsidy rate for applicants working less than 72 hours but more than 32 hours should be not less than \$300 per month for each person."

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Mr WONG Kwok-hing moved amendments, seconded by Dr PAN Pey-chyou, to the motion moved by Mr CHEUNG Kwok-che. The wording of the motion moved by Mr CHEUNG Kwok-che as amended by Mr WONG Kwok-hing was as follows -

"本委員會認為政府的「鼓勵就業交通津貼計劃」未能達到鼓勵就業的政策目的，並要求——

- (一) 推行以個人和家庭為單位的鼓勵就業交通津貼計劃，保留現有交通津貼計劃的個人申請制度；及
- (二) 為每個工作少於72小時的兼職工人，同樣提供交通津貼。具體要求是少於72小時的津貼額按實際工時的比例計算。"

(Translation)

"That, this Panel considers that the Administration's "Work Incentive Transport Subsidy Scheme" has failed to achieve the policy objective of encouraging employment and requests that -

- (a) a work incentive transport subsidy scheme on individual and household bases be implemented, and the existing individual-based mechanism for applying transport subsidy under the Transport Support Scheme be retained; and
- (b) transport subsidy should also be provided to each part-time worker working less than 72 hours, with a specific requirement that the subsidy rate for those working less than 72 hours should be calculated in proportion to the actual hours worked."

The Chairman put Mr CHEUNG Kwok-che's motion as amended by Mr WONG Kwok-hing to vote. All members present voted unanimously for the motion and no member voted against it. The Chairman declared that the motion was carried.

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36. Members requested the Administration to further consider their requests as stated in the motion and revert to the Panel at the earliest opportunity.

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37. In the light of the controversy of and wide public concern about the subject, the Chairman proposed and members agreed to hold a special meeting on 4 January 2011 from 4:30 pm to 7:30 pm to receive deputations' views on the proposed WITS Scheme.

(Post-meeting note: The notice of the special meeting was issued vide LC Paper No. CB(2)628/10-11 on 17 December 2010.)

IV. Productivity assessment of persons with disabilities under the statutory minimum wage regime - proposed criteria for approved assessors and methods of assessment
(LC Paper Nos. CB(2)533/10-11(04) and (05))

38. SLW briefed members on the proposed criteria for approved assessors and methods of assessment for the productivity assessment of persons with disabilities under the statutory minimum wage ("SMW") regime as set out in the Administration's paper.

39. Mr LEUNG Yiu-chung and Ms LI Fung-ying queried whether the proposed categories of approved assessors would be adequate for dealing with various trades of persons with disabilities to be assessed. Mr LEUNG asked whether the productivity assessment would be conducted in the actual workplaces of persons with disabilities.

40. SLW and Commissioner for Labour ("C for L") responded that only those who had substantial experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities would be eligible for becoming approved assessors. This was to ensure the quality and credibility of the productivity assessment mechanism. The assessment would be conducted in the actual workplace of the persons with disabilities to be assessed.

41. Mr LEUNG Yiu-chung and Ms LI Fung-ying considered that an opportunity for appeal or re-assessment should be provided to persons with disabilities. Mr WONG Sing-chi enquired whether there would be an appeal mechanism for persons with disabilities in the event of misconduct on the part of an approved assessor, or where the performance of persons with disabilities and degree of productivity on the day of assessment was adversely affected by any reasons that caused them not performing at their full potential.

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42. C for L responded that no appeal mechanism would be provided as there were concerns during the consultation that to do so could adversely affect employers' wish to take on persons with disabilities. He said that the Administration could withdraw the approval so granted to an assessor who was considered unable or unfit to carry out the duties of the approved assessor owing to poor performance or any sufficient cause. The proposed notice on the assessment methods would require the approved assessor to ensure that no conflict would arise between his duties involved in conducting the assessment and his other interests. The Administration would review the productivity assessment mechanism, including whether there was a need for a second assessment, in the light of operational experience within two years after the implementation of SMW.

43. Mr CHAN Wai-yip and Ms LI Fung-ying asked whether the Administration would prevent productivity assessments from being conducted by approved assessors who worked in the same organization of the person with disabilities to be assessed. Assistant Commissioner for Labour (Special Duties) ("AC for L") responded that according to the proposed notice, approved assessors should not conduct assessments for persons with disabilities who worked for the same employers of the assessors as it would be in contravention of the "no conflict of interest" principle.

44. Mr LEUNG Yiu-chung and Mr WONG Sing-chi asked whether the Administration would provide wage subsidy up to 50% of SMW to persons with disabilities whose productivity were assessed to be less than 100% of their able-bodied counterparts. SLW responded that SMW aimed at preventing excessively low wages. Wage subsidy and SMW were different issues.

45. Mr WONG Sing-chi and Mr Alan LEONG asked how the Administration would assist persons with disabilities to seek employment.

46. SLW responded that LD had launched a series of initiatives that aided persons with disabilities to seek employment. For instance, LD's "Work Orientation and Placement Scheme" aimed to enhance the employability and competitiveness of persons with disabilities through comprehensive pre-employment training and work trial placement. The participating employer would receive a financial incentive equal to two-thirds of the actual wages paid to the employee, subject to a ceiling of \$4,000 per month and a maximum period of six months. LD's Selective Placement Division would also provide placement services for job

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seekers with disabilities and encourage employers to employ persons with disabilities.

47. Mr CHEUNG Kwok-che considered that the requirement for a vocational rehabilitation practitioner to be recommended by the recognized organization to which he was/had been engaged was inappropriate. He opined that those organizations should only be required to confirm such vocational rehabilitation practitioners' length of relevant experience and integrity, as the approved assessors would be acting independently and in their personal capacities in the course of conducting the productivity assessments.

48. SLW responded that the views of stakeholders in the consultation process had been taken on board, as such vocational rehabilitation practitioners might not be registered professionals, the recommendations by their organizations were required for quality assurance.

49. Mr CHEUNG Kwok-che and Dr PAN Pey-chyou asked about the details of the methods of assessment conducted by approved assessors. Mr CHEUNG and Mr LEUNG Yiu-chung asked whether aiding equipment would be provided to persons with disabilities in the assessment process.

50. SLW responded that the operational details of the productivity assessment would be set out in administrative guidelines to be issued to approved assessors. C for L added that the administrative guidelines would set out the requirement that the approved assessors should give due consideration to whether the aiding equipment which the persons with disabilities might require in carrying out the work being assessed was provided by the employers during the assessment process. In the event of the absence of the necessary aiding equipment, the approved assessors might reasonably adjust upwards the degree of productivity of persons with disabilities on being satisfied that, owing to the particular circumstances, the persons with disabilities failed to demonstrate full potential in the assessment. In conducting the productivity assessment, the approved assessors should collect detailed information on the work of persons with disabilities through the employers, persons with disabilities and, if appropriate, any other relevant persons conducive to the understanding of the work of persons with disabilities.

51. Mr CHEUNG Kwok-che expressed concern that the proposed mechanism might be open to abuse if the approved assessors could adjust the degree of productivity of persons with disabilities. SLW emphasized that the administrative guidelines would provide examples to illustrate the

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appropriate circumstances for the approved assessors to adjust persons with disabilities' degree of productivity. He added that to ensure the quality, simplicity, fairness and reliability of productivity assessments conducted by approved assessors, all eligible applicant assessors should complete satisfactorily training arranged by LD in order to become approved assessors.

52. Mr CHAN Wai-yip opined that the productivity assessment should be conducted in an objective and voluntary manner. He asked whether there would be an opportunity for members of the public to submit views on the Administration's proposals. The Chairman said that a subcommittee would probably be formed to study the subsidiary legislation concerned and members of the public could submit their views to the subcommittee.

53. Mr CHAN Wai-yip asked whether the Labour and Welfare Bureau or the Equal Opportunities Commission was responsible for law enforcement regarding the productivity assessment. AC for L responded that LD would monitor the productivity assessment mechanism which was introduced under the SMW regime. The Equal Opportunities Commission was the statutory body to implement, among others, the Disability Discrimination Ordinance ("DDO") (Cap. 487).

54. Mr WONG Kwok-hing asked how the Administration would monitor the approved assessors and ensure fair assessments. He also asked about the government department responsible for handling complaints in relation to the productivity assessment.

55. SLW responded that the Administration might withdraw the approval so granted to an assessor who was considered unable or unfit to carry out the duties of the approved assessor owing to poor performance or any sufficient cause. In order to ensure the fairness of productivity assessments conducted by approved assessors, all eligible applicant assessors would be required to complete satisfactorily training arranged by LD to become approved assessors. C for L added that surprise checks would be conducted and relevant statistics would be analyzed to monitor the mechanism of productivity assessments. Complaints in relation to the productivity assessment would be handled by LD.

56. Mr IP Wai-ming was concerned about the number of persons with disabilities who would invoke assessments when the SMW rate came into force on 1 May 2011. He asked whether there would be sufficient number of approved assessors to carry out the assessments. Mr Tommy CHEUNG asked whether only persons with disabilities employed after

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the implementation of SMW were required to opt for having their productivity assessed or not. Mr Alan LEONG asked how the Administration would ensure that no persons with disabilities would be forced by their employers to have their productivity assessed.

57. SLW, PSLW and C for L advised that according to statistics for 2007, there were about 10 000 employees with disabilities receiving wages less than \$28 per hour. There were about a few hundred persons eligible for becoming approved assessors. A person with disabilities who chose to be paid at no less than the SMW rate would not need to undergo any assessment of productivity. A serving employee with disabilities who had, prior to the commencement of SMW on 1 May 2011, opted for undergoing assessment of productivity under the transitional arrangement provided in the SMW regime could invoke the assessment any time after the SMW rate came into force as long as they were still working for the same employer for the same work. Thus, the question of whether the pool of approved assessors for carrying out the assessments was sufficient would depend on the number of persons with disabilities invoking the special arrangement as well as the timing of individual serving employees with disabilities seeking the assessment after they had so opted for it.

58. Noting that the Administration would review the productivity assessment mechanism within two years after the implementation of SMW, Mr Alan LEONG asked about the scope of the review. SLW responded that the review would be comprehensive, covering areas such as quality and operations of the productivity assessment, room for improvement of the operational details of the productivity assessment and impact of SMW on the employability of persons with disabilities.

59. Dr PAN Pey-chyou enquired about the details of the training that eligible applicant assessors were required to complete in order to become approved assessors. SLW and C for L explained that eligible applicant assessors would be required to receive a half-day or one-day training and pass an examination before becoming approved assessors. They were required to apply again upon the expiry of the approval period, say, three years from being appointed as approved assessors.

60. Mr LEUNG Yiu-chung asked how the Administration would protect persons with disabilities who did not opt to have their productivity assessed after the implementation of SMW from being dismissed by their employers. He also asked how a person with disabilities could obtain information about the approved assessors before selecting one for his productivity assessment.

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61. C for L responded that the Employment Ordinance ("EO") (Cap. 57) and DDO had provided sufficient legal protection for employees and persons with disabilities respectively. AC for L added that information of the approved assessors would be listed in a register for selection by persons with disabilities who decided to invoke the assessment mechanism.

62. Mr CHEUNG Kwok-che asked about the Administration's timetable for consultation with stakeholders on the draft administrative guidelines for approved assessors.

63. AC for L advised that the Administration had already started consulting the relevant sectors and professional associations of approved assessors on the operational details of the productivity assessments. After the subsidiary legislation on the criteria for approved assessors and methods of assessment had been scrutinized by the Legislative Council, the Administration would finalize the draft administrative guidelines in consultation with the relevant sectors and professional associations.

V. Guidelines on statutory minimum wage for employers and employees
(LC Paper Nos. CB(2)533/10-11(06) and (07))

64. SLW briefed members on the draft reference guidelines on SMW for employers and employees, and information on the treatment of meal break and employment terms under the relevant legislation as set out in the Administration's paper.

65. Mr CHAN Kin-por asked whether the Administration would consult stakeholders on the draft reference guidelines. SLW responded that members of the Labour Advisory Board ("LAB") had been consulted on the draft reference guidelines and the response was generally positive. Over 300 stakeholders had been invited to give views on the draft reference guidelines by the end of December 2010.

66. Mr Tommy CHEUNG enquired whether the Administration would speed up the drafting of industry-specific guidelines to address the unique characteristics and specific needs of different sectors.

67. SLW advised that in addition to consulting LAB and stakeholders on the draft reference guidelines, LD would also work in collaboration with the Industry-based Tripartite Committees and stakeholders concerned in drawing up industry-specific guidelines to address the

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unique characteristics and specific needs of different sectors. The Administration would speed up the preparation of both the reference guidelines and the industry-specific guidelines.

68. Referring to paragraph 6 of the Administration's paper, Mr CHAN Kin-por expressed concern that the guideline regarding whether meal breaks should constitute hours worked for the purpose of computing SMW might cause labour disputes.

69. AC for L responded that all along, employers and employees could agree on their employment terms having regard to the circumstances of individual enterprises and personal needs of employees, including whether meal breaks constituted hours worked by employees, and whether they were remunerated or not. The Minimum Wage Ordinance ("MWO") stipulated the circumstances under which meal breaks should constitute hours worked for the purpose of computing SMW. Moreover, if meal breaks were regarded as working hours of the employee according to his employment contract or agreement with his employer, such hours should also be taken into account in computing SMW.

70. Referring to page 5 of the draft reference guidelines at the Annex to the Administration's paper, SLW said that employees were the most valuable asset of an enterprise. It was always in the interest of employers to bear in mind the well-being, morale and sentiments of their employees, to treat them well and to maintain harmonious labour relations. The aim of SMW was to protect low-paid employees. Employers should not reduce employees' existing remuneration and employment benefits upon the implementation of SMW. Apart from complying with the legislative provisions, employers should carefully assess the impact on labour relations in contemplating any change to the employment terms. Factors to be considered included employees' request and whether the change was fair and reasonable. Employees would always have a greater commitment to work as well as a stronger sense of belonging when employers responded positively to their reasonable requests. This would enhance the employees' enthusiasm and sense of belonging to the company, and in turn be beneficial to the operation and productivity of the business and achieve a win-win situation for both employers and employees. SLW emphasized that LD would continue to promote good people management practices.

71. Mr Tommy CHEUNG said that the Administration should not wait until the reference guidelines were finalized before proceeding to draw up the industry-specific guidelines. He considered that the Administration should draw up industry-specific guidelines as soon as possible especially

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for the catering industry. SLW responded that the Administration would work with the Industry-based Tripartite Committees and stakeholders concerned and draw up the industry-specific guidelines as soon as possible. C for L added that LD had liaised with the Tripartite Committees and had been told that many members were very busy in December. The discussion with Tripartite Committees on industry-specific guidelines would thus commence in January 2011.

72. Mr WONG Sing-chi said that besides promoting the reference guidelines to employers, the Administration should also promote the reference guidelines to employees so that they would be fully aware of their rights under MWO. He considered that LD should display its complaint hotline at workplaces to facilitate the lodging of complaints by employees.

73. SLW advised that to tie in with the implementation of SMW, the Administration would launch extensive educational and promotional activities to enhance public awareness of MWO in the coming months. These activities included production of tailor-made publications, television and radio announcements of public interest, issuing press releases, dissemination of relevant information on LD's website, holding of roving exhibitions, seminars and briefings, etc. He said that LD had a hotline for handling enquiries as well as complaints.

74. Mr IP Wai-ming expressed concern that the requirement of "in accordance with the employment contract or with the agreement or at the direction of the employer" in MWO on whether meal break should be counted as hours worked might eventually result in all meal breaks being not counted as hour worked.

75. SLW responded that in the event of any labour disputes, employers and employees could seek help from LD. He added that employers should not unilaterally vary or cancel the contractual term or agreement. When employers and employees sought to clarify unclear terms in their existing employment contracts, there should be thorough staff consultation with a view to reaching consensus on lawful, sensible and reasonable grounds. AC for L added that employees' existing rights and benefits under EO would not be reduced upon the implementation of SMW.

(Members agreed to extend the meeting by 5 minutes.)

76. Mr LEUNG Yiu-chung said that besides informing employees who found their employment rights undermined that they might seek help

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from LD, the guidelines should also set out the rights of an employee. He suggested that the Administration should launch extensive promotion and publicity on MWO to enhance employees' understanding of their rights and benefits.

77. SLW advised that LD's Labour Relations Division had been providing conciliation service, which recorded a settlement rate of 74% in the preceding quarter, to employers and employees. LD would also institute prosecution against employers violating EO or MWO if warranted. He reiterated that the Administration would launch extensive promotion and publicity on MWO.

78. Mr WONG Kwok-hing considered that government departments, subvented organizations, schools and public bodies should take the lead to ensure that the wages of their staff were not lower than the SMW rate.

79. SLW responded that the Administration had introduced the mandatory wage requirement for non-skilled workers under government outsourced service contracts since a few years ago. Such an arrangement set the required wage levels by reference to the market average wage rates. The Administration planned to brief the Panel on the subject in the first quarter of 2011.

80. The Chairman expressed concern that some employers might take the opportunity of the implementation of SMW to change the terms and conditions to the existing contract with employees. He suggested that the Administration should spell out clearly in the reference guidelines that the implementation of SMW did not necessitate a change to the terms and conditions of existing employment contracts. Employers were only required to pay wages not lower than the SMW level. SLW noted the suggestion.

81. The Chairman asked whether the meal break of employees of government outsourced service contractors would be counted as hours worked after the implementation of SMW.

82. SLW responded that the standard employment contract for government service contractors was silent on whether meal break should be counted as hours worked. He pointed out that at the time of signing the standard employment contract, contractors and their workers could negotiate and agree on whether meal break would be counted as hours worked, having regard to the nature of work, characteristics of the industries and operational needs of the contractors.

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83. The Chairman said that the Administration should include in the reference guidelines examples indicating when on-call or standby time would be counted as hours worked for workers of residential care homes for the elderly. SLW noted the suggestion.

VI. Any other business

84. The meeting ended at 5:37 pm.

Council Business Division 2
Legislative Council Secretariat
15 February 2011