

立法會
Legislative Council

LC Paper No. CB(2)1244/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Thursday, 20 January 2011, 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
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
Hon LEUNG Kwok-hung

Member absent : Dr Hon LAM Tai-fai, BBS, JP

Public Officers attending : Item III
Mr CHEUK Wing-hing, JP
Commissioner for Labour

Mr Ernest IP Yee-cheung
Assistant Commissioner for Labour (Employees'
Rights & Benefits)

Miss Bonny WONG Wai-man
Senior Labour Officer (Wage Security)
Labour Department

Item IV

Mr CHEUK Wing-hing, JP
Commissioner for Labour

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

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

Dr Raymond LEUNG Lai-man, JP
Occupational Health Consultant
Labour Department

Item V

Mr CHEUK Wing-hing, JP
Commissioner for Labour

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

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

Miss Cindy YIM Lai-kwan
Senior Labour Officer (Statutory Minimum Wage)
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

Miss Jenny LI
Administrative Assistant (SD)

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)806/10-11)

The minutes of the meeting held on 18 November 2010 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)814/10-11(01) and (02))

Regular meeting in February 2011

2. Members noted that the Administration proposed to discuss the following items at the next regular meeting to be held on Thursday, 17 February 2011, at 2:30 pm -

- (a) Arrangement for replacement holiday when a Lunar New Year holiday falls on a Sunday; and
- (b) Overview of Labour Department's labour administration work in 2010.

3. Regarding the agenda item proposed by the Administration in paragraph 2(a), the Deputy Chairman said that apart from devising the arrangement for replacement holiday when a statutory holiday fell on a Sunday, the Administration should look into the issue further to address the concerns of employees who worked five days a week from Monday to Friday with day-off on Saturday. She said that the Administration's paper on the subject matter should cover relevant matters concerning the arrangement for replacement holiday when a statutory holiday fell on a Saturday, given that an increasing number of organizations were implementing a five-day work week.

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4. The Chairman and Mr WONG Kwok-hing were concerned whether and how the anticipated implementation of statutory minimum wage ("SMW") would affect the wages, fringe benefits as well as employment terms and conditions of workers currently employed under Government outsourced service contracts. Mr WONG requested the Administration to brief the Panel at the next regular meeting on the progress of preparation for the implementation of SMW, including the measures to be taken by the Administration to ensure that the rights of employees of Government outsourced service contractors would remain unchanged after the implementation of SMW.

5. Members agreed that the item proposed by the Administration in paragraph 2(b) above be deferred to a future meeting, and the Panel would discuss the following two items at the regular meeting on 17 February 2011 -

- (a) Replacement holiday arrangements; and
- (b) Progress of preparation for implementation of statutory minimum wage.

Timing for discussing the Work Incentive Transport Subsidy Scheme

6. The Chairman recalled that when the Panel received the Administration's briefing and met with deputations to receive their views on the proposed Work Incentive Transport Subsidy ("WITS") Scheme at the meetings on 16 December 2010 and 4 January 2011, members were informed that it was the plan of the Administration to submit the funding proposal to the Finance Committee ("FC") for approval on 28 January 2011. Expressing concern over the Administration's work progress in respect of the proposed WITS Scheme, he asked whether the Administration would, in the light of the views and concerns expressed by members and deputations, review its policy with a view to relaxing the eligibility criteria and level of subsidy before seeking funding approval from FC. He said that if the Administration was prepared to do so, the Panel would like to be briefed on the latest development.

7. Commissioner for Labour ("C for L") advised that following discussions at the Panel meetings, the Administration was seriously considering the views and concerns of members and deputations on the proposed territory-wide WITS Scheme. As the Administration needed to consider carefully the suggestions received, a decision was taken to defer

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the submission of the funding proposal to FC. Nevertheless, the Administration would strive to finalize the scheme at the earliest possible time. It would revert to the Panel once it was in a position to do so.

8. Mr WONG Kwok-kin and Mr IP Kwok-him considered that a decision had to be made as early as possible and the proposed WITS Scheme should not be dragged on any further. They requested the Administration to speed up the related work and finalize the details no later than February 2011.

9. C for L assured members that the Administration would strive to submit the proposal to FC as early as possible.

III. An overview of the latest position of redundancy, business cessation and the Protection of Wages on Insolvency Fund
(LC Paper Nos. CB(2)808/10-11(01) and CB(2)814/10-11(03))

10. C for L briefed members on the latest position of redundancy and business cessation, as well as the measures adopted by the Labour Department ("LD") to prevent abuse of the Protection of Wages on Insolvency Fund ("PWIF") and to streamline the application and processing procedures for ex gratia payment, details of which were set out in the Administration's paper.

11. Mr WONG Kwok-hing noted that the surplus of PWIF had recorded a steady growth from \$1,749 million in end 2009 to \$2,152 million in end 2010. Given the huge reserve and the Administration's plan to amend the law to expand the scope of PWIF to cover pay for annual leave and statutory holidays accrued but not yet taken by employees in insolvency cases, Mr WONG suggested that the Administration should give consideration to further enhancing the protection for employees by raising the payment ceiling from \$10,500 to \$20,000 and removing the provisions limiting an employee's leave entitlement for applying ex gratia payment from PWIF to cover leave/holiday pay.

12. Echoing Mr WONG Kwok-hing's views, Mr IP Wai-ming said that the proposal in paragraph 14 of the Administration's paper was inadequate. He considered that the ex gratia payment in respect of leave/holiday pay should be determined by reference to all untaken annual leave within two years which an employee was entitled to upon termination under the Employment Ordinance (Cap. 57) ("EO") as well as

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all statutory holidays not yet taken by the employee within 12 months prior to his last day of service.

13. In response, C for L made the following points -
- (a) PWIF was set up to provide timely relief in the form of ex gratia payment to employees who were owed wages and other termination benefits by their insolvent employers;
 - (b) PWIF was mainly financed by an annual levy on each Business Registration Certificate issued under the Business Registration Ordinance (Cap. 310). Since the establishment of PWIF in 1985, the levy rate had been revised three times, respectively in 1991, 2002 and 2008;
 - (c) LD and the Protection of Wages on Insolvency Fund Board ("the PWIF Board") had all along adopted a prudent approach in managing PWIF and improved its coverage in a progressive manner, with a view to enhancing employees' protection while ensuring the sustainability of PWIF. In the past, amidst the financial turmoil bringing soaring applications, PWIF recorded a recurrent deficit for seven consecutive years from 1997-1998 to 2003-2004. In 2002, PWIF received an all-time high number of applications of 23 023. The accumulated surplus of PWIF rapidly depleted in just a few years. In November 2002, PWIF had to obtain a stand-by loan of \$695 million from the Government. As such, it was vital to ensure the sustainability of PWIF;
 - (d) with gradual improvements of PWIF's coverage made over the years, the maximum amount of ex gratia payment which an employee could receive from PWIF had increased from \$8,000, covering only wages, in 1985 to the current level of \$278,500, comprising four months' wages up to \$36,000, one month's wage in lieu of notice up to \$22,500 and severance payment up to \$50,000 plus 50% of the remainder of the entitlement under EO;
 - (e) when the levy was increased from \$250 to \$600 in 2002 due to the depletion of PWIF following the upsurge in claims for ex gratia payment after the Asian financial crisis, the Labour Advisory Board ("LAB") had agreed that a review of the new levy rate be conducted in the following year.

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Concomitant with the continual improvement in the local economy in the subsequent years and LD's all-out efforts in combating wage default, claims payment by PWIF had subsided significantly and the accumulated fund reached a record figure of \$1,045 million as at end of October 2007. The Administration thus proposed to reduce the levy rate to \$450 per annum and the proposal was supported by LAB. The levy reduction was subsequently implemented in March 2008;

- (f) at the time the levy was reduced from \$600 to \$450 in March 2008, the Administration had started to consider expanding the scope of ex gratia payment. Having considered members' views, the PWIF Board and the Administration proposed to broaden the scope of ex gratia payment to cover pay for two types of leave/holiday subject to a payment ceiling of \$10,500, viz -
 - (i) pay for annual leave accumulated under EO and not yet taken by an employee, subject to the limit of the employee's statutory entitlement in his last year of employment with a maximum of seven to 14 days' pay as per an employee's length of employment;
 - (ii) pay for statutory holidays under EO not yet taken by an employee within four months prior to his last day of service; and
- (g) with the support of the PWIF Board, LAB and the Panel on Manpower on the proposed extension of PWIF's coverage, the Administration was progressing in full swing on the legislative amendment to the Protection of Wages on Insolvency Ordinance (Cap. 380) and planned to introduce an amendment bill in 2011.

14. Mr WONG Kwok-hing and Mr IP Wai-ming considered the Administration's explanation far from satisfactory. They held the view that the coverage of PWIF should be further expanded and asked whether the Administration had ever made any cost analysis based on the proposed enhanced ceiling of \$20,000 and the hypothetical scenario that an employee would be entitled to receive ex gratia payment for all his accrued but untaken annual leave and statutory holidays.

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15. Mr IP Wai-ming recalled that when the Panel was consulted on the proposal to expand the scope of PWIF to cover pay for untaken annual leave and statutory holidays at the meeting on 26 April 2010, members had requested the Administration to submit the relevant amendment bill to the Legislative Council ("LegCo") within 2010. Expressing disappointment with the slow progress made by the Administration in the drafting of the bill, he requested the Administration to provide a specific timetable for introducing the amendment bill into LegCo.

16. In response, C for L and Assistant Commissioner for Labour (Employees' Rights & Benefits) ("AC for L (R&B)") advised that as the Administration had pledged in April 2010, LD together with the Department of Justice ("DoJ") were working in full gear with a view to introducing the relevant amendment bill into LegCo in the 2010-2011 legislative session. AC for L (R&B) further said that the PWIF Board had undertaken to review again the coverage of PWIF in the light of operational experience and PWIF's financial position after the relevant bill had taken effect for one year.

17. Regarding the suggestion of Mr IP Wai-ming to relax the limits in respect of an employee's outstanding entitlements to statutory holidays in the application for ex gratia payment from PWIF, AC for L (R&B) advised that this limit was the same as the extent of coverage in respect of the arrears of wages.

18. The Deputy Chairman expressed strong dissatisfaction with the Administration's response and belated introduction of the amendment bill. She said that specific issues pertaining to the extension of the scope of PWIF had been discussed by the Panel many times and members' views on the issues were clear. As a matter of fact, members had passed a motion at the Panel meeting on 18 June 2009 urging the Administration to amend the scope of PWIF to cover the full amount of pay in arrears for holidays, including statutory holidays and annual leave, while maintaining the payment ceiling at \$10,500. She said that the Administration should take heed of the consensus view of members and expedite the drafting of the legislative amendments. She hoped that the relevant amendment bill could be introduced into LegCo for consideration as soon as possible, in order that the scrutiny of the bill could be completed within the current legislative session.

19. Dr PAN Pey-chyou echoed the Deputy Chairman's view that the Administration should expedite the drafting of the amendment bill and introduce it into LegCo as early as practicable.

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20. C for L responded that the Administration was making its best endeavour to expedite the law drafting work and would strive to submit the amendment bill to LegCo in May 2011.

21. Regarding members' proposal to further expand the scope of PWIF to cover the full amount of pay for statutory holidays and annual leave in arrears, AC for L (R&B) advised that the original proposal only covered untaken annual leave of one leave year. The PWIF Board had considered members' proposal to further expand the scope of PWIF and reached a consensus on the present proposal, which was then endorsed by LAB and the Panel. Members' proposal departed from the consensus reached on the PWIF Board, it would be necessary to consult the PWIF Board again, if the suggestion of members was to be adopted.

22. Mr CHAN Kin-por was concerned whether a mechanism was in place for triggering reviews of the levy rate.

23. C for L replied in the affirmative and advised that the PWIF Board, in discharging its statutory function of making recommendations for the rate of levy of PWIF, had agreed in April 2008 on an objective mechanism for triggering its future reviews of the levy rate. It should be noted that whether actual adjustment would be made was subject to findings. The mechanism was as follows -

- (a) where the accumulated fund fell below \$800 million by 20% or more for four consecutive quarters, the PWIF Board would consider whether to review the rate of levy to recommend a levy increase; and
- (b) where the accumulated fund exceeded \$1,200 million by 20% or more for four consecutive quarters, the PWIF Board would consider whether to review the rate of levy to recommend a levy reduction.

24. Mr LEUNG Yiu-chung said that possible abuse of PWIF by some unscrupulous employers should not be an excuse for not improving the coverage of PWIF further. He considered that PWIF should provide full protection for employees and its scope should be extended to cover all statutory entitlements of employees provided under EO. With the increasing reserve of PWIF, the PWIF Board should allow employees to cover the full amount of pay for untaken annual leave and statutory holidays. His view was echoed by Dr PAN Pey-chyou.

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25. In response, AC for L (R&B) advised that -
- (a) the Administration and the PWIF Board had worked towards improving the coverage of PWIF over the years. In doing so, the PWIF Board considered it prudent to adopt a progressive approach since experience in the past decade had indicated that the balance of PWIF could fluctuate and a single insolvent case could cost a huge sum of money;
 - (b) under the present proposal, the scope of PWIF would be expanded to allow claims for untaken annual leave and statutory holiday pay subject to the payment ceiling of \$10,500. The PWIF Board was aware of members' concerns and had undertaken to review the coverage of PWIF one year after the proposal had been implemented;
 - (c) it was the view of the PWIF Board that the following should be observed when deliberating on specific improvement proposals -
 - (i) similar to other items currently covered by PWIF, a payment ceiling should be set for annual leave/statutory holiday pay to ensure the sustainability of PWIF;
 - (ii) PWIF should maintain its policy of discouraging employees from tolerating non-payment of statutory benefits by their employers on a prolonged basis, while encouraging employees to report malpractices promptly. This would compel employers to observe the legal requirements of payment on time on the one hand, and forestall misconducts such as abuse or conspiracy to defraud PWIF on the other. In the light of the above, a cap on the period and number of days of annual leave/statutory holiday pay to be covered should also be set to avoid providing any incentive for employers to preclude employees from taking their annual leave/statutory holidays entitled and to shift the obligation of granting annual leave/statutory holiday pay to PWIF upon business closures; and

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- (iii) the limit of pay for untaken statutory holidays within four months prior to an employee's last day of service had been determined after taking into account the coverage of wages under PWIF and the requirements under EO for granting a substituted and an alternative holiday within a maximum period of 90 days of a statutory holiday.

26. Mr Alan LEONG sought more detailed information on the cooperation among various departments in the fight against PWIF abuses.

27. AC for L (R&B) advised that -

- (a) the Administration had stepped up enforcement and prosecution actions against abuse of PWIF. In parallel with the establishment of a special investigation team in May 2003, the Government had set up an inter-departmental task force in November 2002 comprising representatives from the Commercial Crime Bureau ("CCB") of the Hong Kong Police Force, the Official Receiver's Office ("ORO"), the Legal Aid Department ("LAD") and LD to strengthen the collaboration among the departments concerned in pursuing and investigating possible abuse of PWIF;
- (b) if offences such as illegal transfer of assets, fraud or conspiracy to defraud were suspected to have been committed, LD would refer the case, where appropriate, to CCB or ORO for investigation;
- (c) LD had engaged former police officers as contract investigation officers to reinforce its capacity in intelligence gathering and evidence collection; and
- (d) as endeavours to strengthen the cooperation with LAD, LD had, since 2009, established linkage to the on-line computer system of LAD so as to follow up more closely the progress of presenting bankruptcy/winding up petitions of individual cases, whereby relevant information could be provided more readily to applicants in their enquiries.

28. The Chairman considered the current proposal of the PWIF Board to expand the scope of PWIF far from adequate. He said that to his knowledge, the amount of ex gratia payment made from PWIF in respect

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of severance payment had been greatly reduced in recent years following the introduction of the Mandatory Provident Fund Scheme in 2000, which helped improve the financial position of PWIF. Given that the claim for leave/holiday pay would be capped at \$10,500 and PWIF had a huge surplus of \$2,152 million as at the end of 2010, the Chairman shared the views of members that an employee should be entitled to claim all untaken annual leave and statutory holiday pay in full and requested the Administration to provide the Panel with the assessment of the financial impact of expanding PWIF to cover pay for all untaken annual leave and statutory holidays.

Admin

29. Mr LEUNG Yiu-chung expressed concern about the cost implications on PWIF, if the suggestion of members was to be adopted. He requested the Administration to provide an estimate of the additional expenditure that would have been incurred had all employees making PWIF applications in the past three years been provided with ex gratia payment for all their annual leave and statutory holidays accumulated but not yet taken.

Admin

30. The Chairman said that the PWIF applications might not capture claims for untaken annual leave and statutory holidays as such payments were not yet covered by PWIF. He further said that relevant information might be captured in the claim forms lodged with LD. AC for L (R&B) confirmed that PWIF applications did not capture such claims. The Administration would advise whether such information was available.

IV. Hong Kong's occupational safety performance in the first half of 2010

(LC Paper Nos. CB(2)814/10-11(04) and (05))

31. C for L briefed members on Hong Kong's occupational safety performance in the first half of 2010 as set out in the Administration's paper.

Safety of Repair, Maintenance, Alteration and Addition works

32. Mr CHAN Kin-por expressed deep concern about the increase in the number of accidents related to Repair, Maintenance, Alteration and Addition ("RMAA") works. He considered that to ensure RMAA works contractors' compliance with relevant safety legislation, the Administration should conduct more regular inspections, apart from paying surprise inspections, to workplaces. In case of non-compliance

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constituting an offence for repeated contraventions of the legislation, a higher level of penalty should be imposed in order to achieve greater deterrent effect.

33. In response, C for L and Deputy Commissioner for Labour (Occupational Safety and Health) ("DC for L (OSH)") advised that -

- (a) with the construction industry recording the highest injury/accident rate, this specific industry remained a major area of concern in respect of occupational safety and health performance. In the first half of 2010, in addition to regular inspections to workplaces, LD had launched six enforcement campaigns focusing on construction safety, RMAA works safety, scaffolding safety, catering safety, cargo and container handling safety. During these campaigns, LD took rigorous enforcement actions and issued improvement notices/suspension notices, where circumstances warranted, to ensure compliance with relevant safety legislation and remove imminent risks of death or serious bodily injury;
- (b) in 2010, LD had conducted a total of 124 000 inspections resulting in the issuance of some 1 400 enforcement notices. In cases where employers, including contractors/subcontractors as in the cases of RMAA works, had bad records, LD would conduct more frequent inspections to ensure their full compliance with relevant safety legislation; and
- (c) it should be noted that most RMAA works were small in scale and scattered in nature, and undertaken by small contractors within a relatively short span of time. Small RMAA contractors were generally less conversant with the occupational safety and health legislation and their workers were less aware of safety precautionary measures. With the introduction of the Mandatory Building Inspection and Window Inspection Schemes by the Buildings Department and the launch of various sponsorship schemes to encourage the maintenance of dilapidated buildings, the anticipated growth in RMAA works would bring challenges to enforcement and promotion of work safety and would call for more focus. LD had established referral systems with the Housing Department ("HD"), the Hong Kong Housing Society ("HKHS") and the Hong Kong Association of

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Property Management Companies to collect intelligence on RMAA works to facilitate prompt and targetted enforcement actions on such high-risk work activities.

34. Dr PAN Pey-chyou expressed concern as to whether LD had any difficulties in planning and conducting safety inspections targetting RMAA works, since RMAA works were frequently small-scale in nature and carried out at the home of members of the public or old buildings under renovation, which might not come to the notice of LD.

35. In response, DC for L (OSH) reiterated that LD had established with HD, HKHS, the Hong Kong Association of Property Management Companies and the Urban Renewal Authority referral systems to enable the collection of intelligence on RMAA works and facilitate prompt and targetted enforcement actions on such high-risk activities. In the past few years, cases involving RMAA works had been referred to LD through the established mechanism. LD also collaborated with District Councils and property management companies to promote RMAA works safety at the community level.

36. The Deputy Chairman said that with the implementation of the Minor Works Control System ("MWCS"), including the registration of registered minor works contractors ("RMWCs"), LD should be more ready to identify the targetted groups of publicity and education programmes on industrial safety for RMAA works.

37. C for L and DC for L (OSH) said that the full implementation of MWCS in December 2010 could facilitate the work of LD in planning/launching promotion and publicity campaigns targetting RMAA works. LD would work closely with the Buildings Department, trade associations and workers' unions to promote safety and health at work through initiatives such as publicity campaigns and targetted programmes. In parallel, LD also collaborated with the Occupational Safety and Health Council ("OSHC") in the launch of large-scale publicity programmes with new initiatives targetting contractors and workers engaged in RMAA works. The objective was to bring relevant safety messages to these contractors and workers direct.

38. Dr PAN Pey-chyou considered that while LD should enforce the law vigorously, it should at the same time explore with the Development Bureau whether RMAA contractors who had repeatedly violated the occupational safety and health legislation should be withheld from registration as RMWCs. DC for L (OSH) responded that the

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Administration would relay members' views to the relevant policy bureaux for consideration.

Safety of lift and escalator maintenance and repair works

39. Mr WONG Kwok-hing expressed concern about the spate of lift incidents in recent years. Referring to a fatal accident which occurred in January 2009, he noted that the lift contractor/engineer concerned was only fined a few thousand dollars. He considered the level of penalty too low to provide sufficient deterrence. Mr WONG asked whether the Administration had any plan to introduce legislative amendments to enhance the regulatory control over lift and escalator safety and to increase the penalty levels to deter malpractice and substandard works.

40. In response, DC for L (OSH) advised that -

- (a) the Electrical and Mechanical Services Department ("EMSD") was responsible for lift safety while LD was responsible for occupational safety of workers engaging in lift installation/repair and maintenance works. To ensure the safety of workers carrying out maintenance works at lifts, LD had liaised closely with EMSD;
- (b) in the case to which Mr WONG Kwok-hing had referred, the Administration noted that the lift contractor and the lift engineer were fined \$4,000 and \$2,000 respectively at Sha Tin Magistrates' Courts for contravening the Lifts and Escalators (Safety) Ordinance (Cap. 327) administered by EMSD; and
- (c) the Administration attached great importance to the safety of lifts. EMSD was undertaking a legislative review of lift safety with a view to strengthening the regulatory regime and legislative controls over lift and escalator safety.

41. The Chairman noted with concern that in 2010, the level of fine imposed on convicted cases for non-compliance with safety legislation was in the range of \$1,000 to \$200,000 and the average was about \$8,000. He considered the fines imposed too low to achieve a deterrent effect. He hoped that in the event that the penalty handed down by the court was considered disproportionate, the Administration would discuss with DoJ as to whether an appeal for review of the sentence should be lodged. His view was echoed by Mr WONG Kwok-hing. The Administration undertook to relay members' views and concerns to DoJ.

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Professional drivers' safety and health awareness

42. Mr WONG Kwok-hing expressed concern about serious incidents involving professional drivers. He said that professional drivers' health was very often affected by long working hours and stressful working conditions. The Administration should ensure that professional drivers were in good health and would have sufficient rest to prevent traffic accidents caused by sudden illness, such as heat stroke or heart attack. He suggested that the Administration should study relevant issues and report to the Panel in due time on the Administration's efforts in enhancing the safety and health awareness of professional drivers.

43. DC for L (OSH) explained that the Occupational Safety and Health Ordinance (Cap. 509) ("OSHO") provided that employers had the general duty to provide a safe and healthy workplace for employees. However, the occupational safety and health of professional drivers were more related to "road safety" which was governed by relevant provisions of the Road Traffic Ordinance (Cap. 374). Notwithstanding this, LD would closely liaise with the Transport and Housing Bureau and the Transport Department with a view to drawing up measures to enhance the safety and health awareness of professional drivers.

Safety and health of employees at work in inclement weather

44. The Deputy Chairman recalled that a motion was passed at the Council meeting of 12 May 2010 urging the Administration to review and formulate the relevant guidelines and legislation for employees at work under very hot weather warnings, typhoon or rainstorm warnings and severe air pollution, so as to enhance the protection of employees' safety and health when working in inclement weather or severe air pollution. She asked about the Administration's response to the motion passed by LegCo.

45. In response, C for L advised that -

- (a) LD conducted regular review of guidelines and legislation, including guidelines on working in inclement weather and the related legislation, for protecting the safety of employees at work. It would, in light of social, economic and technical developments as well as the trend of occupational accidents, consider if amendments to the guidelines were required or whether new guidelines/legislation which sought to keep pace with changing needs of time were required for protecting employees' safety at work;

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- (b) LD had published the "Code of Practice in Times of Typhoons and Rainstorms" to advise employers to work out, in consultation with employees, prior work arrangements and contingency measures during typhoons and rainstorms. Employers were also reminded to be aware of their obligations under OSHO, EO and the Employees' Compensation Ordinance (Cap. 282). LD would keep the Code under regular review in light of experience;
- (c) on the enforcement front, officers of LD conducted surprise inspections to various workplaces regularly to ensure compliance with relevant occupational safety and health legislation. This strategy was also applicable to employers' responsibilities to safeguard the safety and health of employees working in inclement weather. In addition to regular inspections, LD also launched special enforcement campaigns targetting higher risk work at outdoor workplaces, such as construction sites or container yards, under inclement weather conditions to ensure compliance with the law by contractors/employers;
- (d) LD had, from April to September 2010, launched an enforcement campaign targetting outdoor workplaces with a higher risk of heat stroke, including construction sites, outdoor cleansing workplaces and container yards, focusing on the adequacy and effectiveness of preventive measures taken to protect employees at work in the hot weather. LD had taken appropriate enforcement actions against irregularities identified; and
- (e) in respect of work at times of severe air pollution, LD had taken the initiative to publish a set of guidelines, entitled "Checklist for Risk Assessment of Outdoor Work under High Air Pollution Levels", for employers' reference. The checklist set out a multitude of factors that should be considered by employers in conducting risk assessments of outdoor work at times of high air pollution levels. When the air pollution level of a certain district was high, officers of LD would, during their inspections of outdoor workplaces in the district, remind employers to take necessary preventive measures to protect the health of their employees working there.

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Causes for industrial accidents in the catering industry

46. Mr LEUNG Yiu-chung noted with concern that the catering industry continued to rank top among all industries in terms of the number of accidents. He asked whether the Administration had conducted case studies to identify the causes for industrial accidents in the catering industry. He considered that such information would be useful to the Administration for planning publicity and education programmes on industrial safety that could meet the unique characteristics of targetted groups and industries. Mr LEUNG further asked about the preventive measures adopted by the Administration in promoting the occupational safety and health awareness of employers and employees in the catering industry.

47. Assistant Commissioner for Labour (Occupational Safety) ("AC for L (OS)") responded that the increase in the number of accidents in the catering industry was mainly due to the relatively large workforce in the sector. Although the number of accidents in the first half of 2010 increased to 3 586, representing an increase of 1.1% when compared with 3 546 in the corresponding period of 2009, the accident rate per 1 000 workers decreased from 34.3 to 33.3 by 3.1%. AC for L (OS) said that "injured by hand tool", "injured whilst lifting or carrying" and "contact with hot surface or substance" were the major causes of occupational injuries in the catering industry. LD had joined hands with OSHC to launch publicity campaigns to promote occupational safety at the workplace.

48. DC for L (OSH) added that LD and OSHC had in the past few years launched a number of sponsorship schemes to provide financial support to small and medium-sized enterprises ("SME") to purchase the necessary safety equipment. Among others, there was a scheme which provided subsidies for the purchase by SME catering establishments of cut-resistant gloves and slip-resistant shoes for kitchen frontline workers. These schemes aimed to foster safety awareness and change work habits, and ultimately reduce the number of work accidents.

Other issue

49. The Deputy Chairman considered that the Administration should compile work injury statistics from a wider perspective, and provide members with figures which covered all accidents occurred in different industries, including injuries related to self-employed persons. With such

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information, members could have a more comprehensive picture of the safety performance of all sectors.

(Members agreed to extend the meeting by 20 minutes.)

V. Productivity assessment of persons with disabilities under the statutory minimum wage regime and guidelines on statutory minimum wage for employers and employees
(LC Paper Nos. CB(2)533/10-11(04) to (07))

Criteria for becoming approved assessors

50. Mr CHEUNG Kwok-che noted that among the categories of approved assessors, a vocational rehabilitation practitioner currently engaged, or a veteran vocational rehabilitation practitioner who had been engaged, by an organization recognized by the Commissioner for Labour for not less than five years in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities during the immediately preceding 10 years would require the recommendation of the recognized organization. He enquired whether trade unions of the relevant sector would also be regarded as "recognized organization" for the purpose of making such recommendation.

51. In response, Assistant Commissioner for Labour (Special Duties) ("AC for L (SD)") advised that the recognized organizations should provide vocational rehabilitation or other services in relation to the employment of persons with disabilities.

52. In response to Mr LEUNG Yiu-chung's concern about the quality and credibility of the productivity assessment carried out by approved assessors, Deputy Commissioner for Labour (Labour Administration) ("DC for L (LA)") advised that for quality assurance, all eligible applicant assessors should complete satisfactorily training arranged by LD in order to become approved assessors. 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. An approved assessor should, in addition to meeting the other specified requirements, possess the requisite years of experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities, such as the provision of vocational training and placement services for persons with disabilities. C for L pointed out that LD would

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actively consider preparing a register of approved assessors which would include more information of the assessors, such as professional qualification and relevant working experience. This would facilitate persons with disabilities who decided to invoke the assessment mechanism in the selection of approved assessors to conduct the assessment.

53. Regarding the methods of assessment, DC for L (LA) advised that it was the general view that the assessment mechanism should not be complicated. Otherwise, it would create undue pressure on the persons with disabilities, which would in turn affect their performance during the assessment and dampen employers' willingness to employ persons with disabilities. Having regard to the multifarious nature and modalities of work of persons with disabilities, only the broad principles and major elements of the assessment methods would be stipulated in the relevant subsidiary legislation under the Minimum Wage Ordinance (Cap. 608) ("MWO"). The operational details of the productivity assessment would be set out in the administrative guidelines to be provided to the approved assessors.

Requirement for vocational rehabilitation practitioners to be recommended by recognized organizations for the purpose of becoming approved assessors

54. The Chairman and Mr CHEUNG Kwok-che noted with concern that the requirement for obtaining a recommendation from a recognized organization only applied to vocational rehabilitation practitioners but not registered occupational therapists, registered physiotherapists or registered social workers. They asked about the rationale for adopting such a recommendation requirement.

55. AC for L (SD) explained that the quality of approved assessors was crucial to the smooth and effective implementation of the assessment mechanism. It was noteworthy that the requirement of holding a valid registration under the relevant Ordinances applied to the categories of registered occupational therapists, registered physiotherapists and registered social workers, but not the category of vocational rehabilitation practitioners. For the latter, the requirement for a recommendation from the recognized organizations engaged in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities, like other criteria for the approved assessors, was to ensure the quality of productivity assessments to be conducted under the SMW regime.

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56. Dr PAN Pey-chyou expressed concern as to whether the organizations referred to in paragraph 50 above were in a position to be truly objective in assessing an applicant vocational rehabilitation practitioner's suitability to become an approved assessor. He suggested that the Administration should engage people with relevant professional background and experience to make a determination.

57. DC for L (LA) responded that the organization which had engaged the applicant vocational rehabilitation practitioner in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities was in an appropriate position to provide specific comments on the applicant vocational rehabilitation practitioner's suitability in taking up the duties of the approved assessor.

Requirement for provision of aiding equipment

58. Mr CHEUNG Kwok-che asked whether the Administration would make it a mandatory requirement for all persons with disabilities to be provided with the necessary aiding equipment during the assessment process. He was also concerned whether the Administration would put in place measures to ensure that the performance of persons with disabilities during the assessment would not be unduly affected due to particular circumstances, including the absence of the necessary aiding equipment.

59. AC for L (SD) advised that relevant subsidiary legislation under MWO would stipulate the broad principles and major elements of the assessment methods, leaving the operational procedures and other details to be set out in the form of administrative guidelines for approved assessors. As such, the Administration would highlight in the administrative guidelines to be issued to the approved assessors that they might make suggestions on the aiding equipment to be provided by the employer to the person with disabilities. If the approved assessor, having regard to all the facts and evidence available, was of the view that the performance of the person with disabilities and degree of productivity during the assessment was adversely affected by any reasons that caused the latter not to perform at full potential, the approved assessor might reasonably adjust upwards the degree of productivity of the person with disabilities.

60. Notwithstanding the aforesaid upward adjustment mechanism for productivity assessment, Mr CHEUNG Kwok-che remained of the view that it was of pivotal importance for employers to provide persons with

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disabilities with the necessary aiding equipment in the assessment process because even if there were upward adjustment, it was subject to the subjective judgment of approved assessors.

Cost of assessment and the remuneration level

61. In reply to Dr PAN Pey-chyou's enquiry, AC for L (SD) advised that the cost of assessment would be borne by the Government. The Administration intended to pay the assessment fee at a standard rate to the approved assessor after the completion of an assessment in accordance with MWO and its relevant subsidiary legislation. The Administration was working on the amount of the assessment fee and the financial expenses involved would be reflected in the Estimates of the relevant years.

VI. Any other business

62. Mr CHEUNG Kwok-che suggested that consideration should be given for the Panel to undertake an overseas duty visit for the purpose of understanding the experience of other countries in the implementation of standard working hours.

63. The Chairman suggested that the Research Division should be requested to conduct a preliminary research on overseas places which had implemented standard working hours. The Chairman further said that he would discuss with the Deputy Chairman as to whether and how to proceed with the duty visit on the basis of the research findings. Members agreed.

64. There being no other business, the meeting ended at 4:48 pm.