

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1326/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/MP

**Panel on Manpower**

**Minutes of meeting**  
**held on Friday, 20 January 2012, at 9:00 am**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon LEE Cheuk-yan (Chairman)  
Hon LI Fung-ying, SBS, JP (Deputy Chairman)  
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 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

**Members absent** : Hon CHEUNG Man-kwong  
Hon WONG Sing-chi  
Hon LEUNG Kwok-hung

**Public Officers attending** : Item IV  
Mr CHEUK Wing-hing, JP  
Acting Permanent Secretary for Labour and Welfare

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

Ms Teresa FONG Yuk-sim  
Senior Labour Officer (Employees' Compensation) 1  
Labour Department

Mr Raymond FONG Siu-leung  
Senior Labour Officer (Employees' Compensation) 2  
Labour Department

Item V

Mr CHEUK Wing-hing, JP  
Acting Permanent Secretary for Labour and Welfare

Mr Byron NG Kwok-keung, JP  
Assistant Commissioner for Labour  
(Labour Relations)

Ms Melody LUK Wai-ling  
Chief Labour Officer (Labour Relations)  
Labour Department

Miss Candice CHENG Lai-fan  
Senior Labour Officer (Labour Relations)  
Labour Department

**Clerk in attendance** : Mrs Sharon TONG  
Principal Council Secretary (2)

**Staff in attendance** : Ms Clara TAM  
Assistant Legal Adviser 9

Miss Josephine SO  
Senior Council Secretary (2) 7

Miss Lulu YEUNG  
Clerical Assistant (2) 1

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Action

**I. Confirmation of minutes of previous meeting**  
(LC Paper No. CB(2)836/11-12)

The minutes of the meeting held on 17 November 2011 were confirmed.

**II. Information paper(s) issued since the last meeting**  
(LC Paper No. CB(2)695/11-12(01))

2. Members noted that a submission from a member of the public, expressing concern about the working environment and rest time of the staff of the telebet department of the Hong Kong Jockey Club, had been issued since the last meeting.

3. The Deputy Chairman suggested that the submission should be forwarded to the Administration for follow up. Members agreed.

*(Post-meeting note: The submission was forwarded to the Administration on 20 January 2012. The Administration had been requested to follow up the issues raised in the submission and keep the Panel posted of developments or follow-up actions taken.)*

**III. Date of next meeting and items for discussion**  
(LC Paper Nos. CB(2)838/11-12(01) and (02))

4. Members agreed to discuss the following two items proposed by the Administration at the next Panel meeting to be held on Thursday, 16 February 2012, at 2:30 pm -

- (a) Implementation of the Work Incentive Transport Subsidy Scheme; and
- (b) Manpower projection to 2018.

Regarding the item in (a) above, members agreed that deputations should be invited to express their views at the meeting and invitation be sent to those deputations and individuals who had attended the special Panel meeting on 4 January 2011 giving views on the same subject.

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**IV. Review of the levels of compensation under the Employees' Compensation Ordinance, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance**  
(LC Paper Nos. CB(2)699/11-12(01), CB(2)838/11-12(03) to (04) and CB(2)859/11-12(01))

5. Acting Permanent Secretary for Labour and Welfare ("PSLW(Atg)") briefed members on the Administration's proposal to increase the amount of a total of 10 compensation items under the Employees' Compensation Ordinance (Cap. 282) ("ECO"), the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) ("PMCO") and the Occupational Deafness (Compensation) Ordinance (Cap. 469) ("ODCO") in line with the findings of the biennial review covering 2009 and 2010 on the levels of compensation under the three Ordinances, details of which were set out in the Administration's paper.

6. Members noted a submission, which was tabled at the meeting, from a group of patients suffering from pneumoconiosis.

*(Post-meeting note: The submission tabled at the meeting was circulated vide LC Paper No. CB(2)878/11-12 on 20 January 2012.)*

Adequacy of adjustment to the levels of compensation

7. Mr WONG Kwok-hing considered the proposed 1.48% increase in the compensation level for the five relevant items under ECO far from sufficient, given the persistent high inflation rates recorded in the past two years. He expressed disappointment that the Administration had taken a long time to complete the review exercise for 2009-2010, and the proposed adjustment of compensation levels failed to accurately reflect the latest price movement.

8. PSLW(Atg) responded that the level of compensation for the five relevant items under ECO was normally adjusted according to the wage movement as reflected by the Nominal Wage Index ("NWI"). As NWI decreased by 1% in 2009 but increased by 2.5% in 2010 according to the Census and Statistics Department ("C&SD"), the net increase in wage movement for 2009-2010 was 1.48%.

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9. Regarding members' concern about the proposed adjustments to different compensation items under ECO, ODCO and PMCO lagging behind inflation, PSLW(Atg) explained that it was the established practice of the Administration to review the levels of compensation provided for under ECO and PMCO every two years. For the current review, all relevant data were available for analysis in mid-2011. Time was needed to consult the Hong Kong Federation of Insurers ("HKFI"), the Occupational Deafness Compensation Board and the Pneumoconiosis Compensation Fund Board on the impact of the proposed increases in the levels of compensation under the three Ordinances. Afterwards, the review findings and proposals had to be discussed by the Labour Advisory Board ("LAB").

10. Mr LEUNG Yiu-chung shared the view that the proposed adjustments were on the low side. He criticized the Administration for failing to take into account the present-day consumer price inflation during the review. He pointed out that the amount of compensation for pain, suffering and loss of amenities under PMCO had remained unchanged for about 13 years. Despite the upward adjustment of the maximum amount of funeral expenses reimbursable under ECO and PMCO to \$55,000, it was still insufficient to cover the reasonable funeral expenses for a deceased person. Besides, the daily maximum rates for medical expenses under the two Ordinances were last revised in April 2003. In his view, the maximum amounts of reimbursement for funeral and medical expenses should be raised to \$85,000 and \$500 respectively. He enquired whether the Administration would consider members' suggestion to further increase the compensation levels of different items and take the matter back to LAB for further discussion.

11. Echoing the views of Mr WONG Kwok-hing and Mr LEUNG Yiu-chung, the Deputy Chairman said that the implementation of statutory minimum wage ("SMW") would have an impact on the wage and price movements. It was therefore necessary for the Administration to take into account the impact of SMW in future reviews of the compensation levels under the three Ordinances.

12. Noting that the present maximum amount of reimbursement for funeral expenses incurred was set in 2000, Mr IP Kwok-him asked whether a review mechanism was in place to ensure that the pay-out amount was sufficient to cover the reasonable funeral expenses for a deceased person.

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13. In response, PSLW(Atg) made the following points -
- (a) the Administration followed the established mechanism to review the changes in wage and price indices and other relevant factors for 2009 and 2010. The findings of the review and the proposals to increase the amount of 10 compensation items under the three Ordinances had been discussed and endorsed by LAB. Any changes to the proposals in response to members' views and concerns had to be re-submitted to LAB for consideration. Besides, consultation with the relevant fund boards would also be required;
  - (b) the proposals under discussion were unanimously supported by LAB, which comprised an equal number of employer and employee representatives;
  - (c) compensation for pain, suffering and loss of amenities ("PSLA") under PMCO, currently at the rate of \$3,180 per month, was normally adjusted by reference to price changes as reflected by the Consumer Price Index ("CPI") (A). The amount of the compensation had remained unchanged since 1998, as in the past reviews conducted up to 2008, the increases in CPI(A) over the years had yet to offset the cumulated rate of decrease since the last adjustment of compensation level in 1998. Same as for the other compensation items, it was agreed that the amount of compensation for PSLA would not be revised upwards until the cumulated rate of decrease in CPI(A) had been offset by future increases. In the current review, CPI(A) increased by 0.4% in 2009 and further by another 2.7% in 2010. Although the price movement for 2009-2010 was +3.11%, this was still not short of the cumulative negative change of 6.88% since the last adjustment of compensation levels between 1998 and 2008. Hence, the Administration decided to freeze the level of compensation for this item;
  - (d) the maximum amount of funeral expenses reimbursable under ECO and PMCO was also subject to review every two years by reference to the movement of CPI(A). The rate had been frozen for around 10 years because the increases in CPI(A) over the years had yet to offset the cumulated rates of decrease since the last adjustment in 2000. When setting

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the present maximum level for funeral expenses in 2000, information was collected on the costs for cremation from the major funeral parlours and the Food and Environmental Hygiene Department. Taking into account the expenses incurred by people who opted for cinerary urns in the private sector, an amount of \$10,000 was added on top of the estimated cremation costs to come up with the \$35,000 maximum level for funeral expenses. According to the latest cost information collected in March 2011, funeral expenses ranged from \$26,250 to \$52,735, with \$39,493 in the middle. It was noteworthy that prices of cinerary urns in private columbaria varied widely and had increased substantially in recent years. In proposing the increase from the current ceiling of \$35,000 to \$55,000, the Administration had allowed a 50% increase in the provision, i.e. from \$10,000 in 2000 to \$15,000 in 2011, to cater for the higher price of urns in the private sector. The maximum amount of funeral expenses reimbursable under ECO and PMCO would thus be adjusted upwards to \$55,000. Nonetheless, the use of private columbarium facilities was not a requirement for claiming funeral expenses. In reality, given the increasingly high price of private cinerary urns due to a shortage in niche supply which was not a problem before 2000, it would be impractical nowadays to have the ceiling of funeral expenses adjusted by reference to the prices of urns in private columbaria; and

- (e) under ECO and PMCO, a claimant who had received medical treatment as a result of a work injury or in connection with pneumoconiosis and/or mesothelioma might claim reimbursement of the actual amount of medical expenses incurred, subject to a daily maximum. The maximum amounts were set to cover the costs for consultation, injection and dressing, physiotherapy and hospitalization on any one day in a public hospital or clinic. The daily maximum rates for medical expenses under these two Ordinances were last revised on 4 April 2003 to align with the revision of the fee structure of public health care services in 2003. Since then, the charges in public hospitals and clinics for these treatments remained at the same level, hence a freeze in the daily limits for reimbursement. It was considered appropriate to adopt the charges for public health care services as the basis of adjustment.

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14. Mr Tommy CHEUNG remarked that members should respect the decision of LAB. Should any amendments to the proposals under discussion be proposed by members, the Administration should bring the matter up for discussion by LAB.

15. Mr CHAN Kin-por considered that the proposed 1.48% increase sounded problematic amidst the current state of high inflation. However, as the review had long been conducted according to established practices, it would not be appropriate to deviate from the existing practices upon finding certain indicators not favourable. Considering the views of some members, he suggested that the Administration should give consideration to revamping the basis for reviewing and adjusting the compensation levels. He requested the Administration to consult LAB on members' suggestion to further increase the compensation amount of those items under discussion. He considered that there should be objective data to justify an increase in the ceiling of funeral expenses to \$85,000.

16. PSLW(Atg) reiterated that LAB had unanimously agreed to the package of proposals set out in the Administration's paper. The increase of 1.48% was not small in money terms. The proposed ceiling of monthly earnings for calculating compensation (i.e. \$21,820) was a base figure to be multiplied by a factor which could be up to 84 or 96 months, depending on the age of the employees concerned, and the actual increase in compensation would be over \$20,000. It was the plan of the Administration to submit the relevant legislative proposal very shortly to the Legislative Council ("LegCo"), so as to effect the proposed changes starting from 1 April 2012. Since any changes to the proposals in response to members' views and concerns would need to be referred to the relevant fund boards, the LAB Committee on Employees' Compensation and LAB for detailed examination, the implementation of the proposed upward adjustment of compensation levels might have to be deferred as a result.

17. The Chairman stressed that members were duty-bound to fight for the interests and better protection of workers who suffered from work injuries, occupational diseases, occupational deafness, pneumoconiosis and/or mesothelioma. He shared the view of some members that the proposed adjustment rates in the present review exercise were far out of line with the latest inflation situation and hence, should be raised further. He said that as statistics considered were out of date and lagging in nature, the Administration should take into account the latest inflation situation and propose higher and more realistic rates of compensation. He urged the Administration to refer members' proposals to LAB immediately for

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its consideration. In his view, re-opening the issue for further consultation with LAB and the relevant fund boards should not cause delay to the implementation of the upward adjustment. The Administration should deal with the two matters concurrently and follow its original schedule to give notice for moving the proposed resolutions to effect the changes at a Council meeting before April 2012.

18. PSLW(Atg) responded that the Administration would endeavour to adhere to its original timetable to move resolutions on the present proposal at a Council meeting with a view to effecting the proposed changes commencing from 1 April 2012 and at the same time, conduct a special review on the wage and price changes in 2011 to take into account the effect of the implementation of SMW. The Administration would strive to compress the time required for undertaking the review and consulting LAB on the proposed enhancements, if any, to the present proposal. The special review would be completed within 2012.

Comprehensive review of the employees' compensation system

19. Mr WONG Kwok-hing asked whether the Administration would conduct a full review of and introduce improvements to the existing employees' compensation system, such as expanding its scope to make diseases, for example, muscle strain and musculoskeletal disorder, as compensable occupational diseases.

20. PSLW(Atg) pointed out that the issue raised by Mr WONG Kwok-hing was outside the scope of the present review. He stressed that the Administration conducted reviews from time to time, with a view to making improvements to the existing employees' compensation system.

21. The Deputy Chairman said that to her knowledge, people suffering from occupational deafness had to endure constant and immeasurable pain for the rest of their life. She urged for the establishment of compensation for pain arising from occupational deafness, like the one under PMCO.

22. Assistant Commissioner for Labour (Employees' Rights & Benefits) ("AC for L (R&B)") responded that ODCO provided one-off compensation and benefits for people who suffered from noise-induced deafness by reason of their employment. While ODCO was last amended in February 2010 to further benefit persons with occupational deafness, the Administration would continue to adopt an open attitude towards specific proposals to improve ODCO.

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23. The Deputy Chairman urged the Administration to provide a concrete timetable for taking forward her suggestion.

24. Mr IP Wai-ming said that ECO had remained essentially unchanged for many years. In his view, the Administration should conduct a comprehensive review on ECO and introduce improvements, including facilitating the early rehabilitation of injured workers and promoting mediation of work injury claims, to keep pace with the developments in the society.

25. PSLW(Atg) reiterated that from time to time, the Administration reviewed the scope and levels of compensation under the three Ordinances with a view to identifying areas for further improvement. The Administration had reservations about the suggestion for a comprehensive review. The Administration was heavily engaged in numerous legislative review exercises in recent years, such as the enactment of SMW legislation in 2011 and there was the policy study on standard working hours in the year ahead. It was difficult at this stage for the Administration to provide any timeframe for other legislative reviews.

26. Regarding Mr IP Wai-ming's suggestion of promoting mediation of work injury claims, PSLW(Atg) and AC for L(R&B) said that the Judiciary had set the procedure to be followed by the litigating parties to engage in mediation after the commencement of a court action as an alternative dispute resolution to litigation. In the course of processing employees' compensation claims, the Employees' Compensation Division of the Labour Department ("LD") also helped employers and employees resolve their disputes by providing information or advice on the legal requirements and medical conditions of the injured employees, etc.

Economic implication of the upward adjustment

27. Mr IP Kwok-him noted that the Administration had consulted HKFI about the impact of the proposed increases in the compensation level of five items under ECO on employees' compensation insurance ("ECI") premium. He sought detailed information in this regard.

28. PSLW(Atg) advised that according to the actuarial studies engaged by HKFI, the combined impact of an 1.48% increase in the compensation level for the five relevant items and an upward adjustment of the maximum amount of funeral expenses to \$55,000 under ECO would result in an increase of insurance claims costs in the region of 0.051%

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to 0.343% which might in turn be translated into an increase of a similar range in the ECI premium. Taking an enterprise with over 100 employees paying an insurance premium at \$100,000 a year as an example, if the insurer would adjust the premium upwards by 0.343% given the increase in insurance claims costs, the additional premium to be paid by the employer would be \$343 per year (i.e. \$100,000 x 0.343%). The cost implication on employers would hence be minimal. The impact on ECI premium was set out in the paper for discussion by LAB on the subject.

29. Mr Tommy CHEUNG said that he had received complaints from catering establishments recently about the difficulty in taking out ECI, because of unreasonably high premiums and collective refusal of insurance coverage. Expressing concern over the impact of the proposed increases on ECI premium, he called on the Administration to thoroughly assess the impact of upward adjustment of compensation levels provided for under ECO when conducting biennial reviews in future.

30. PSLW(Atg) responded that to alleviate the difficulties of enterprises, particularly those in high-risk industries, in taking out ECI, the insurance industry had launched the Employees' Compensation Insurance Residual Scheme ("the Scheme") starting from May 2007. The Scheme operated as the market of last resort for employers who were unable to acquire ECI cover from the open insurance market, and it accepted risks on the basis of co-insurance subscribed by participating employees' compensation insurers. As at the end of 2011, a total of 176 applications for insurance cover had been received. Other than the 40 cases which were still under processing, 97 employers had been offered ECI cover by individual insurers in the course of applications while the remaining some 30 employers had been insured through the Scheme.

31. Mr CHAN Kin-por said that while the Scheme provided support as the last resort to enterprises in need of insurance coverage, there were often suspected cases of making fraudulent insurance claims, leading to the refusal of underwriting insurance policy by insurance companies.

32. Mr LEUNG Yiu-chung held the view that in the long run, the Administration should explore the feasibility of establishing in Hong Kong a central ECI scheme.

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Other issues

33. Responding to Mr WONG Kwok-hing's enquiry about rehabilitation services provided to workers suffering from occupational injuries or diseases to facilitate their early return to work, PSLW(Atg) and AC for L (R&B) said that -

- (a) at present, the Hospital Authority ("HA") provided comprehensive and integrated medical and rehabilitation services to all injured persons, including employees injured at work. HA considered it not feasible to provide priority or specialized services for injured employees; and
- (b) LD had, in collaboration with the insurance industry, launched the Voluntary Rehabilitation Programme ("VRP") to provide injured employees with an additional channel to receive free and timely medical and rehabilitation services in the private sector to facilitate speedier recovery and their early return to work. Participation of injured employees in VRP was entirely voluntary and their statutory entitlements would not be affected.

34. The Deputy Chairman noted with concern that the Pneumoconiosis Medical Board ("PMB") took considerable time to confirm if workers had contracted pneumoconiosis and/or mesothelioma. As such, workers suffering from pneumoconiosis and/or mesothelioma had to wait for a long time before they were provided with compensation payments under PMCO. She asked whether interim payment of compensation could be given once a worker was preliminarily diagnosed of suffering from the said diseases, leaving any adjustment to be made when his/her entitlement could be ascertained after PMB's determination was known. PSLW(Atg) responded that the Administration maintained an open mind and would consider the suggestion in its future review of PMCO.

35. Mr CHEUNG Kwok-che noted from paragraph 14 of the Administration's paper that the cumulative change in CPI(A) for the period between 1998 and 2010 was -3.99%. Expressing concern about the big gap between the price movement as reflected by CPI(A) and the high inflation rate felt by the general public in their daily life over the past year, he queried the appropriateness for the Administration to adjust the levels of compensation according to price changes as reflected by CPI(A).

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36. PSLW(Atg) pointed out that CPI(A) measured the expenditure pattern of households in Hong Kong in the lower to middle expenditure ranges. CPI(A) was commonly adopted in numerous economic analyses and reviews administered by the Government.

Motions

Motion 1

37. Mr WONG Kwok-hing moved the following motion, seconded by the Deputy Chairman -

"本委員會促請政府盡快重新按最新通脹率及最低工資實施後的情況，調高所有有關職業補償條例的金額及殯殮費、醫療費等等補償和支援的費用，改變過時及滯後的調整機制，進一步改善對傷亡僱員的支援。政府並應就上述改善提交落實的時間表。"

(Translation)

"That this Panel urges the Government to, in accordance with the latest inflation rate and the circumstances after the implementation of the minimum wage, expeditiously make upward adjustment to the levels of compensation under various occupational compensation ordinances as well as the amounts for rendering compensation and support such as funeral and medical expenses and so on, so as to revamp the out-dated and lagged-behind adjustment mechanism with further improvement to the support to be provided to injured or deceased employees; and that the Government should also submit a timetable for the implementation of the aforesaid improvement measures."

The Chairman put Mr WONG's motion to vote. All members present voted unanimously for the motion and no member voted against it. The Chairman declared that the motion was carried.

38. Mr LEUNG Yiu-chung moved the following two motions, seconded by Mr CHEUNG Kwok-che -

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Motion 2

"本委員會要求政府於下次會議提交設立"職業性失聰痛苦補償金"落實的時間表及有關詳情。"

(Translation)

"That this Panel requests the Government to provide an implementation timetable as well as the relevant details for the establishment of "Compensation for Pain arising from Occupational Deafness" at the next meeting."

Motion 3

"本委員會要求政府將殯殮費上限調升至85,000元。"

(Translation)

"That this Panel requests the Government to raise the maximum amount of funeral expenses to \$85,000."

The Chairman put the two motions moved by Mr LEUNG to vote. All members present voted unanimously for the motions and no member voted against them. The Chairman declared that the two motions were carried.

Conclusion

39. Concluding the discussions, the Chairman said that members had no objection to the Administration proceeding with moving resolutions to effect the new levels of compensation starting from 1 April 2012. Members, however, requested the Administration to consider their views and suggestion of raising the amount of compensation items further and take the matter back to LAB for its consideration.

**V. Proposed amendments to the reinstatement and re-engagement provisions under the Employment Ordinance**  
(LC Paper Nos. CB(2)825/11-12(01) and CB(2)838/11-12(05))

40. PSLW(Atg) briefed members on the work progress of the Administration in drawing up amendments to the reinstatement and re-engagement provisions of the Employment Ordinance (Cap. 57) ("EO"), as detailed in the Administration's paper.

Action

Legislative timetable

41. Mr IP Wai-ming and Mr WONG Kwok-hing welcomed the Administration's proposal to empower the Labour Tribunal ("LT") to make a compulsory order for reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully, and to require the employer to pay a further sum to the employee for failing to comply with the order. Mr IP enquired whether the amendment bill could be introduced into the Council within the current legislative session.

42. PSLW(Atg) replied that the Administration was drafting a bill to amend EO to incorporate the proposed amendments. The Labour and Welfare Bureau and LD had been working closely with the Department of Justice and consulting the Judiciary on various legal and implementation details. The Administration would endeavour to expedite the drafting process and introduce the amendment bill into LegCo as soon as possible.

43. Mr IP Wai-ming considered that the Administration should not drag on the matter any further. He urged the Administration to introduce the amendment bill within the current legislative session. Echoing Mr IP's view, the Chairman and Mr WONG Kwok-hing said that the Administration should aim at introducing the amendment bill as early as possible, say, within March 2012 so that LegCo Members could complete the scrutiny work within the current term.

44. PSLW(Atg) assured members that the Administration would do its best to expedite the preparatory work for the amendment bill. In case the bill could not be introduced within this legislative session, the Administration's objective was to submit it at the commencement of the Fifth LegCo.

Adequacy of protection

45. Mr IP Wai-ming expressed concern that some employers might circumvent their obligation to pay a further sum by first re-engaging those staff in respect of whom a compulsory order for reinstatement/re-engagement was made and then dismissing them after a certain period of time. He asked whether the Administration had any plan to review the implementation of the proposed compulsory reinstatement/re-engagement order in future, so as to enhance the protection brought by this compulsory order to employees.

Action

46. PSLW(Atg) advised that the Administration would closely monitor the implementation of the proposed amendments. If circumstances so warranted, the Administration would conduct a review of the bill, if enacted, one year after its coming into effect.

Admin

47. Responding to Mr IP Wai-ming's concern about the possibility of circumvention by unscrupulous employers of their obligation to pay the proposed further sum, PSLW(Atg) said that if there was sufficient evidence demonstrating wilful default of payment or unlawful dismissal of the reinstated employee, prosecution would be instituted. The Chairman requested the Administration to supplement information on the relevant provisions under which prosecution would be taken out.

48. Mr WONG Kwok-hing considered that the proposed amount of the further sum, subject to a maximum of \$50,000, was too low. He asked about the basis of calculation of the sum and whether the Administration would consider increasing it to a higher level.

49. Dr PAN Pey-chyou shared the view that the proposed further sum, which was three times of the monthly wages of the employee concerned and capped at \$50,000, was too low and insufficient to ensure protection for employees, especially the professional and high-salaried employees, against unreasonable and unlawful dismissal. He considered that the cap should be removed to enable LT to award a higher amount of compensation, so as to deter employers from evading their obligation to comply with the compulsory reinstatement order.

50. PSLW(Atg) responded that the proposed further sum was arrived at by making reference to the claim cases received in the past which showed that the average monthly salary of employees was around \$10,000. As the further sum, which was over and above the terminal payments and award of compensation stipulated under the existing provisions of EO, was an additional monetary compensation to recompense the aggrieved employee in consequence of the employer's non-compliance with the compulsory order of reinstatement or re-engagement, the Administration considered the proposed level of the further sum appropriate. PSLW(Atg) stressed that in determining the level of the further sum, the Administration had taken into account the interests of employees and the effect on employers. The ceiling of \$50,000 was agreed by the employee and employer members of LAB. Where it was considered necessary for the amount to be adjusted after the legislative proposal was passed, this could be done by way of a subsidiary legislation as in section 32P of EO.

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51. The Deputy Chairman expressed deep concern about the protection provided to a dismissed employee under the present proposal. She asked whether LT, in tandem with making a compulsory reinstatement/re-engagement order, would specify the date on which the reinstatement/re-engagement was to take place.

52. PSLW(Atg) replied that according to EO, in making an order for reinstatement or re-engagement, LT should specify the terms on which reinstatement or re-engagement was to take place, including the date by which the employer must comply with the order.

53. Responding to the Deputy Chairman's enquiry as to whether employees unreasonably and unlawfully dismissed would be compensated or paid wages for the period while awaiting reinstatement after LT had made a reinstatement order, PSLW(Atg) said that the existing provisions in EO did not impose such a duty on employers.

54. The Deputy Chairman urged the Administration to incorporate members' suggestions, in particular about the need to include a provision to enable employees to be immediately reinstated or re-engaged when LT made such an order, otherwise the employees should be entitled to certain payment during the period pending reinstatement. PSLW(Atg) said that the Administration took note of members' views and would study their suggestions.

Statistics on cases of unreasonable and unlawful dismissal

55. The Deputy Chairman noted that during the period from July 1997 to December 2011, LD had handled 6 653 claim cases of unreasonable and unlawful dismissal, of which 46 involved employees' requests for reinstatement or re-engagement. Among these 46 cases, 28 could not be resolved through conciliation by LD and were thus referred to LT for adjudication. She sought information on the court judgment, including the remedies awarded to employees, in respect of these 28 cases.

56. PSLW(Atg) informed members that among the 28 cases which had been referred to LT, the employers and employees reached mutual agreement to settle the case by payment in 12; the claimants withdrew their claims in two; the court dismissed the claims in six; the court ruled in favour of the claimant in one; the court adjourned the proceedings in four; and three were still under processing by LT.

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Admin

57. Regarding the 12 cases in which the employers and employees reached settlement by payment, the Deputy Chairman requested the Administration to provide supplementary information after the meeting on the amount of payment made to the employee in each case.

*(Members agreed to extend the meeting by 15 minutes.)*

58. Mr LEUNG Yiu-chung held the view that in situations where an employee was dismissed or discriminated against by reason of the employee exercising trade union rights, the order for reinstatement or re-engagement should be made compulsory to the effect that the employer concerned would not be allowed to opt for making a further sum instead of complying with the reinstatement/re-engagement order. He suggested that a provision be added for LT to exercise discretion to make a compulsory order strictly for reinstatement or re-engagement.

59. PSLW(Atg) responded that dismissal by reason of the employee exercising trade union rights fell within the scope of unlawful dismissal, in which case the employer concerned was liable to prosecution. Since the proposal to empower LT to make a compulsory order for reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully and to require the employer to pay a further sum to the employee for failing to comply with such an order was targetted at all types of dismissal prohibited by EO and without valid reasons, singling out those cases of dismissal on grounds related to union membership or participation in union activities and according them differential treatment might not be tenable as a matter of principle. Given the controversial nature of this suggestion and the need to consult LAB, the proposed amendments as currently formulated appeared to be a more practical way forward to protect the employees.

60. The Chairman suggested that to achieve greater deterrence, the Administration should give consideration to making non-compliance with the reinstatement or re-engagement order made by LT a criminal offence.

61. PSLW(Atg) responded that the Chairman's suggestion had in fact been fully deliberated by LAB in 2004. LAB, however, was of the view that in the interests of employees, it was more appropriate and pragmatic to adopt a provision of a further sum to be payable to the employee in case the employer failed to comply with the compulsory order for reinstatement/re-engagement.

Action

62. There being no other business, the meeting ended at 11:18 am.

Council Business Division 2  
Legislative Council Secretariat  
13 March 2012