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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 19 March 2013**

Continuous contract under the Employment Ordinance

Purpose

This paper provides background information on the discussions of the Panel on Manpower ("the Panel") on the subject of continuous contract under the Employment Ordinance (Cap. 57) ("EO").

Background

2. Schedule 1 of EO defines continuous contract as a contract of employment under which an employee has been employed for four weeks or more and has worked for 18 hours or more in each week. This is commonly known as the "4-18" threshold for a continuous contract. While certain protection and entitlement are accorded to all employees, irrespective of their duration of employment or hours of work per week, some other protection and entitlement are provided for continuous contract employees only. These include rest days, pay for statutory holidays, paid annual leave, paid maternity leave, paid sickness days, severance payment and long service payment, subject to the respective qualifying requirements.

3. According to the Administration, the notion of continuous contract rests on the premise that employees who have a regular employment relationship with their employers should be entitled to the full range of employment benefits. In any dispute as to whether a contract of employment is a continuous contract, section 3 of EO provides that the onus of proving that the contract is not a continuous contract rests on the employer.

4. In the third quarter of 2001, the Census and Statistics Department ("C&SD") conducted a special topic enquiry via the General Household Survey

to gather information on those employees who were not working under a continuous contract. The Labour Department ("LD") commissioned C&SD to conduct another survey in the first quarter of 2006 as a special topic enquiry via the General Household Survey. Further, LD had commissioned C&SD to collect statistical data of employees who were not engaged under a "continuous contract", including their distribution and proportion in the labour market as well as their occupational characteristics for the period from October to December 2009.

Deliberations of the Panel

Protection for employees not employed under a continuous contract

5. The phenomenon of growing number of employees who were not engaged under a continuous contract had been a major issue of concern of the Panel. At the Panel meeting on 16 June 2005 when the protection for employees not employed under a continuous contract was discussed, there was a suggestion that employees not employed under a continuous contract should be entitled, on a pro-rata basis, to the rights and benefits of a full-time employee. There were also suggestions that the "4-18" threshold should be removed and the subject matter should be examined in a wider context in association with the issues of minimum wage and standard working hours of employees. Following the implementation of the statutory minimum wage ("SMW") from May 2011, members expressed concern that it might have negative impact on the employment opportunities of these employees. It was suggested that the Administration should conduct a survey and collect relevant data to find out the possible impact of SMW in this respect.

6. According to the Administration, removing or lowering the "4-18" threshold for continuous contract under EO would have cost implications for employers, as they would also have to offer the full range of employment benefits to those employees who worked for shorter hours. The retail, catering and entertainment businesses had a greater demand for part-time staff. Employers in these trades might need to reduce their workforce so as to contain the additional staffing cost if the "4-18" threshold was relaxed. Removing the threshold would also adversely affect the employment opportunities of those who preferred to work shorter hours. Besides, it would impact on the marginal workforce who might have difficulty competing with other job-seekers in the full-time employment market. Furthermore, it might reduce the flexibility of certain industries which would normally adjust their part-time workforce when there were fluctuations in the demand for their goods and services. Given the wide implications on employers and employees, any proposal to remove or reduce the "4-18" threshold for continuous employment should be considered

carefully in this light. Members were advised that LD had commissioned C&SD to collect statistical data to facilitate the impact assessment of the implementation of SMW. The Administration would make reference to those data during its review of the definition of continuous contract under EO.

Survey findings on employees who were not working under a continuous contract

7. At its meeting on 17 January 2008, the Panel was briefed on the survey findings conducted by C&SD in the first quarter of 2006 on a special topic enquiry to gather updated information on employees who were not working under a continuous contract ("the survey"), which had been deliberated by Labour Advisory Board ("LAB"). Concern was raised over a substantial increase in the number of non-"4-18" employees working less than 18 hours per week from 28 900 in 2001 to 52 400 in 2006. Members called on the Administration to amend EO to minimize unscrupulous employers' exploitation of part-time workers.

8. Information was sought on whether the Administration would consider removing the "4-18" threshold and extending the rights and benefits of "4-18" employees under EO to part-time employees on a pro-rata basis. There was a view that removing the threshold might have a positive effect and enable non-"4-18" employees to work for longer hours and help simplify the task of human resource management.

9. According to the Administration, economic growth might be conducive to the increase of non-"4-18" employees. While employees engaged under a continuous contract were entitled to additional benefits under EO compared to non-"4-18" employees, the latter, irrespective of their hours of work, were also entitled to basic rights and benefits under EO. As revealed in the survey, some employers of non-"4-18" workers had voluntarily provided their non-"4-18" employees with benefits exceeding the statutory requirements of EO.

10. The Administration further advised that the survey had revealed that the majority of non-"4-18" employees working less than 18 hours per week did not work longer hours for personal reasons. From the perspective of human resource management, some trades such as the retail and catering industries might prefer to employ part-time workers to cater for their operational needs. The employment of part-time workers could also provide opportunities for those who preferred to work on a flexible basis. Removal of the threshold might have a negative impact on employment.

11. The Panel noted that the Administration would conduct an in-depth study based on the statistics obtained and explore the feasibility of introducing

amendment to EO to enhance the rights and benefits of non-"4-18" employees.

12. The Panel passed a motion at its meeting on 17 January 2008 urging the Government to proceed immediately to amend EO for protection of non-"4-18" employees so that they would be entitled to the statutory employment rights and benefits. Members were advised that the Administration would conduct a review on the definition of "continuous contract" under EO in the light of the latest developments in the labour market.

Major findings of Special Topics Report No. 55

13. At the Panel meeting on 17 November 2011, the Panel was briefed on the major findings of a survey conducted by C&SD on employees engaged under employment contracts with short duration or working hours (hereinafter referred to as "SDWH employees") as published in its Special Topics Report No. 55 ("the Report") released in July 2011. The 148 300 SDWH employees at the time of enumeration were classified into three categories i.e. A, B and C. Members were advised that 56 300 Category A employees usually worked less than 18 hours per week; 75 800 Category B employees usually worked 18 hours or more per week but were employed in their present jobs for less than four weeks at the time of enumeration; and 16 200 Category C employees had worked continuously for their employers for four weeks or more and usually worked at least 18 hours per week but not continuously in their present jobs at the time of enumeration.

14. Members were further advised that it was mostly due to personal reasons, including family duties, educational pursuit, health problem, old age and no financial need, that the majority of Category A employees working less than 18 hours per week had not worked longer hours.

15. Under Category B, 25 600 employees did not expect to work in their present jobs continuously for four weeks or more. Members expressed deep concern about the reasons given by about half of these 25 600 employees for not being offered a longer term contract by their employers, including custom of trade, norm of company and business arrangement of company. Some members were of the view that these reasons were merely used as excuses of unscrupulous employers or well-established enterprises to evade their statutory responsibilities to provide SDWH employees with employment benefits. These members enquired about the measures to be taken by the Administration to curb such practice. In addition, clarification was sought on the impact assessment on the business environment and labour market should legislative amendments be introduced to EO to enhance the rights and benefits of SDWH employees.

16. The Administration explained that a higher proportion of the 25 600 SDWH employees were engaged in the construction sector in which due to the special characteristics of construction works, workers with a skill were usually engaged on a short-term basis and would leave the work site after that part of the works had been completed. Since "continuous contract" was the basis for determining an employee's eligibility for various employment rights and benefits under EO, any amendment to this statutory definition would have far-reaching implications on the labour market as a whole.

17. There was concern about analyses on the employment and demographic profiles for Category C employees. According to the Administration, it was the first time that C&SD captured data on such type of employees, which accounted for 0.6% of the total number of employees working in the non-government sector. Among them, 33.0% were engaged in the construction sector, 32.0% in the retail, accommodation and food services sector, 11.6% in the public administration, social and personal services sector and 11.1% in the transportation, storage, postal and courier services, information and communications sector.

18. Members expressed concern about an increasing trend of employers scheduling the pattern of hours of work of their part-time employees in such an odd way that the employees concerned would not be entitled to protection and benefits that were accorded to continuous contract employees. Members were of the view that the Administration should plug the loopholes as soon as possible by removing the "4-18" threshold and putting forward legislative proposals to enhance employment protection and benefits for SDWH employees.

Review of the definition of "continuous contract"

19. At the Panel meetings on 21 October 2010 and 17 February 2011, information was sought on the progress of the review conducted by the Administration on the definition of "continuous contract" under EO and the Administration's timetable for completing the review. The Administration advised that the review on the definition of "continuous contract" was carried out in the light of the survey findings of the Report.

20. Concern about the progress of the review on continuous contract under EO was raised again at the Panel meeting on 17 November 2011. The Administration advised that a review of the subject was being undertaken with reference to relevant laws and regulations, measures and experiences of other places and findings of the survey on SDWH employees as revealed in the Report, with due regard to Hong Kong's own circumstances. It would be important to strike a reasonable balance between the interest of employees and

the affordability of employers. The Administration's plan was to consult LAB on the review in mid-2012. The Panel would be further consulted.

Relevant papers

21. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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**Relevant papers on
continuous contract under the Employment Ordinance**

Committee	Date of meeting	Paper
Panel on Manpower	16.6.2005 (Item VI)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	17.1.2008 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	21.10.2010 (Item II)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	10.11.2010	<u>Official Record of Proceedings</u> <u>(Question 18)</u>
Panel on Manpower	17.2.2011 (Item II)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	16.3.2011	<u>Official Record of Proceedings</u> <u>(Question 9)</u>
Panel on Manpower	17.11.2011 (Item IV)	<u>Agenda</u> <u>Minutes</u> <u>LC Paper No.</u> <u>CB(2)694/11-12(01)</u>