

立法會
Legislative Council

LC Paper No. CB(2)626/15-16
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 15 December 2015, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex

Members present : Hon KWOK Wai-keung (Chairman)
Dr Hon CHIANG Lai-wan, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon CHAN Kin-por, BBS, JP
Hon CHEUNG Kwok-che
Hon WONG Kwok-kin, SBS
Hon IP Kwok-him, GBS, JP
Hon LEUNG Kwok-hung
Hon CHAN Yuen-han, SBS, JP
Dr Hon KWOK Ka-ki
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan

Member attending : Hon WONG Kwok-hing, BBS, MH

Members absent : Hon LEUNG Yiu-chung
Dr Hon LEUNG Ka-lau
Hon LEUNG Che-cheung, BBS, MH, JP

**Public Officers
attending** : Item IV

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

Mr Donald TONG Chi-keung, JP
Commissioner for Labour

Ms Queenie WONG Ting-chi
Assistant Commissioner for Labour
(Policy Support)

Mr Desmond HOU Ka-chun
Principal Economist
Financial Secretary's Office

Mr Raymond HO Kam-biu
Chief Labour Officer (Working Hours Policy)
Labour Department

Item V

Mr Donald TONG Chi-keung, JP
Commissioner for Labour

Ms Melody LUK Wai-ling
Assistant Commissioner for Labour
(Labour Relations)

Mr Simon LI Chi-chung
Chief Labour Officer (Labour Relations)
Labour Department

Ms Cecilia CHAN Pui-ching
Senior Labour Officer (Labour Relations)
(Policy Support)
Labour Department

**Clerk in
attendance** : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Miss Joyce CHAN
Assistant Legal Adviser 1

Ms Rita LAI
Senior Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)444/15-16)

The minutes of the meeting held on 17 November 2015 were confirmed.

II. Information paper issued since the last meeting
(LC Paper No. CB(2)356/15-16(01))

2. Members noted that a joint letter dated 26 November 2015 from Mr WONG Kwok-kin, Miss CHAN Yuen-han and Mr TANG Ka-piu suggesting the Panel to follow up the review of the implementation of statutory paternity leave had been issued since the last meeting. Miss CHAN was of the view that the Panel should discuss the subject as soon as practicable. The Chairman advised that the subject had been included in the Panel's list of outstanding items for discussion and he would liaise with the Administration on the timing for reverting to the Panel.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)446/15-16(01) and (02))

Regular meeting in January 2016

3. Members agreed that the Panel would receive briefings by the Secretary for Labour and Welfare ("SLW") and the Secretary for Education respectively on the relevant policy initiatives in the Chief Executive ("CE")'s 2016 Policy Address at the next regular meeting scheduled for 19 January 2016 at 4:30 pm.

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Items for discussion at future meetings

Review on the implementation of the Work Incentive Transport Subsidy ("WITS") Scheme

4. Mr LEE Cheuk-yan suggested that the Panel should follow up on the review findings of the implementation of the WITS Scheme as soon as practicable as the annual adjustment of the income and asset limits of the transport subsidy would take effect in early 2016. At the invitation of the Chairman, SLW said that the Administration would revert to the Panel on the results of the comprehensive review of the WITS Scheme around April 2016 subject to the progress of the review. In response to Mr LEE's enquiry about the relationship between WITS and the Low-income Working Family Allowance ("LIFA"), SLW advised that LIFA-family working members meeting the eligibility criteria of the WITS Scheme might apply for individual-based WITS, and their WITS payments would be counted towards the family income in LIFA's income test in the respective claim months.

Employment support measures for grassroots women

5. The Deputy Chairman informed members that she and four other members, including Mr LEUNG Kwok-hung, Miss CHAN Yuen-han, Mr POON Siu-ping and Mr CHUNG Kwok-pan, had just met with a deputation on issues relating to employment support measures for grassroots women and they suggested that the Panel should discuss the subject as soon as practicable. The Chairman advised that he would liaise with the Administration in respect of the timing for discussing the subject.

(Post-meeting note: A joint letter from the above-mentioned five members on the subject was issued to members vide LC Paper No. CB(2)482/15-16(01) on 16 December 2015.)

IV. Progress of the work of the Standard Working Hours Committee

(LC Paper Nos. CB(2)446/15-16(03) and (04))

6. At the invitation of the Chairman, SLW, Commissioner for Labour ("C for L"), Principal Economist of the Financial Secretary's Office and Chief Labour Officer (Working Hours Policy) of the Labour Department ("LD") ("CLO(WHP)) briefed members on the latest work progress and deliberations as well as the subsequent work directions of the Standard Working Hours Committee ("SWHC"), details of which were set out in

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the Administration's paper. The Chairman drew members' attention to the Administration's proposal to extend a supernumerary post of CLO at D1 level for a period of five years to follow up the working hours policy directions and the related work, and its plan to submit the relevant staffing proposal to the Establishment Subcommittee for consideration.

7. Members noted the background brief entitled "Standard working hours" prepared by the Legislative Council ("LegCo") Secretariat.

8. Members further noted that The Federation of Hong Kong & Kowloon Labour Unions had provided the Panel with a written submission.

"Big frame" under exploration

9. Members noted with grave concern that six employee representatives of the Labour Advisory Board ("LAB"), who were SWHC's ex-officio members, had walked out of the SWHC meeting on 27 November 2015. Miss CHAN Yuen-han, Mr WONG Kwok-hing and Mr TANG Ka-piu said that the employee representatives were dissatisfied with the fact that employer representatives backtracked on their promise to conduct future discussion on the basis of legislating for working hours of employees as agreed at the SWHC meeting on 18 March 2015. Instead, SWHC was exploring a proposed legislative approach to mandatorily require employers and employees in general to enter into written employment contracts specifying clearly such terms relating to working hours, for example, the number of contractual working hours, overtime work arrangements and methods of overtime compensation (i.e. the "big frame"). Under such circumstances, Miss CHAN Yuen-han, Mr WONG Kwok-kin and Mr POON Siu-ping took the view that the Administration's stance on the matter was of critical importance. Mr POON sought clarification about the rationale for SHWC's recent discussion departing from the consensus reached at earlier meetings. Miss CHAN and Mr WONG considered it imperative for the Administration to break such a deadlock and secure the participation of the employee representatives again in SWHC's work. Mr TANG Ka-piu and the Chairman were concerned about how the Administration could take forward the subject of formulating a working hours policy in the absence of the employee representatives on SWHC. Dr KWOK Ka-ki shared a similar concern. Mr TANG held the view that there was no need to legislate for "contractual working hours" which was a matter of enforcement action. He urged the Administration to respond to the strong call from the labour sector in respect of legislating for SWH.

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10. In light of the lack of a consensus among the employer and employee representatives over the "big frame" under SWHC's exploration and the latter's boycott of the SWHC discussion, Mr CHAN Kin-por expressed concern about how the Administration could secure the continued participation of the employee representatives in SWHC's work and kick start the second-stage consultation which was expected to commence in early 2016. Raising queries that the Administration had intentionally adopted a delaying tactic in formulating a working hours policy, Mr SIN Chung-kai asked whether the second-stage consultation would be the final step to be taken by the Administration before making a decision on the way forward for a working hours policy. Mr SIN was concerned about how the Administration would take forward the subject upon completion of the second-stage consultation and receipt of the report from SWHC.

11. Given that employers and employee of various sectors hold divergent views on whether SWH should be implemented through legislative means, Mr LEE Cheuk-yan considered that it was incumbent upon the Administration to adopt a proactive approach in legislating for SWH so as to safeguard employees' rights and benefits. Mr LEE held a strong view that the "contractual working hours" approach under the "big frame" was not acceptable.

12. Mr IP Kwok-him was of the view that the subject of SWH involved the fundamental interest of the labour sector as well as the operational cost and business environment of employers. It was imperative to strike a balance and adopt a rational and evidence-based approach when conducting relevant discussion on the formulation of a working hours policy.

13. The Deputy Chairman said that some large enterprises as well as small and medium enterprises ("SMEs"), for instance, information technology and some emerging industries, might not support a SWH policy because of the difficulties and complications involved in the calculation of working hours. The Deputy Chairman, on the other hand, was concerned that the overtime work of some elementary workers was not duly compensated or merely compensated at an overtime pay rate equal to the statutory minimum wage ("SMW") level, which in her view was unreasonable. She called on the Administration to make efforts in ensuring the continuation of SWHC's work with a view to identifying an appropriate working hours policy for the benefits of all employees, in particular those vulnerable ones.

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14. Expressing the view that it was inappropriate to implement a uniform working hours regulation for all the sectors across-the-board, Mr CHUNG Kwok-pan said that he was in support of the "big frame" under exploration and it was reasonable to implement contractual working hours having regard to the varied circumstances of various sectors and occupations.

"Small Frame" under exploration

15. While acknowledging that the subject of SWH was highly complicated given its widespread and far-reaching implications for the overall employment market, employment relations, business environment, economic development and business competitiveness, Mr CHAN Kin-por remarked that the non-monetary social benefits, including work-life balance and employees' health, were of equal importance. As regards the "small frame" under exploration, he enquired whether consideration would be given to extending the coverage of the impact assessment as appropriate.

16. Mr POON Siu-ping noted with concern that the preliminary results of the impact assessment of 27 parameter combinations conducted by SWHC for exploring the feasibility under the "small frame" to provide further protection for grass-roots employees with lower income, lower skills and less bargaining power focused on the potential impact on enterprises, such as the number of enterprises turning from profits to losses and the number of full-time equivalent jobs so entailed. Mr POON was of the view that the assessment had omitted the part on the positive social impacts of SWH, such as enhancing occupational safety and health and enhancing employees' productivity. The Chairman echoed a similar view and concern. Mr LEUNG Kwok-hung was of the view that a working hours policy should be formulated under the premise of eight hours work per day to ensure work-life balance.

17. Mr CHUNG Kwok-pan said that he was in support of exploring the "small frame" on the premise of the "big frame". He further expressed the view that concerns over the long working hours situation which adversely impacted on work-life balance should more appropriately be addressed by specifying the maximum working hours instead of SWH.

18. In response to members' views and concerns, SLW made the following points -

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- (a) as one of its terms of reference, SWHC would report to CE and advise on the working hours situation in Hong Kong, including whether a statutory SWH regime or any other alternatives should be considered, upon completion of its term;
- (b) SWHC had since its establishment worked at full steam to complete an enormous amount of work to explore working hours policy directions. SWHC planned to launch the second-stage consultation in early 2016, which would be the final round of its consultation, to facilitate further discussion on working hours policy directions and collect views for SWHC's reference in preparing its report; and
- (c) the secretariat would continue to fully support the work of and act in concert with SWHC so as to facilitate its completion of the second-stage consultation and preparation of the report for submission to the Government as soon as possible. The Administration would carefully consider the recommendations therein in identifying the way forward for a working hours policy suitable for Hong Kong.

19. C for L made the following points -

- (a) SWHC, upon further deliberation of relevant data analysis, had agreed to take forward the work on further consultation with major employers' associations, major labour organisations, relevant trades and professional bodies during the second-stage consultation so as to collect views of the community on working hours policy directions being explored by SWHC;
- (b) SWHC was discussing the draft framework of the second-stage consultation and would at the future meetings discuss the content of the draft consultation document, which would probably include both the "big frame" and the 28 parameter combinations for impact assessment under the "small frame"; and
- (c) SWHC kept an open mind in contemplating a working hours policy and would carefully consider various factors including employees' overtime work situation, as well as the

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possible impacts of different scenarios on employees, employers, enterprises (particularly SMEs), trades, overall economy and labour market with a view to building community consensus and formulating appropriate and feasible working hours policy directions.

20. CLO(WHP) made the following response -

- (a) SWHC consistently conducted its discussions at recent meetings on the four principles and suggestions on working hours policy directions deduced through an evidence-based approach with reference to the findings of the working hours survey and the first-stage consultation completed in 2014, which were detailed in paragraph 23 of the Administration's paper; and
- (b) as regards the social impact of implementing SWH, SWHC noted that if working hours were shortened, it might help employees achieve better work-life balance, and reduce their potential health problems. Regulating working hours and overtime pay rates might improve employees' income and accordingly their quality of life, and might also encourage enterprises to review their manpower arrangements, so as to enhance operational efficiency and reduce the overtime work of employees.

Manpower resources required

21. Mr POON Siu-ping and Miss CHAN Yuen-han expressed reservation about the Administration's proposed extension of the supernumerary CLO post for five years, given that there was no significant progress of SWHC's work in legislating for SWH. They raised query about the Administration's intention of adopting a delaying tactic in taking forward the subject.

22. Mr LEE Cheuk-yan, Mr SIN Chung-kai, Mr LEUNG Kwok-hung and Dr KWOK Ka-ki shared similar concerns. These members were concerned that the proposed extension of the CLO post would mean that the Administration intended to continue its study on the subject of SWH for a few more years. Mr LEE said that he would object to the proposed extension of the supernumerary CLO post if it was not tasked to follow up the legislative work for SWH. Expressing dissatisfaction at the Administration's failure to honour CE's election manifesto and to follow

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up on the policy study on SWH, Mr LEUNG Kwok-hung held the view that the Administration should seriously consider legislating for SWH for the benefits of over 3 000 000 employees in Hong Kong. Given the tenure of the current-term Government would expire in June 2017, Dr KWOK Ka-ki cast doubt as to whether the necessary legislative procedures for introducing a working hours regime could be completed within the tenure of the current Government. As such, it was not justifiable to extend the supernumerary CLO post for five years.

23. Mr TANG Ka-piu raised query about the need for extending the supernumerary CLO post in view of the uncertain participation of the employee representatives in the work of SWHC again.

24. Mr IP Kwok-him was concerned about the impact on the work of SWHC if the proposed extension of the supernumerary CLO post was not supported.

25. Responding to members' concerns and views, SLW and C for L made the following points -

- (a) the supernumerary CLO post had been created since 1 April 2013 for a period of three years until 31 March 2016 to head the newly established Working Hours Policy Division ("WHPD") in LD, provide the secretariat support for SWHC, plan and take forward the various tasks involved, coordinate the research work and impact assessments, as well as follow up the discussions of SWHC. There was a continued need for the supernumerary CLO post, in particular in light of the impending commencement of the second-stage consultation;
- (b) it was envisaged that after receiving SWHC's report, the Government would need to thoroughly and holistically consider SWHC's recommendations and take follow-up actions as appropriate, including formulating the details and concrete arrangements for taking forward SWHC's recommendations, communicating and liaising with relevant advisory and statutory bodies, drafting any legislation and/or administrative measures relating to implementation of SWHC's recommendations, planning various aspects of supporting work to tie in with the implementation of SWHC's recommendations; and

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- (c) from experience of the past two years or so, LD had to have a veteran directorate officer who was familiar with labour administration matters to lead WHPD and other non-directorate supporting staff in handling various complicated issues of working hours policy and coordinating the relevant work. It was noteworthy that issues relating to SWH were far more complicated and controversial than the introduction of SMW. To follow up the report to be submitted by SWHC to the Government in the first quarter of 2016, the Administration proposed to extend the supernumerary CLO post for five years so as to continue to head WHPD, and to specifically follow up and take forward the various aspects of work on working hours policy. It was anticipated that such work would be procrastinated if the proposed extension was not supported. However, consideration could be given to adjusting the proposed extension if necessary in the light of members' views about the long-term need for the post.

26. In concluding the discussion, the Chairman requested the Administration to take note of members' concerns over the proposed extension of the supernumerary CLO post when preparing the proposal to the Establishment Subcommittee for consideration.

27. The Chairman reminded members that a subcommittee appointed by the Panel to follow up the subject of SWH would commence work in early January 2016.

V. Proposed amendments to the Employment Ordinance for the making of compulsory reinstatement or re-engagement orders for unreasonable and unlawful dismissals
(LC Paper Nos. CB(2)446/15-16(05) and (06))

28. At the invitation of the Chairman, C for L briefed members on the progress of the proposal to amend the Employment Ordinance (Cap. 57) ("EO") for the making of compulsory reinstatement/re-engagement orders for unreasonable and unlawful dismissals ("UUD") and the key elements of the proposed provisions, as detailed in the Administration's paper. C for L added that LAB had no further comments on the inclusion into the draft provisions two detailed items relating to relief from paying the further sum under exceptional circumstances and arrangement for re-engagement by successor or associated company of the employer under a re-engagement order.

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29. Members noted the background brief entitled "Proposed amendments to the reinstatement and re-engagement provisions under the Employment Ordinance" prepared by the LegCo Secretariat.

[The Chairman informed members that the meeting would be extended by 15 minutes.]

Legislative timetable

30. Mr WONG Kwok-hing, Miss CHAN Yuen-han and Mr TANG Ka-piu welcomed the Administration's proposal to amend the reinstatement/ re-engagement provisions of EO. Mr WONG, Miss CHAN and Mr LEE Cheuk-yan expressed concern about the legislative timetable and whether the necessary legislative procedures could be completed within the tenure of the Fifth LegCo. Mr LEE expressed disappointment at the slow progress of the drafting of the relevant legislation, having regard to the lengthy discussion on the issue by LegCo and its committees for more than a decade.

31. Responding to members' concerns and views, C for L said that the Administration was aware of the tight schedule for introducing the legislative proposal into LegCo. The Labour and Welfare Bureau was working closely with the Department of Justice ("DoJ") and the Judiciary in the drafting work with a view to finalising the amendment bill for introduction into LegCo in the first quarter of 2016.

Adequacy of protection

32. In respect of the further sum to be paid by an employer who failed to reinstate or re-engage the employee concerned in case of UUD as required by the order made by the Labour Tribunal ("LT"), Mr WONG Kwok-hing considered the proposed amount, which was three times the employee's monthly wages and subject to a maximum of \$50,000, was too low and insufficient to ensure adequate protection for employees. Mr CHEUNG Kwok-che shared a similar view. Mr WONG enquired whether consideration would be given to removing the cap so as to enhance the protection for employees.

33. Citing the recent labour dispute case involving musicians of the Hong Kong Chinese Orchestra who had been dismissed because of participation in trade union activities, Mr TANG Ka-piu remarked that the protection of employees' rights to form trade unions and join such activities was insufficient under the existing legislation. Mr TANG and

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Mr WONG Kwok-hing were of the view that the legislative proposal should safeguard employment of employees exercising trade union rights. While acknowledging that the proposed reinstatement/re-engagement provisions would be able to enhance the protection for employees to a certain extent, Mr TANG expressed concern about its deficiencies, including the fact that LT would consider the difficulties faced by employer in complying with its order and that an employer who was unable to fulfil the reinstatement or re-engagement obligation under the order might make an application to LT for relief from the liability to pay the further sum which was subject to a maximum of \$50,000 only. Mr TANG held the view that such ceiling, which was calculated based on the findings from past cases that the average monthly salary of employees was around \$10,000, had to be reviewed and adjusted to, say, \$14,000 to \$15,000, in view of the accumulated wage increase over the years.

34. Mr LEE Cheuk-yan expressed grave concern that the employer would only be liable to pay a further sum with a ceiling of \$50,000 in lieu of the requirement of reinstatement or re-engagement made by LT. In his view, employers' non-compliance with the order for reinstatement or re-engagement should be made a criminal offence to increase the deterrence. Mr CHEUNG Kwok-che shared a similar view.

35. Mr LEUNG Kwok-hung called on the Administration to make reference to the international practice in adopting the concept of unfair dismissal and increase the level of penalty for non-compliance of reinstatement/re-engagement order made by LT as well as extending the scope of the coverage with a view to enhancing the deterrent effect on the unscrupulous employers.

36. In response to members' views and concerns, C for L advised that the consensus of LAB on specific elements of the legislative proposal, including the proposed amount of the further sum and the penalty on employers concerned, had been reached after thorough discussion. He drew members' attention to the current median monthly wage which was around \$15,000. It was believed that the legislative proposal would be able to provide further protection to employees. The Administration would keep in view the protection for employees' rights in this respect.

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37. At the request of Mr TANG Ka-piu, C for L agreed to provide a table illustrating the key differences in making an order for reinstatement/re-engagement for UUDs under the current provisions of EO and the proposed amendments to the Ordinance.

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38. The Deputy Chairman raised query as to whether a compulsory reinstatement/re-engagement order would be in the best interest of employers and employees. Expressing concern about the failure of some employees in obtaining the judgment sum awarded by LT because of employers' wilful intention of defaulting, the Deputy Chairman sought information on the relevant legal requirement and the number of cases involved.

39. C for L advised that an employer who wilfully and without reasonable excuse failed to pay a sum for wages or other specified entitlements awarded by LT within 14 days after it became due would commit an offence and would be liable on conviction to a maximum fine of \$350,000 and three years of imprisonment. The penalty level was considered to be effective in deterring the offenders. Assistant Commissioner for Labour (Labour Relations) ("AC for (LR)") added that cases of default payment of LT awards were broadly divided into two categories. The first category recorded most of the cases which involved mainly insolvent employers. Under such circumstances, LD would provide the employees concerned with assistance in executing the award or instituting winding-up or bankruptcy proceedings against the insolvent employers, and refer the cases to the Protection of Wages on Insolvency Fund for application of ex gratia payments, if applicable. For the second category of cases where the employers were solvent and still in operation, upon receipt of the employee's complaint on default of LT awards, LD would conduct follow-up investigation and, with sufficient evidence of breach of EO requirements, take out criminal prosecution against the employer. In the past, LD had successfully secured conviction of employers who defaulted LT awards, with one of them being fined \$300,000 and some other employers being sentenced to imprisonment for a few weeks to a few months. The Deputy Chairman suggested that consideration could be given to prohibiting the default employers from departing from Hong Kong so as to enhance the deterrent effect.

40. In response to Miss CHAN Yuen-han's enquiry, C for L advised that LD had handled a total of some 8 000 claim cases of UUD in the past 18 years. Of which, 67 cases involved employees requesting for reinstatement or re-engagement.

41. Miss CHAN Yuen-han expressed concern about whether the legislation to be enacted would have retrospective effect. In reply, AC for (LR) said that LD had consulted DoJ in this regard. Owing to human rights consideration, the revised provisions would provide for a transitional arrangement with reference to the date of dismissal.

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42. Mr CHEUNG Kwok-che expressed concern about the protection of employees who had been reinstated or re-engaged by the employer concerned under an order made by LT. Mr CHEUNG further enquired about the penalty on the employer concerned in the event of repeated UUD.

43. AC for (LR) responded that in respect of anti-union discrimination, an employee who was dismissed owing to his exercising trade union rights under relevant provisions of EO within 12 months immediately before the dismissal was entitled to make a claim for remedies against the employer for UUD. It was believed that the stringent enforcement effort would strengthen the deterrent effect and send a strong message to employers that violating EO was a serious offence. C for L added that according to the legislative proposal, in an employee's claim for reinstatement or re-engagement in the circumstances of UUD, an employer's consent as a prerequisite to a reinstatement or re-engagement order made by LT would be removed. In considering an employee's claim for reinstatement or re-engagement, if LT found that an order for reinstatement or re-engagement was appropriate and compliance with the order by the employer reasonably practicable, it might make such an order even if the employer disagreed. As such, the right to opt for reinstatement or re-engagement or receiving terminal payments and/or compensation would be vested in the employees concerned.

44. Mr CHEUNG Kwok-che, however, remained concerned about the deterrent effect of the reinstatement/re-engagement provisions in safeguarding employees against anti-union discrimination even after the enactment of the amendment bill. Miss CHAN Yuen-han shared a similar view.

45. There being no other business, the meeting ended at 6:47 pm.