

立法會
Legislative Council

LC Paper No. CB(2)1234/17-18
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Monday, 26 February 2018, at 10:45 am
in Conference Room 2 of the Legislative Council Complex

- Members present** : Hon KWOK Wai-keung, JP (Chairman)
Hon LEUNG Yiu-chung
Hon WONG Kwok-kin, SBS, JP
Hon Michael TIEN Puk-sun, BBS, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Dr Hon KWOK Ka-ki
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon HO Kai-ming
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Dr Hon Pierre CHAN
Hon LUK Chung-hung
Hon Jeremy TAM Man-ho
- Member absent** : Dr Hon Fernando CHEUNG Chiu-hung (Deputy Chairman)
- Public Officers attending** : Item IV
Dr LAW Chi-kwong, GBS, JP
Secretary for Labour & Welfare

Miss Mabel LI Po-yi, JP
Deputy Commissioner for Labour (Labour Administration)

Mr Simon LI Chi-chung
Assistant Commissioner for Labour
(Employees' Rights & Benefits)

Mr Sam SUM Kai-wah
Senior Labour Officer (Labour Inspection)
Labour Department

Ms Tracy CHU Lai-fong
Principal Assistant Secretary for Financial Services &
the Treasury (Treasury) (E)

Mr CHIU Yu-chow
Assistant Director (Grade Management & Development)
Food and Environmental Hygiene Department

Mr Rex LAW Chi-wai
Assistant Director (Finance)
Leisure and Cultural Services Department

Mrs Helen CHEUNG LO Pik-yuk
Chief Manager / Management (HK Island and Islands)
Housing Department

Mr Aaricf MOK Chun-yu
Chief Property Manager (Property Management)
Government Property Agency

Mr Alex CHAN Mun-keung
Senior Property Manager (Property Management)
Contract Administration
Government Property Agency

Item V

Miss Mabel LI Po-yi, JP
Deputy Commissioner for Labour (Labour Administration)

Mr Simon LI Chi-chung
Assistant Commissioner for Labour
(Employees' Rights & Benefits)

Mr KOO Chiu-shing
Senior Labour Officer (Employment Claims Investigation)
Labour Department

Mr Sam SUM Kai-wah
Senior Labour Officer (Labour Inspection)
Labour Department

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

Staff in attendance : Ms Rita LAI
Senior Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper Nos. CB(2)895/17-18 and CB(2)918/17-18)

The minutes of the meetings held on 19 December 2017 and 16 January 2018 were confirmed.

II. Information paper issued since the last meeting

2. Members noted that no information paper had been issued since the last meeting.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)920/17-18(01) and (02))

Regular meeting in March 2018

3. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 4:30 pm on 20 March 2018:

- (a) Major findings of the 2017 Annual Earnings and Hours Survey; and

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- (b) Occupational disease and occupational health situation in 2017.

Dr KWOK Ka-ki suggested and members agreed that in its paper for item (b) above, the Administration should address members' concerns about rehabilitation services for employees who sustained work injuries, which had already been included in the Panel's list of outstanding items for discussion.

IV. Protection for employees of government service contractors
(LC Paper Nos. CB(2)920/17-18(03) and (04))

4. At the invitation of the Chairman, Secretary for Labour & Welfare ("SLW") briefed members on the existing measures adopted by the Government for protecting non-skilled workers engaged by its service contractors, and the work of a working group ("the Working Group") set up by the Government in exploring ways to strengthen the employment rights and benefits as well as protection of these non-skilled employees, details of which were set out in the Administration's paper.

5. Members noted an updated background brief entitled "Protection for employees of government service contractors" prepared by the Legislative Council ("LegCo") Secretariat.

Government outsourcing system

6. Mr LUK Chung-hung said that the Hong Kong Federation of Trade Unions ("HKFTU") had all along been concerned about the deficiency of the government outsourcing system ("GOS") and the inadequate protection of the employment rights and benefits of non-skilled employees engaged by the government service contractors ("GSCs"). In the light of huge fiscal reserve, Mr LUK held the view that the Administration should make substantial improvement to GOS.

7. Dr KWOK Ka-ki pointed out that prior to the implementation of GOS, certain services provided by non-skilled workers of GOS were performed by government employees. The Government should therefore assume the responsibility to protect these non-skilled employees and address various problems relating to GOS. Sharing a similar view, Mr LEUNG Yiu-chung was particularly concerned about the problem of

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suspected bid-rigging in view of the limited numbers of contractors awarded service contracts by the Food and Environmental Hygiene Department ("FEHD").

8. Mr LUK Chung-hung enquired about whether the review of the Working Group would include the scope of outsourcing of government services. SLW replied in the negative. Mr LUK expressed disappointment and said that it was HKFTU's view that in the long run, outsourcing should be minimized and more permanent employees should be recruited if there was a long-term and stable demand for services provided by outsourced workers.

9. Mr SHIU Ka-fai was of the view that it was necessary to deliver some of the public services under GOS so as to maintain a small and efficient civil service. As a matter of fact, non-skilled workers engaged by GSCs were duly protected under the labour laws. It was the Government's responsibility to use the public resources prudently. Mr Frankie YICK shared a similar view and suggested that the efficiency and effectiveness of delivery of public services under GOS should be studied by the Efficiency Unit.

10. In response to Mr SHIU Ka-fai's further enquiry, SLW said that the staff cost of government employees would generally be higher as compared with outsourcing the relevant public services.

11. The Chairman called on the Administration to conduct review of GOS on a regular basis so as to make necessary improvements from time to time. The Chairman further appealed to the procuring departments of outsourced services to provide decent environment and appropriate facilities for employees of GSCs to take meals and change uniforms as necessary.

12. SLW said that members' views on and concerns about protection for employment rights and benefits of non-skilled employees engaged by GSCs were noted. As a matter of fact, the inter-bureaux/departmental Working Group comprising the Labour and Welfare Bureau ("LWB"), Labour Department ("LD"), Financial Services and the Treasury Bureau, FEHD, Leisure and Cultural Services Department ("LCSD"), Housing Department ("HD") and Government Property Agency would explore feasible options to improve GOS with a view to enhancing the protection of reasonable employment terms and conditions as well as labour benefits for non-skilled employees engaged by GSCs, while at the same time

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improving the requirements of service quality. SLW stressed that the Government attached great importance to protecting the employment rights and benefits of the employees engaged by GSCs.

13. In response to Mr HO Kai-ming's enquiry, Chief Manager/Management (HK Island and Islands) of HD said that the Housing Authority, being a statutory body, would make reference to the government procurement regulations and procedures when formulating HD's outsourcing policy. Upon the introduction of new measures by the Government, HD would consider for incorporation into its policy.

14. Mr LUK Chung-hung expressed concern about the monitoring measures against GSCs. Given that the manpower requirements and service hours had not been stipulated clearly in the service contracts of FEHD, he said that to his knowledge, some GSCs of FEHD had not deployed sufficient workers for the outsourced services and this had caused great work pressure to the workers. Assistant Director (Grade Management & Development) of FEHD advised that service contractors were required to submit, among others, attendance records of their employees regularly. District staff of FEHD would also check the attendance randomly on daily basis. In respect of the service hours, the proposed working hours of GSCs' employees submitted by the tenderers, say less than 10 hours per day, in the work plan was used for evaluation under the standard marking scheme as part of the assessment criteria.

Tender evaluation

15. Mr LUK Chung-hung said that the marking schemes for assessing service contractors should be revised by assigning a higher weighting of 70% for the technical and quality factor relating to employees' benefits, with the remaining 30% for the price factor. Mr LEUNG Yiu-chung shared a similar view.

16. Instead of awarding outsourced service contracts based on "lowest bid wins", Mr LEUNG Yiu-chung considered that the Government should formulate certain index for assessing whether the tender price was unreasonably low. For instance, whether the manpower provision for the lower-priced tender was reasonable in the light of the service areas and population so as to ensure sufficient manpower for delivery of services and reasonable workload of outsourced workers if the contract was so awarded. Consideration should also be given to according extra scores to those tenders providing more favourable employment benefits

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in terms of wage rate, working hours and leave entitlements to the employees under the tender evaluation mechanism with a view to ensuring reasonable employment terms and conditions for employees of GSCs.

17. SLW advised that the Government did not assess tenders of outsourced service contracts primarily based on the "lowest bid wins" principle. There was no pre-set ceiling on the weightings of the assessment criteria and procuring departments might propose the relevant weightings based on their actual operational requirements for consideration by relevant tender committees. Procuring departments would generally specify the performance requirements in the tender specifications, whereas the employment terms and conditions of non-skilled employees were stipulated in the Standard Employment Contract ("SEC"). Apart from the assessment criteria in tendering, the Working Group would also study the content of SEC, with a view to providing more reasonable employment terms and conditions to non-skilled employees of GSCs.

18. Mr SHIU Ka-chun asked whether the Working Group would consider specifying the provision of necessary suitable and adequate equipment, such as slip resistant shoes and cut-resistant gloves, as technical aspects in the tender evaluation of GOS with a view to safeguarding the occupational safety of outsourced workers. SLW said that the suggestion was noted and would be duly considered by relevant procuring departments.

Demerit point system

19. Mr LEUNG Yiu-chung, Dr KWOK Ka-ki, Mr SHIU Ka-chun and Mr LUK Chung-hung were concerned about the ineffectiveness of the demerit point system ("DPS") in respect of government service contracts that relied heavily on the deployment of non-skilled employees. Mr LUK pointed out that under DPS, GSCs would seldom be awarded demerit points for non-compliance of relevant items. According to the Government's records, only one GSC had so far been suspended from tendering after having accumulated three demerit points in the past. Mr LEUNG was dissatisfied at the narrow scope of coverage under DPS. He pointed out that GSCs would not be awarded with demerit points even though they were found contravening labour legislation.

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20. Principal Assistant Secretary for Financial Services & the Treasury (Treasury) (E) said that concerns and views expressed by members and relevant labour unions on DPS were noted. In effect, the relevant bureaux and departments were proactively conducting a review on DPS. Currently, demerit points would be awarded to GSCs for non-compliance of relevant items under the service contracts. These included failing to sign SEC with its employees, or failing to observe the contractual obligations in respect of wages, working hours and auto-payment of wages.

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21. In respect of the audit review on outsourcing of the management of public rental housing estates during the period from February 2004 to June 2007 as detailed in the 2007-2008 Report of the Audit Commission, Mr SHIU Ka-chun asked about the reasons for non-issuance of default notices under DPS for the 115 cases with established employment-related irregularities as recorded by HD. Chief Manager/Management (HK Island and Islands) of HD said that information requested by Mr SHIU would be provided after the meeting.

Wage issues

22. To better safeguard the employment benefits of the outsourced workers, Dr KWOK Ka-ki enquired whether the Administration would model on the procurement arrangement of consultancy services for the public works projects and make direct wage payments to GSCs' employees. SLW advised that such procurement was related to professional consultancy services for public works projects. The direct payment of wages by Government to certain employees, however, would have impact on the recruitment policy of the civil service.

23. Dr KWOK Ka-ki said that the wage level of outsourced workers should be set at a level that was sufficient for them to support the basic livelihood of their families. SLW advised that the wage levels of employees of GSCs were protected under the Minimum Wage Ordinance (Cap. 608) ("MWO") and that the Statutory Minimum Wage ("SMW") rate was reviewed on a regular basis. On the other hand, the Low-income Working Family Allowance Scheme would help relieve the financial pressure of low-income working families.

24. The Chairman, however, considered that the SMW rate could hardly safeguard the basic needs of outsourced workers. As the wage component for successful bids for outsourced services was mostly computed on the basis of the SMW rate, the Chairman and

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Mr LUK Chung-hung said that HKFTU had urged for stipulating the wage level of non-skilled employees engaged by GSCs at no less than the latest median wage of the industries.

25. Mr LEUNG Yiu-chung was concerned about the low wage level of GSCs' employees, in particular those under the service contracts of FEHD and LCSD, as the increase in the tender price lagged behind the increase in inflation over the years.

26. Citing a wage default incident in 2015 whereby the default contractor providing manpower/shelving services to public libraries failed to pay wages to his employees and the affected employees had to file claims for outstanding wages, the Chairman said that members had repeatedly called on the Administration to consider making reference to section 43C of the Employment Ordinance (Cap. 57) ("EO"), under which the principal contractor and superior sub-contractors would be liable for the outstanding wages of employees of sub-contractors, and settle directly the outstanding wages of the affected outsourced workers. He expressed dissatisfaction at the Administration's refusal to adopt the arrangement on the ground that EO was not applicable to the Government and that the applicability of section 43C of EO was confined to the construction industry.

27. SLW advised that the Government was always conscious of the quality of public services. If the public services were outsourced, procuring departments should devise an effective monitoring mechanism to ensure the performance of the contractors and their compliance with the terms of the contract. LD would also check GSCs' compliance with the provisions of labour legislation and SEC.

28. Mr LUK Chung-hung and Mr HO Kai-ming took the view that the wage level of non-skilled employees engaged by GSCs in the new contracts for the same jobs should not be lower than that in the previous ones. Mr HO further expressed grave dissatisfaction about the increasing trend and extent of outsourcing public services, such as outsourcing low- and middle-rank managerial jobs, and the phenomenon of wage deduction for the same jobs after the services were outsourced. Mr HO further called on the Administration, in particular the four major procuring departments, to make reference to the mechanism put in place by the Transport Department ("TD") whereby the wage level of the non-skilled employees engaged by the new tunnel operator would not be lower than that in the old contract.

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29. SLW responded that it was a complicated issue to mandate the incoming GSC to take over the workers of the outgoing GSC if there was a change of contractor at the end of the contract period and the adoption of "no worse off" principle for the wage level of these workers. That said, the Working Group noted the concern and would take this into consideration.

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30. In respect of HD's outsourcing of the property management of some of public rental housing estates, Mr HO Kai-ming sought information on the savings in staff costs for non-skilled employees. Chief Manager/Management (HK Island and Islands) of HD said that she did not have the requested information on hand and would provide it after the meeting.

Provision of paid meal breaks

31. Mr Jeremy TAM said that he had received a number of complaints referred from the Public Complaints Office of LegCo about non-provision of paid meal breaks for non-skilled employees engaged by GSCs. He considered that it was attributed to the adoption of the "lowest bid wins" principle in tender evaluation for outsourced services. Being the largest employer in Hong Kong and having regard to the huge fiscal reserve, Mr TAM held the view that instead of providing the employees concerned with the statutory minimum employment entitlements, the Government should take the lead in stipulating paid meal breaks in the employment terms for non-skilled workers engaged by GSCs. Mr TAM and Mr SHIU Ka-chun enquired whether the Working Group would study the issue. Mr TAM further expressed the view that LegCo should also require its outsourcing contractors to include paid meal breaks in their employees' working hours.

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32. At Mr Jeremy TAM's request, the Administration agreed to provide information on the number of service contracts of HD and FEHD which had stipulated meal breaks with pay in the employment terms for non-skilled workers engaged by GSCs after the meeting.

33. Mr SHIU Ka-fai, however, considered it unnecessary to stipulate paid meal breaks in the employment terms for non-skilled workers engaged by GSCs in the light of the diversity of job nature involved. He drew to the attention of members that following the implementation of SMW and the provision of paid meal breaks by some enterprises, it was

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observed that the increase in wage cost had eventually transferred to the consumers. Given that it was the Government to foot the bill for GOS, Mr SHIU cautioned that the pay rise for outsourced workers would in effect be borne by tax payers in Hong Kong.

34. SLW and Deputy Commissioner for Labour (Labour Administration) advised that neither MWO nor EO prescribed that meal breaks should be with pay or otherwise. It had all along been subject to the agreement between employers and employees having regard to the circumstances and needs of individual enterprises and employees. Likewise, while GSCs had to specify the meal breaks in SECs, they were not compulsorily required to offer pay for the meal breaks.

35. SLW further advised that members' concerns and suggestions on the matter were noted. While ensuring the quality of the public service was the premise, further improvement of the protection of the entitlements of non-skilled employees engaged by GSCs had to be considered in the context of the overall Government policy, which warranted careful study and assessment of the additional resources involved. Notably, there was operational difficulty in providing paid meal breaks to GSCs' employees under service contracts of some procuring departments. That said, the Working Group was proceeding with the review in full gear and targeted to complete the review before the third quarter of 2018.

Years of service and related issues

36. The Chairman was concerned that as a result of frequent change of service contractors, it had been difficult for the outsourced workers to accumulate years of service although they had remained in the same posts for years, which in turn had adverse impact on their leave entitlements. The Chairman requested the Administration to provide information on the proportion of GSCs' employees with more than seven-day paid annual leave.

37. SLW said that the Administration did not have the requested information. LWB would explore with relevant bureaux/government departments in collecting the information, if available. SLW added that the Working Group would explore various feasible options to improve the protection of the entitlements of non-skilled employees engaged by GSCs, including leave benefits.

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Termination payments

38. Dr KWOK Ka-ki and Mr LUK Chung-hung expressed concern that a considerable number of GSCs had evaded the statutory obligation to make termination payments, including long service payment and severance payment to their eligible employees. Dr KWOK suggested that consideration should also be given to introducing the departure gratuity as a compensation for the years of service.

39. SLW advised that the Government was making best efforts to draw up a proposal to abolish the "offsetting" arrangement under the Mandatory Provident Fund ("MPF") system which would take account of the interests of both the business and labour sectors. The Government was considering the option of developing a mechanism to assist employers to save up a dedicated reserve to cover potential expenses arising from long service payment and severance payment payable to their employees in the future.

Motions proposed by members

40. The Chairman said that four members had indicated their respective intention to move motions under the agenda item. He ruled that the four motions were directly related to the agenda item and said that in accordance with Rule 22(p) of the House Rules, the motion would be proceeded with if agreed by a majority of the members voting. The motions would be voted on in the order in which they were presented.

Motion moved by Mr LEUNG Yiu-chung

41. Mr LEUNG Yiu-chung said that Dr Fernando CHEUNG was unable to attend the meeting to propose the following motion, and he would move the motion on his behalf:

"本事務委員會要求政府立即改革外判制度，包括：

- (a) 以基本生活需要制定生活工資，以此作為外判工人的工資下限；
- (b) 改變價低者得制度，參考新加坡政府外判以三成價格七成技術制定新投標制度，其中工資及工作條件的分數比重必須大幅增加；

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- (c) 引進離職酬金作為年資補償，避免轉約工人被辭職被剝奪遣散費權益；及
- (d) 撤銷外判制度，恢復由政府直接聘用，杜絕中間剝削。

(Translation)

"This Panel requests the Government to reform the outsourcing system without delay by:

- (a) setting the living wage in the light of basic livelihood needs, making it a wage floor for outsourced workers;
- (b) changing from the system of 'lowest bid wins' to a new tender system by making reference to the Singaporean Government, which adopts a weighting of 30% for the price factor and 70% for the technical factor in its outsourcing of services, while the weighting of the scores in wages and working conditions must be substantially increased;
- (c) introducing the departure gratuity as a compensation for the years of service, so as to prevent workers affected by the change of service contractors from being dismissed and deprived of their entitlement to severance payment; and
- (d) abolishing the outsourcing system and resuming direct employment by the Government in order to eradicate middle-man exploitation."

42. The Chairman put to vote the proposal of proceeding with the motion. The Chairman declared that four members voted for and one member voted against the proposal to proceed with the motion. He declared that the proposal was carried.

43. The Chairman then put Mr LEUNG Yiu-chung's motion to vote. Mr SHIU Ka-fai requested a division.

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The following members voted in favour of the motion:

Mr LEUNG Yiu-chung, Dr Hon KWOK Ka-ki, Mr CHU Hoi-dick, Mr HO Kai-ming, Dr Pierre CHAN, Mr LUK Chung-hung and Mr Jeremy TAM.
(seven members)

The following member voted against the motion:

Mr SHIU Ka-fai
(one member)

44. The Chairman declared that seven members voted for and one member voted against the motion and no member abstained from voting. He declared that the motion moved by Mr LEUNG Yiu-chung was carried.

Motion moved by Mr Jeremy TAM

45. Mr Jeremy TAM moved the following motion:

"就有關工作時間的規定，本事務委員會認為「飯鐘錢」(僱員用膳的時間)應被納入至政府外判服務承辦商投標條款之內。本事務委員會同時要求立法會應由自己做起，規定外判承辦商應將「飯鐘錢」納入至僱員工作時間之中。"

(Translation)

"Regarding the requirement of working hours, this Panel is of the view that payment for employees' meal breaks should be included in the terms of tender for government service contractors, and at the same time requests the Legislative Council to start by itself by requiring its outsourced service contractors to include paid meal breaks in employees' working hours."

46. The Chairman put to vote the proposal of proceeding with the motion. The Chairman declared that eight members voted for and no member voted against the proposal to proceed with the motion. He declared that the proposal was carried.

47. The Chairman then put Mr Jeremy TAM's motion to vote. Mr SHIU Ka-fai requested a division.

Action

The following members voted in favour of the motion:

Mr LEUNG Yiu-chung, Dr Hon KWOK Ka-ki, Mr POON Siu-ping, Mr HO Kai-ming, Dr Pierre CHAN, Mr LUK Chung-hung and Mr Jeremy TAM.
(seven members)

The following member voted against the motion:

Mr SHIU Ka-fai
(one member)

48. The Chairman declared that seven members voted for and one member voted against the motion and no member abstained from voting. He declared that the motion moved by Mr Jeremy TAM was carried. The Chairman directed that the suggestion regarding provision of paid meal breaks by service contractors of LegCo to their employees in the motion be referred to The Legislative Council Commission for consideration.

Motion moved by Mr LUK Chung-hung

49. Mr LUK Chung-hung moved the following motion:

"本事務委員會促請政府履行責任，正視外判制度的問題，並徹底作出改革，以杜絕外判承辦商的壓榨行為，包括：

- (a) 檢討現時評審機制，重訂計分制，譬如參考新加坡政府的採購政策，調高「技術」(尤其是與僱員相關權益因素)分數所佔比例至「七三比」(即技術佔七成，價格佔三成)，以加強保障工人權益；
- (b) 規定外判工人工資不應低於最新行業工資中位數，以保障工人薪酬水平貼近市場水平；新合約工資水平不能低於舊合約；
- (c) 檢討標準僱傭合約，並訂明承辦商必須在合約期滿後，向僱員支付遣散費；及

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- (d) 參考建造業界做法，訂明政府及公營機構作為大判，須要承擔外判僱員權益的最終責任。

長遠則應減少外判，增聘長工；對於有長期穩定服務需求的外判員工，改以公務員合約條款或其他政府直接聘用的形式聘用他們，從而讓其薪酬福利待遇得到合理的保障。"

(Translation)

"This Panel urges the Government to fulfil its obligations, address the problem of the outsourcing system squarely and conduct reform thoroughly so as to eradicate the exploitation of contractors by:

- (a) reviewing the current assessment mechanism by revising the marking scheme, for example, making reference to the procurement policy of the Singaporean Government by raising the weighting for technical scores (particularly the factor relating to employees' benefits) to 70% (i.e. 70% for the technical factor and 30% for the price factor), so as to better safeguard workers' rights and benefits;
- (b) requiring the wage of outsourced workers be set no less than the latest median wage of the industries in order to ensure that workers' remuneration level is close to the market level, and the wage level in the new contract should not be lower than that in the old contract;
- (c) reviewing the standard employment contract and stipulating that contractors must pay employees severance payment upon expiry of the contract; and
- (d) making reference to the practice in the construction industry by stipulating that the Government and public organizations, being the principal contractors, have to bear the ultimate responsibility of protecting the rights and benefits of outsourced employees.

In the long run, however, outsourcing should be reduced and more permanent workers should be recruited; if there is a long-term and stable demand for services provided by outsourced workers, such workers should be hired on civil service agreement terms or in

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other forms of direct employment by the Government, thus providing reasonable protection to their remuneration and benefits."

50. The Chairman put to vote the proposal of proceeding with the motion. The Chairman declared that seven members voted for and no member voted against the proposal to proceed with the motion. He declared that the proposal was carried.

51. The Chairman then put Mr LUK Chung-hung's motion to vote. Mr SHIU Ka-fai requested a division.

The following members voted in favour of the motion:

Mr LEUNG Yiu-chung, Dr Hon KWOK Ka-ki, Mr POON Siu-ping, Dr CHIANG Lai-wan, Mr HO Kai-ming, Dr Pierre CHAN, Mr LUK Chung-hung and Mr Jeremy TAM.
(eight members)

The following member voted against the motion:

Mr SHIU Ka-fai
(one member)

52. The Chairman declared that eight members voted for and one member voted against the motion and no member abstained from voting. He declared that the motion moved by Mr LUK Chung-hung was carried.

Motion moved by Dr KWOK Ka-ki

53. Dr KWOK Ka-ki moved the following motion:

"本事務委員會認為外判服務的扣分制度，未來應包括完約不支付遣散費、不供強積金、不提供合適及足夠裝備，在勞工處或勞資審裁處工友勝訴的個案。以加強阻嚇及保障外判合約員工。"

(Translation)

"This Panel considers that in the future the demerit point system for outsourcing services should cover the failure to pay severance payment upon contract expiry, failure to make Mandatory Provident Fund contributions, non-provision of suitable and

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adequate equipment as well as cases where the Labour Department or Labour Tribunal have ruled in favour of the workers, so as to enhance deterrence and protection for outsourced contract workers."

54. Principal Assistant Secretary for Financial Services & the Treasury (Treasury) (E) drew to the attention of members that under the debarment mechanism, if a GSC was convicted of non-contribution to MPF for its employees as required under the Mandatory Provident Fund Schemes Ordinance (Cap. 485), its tender offers would not be considered by the Government for a period of five years from the date of conviction. In response to members' enquiry, she clarified that the scope of DPS did not cover cases where the Labour Tribunal had ruled in favour of GSCs' employees.

55. The Chairman put to vote the proposal of proceeding with the motion. The Chairman declared that seven members voted for and no member voted against the proposal to proceed with the motion. He declared that the proposal was carried.

56. The Chairman then put Dr KWOK Ka-ki's motion to vote. The Chairman declared that seven members voted for the motion and no member abstained from voting. He declared that the motion moved by Dr KWOK Ka-ki was carried.

V. Enforcement of labour legislation by the Labour Administration Branch of the Labour Department
(LC Paper Nos. CB(2)898/17-18(01) and CB(2)920/17-18(05))

57. Deputy Commissioner for Labour (Labour Administration) ("DC for L(LA)") briefed members on the enforcement actions taken by the Labour Administration Branch of LD to protect the statutory rights and benefits of employees under relevant labour legislation in 2017, details of which were set out in the Administration's paper.

58. Members noted an updated background brief entitled "Enforcement of labour legislation" prepared by the LegCo Secretariat.

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Workplace inspections

59. Mr HO Kai-ming said that labour inspectors in LD should conduct inspection to workplaces of various sectors to detect offences and breaches of labour legislation to better protect employees' statutory rights and benefits under relevant labour legislation. Mr HO sought information on the manpower of labour inspectors in the Labour Administration Branch and the number of workplace inspections conducted. DC for L(LA) responded that there were around 200 labour inspectors in LD responsible for conducting workplace inspections to safeguard employees' statutory rights and benefits. In 2017, 154 237 workplace inspections were conducted to check compliance with relevant labour legislation.

60. Mr HO Kai-ming considered that as compared with the total workforce, the number of workplace inspections was relatively low to provide employers with sufficient deterrence against non-compliance with the relevant labour legislation. DC for L(LA) said that the workplace inspections covered establishments of various trades and industries as well as different size in Hong Kong. LD would assess from time to time the manpower requirements of workplace inspections and seek additional manpower resources under the existing mechanism if necessary.

61. Mr HO Kai-ming further enquired about LD's enforcement against employers' non-compliance of the Labour Tribunal ("LT") awards. DC for L(LA) elaborated on the provisions of EO on the offences of defaulting the awards of LT and the Minor Employment Claims Adjudication Board ("MECAB") which took effect in October 2010. In gist, where default cases were suspected to have been committed wilfully and without reasonable excuse, LD would follow up, investigate and collect sufficient evidence with a view to prosecution. Up to the end of 2017, LD secured 628 convicted summonses on these offences. It took a serious view on the non-compliance of LT and MECAB awards by employers. If suspected breaches of EO were detected, LD would take vigorous enforcement action against the employers. In 2017, there were 126 convicted summonses on offences relating to these default cases, which represented a significant increase as compared with 73 in 2016.

62. Mr LEUNG Yiu-chung was concerned about the effectiveness of workplace inspections in preventing the occurrence of industrial accidents. He considered that in-depth inspections should be conducted with a view to identifying potential hazards at workplace and drawing up

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appropriate preventive measures. Noting the Administration's plan of bringing in higher penalties under the occupational safety and health ("OSH") legislation, Mr LEUNG called on the Administration to expedite the relevant legislative work so as to enhance the deterrence and prevent the occurrence of industrial accidents.

63. DC for L(LA) said that the Occupational Safety and Health Branch of LD was responsible for the enforcement of the Factories and Industrial Undertakings Ordinance (Cap. 59) ("FIUO"), the Occupational Safety and Health Ordinance (Cap. 509) ("OSHO") and their subsidiary Regulations. In 2017, 140 868 inspections were conducted by LD under FIUO and OSHO. DC for L(LA) further said that as reported to the Panel in December 2017, LD was reviewing the penalty levels of the OSH legislation in full swing and aimed to work out a direction for making legislative amendments by the end of the current legislative session. Mr LEUNG Yiu-chung's views would be relayed to the responsible officers for consideration.

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

False self-employment

64. Mr LUK Chung-hung and Mr HO Kai-ming expressed concern that some employers, for example the food delivery services, had evaded the responsibility of providing employees with statutory employment benefits by forcing their employees to become self-employed persons ("SEPs"). They were concerned about the enforcement against the phenomenon.

65. DC for L(LA) said that LD had all along been embarking on a full range of educational and publicity activities to raise the attention and alertness of the public on the differences in the rights and benefits under EO between an employee and a SEP. Employers could not make use of false self-employment contract to evade paying employment benefits to their employees under EO and the Employees' Compensation Ordinance (Cap. 282) ("ECO"). Even though an employee was labelled as a contractor/SEP in a contract, he would not be deprived of protection under labour legislation if in essence there existed an employer-employee relationship between the two parties concerned. Employers were also warned not to unilaterally change the status of a person from an employee to a SEP in the light of the legal consequences that might arise. In addition, LD provided consultation and conciliation services to the parties

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in false self-employment disputes and a complaint hotline had been set up. Prosecution would be initiated if there was sufficient evidence on breaches of labour legislation. It was notable that between the period of 2012 (i.e. the year following the implementation of SMW) to 2017, the number of claim cases received by LD in which the claimants alleged to have disputes on false self-employment remained stable. In 2012, 25 convicted summonses were recorded while 15 convicted summonses were recorded in 2017 for cases involving false self-employment.

Wage default

66. In respect of the 766 convictions for wilful defaults of wage payment in breach of EO and the 231 convictions on holiday and leave offences in 2017, Mr LUK Chung-hung sought information on the number of cases involving outsourced workers. Mr LUK enquired whether the Administration would consider expanding the application of section 43C of EO to other industries, such that the principal employer should assume the overall responsibility for settling any outstanding wages of sub-contract employees in wage default cases. DC for L(LA) said that LD had no such plan. Moreover, it was noteworthy that section 43C of EO was introduced in 1970s to address the specific sub-contracting practice in the construction industry.

Enforcement of compulsory insurance for employees' compensation

67. With regard to the 697 convictions for failure to take out employees' compensation insurance ("ECI") as secured by LD in 2017, Mr POON Siu-ping sought further information, including the trend, amounts of fine and employers involved.

68. DC for L(LA) responded that the respective numbers of convictions for failure to take out ECI as secured by LD in 2015 and 2016 were 829 and 567 whereas the highest fine in 2017 was \$15,000 as compared with \$12,000 in 2016. Employers concerned were found in various trades and industries. Mr POON Siu-ping, however, considered the amount of fine too low to achieve sufficient deterrence. DC for L(LA) stressed that enforcement of compulsory insurance for employees' compensation was one of the priority tasks of the Labour Administration Branch of LD. It would continue to step up its publicity efforts and enforcement actions to ensure that employers would take out ECI under ECO to cover their liabilities to pay compensation under the Ordinance and the common law, thereby strengthening the protection of employees.

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Overtime pay rate

69. Noting that the overtime pay rate for some employees engaged in low-paid industries was pitched at the SMW rate, which was in effect lower than their hourly wage rate, the Chairman was concerned about whether such arrangement was in breach of the labour legislation. In his view, the overtime pay rate should at least be the same as the normal hourly wage rate. Given that there was a strong call for overtime pay rate of 1.5 times during the deliberations on the implementation of standard working hours, he was concerned whether and how the Administration could strengthen protection for employees in this regard.

70. DC for L(LA) said that wage rates as well as overtime pay rates of individual employees were not stipulated under EO whereas the SMW rate was specified under MWO. That said, the Standard Working Hours Committee ("SWHC") set up by the last-term Government had recommended to adopt a legislative approach to, among others, specify that the lower-income grassroots employees should be entitled to overtime compensation by way of overtime pay at a rate no less than the rate of the agreed wages (i.e. wages as defined under EO but excluding overtime pay) or the equivalent time-off in lieu. There were, however, divergent views in the community regarding the legislative proposals of SWHC.

71. In response to the Chairman's enquiry, DC for L(LA) said that LD did not maintain separate statistics on the number of complaints against low overtime pay rate as received through its hotline. The Chairman called on the Administration to address the problem.

72. There being no other business, the meeting ended at 12:53 pm.