

立法會
Legislative Council

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by the Administration)

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Panel on Manpower

Minutes of meeting
held on Tuesday, 17 July 2018, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

- Members present** : Dr Hon Fernando CHEUNG Chiu-hung (Deputy Chairman)
Hon LEUNG Yiu-chung
Hon WONG Kwok-kin, SBS, 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, SBS, 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, JP
Hon Vincent CHENG Wing-shun, MH
- Members absent** : Hon KWOK Wai-keung, JP (Chairman)
Hon Michael TIEN Puk-sun, BBS, JP
Hon Jeremy TAM Man-ho

Public Officers attending : Item II

Mr Jeff LEUNG Wing-yan, JP
Deputy Commissioner for Labour (Occupational Safety and Health)

Mr WU Wai-hung, JP
Assistant Commissioner for Labour (Occupational Safety)

Mr MAK Ping-sang
Chief Occupational Safety Officer (System and Support)
Labour Department

Item III

Mr Jeff LEUNG Wing-yan, JP
Deputy Commissioner for Labour (Occupational Safety and Health)

Mr WU Wai-hung, JP
Assistant Commissioner for Labour (Occupational Safety)

Item IV

Dr LAW Chi-kwong, GBS, JP
Secretary for Labour and Welfare

Mr Carlson CHAN Ka-shun, JP
Commissioner for Labour

Mr Raymond HO Kam-biu
Assistant Commissioner for Labour (Development)

Mr Raymond FONG Siu-leung
Senior Labour Officer (Supplementary Labour)
Labour Department

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

Ms Maggie LEUNG Yee-lee
Chief Social Work Officer (Licensing and Regulation)
Social Welfare Department

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

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

Ms Kiwi NG
Legislative Assistant (2) 1

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(In the absence of the Chairman, the Deputy Chairman took the chair.)

I. Information papers issued since the last meeting
(LC Paper Nos. CB(2)1739/17-18(01) and CB(2)1841/17-18(01))

Members noted that the following papers had been issued since the last meeting:

- (a) referral from the Subcommittee on Proposed Resolutions under Construction Industry Council Ordinance and Pneumoconiosis and Mesothelioma (Compensation) Ordinance; and
- (b) letter dated 16 July 2018 from Mr LUK Chung-hung suggesting the Panel to discuss review of the continuous contract requirement under the Employment Ordinance (Cap. 57) ("EO").

2. The Chairman advised that the above issues had been included in the Panel's list of outstanding items for discussion.

II. Hong Kong's occupational safety performance in 2017
(LC Paper Nos. CB(2)1797/17-18(01) to (02) and CB(2)1837/17-18(01))

3. Deputy Commissioner for Labour (Occupational Safety and Health) ("DC for L (OSH)") briefed members on Hong Kong's occupational safety performance in 2017, as detailed in the Administration's paper.

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4. Members noted an updated background brief entitled "Occupational safety performance in Hong Kong" prepared by the Legislative Council ("LegCo") Secretariat.

Occupational injuries statistics

5. Mr POON Siu-ping and Dr KWOK Ka-ki were gravely concerned about Hong Kong's occupational safety performance in 2017 given that there were 22 construction industrial fatalities in the year. Dr KWOK queried whether occurrence of these accidents was attributable to catching up with works progress at the expense of safe work practices and not having properly used safety precautionary measures, such as fall arresting devices. He sought information on the number of fatality cases involving public works projects as well as the number of prosecutions initiated against contravening the occupational safety and health ("OSH") legislation and the penalties imposed on the convicted contractors and subcontractors.

6. Assistant Commissioner for Labour (Occupational Safety) ("AC for L (OS)") responded that in 2017, the respective numbers of fatal industrial accidents that happened in worksites of public works projects and the private sector were eight and 14, and a number of such cases occurred in the worksites of mega infrastructure projects. DC for L (OSH) added that in the light of the occurrence of serious or fatal industrial accidents involving "persons falling from height" in the construction industry, the Labour Department ("LD") had stepped up inspection and enforcement to deter unsafe work practices, and reminded stakeholders to comply with relevant OSH legislation. In-depth safety audit and analyses of the systemic risks had also been conducted to help formulate relevant precautionary measures to prevent recurrence of similar accidents. In addition, LD had stepped up participation in site safety management committee meetings of public work projects so that LD would be apprised of their latest risk situations, and give advice on work processes of higher risk and adjust the inspection strategy accordingly in a more focused manner. DC for L (OSH) further advised that investigation of the 22 construction industrial fatalities were at different stages. He would provide information on the progress of the prosecution and penalties involved, if available, after the meeting.

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7. Referring to Annex 1 to the Administration's paper, Mr POON Siu-ping noted with concern that the number of industrial accidents and fatalities in the transportation, storage, postal and courier services had

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increased from 458 and two in 2016 to 473 and three in 2017 respectively. Mr POON was particularly concerned about the fatalities that occurred in the airport. DC for L (OSH) said that the Administration did not keep separate statistics on industrial fatalities that occurred in the airport. However, it was noted that among the 227 fatal cases in 2017, two fatalities took place in the airport or its vicinity.

8. Referring to more than 35 000 occupational injuries cases in each of the past few years, Mr HO Kai-ming was concerned about the manpower in LD responsible for handling work injury compensation claims, as the handling of some work injury compensation claims would take almost two years. DC for L (OSH) advised that such claims were handled by Labour Officers in the relevant sections of LD's Employees' Compensation Division.

9. The Deputy Chairman and Mr HO Kai-ming held the view that representatives from LD's Employees' Compensation Division should attend the future meetings of the Panel when the subject of OSH was discussed.

Work-at-height

10. Expressing concern that a majority of the 22 construction industrial fatalities in 2017 involved persons falling from height, Mr LEUNG Yiu-chung asked about the reasons for the occurrence of such accidents and the preventive measures to be taken. He was particularly concerned about the role played by registered safety officers ("RSOs") in ensuring employers' provision of sufficient safety measures before commencement of the construction work as well as construction workers' awareness of occupational safety.

11. DC for L (OSH) explained that during the investigation of industrial accidents, it was found that in some cases employers had failed to provide a safe working platform or sufficient safety devices and equipment for workers when working at height, and in some other cases workers had not made use of the work safety devices and equipment, such as independent lifelines or full body safety harnesses. The investigation findings also revealed that in most of the cases, employers had failed to conduct proper risk assessment, design safe working methods and provide the necessary safety equipment prior to commencement of the construction work. LD would propose amendments to raise the penalties of OSH legislation, which would

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strengthen the deterrent effect of the penalties and improve the overall OSH performance. DC for L (OSH) further advised that under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z), a principal contractor or a specialist contractor of a construction site employing 100 or more persons was required to employ one full-time RSO.

[In accordance with rule 77(5) of the Rules of Procedure, Mr HO Kai-ming was elected among members to chair the meeting in the absence of the Chairman and the Deputy Chairman.]

12. Mr SHIU Ka-fai pointed out that consequent upon the installation of different pipes along the external walls of buildings, there was limited working space on the air-conditioner platforms which posed risk to the safety of workers when undertaking air-conditioner maintenance. Mr SHIU called on LD to liaise with the Development Bureau ("DevB") and the Buildings Department ("BD") to further strengthen work safety of workers undertaking air-conditioner maintenance.

13. DC for L (OSH) said that the Committee on Construction Site Safety under the Construction Industry Council had formed a Task Force, comprising members from relevant government departments (including LD and BD) and industry stakeholders including representatives of relevant trade associations and workers' unions, to follow up the design safety for work at external walls. LD had also been working closely with BD in revising the Practice Notes to require developers when constructing new buildings to provide air-conditioner platforms with suitable guard-rails to facilitate air-conditioner maintenance, and devices to facilitate cleaning and repair at buildings with curtain walls. Mr SHIU called on the Administration to consider including representatives from relevant trade associations for electrical appliances in the Task Force. AC for L (OS) said that to his understanding, there were representatives from a trade association and a workers' union of the electrical and mechanical engineering sector in the Task Force. LD would relay member's advice to the relevant parties.

Inspection and enforcement

14. Noting that LD had from April to September 2017 conducted more than 27 000 inspections targeting at industries with higher risk of heat stroke, Mr POON Siu-ping sought clarification as to whether these inspections were included in the total number of 77 314 site inspections

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conducted by LD in 2017. In response, DC for L (OSH) said that the total number of site inspections conducted by LD in 2017 included those site inspections to establishments with higher risk of heat stroke.

15. Mr POON Siu-ping expressed concern about whether there was sufficient manpower in LD to conduct worksite inspections. DC for L (OSH) advised that LD had and would continue to bid for additional manpower resources under the resources allocation exercises for stepping up inspection and enforcement targeting at the construction industry. In 2017, 85 additional Occupational Safety Officer ("OSO") posts, including some time-limited ones, were secured through the government resource allocation exercises. According to the existing establishment, there were 245 OSOs responsible for workplace inspections, which were considered sufficient for carrying out risk-based workplace inspections.

16. Referring to Report No. 69 of the Director of Audit released in October 2017, Mr SHIU Ka-chun expressed concern about the comments that the number of inspections recorded in the Controlling Officer's Report ("COR") being larger than the actual number of workplace inspections. Mr SHIU sought clarification about the computation method of the 77 314 site inspections conducted by LD in 2017.

17. DC for L (OSH) explained that as opposed to the number of workplaces inspected, the number of inspections recorded in CORs was the total output of OSOs. Depending on the size of the worksite, the number of workers and the OSH risks involved, some workplace inspections were undertaken jointly by more than one OSO. In light of the Audit's observations, LD would explain the computation of the relevant figures in future CORs.

18. Mr SHIU Ka-chun expressed concern that LD's hotline for lodging complaints against unsafe working conditions was operated on weekdays only. He asked whether consideration would be given to providing such services on weekends, Sundays and public holidays as well.

19. DC for L (OSH) responded that automatic call recording of the LD's hotline would be activated during non-office hours to facilitate lodging of complaints. In addition, LD was exploring the use of electronic platform for lodging of complaints.

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Sponsorship scheme

20. Noting that LD had in collaboration with the Occupational Safety and Health Council ("OSHC") launched the Safety Helmets with Y-type Chin Straps Sponsorship Scheme for small and medium enterprises ("SMEs") on 25 April 2017, which provided subsidy to SMEs of the construction industry to purchase safety helmets with Y-type chin straps that conformed to safety standards, Mr POON Siu-ping asked about the progress of the Scheme and the effectiveness of the Scheme in reducing the accident rate.

21. DC for L (OSH) said that OSHC had so far approved 624 applications under the Scheme, which amounted to some \$400,000. It was noteworthy that some large and medium enterprises in the construction industry had taken their own initiative to purchase safety helmets with Y-type chin straps for their employees. To enhance the promotion of the protection rendered by safety helmets with chin straps properly buckled up to reduce workers' risk to head injury in case of fall, the relevant LD guideline was revised in June 2018 and corresponding enforcement action was being taken.

III. Raising penalties of occupational safety and health legislation
(LC Paper Nos. CB(2)1797/17-18(03) and (04))

22. DC for L (OSH) briefed members on the broad directions proposed by LD to raise the penalties of the OSH legislation, as detailed in the Administration's paper, and invited members' views on the proposed broad directions.

23. Members noted an information note entitled "Penalties of occupational safety and health legislation" prepared by the LegCo Secretariat.

Level of penalty and legislative review

24. Mr POON Siu-ping was in support of the Administration's plan of bringing in higher penalties under the OSH legislation to increase the deterrent effect. Mr POON said that the labour sector had all along criticized that the current penalties for violating the OSH legislation remained on the low side and they could hardly reflect the seriousness and consequences of the offences and achieve sufficient deterrent effect. The Deputy Chairman shared a similar concern. Both members pointed

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out that there was great disparity in the level of penalties of OSH legislation in Hong Kong and those in the advanced countries/region. While the maximum fine for breaching the OSH legislation in Australia was approximately \$22 million, the maximum fine for similar offences in Hong Kong was in the region of \$2,000 to \$500,000, depending on the seriousness of offences. Moreover, the average fine for each summons involving fatal industrial accident in the construction industry was only about \$21,000 in 2017. Noting that the Administration would consult relevant stakeholders when working out the legislative amendment details, Mr POON appealed to the Administration to have a clear stance and determination over increasing the deterrent effect of the penalties of the OSH legislation regardless of the anticipated opposition from the employer groups. The Deputy Chairman was of the view that heavier penalties should be imposed on duty holders for non-compliance with the OSH legislation.

25. In response to Mr Frankie YICK's enquiry, DC for L (OSH) affirmed that LD had, on account of some of the penalties being too low to reflect the seriousness of the offences and consequences of the accidents, requested the Department of Justice ("DoJ") to consider filing a review or an appeal to the court against the penalties in the past few years. The amount of fines had subsequently been adjusted upwards for some cases.

26. Mr HO Kai-ming said that the Hong Kong Federation of Trade Unions ("HKFTU") had all along considered the existing penalties for breaching the OSH legislation too low to achieve sufficient deterrent effect. Sharing a similar concern, Mr POON Siu-ping said that convicted persons were subject to maximum imprisonment terms ranging from three months to 12 months, which were much lower than those in advanced countries/regions. Mr HO expressed dissatisfaction that no convicted duty holder had so far been sentenced with immediate imprisonment. He considered that this was due to the difficulties in proving that the duty holder had intentionally committed an offence under the Factories and Industrial Undertakings Ordinance (Cap. 59). In order to strengthen the deterrence effect of the penalties and facilitate the court to impose sentences which were proportionate to the seriousness and dire consequences of the offences, the Administration should study the prosecution threshold in taking forward the legislative review. He was also concerned about whether, under the subcontracting practice in the construction industry, the principal contractors would easily evade their legal liabilities in the event of industrial fatalities and accidents.

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27. DC for L (OSH) advised that during the course of the legislative review, LD had made reference to overseas OSH legislation and noted that the prosecution threshold in respect of the OSH legislation in Hong Kong was generally comparable to those of overseas jurisdictions. LD therefore considered that the prevailing prosecution threshold was appropriate. With respect to the legal liabilities under the subcontracting arrangements in the construction industry, both principal contractors and subcontractors of construction projects would be liable to prosecution if there was sufficient evidence to substantiate their non-compliance with the OSH legislation and safe work practices. The Administration had successfully initiated prosecution against the principal contractors in the past years. DC for L (OSH) further advised that in addition to raising the penalties for breaching the OSH legislation, the Administration would step up its efforts in raising the awareness of duty holders/contractors and employees in enhancing the occupational safety performance through publicity and education.

Proposed amendment directions

28. Referring to paragraph 12(a) of the Administration's paper, Mr POON Siu-ping sought clarification about the meaning of "appropriate levels" of the fine and imprisonment terms of the OSH legislation.

29. With respect to the proposal in paragraph 12(b) of the Administration's paper to peg the fine levels for extremely serious cases with the turnover of the convicted companies, the Deputy Chairman and Mr Frankie YICK enquired about how to define the level of seriousness of the cases. Mr YICK was concerned that some enterprises might go bankrupt if the maximum fines for OSH legislation would model on those in the Competitive Ordinance (Cap. 619) and the Telecommunications Ordinance (Cap. 106), which was pitched at 10% of the convicted companies' turnover. He called on the Administration to duly consult the stakeholders when working out the legislative amendment details. On the other hand, Mr POON Siu-ping and Mr SHIU Ka-chun were concerned about the deterrent effect of the penalty for those convicted companies with a low turnover or new companies with no records of turnover at all.

30. Responding to members' concerns and views, DC for L (OSH) said that the overall objective of conducting a review of the penalty level for non-compliance with the OSH legislation was to raise the deterrence to

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an appropriate level. In light of the initial observations transpired from the legislative review, LD proposed the amendment directions as detailed in paragraph 12 of the Administration's paper in order to increase the necessary deterrent effect of OSH penalties. The penalty review had not yet been finalized. The Administration would make reference to the penalty levels under similar legislation in other jurisdictions and relevant overseas experience on instituting prosecution against offences of similar nature and take into account the actual situation in Hong Kong when working out the legislative amendment details. DC for L (OSH) further advised that LD also noted that the United Kingdom had developed a set of systematic sentencing guidelines for OSH offences to assist the court in sentencing. The sentencing guidelines not only took into account the overall seriousness of the offences (including culpability of the convicted companies and the severity of the harm inflicted), but also the turnover of the convicted companies. The Administration was considering to adopt a similar approach in pitching the maximum fines at a specific percentage of the convicted companies' turnover or imposing a specified amount of fines applicable to convicted companies with a low turnover, whichever was higher, so as to ensure that the sentences could have sufficient deterrent effect on companies of different sizes.

31. The Deputy Chairman enquired whether consideration would be given to increasing the maximum fines by pegging them with the contract value of the works projects in which the industrial accidents occurred. DC for L (OSH) advised that since the OSH legislation applied to all industries, it might not be appropriate to peg the maximum fines with the contract value of works projects which might not be applicable to other industries. The Administration's intention was to peg the level of fines with the size of the convicted companies.

32. Mr LEUNG Yiu-chung remained concerned that the court generally imposed a fine at a level below the maximum fine. Consideration should be given to setting a minimum fine for contravening the OSH legislation. DC for L (OSH) advised that it might not be appropriate to set a minimum fine level for OSH legislation, having regard to the principle of fairness and the fact that convicted companies were of different sizes, ranging from sole proprietorship to listed companies.

33. Referring to the proposed extension of the time bar for laying summonses from six months to one year to allow LD with sufficient investigation time, Mr POON Siu-ping was concerned whether the

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prosecution work had been adversely affected because of insufficient investigation time or manpower resources. Mr POON further asked about the existing manpower deployed for conducting investigation of industrial accidents.

34. AC for L (OS) advised that the current time bar for laying summonses for OSH offences was six months. LD proposed to take out prosecutions against extremely serious contraventions as indictable offences which had a higher standard for evidence collection and did not carry a time bar. LD also proposed to lengthen the time bar for laying summonses of summary offences from six months to one year. This would allow LD sufficient time to investigate both summary and indictable offences.

35. Mr CHU Hoi-dick said that to his understanding, enforcement actions against OSH offences were taken in accordance with section 6(1) of the Occupational Safety and Health Ordinance (Cap. 509) ("OSHO") (i.e. every employer must, so far as reasonably practicable, ensure the safety and health at work of all the employer's employees), and work-related guidelines or codes of practice ("CoP"). He considered that the general duty provisions in OSO were too vague to safeguard employees' OSH. Mr CHU further suggested that relevant guidelines or CoP issued by LD for the respective industry practitioners should be promulgated as subsidiary regulations to the OSH legislation, so as to further strengthen their deterrence effect.

36. DC for L (OSH) advised that it was a common practice in overseas countries/places to state the responsibilities of duty holders under the general duty provisions of OSH legislation, such as requiring them to ensure safety and health of employees at work, having regard to the difficulties to include an exhaustive list of work procedures in different trades and industries in the legislation. In general, duty holders were required to conduct risk assessment, develop and maintain a safe system of work, and provide appropriate safety gears/equipment and appropriate information and instruction before commencement of work. DC for L (OSH) considered it more flexible to take enforcement actions against OSH offences with reference to the guidelines/CoP in addition to the OSH legislation. As a matter of fact, a considerable number of prosecutions had been initiated under the OSH legislation after making reference to the relevant guidelines/CoP. DC for L (OSH) stressed that the current enforcement work of the OSH legislation had been proven effective.

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Other concerns

37. Mr Frankie YICK expressed concern that non-compliance with various work-related guidelines/CoP issued by LD was liable to legal consequences. He appealed to the Administration to fully consult the industry stakeholders on the compliance of the relevant guidelines/CoP prior to their promulgation.

38. DC for L (OSH) shared Mr Frankie YICK's view and cited that LD was conducting a consultation on the proposed guidelines regarding reducing health risk of employees caused by prolonged standing. LD would follow up with the industries concerned on their views on the proposed guidelines. He assured members that the Administration would strive to consult all affected stakeholders on various proposals as far as practicable.

39. Mr LEUNG Yiu-chung expressed grave concern that notwithstanding the poor safety performance record of certain contractors in the construction industry, they were still awarded with public works contracts. Given that more than one-third of the industrial fatalities in 2017 involved public works projects, Mr LEUNG called on the Administration to conduct a comprehensive review of the tender assessment mechanism for public works contracts so as to strengthen the monitoring efforts.

40. DC for L (OSH) advised that tendering for public works projects and related matters were under the purview of DevB. To his understanding, in case a contractor, who was on the List of Approved Contractors for Public Works ("the List"), had performed poorly or had been involved in serious incidents in any public or private sector works contracts, DevB could take regulatory actions against it according to the provisions as stipulated in the Construction Site Safety Manual and relevant Technical Circular. Regulatory actions included suspending the contractor from tendering public works contracts for a maximum of 12 months or even removing the contractor from the List depending on the level of severity. He would relay Mr LEUNG Yiu-chung's concerns and suggestion to DevB for consideration.

41. The Deputy Chairman and Mr SHIU Ka-chun enquired whether LD would consider making public a list of convicted contractors for violating the OSH legislation as well as the relevant investigation reports on the industrial accidents. DC for L (OSH) responded that currently,

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LD would issue press releases on conviction of offences under the OSH legislation with details including the court's ruling, the name of the contractors/duty holders concerned and the penalties such as amount of the fines. The press releases would be uploaded onto LD's webpage.

42. Mr SHIU Ka-chun sought information on the employment protection for employees who acted as prosecution witnesses against dismissal by employers upon completion of legal proceedings, and the facilitating measures for their statement-taking. AC for L (OS) said that employees acting as prosecution witnesses in legal proceedings were safeguarded under the prevailing law against unreasonable dismissal. The employees concerned would be given to understand their rights and obligations during the statement-taking process. Flexible arrangement would be adopted for statement-taking, having regard to the needs of the witnesses.

43. Mr SHIU Ka-chun further sought information on the number of cases in the past year that could not be proceeded further due to incompleteness of statement-taking. AC for L (OS) responded that the Administration did not maintain such statistics. He added that LD would try to approach other employees concerned, if available, to act as prosecution witnesses.

IV. Measures for protecting employment rights of imported workers under the Supplementary Labour Scheme
(LC Paper Nos. CB(2)1641/17-18(01) and CB(2)1797/17-18(05) to (06))

44. Members noted the various measures undertaken by the Administration for protecting the employment rights of imported workers under the Supplementary Labour Scheme ("SLS") as set out in the Administration's paper and a background brief entitled "Importation of labour under the Supplementary Labour Scheme" prepared by the LegCo Secretariat.

Recent incident of employment disputes concerning imported workers

45. Referring to a recent incident of employment disputes between a private residential care home for the elderly ("RCHE") and its imported workers in June 2018 ("the incident"), Mr SHIU Ka-chun and Mr Andrew WAN said that to their understanding, the incident concerned

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disputes over wages, rest days arrangements and uncompensated overtime work. The Deputy Chairman added that he was given to understand that one of the imported workers concerned had made a complaint against the employer with LD in February 2018. Mr SHIU noted with concern that the imported workers concerned had been advised to approach different divisions of LD at different locations to lodge the complaints. While the imported workers concerned were advised to stay in Hong Kong to assist in the investigation of the incident after they had lodged the complaints against the private RCHE for violating the relevant labour laws and SLS requirements, LD had not provided these workers with necessary assistance in meeting their accommodation needs or living expenses. He was strongly dissatisfied at LD's inadequate provision of support for these imported workers.

46. Secretary for Labour and Welfare ("SLW") advised that LD would provide one-stop services for complainants as far as practicable, but he hoped members would appreciate that workers concerned might need to visit more than one division of LD having regard to the different nature of services involved. SLW further advised that the Administration did not have the housing resources to meet the accommodation needs of the imported workers concerned. That said, the Administration would assist the workers concerned to source temporary accommodation administered by non-governmental organizations.

47. Mr Andrew WAN and Mr HO Kai-ming asked whether consideration would be given to providing boarding houses or interim housing for those imported workers who lodged complaints against their employers so as to help address their accommodation needs during investigation of the employment claims.

48. SLW said that in light of the past experience, there might not be justifiable grounds for setting up temporary accommodation for the imported workers who lodged complaints against their employers. However, imported workers who served as prosecution witnesses were entitled to allowance for expenses incurred related to their attendance at hearings and giving evidence.

49. Mr Andrew WAN maintained the view that the Administration should seriously consider providing temporary accommodation for imported workers who lodged complaints against their employers who were suspected to have breached labour laws or SLS requirements, given that the investigation might last for an extended period of time.

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Mr WAN considered that the Administration's support for the imported workers concerned during the investigation process was of critical importance to soliciting these workers' agreement to serve as prosecution witnesses. Mr LUK Chung-hung shared a similar view.

50. Mr Andrew WAN further asked about the number of inspections so conducted to the private RCHE concerned after receipt of complaints from workers in February/March and June 2018 and LD's follow-up work as well as the investigation progress.

51. SLW and Commissioner for Labour ("C for L") responded that as the incident was still under investigation, it might not be appropriate to disclose the details of the case at this stage. C for L added that LD had carried out prompt inspections of the private RCHE upon receipt of complaints in March and June 2018. It was noteworthy that some imported workers might not be forthcoming in lodging complaints against their employers and acting as prosecution witnesses. In general, LD's labour inspectors conducted interviews with imported workers individually without interference of any third party (including the employer) so as to ensure that the workers could, where needed, lodge complaints on employment issues. During interviews with imported workers, labour inspectors would inquire and explain to them their statutory rights and benefits under EO and contractual entitlements under SLS. C for L assured members that LD would conduct investigations promptly upon receipt of complaints of suspected breaches of EO from imported workers or referrals from labour unions.

Enhancing employment rights of imported workers

52. Noting that there were 4 788 imported workers working in Hong Kong under SLS as at end May 2018, Mr POON Siu-ping considered it imperative to protect the employment rights of imported workers under SLS. He then sought information on the number of inspections carried out by LD to the workplaces and accommodation of these imported workers as well as the number of complaints lodged by the latter concerning violating labour laws or SLS requirements by their employers.

53. C for L said that LD would conduct inspections of the workplaces and accommodation of imported workers of establishments which were granted permission to employ imported workers for the first time within six months after the arrival of the imported workers as far as practicable and would carry out follow-up inspections where appropriate. In 2017,

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LD had conducted more than 4 800 inspections of the employing establishments of imported workers and had received 28 complaints involving imported workers under SLS. Most of the complaint items were about wages and working hours arrangement. In 2017, LD had received eight claims from 16 imported workers under SLS against their employers for underpayment of wages, etc. At the request of Mr POON Siu-ping and Mr HO Kai-ming, C for L agreed to provide after the meeting the number of SLS employers prosecuted by LD in 2017 for suspected violation of imported workers' employment rights.

54. The Deputy Chairman expressed concern that Hong Kong remained on the Tier 2 Watch List in the US Department of State's Trafficking in Persons Report 2018, which had highlighted the problem of bonded labour in Hong Kong. Mr HO Kai-ming shared a similar concern and called on the Administration to seriously tackle the related problem. The Deputy Chairman was of the view the Administration should plug the loopholes and malpractices of importing labour under SLS, including employment agency ("EA")'s overcharging of intermediary fees, involvement in debt repayment and breaching of labour laws. To his understanding, imported workers from the Mainland had to pay \$21,000 intermediary charges prior to be arranged to work as care workers in RCHEs in Hong Kong and had to further pay \$20,000 to the employing organizations, which would be deducted from their wages. The Deputy Chairman thus expressed great reservations about the Administration's proposal to import more care workers to address the manpower needs for the elderly care services.

55. SLW stressed that importation of labour under SLS was in no way related to trafficking in persons. The Government attached great importance to protection of the employment rights and benefits of imported workers. Labour inspectors of LD carried out inspections of the workplaces and accommodation of imported workers from time to time. Under the Standard Employment Contract ("SEC") for SLS prescribed by the Government, employers were required to release their newly-arrived imported workers to attend briefings organized by LD. At the briefings, LD explained to imported workers their protection under labour laws, and their employment rights and benefits under SEC as required by SLS. Mr HO Kai-ming suggested and C for L advised that LD would consider the feasibility of advancing the timing for newly-arrived imported workers to attend the briefings and sanctioning those employers who did not release their imported workers to attend such briefings by administrative measures.

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56. SLW further advised that imported workers who considered that their rights and entitlements under EO, SEC or SLS had been infringed could report to LD through its 24-hour hotline. SLW appealed to imported workers to file complaints with LD if their employers were suspected to have breached labour laws, SEC or SLS requirements and act as prosecution witnesses when LD initiated prosecution against the law-defying employers.

57. Mr LUK Chung-hung and Mr HO Kai-ming said that HKFTU opposed expanding importation of labour under SLS and was in support of according priority to fill job vacancies with local workers. Mr LUK considered that the Administration should strengthen its monitoring efforts against EAs and inspections to the workplaces to safeguard the employment rights and interest of imported workers. He also called on the Administration to improve the complaint mechanism to enhance the imported workers' confidence in lodging complaints and ensure that appropriate follow-up actions would be taken against law-defying employers.

58. SLW advised that following the enactment of the Employment (Amendment) Ordinance 2018 from February 2018, the maximum penalty for the offences of overcharging commission from job-seekers and the unlicensed operation of EAs had been raised to a fine of \$350,000 and imprisonment for three years. SLW further advised that imported workers who were exploited and dismissed because of complaining against their employers could apply for employment assistance under SLS. Alternatively, they might choose to return to their places of origin and come to Hong Kong again to act as prosecution witnesses later.

[To allow sufficient time for discussion, members agreed to extend the meeting to 6:45 pm.]

59. The Deputy Chairman considered that the duration of employment contracts of the imported workers with new employers, on account of their previous employers had violated relevant labour laws or SEC, should not be limited to the remaining period of the original employment contracts. C for L said that any suggestion of extending the duration of employment contracts under such circumstances needed to be considered with care and prudence, bearing in mind the possible abuse by some imported workers to lodge unsubstantiated complaints against their employers towards the end of employment contracts.

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60. The Deputy Chairman was concerned whether those employers who were complained of having breached the SLS requirements would be allowed to make fresh SLS applications. C for L advised that employers who had been convicted under any relevant laws (including EO, the Employees' Compensation Ordinance (Cap. 282) and the Immigration Ordinance (Cap. 115)) or had breached the terms of SEC or SLS requirements might be subjected to administrative sanction resulting in withdrawal of the approval for labour importation. If an employer had serious adverse record(s) within two years prior to the date of submission of an application under SLS, the application would not be approved. At the request of the Deputy Chairman, the Administration agreed to provide information on the number of employers who had been barred from importing workers under SLS because of having adverse records together with the debarment period involved.

Admin

61. Mr HO Kai-ming enquired whether the Administration would consider providing the Labour Advisory Board ("LAB") with information concerning individual employers' conviction records of criminal offences and involvement in employment disputes, so as to facilitate LAB's consideration of their SLS applications. C for L responded that LD had provided LAB members with information on employers' convictions under relevant labour and immigration laws and breaches of SEC terms and SLS requirements for reference in advising on the relevant SLS applications. It was inappropriate to provide LAB with information about employment disputes in which non-compliance was yet to be substantiated.

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