

立法會
Legislative Council

LC Paper No. CB(2)993/20-21
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 19 January 2021, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon LUK Chung-hung, JP (Chairman)
Hon CHAN Chun-ying, JP (Deputy Chairman)
Hon WONG Kwok-kin, SBS, JP
Hon YIU Si-wing, BBS
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Hon SHIU Ka-fai, JP
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan, JP
Dr Hon Pierre CHAN
Hon Vincent CHENG Wing-shun, MH, JP

Member absent : Hon CHUNG Kwok-pan

Public Officers attending : Items III and V
Dr LAW Chi-kwong, GBS, JP
Secretary for Labour and Welfare

Mr Chris SUN Yuk-han, JP
Commissioner for Labour

Miss CHEUNG Hoi-shan
Assistant Commissioner for Labour (Policy Support)

Miss Grace CHAN Wing-han
Chief Labour Officer (Offsetting Policy)
Labour Department

Items IV and VI

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

Mr Chris SUN Yuk-han, JP
Commissioner for Labour

Mr Raymond LIANG Lok-man
Assistant Commissioner for Labour (Labour Relations)

Item VII

Mr HO Kai-ming, JP
Under Secretary for Labour and Welfare

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

Mr Raymond LIANG Lok-man
Assistant Commissioner for Labour (Labour Relations)

Mr Worky WU Kin-kwok
Registrar
Minor Employment Claims Adjudication Board

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. Information paper issued since the last meeting

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

II. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)648/20-21(01) and (02))

Regular meeting in February 2021

2. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 10:45 am on 18 February 2021:

- (a) Latest development in the employment services of the Labour Department; and
- (b) Enforcement of labour legislation by the Labour Administration Branch of the Labour Department.

III. Update on the proposal to abolish the offsetting arrangement under the Mandatory Provident Fund System

3. The Chairman advised that items III and V were related. He would invite the Secretary for Labour and Welfare ("SLW") to provide members with an update on the preparatory work for abolishing the "offsetting" arrangement under the Mandatory Provident Fund ("MPF") System ("the abolition proposal") under agenda item V.

IV. Update on the proposal to increase progressively the number of statutory holidays under the Employment Ordinance

4. The Chairman advised that items IV and VI were related. He would invite SLW to provide members with an update on the proposal to increase progressively the number of statutory holidays ("SHs") under the Employment Ordinance (Cap. 57) ("EO") under agenda item VI.

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V. Funding for Developing Designated Savings Accounts ("DSA") functionalities on the eMPF Platform and the DSA Information Technology System

(LC Paper No. CB(2)648/20-21(03))

5. At the invitation of the Chairman, SLW briefed members on the funding proposal for building Designated Savings Account ("DSA") functionalities on the eMPF Platform of the Mandatory Provident Fund Schemes Authority ("MPFA"), and the development and management of the DSA Information Technology ("IT") System ("the DSA System") in the Labour Department ("LD"), details of which were set out in the Administration's paper.

Building functionalities on the eMPF Platform to support the DSA Scheme

6. The Chairman and Mr POON Siu-ping said that the labour sector was disappointed at the unduly long time taken for implementing the abolition proposal, notwithstanding that the proposal was announced in the Chief Executive's 2018 Policy Address. As a result, a significant amount of employers' contributions under the MPF System would continue to be withdrawn to "offset" the severance payment ("SP")/long service payment ("LSP"). Noting the proposed timeline of full implementation of the eMPF Platform would be around 2025 at the earliest, Mr POON raised query about the need to have the DSA functionalities and services to be provided on the eMPF Platform for collecting employers' contributions and disbursing DSA monies, and asked whether relevant activities could be performed manually. The Chairman was gravely concerned about the extended period of time to be taken for the development of the DSA System and interfacing with the eMPF Platform so as to implement the abolition proposal after passage of the enabling legislation. The Chairman called on the Government to expedite the relevant work without further delay.

7. While expressing the view that it was cost-effective and acceptable to make use of the eMPF Platform for collecting employers' contributions and disbursing DSA monies, Mr LEUNG Che-cheung called on the Administration to compress the timetable for the development of the DSA System for early implementation.

8. In response to members' views and concerns, SLW advised that the Government planned to introduce the relevant bills into the Legislative Council ("LegCo") in the 2021-2022 legislative session and secure their

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passage within the current term of the Government, and to implement the abolition of "offsetting" arrangement in tandem with the full implementation of the eMPF Platform in around 2025 at the earliest. SLW clarified that while agreeing in principle to the abolition of the "offsetting" arrangement under the MPF System, the Labour Advisory Board ("LAB") had not yet reached a consensus on the detailed arrangements. SLW pointed out that as there were more than 300 000 employers in Hong Kong, it would be very costly to handle collection of employers' contributions and disbursement of DSA monies manually. The Government therefore planned to ride on the eMPF Platform to be built by MPFA to achieve better cost-effectiveness and facilitate employers to handle MPF and DSA matters on one single platform.

9. Mr Wilson OR expressed concern that it would be a waste of money for building DSA functionalities on the eMPF Platform to support the DSA Scheme if the relevant bills were not passed at the end.

10. SLW said that it was believed that a common consensus on abolishing the "offsetting" arrangement under the MPF System had been reached in the community, though there might be different views on the detailed arrangements. Notably, the eMPF Platform would be an appropriate interface to facilitate employers to make contributions to their DSAs as well as disbursing DSA monies to them when the need to pay SP/LSP arose.

Developing and managing the DSA System

11. With respect to the proposal of outsourcing the development, daily management and maintenance of the DSA System, as well as the day-to-day administration of the DSA Scheme to an agent in the private sector, Mr POON Siu-ping enquired whether it was feasible for the Government to take up the relevant tasks on its own. Mr YIU Si-wing and Mr LEUNG Che-cheung asked whether the Administration had ever conducted a comparison study on the respective financial implications of outsourcing the relevant tasks and performing them by civil servants. Mr Wilson OR asked about the anticipated benefits of commissioning of an outsourced agent to perform the relevant tasks.

12. Responding to members' concerns and views, SLW advised that the Government had not conducted a detailed cost assessment on developing and managing the DSA System by the Government per se. Generally speaking, outsourcing IT system development would achieve

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better cost-effectiveness and a higher degree of flexibility, as system development by the Government would often be subject to manpower constraints, involve higher overhead expenses and take a longer lead time. In fact, the development of most of the large-scale IT systems had been outsourced by the Government in recent years. SLW stressed that the responsibility of managing and monitoring the contractors' performance and work would always rest with the Government.

13. Mr POON Siu-ping expressed concern about managing and monitoring of the outsourced agent's performance. Mr YIU Si-wing enquired about the ownership and protection of the information collected via the DSA System. Mr LEUNG Che-cheung asked whether the Government would consider introducing legislation to govern the contractor's work in this regard. Echoing a similar concern, Mr Wilson OR asked about the specific preventive measures to be taken.

14. Mr YIU Si-wing expressed further concern about possible change of contractors in managing the DSA System and protection of employers' interest in subsequent years, such as whether a mechanism would be put in place for overseeing the related expenses for upgrading the hardware and software of the DSA System to be charged by the contractor. Mr Wilson OR was concerned about market competition in selecting contractors in managing the DSA System in the long run.

15. SLW responded that the Government had all along attached great importance to protecting personal data privacy. He assured members that information maintained in the DSA System would be protected under relevant laws and terms of the service contract to ensure its integrity, security and proper use. SLW added that the DSA System would be owned by the Government and the contractor which managed the DSA Scheme would be subject to criminal liability for unauthorized disclosure of information in the DSA System.

16. SLW further advised that market competition should not be a great concern as there were a good number of contractors providing the required services in the market. As a matter of fact, it was not uncommon for the Government to change the service providers for provision of different government services through an open and competitive tendering process. Depending on the nature and scale of subsequent system enhancements, the Government might bear part of the expenses as appropriate.

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Financial implications

17. The Deputy Chairman said that he was in principle supportive of the funding proposal for implementing the DSA Scheme. With respect to the non-recurrent expenditure for developing the DSA System, the Deputy Chairman was concerned about the high percentage of the estimated expenditure of system implementation and maintenance services (i.e. \$30,260,000) amongst all expenditure items, especially in 2023-2024. He sought explanation in this regard. In response, SLW said that all the estimated figures of the funding proposal for implementing the DSA System were estimated cash flow requirement in that year. Commissioner for Labour ("C for L") added that the figure for 2023-2024 was an estimation based on the anticipated bulk of system implementation and maintenance tasks for the year.

18. As regards the daily management of the DSA Scheme, the Deputy Chairman was concerned that the estimated expenditure for office rent and related expenses amounted to \$10,442,000 in 2024-2025 was much higher than that estimated in 2025-2026 i.e. \$4,490,000. C for L responded that the difference in the estimated figures was mainly attributable to the additional cash flow requirement for the initial set-up of the office of the outsourced agent engaged for managing the daily operation of the DSA Scheme in 2024-2025.

19. Noting that the item "Administration, staff and other costs" was included in the estimated expenditure for daily management of the DSA Scheme, the Deputy Chairman asked about the manpower requirements of the DSA Scheme. SLW and C for L said that the relevant estimated expenditure was related to the administrative and staffing expenses incurred by the outsourced agent to be engaged in managing the daily operation of the DSA Scheme in the initial years of its operation.

20. Noting that the recurrent operating expenses of the daily operation of the DSA Scheme would be recouped from the DSA employers on a cost recovery basis from the sixth year of operation onwards, the Deputy Chairman asked how they would be shared amongst the DSA employers. Mr Wilson OR echoed a similar concern and asked whether a mechanism would be put in place to penalize employers for transferring the relevant cost to their employees.

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21. SLW advised that the recurrent operating expenses of the daily operation of the DSA Scheme from the sixth year onwards would be shared amongst individual employers holding DSAs. The details had yet to be worked out. On the concern as to whether the related cost would be transferred to employees, it was believed that the said cost would only form a small part of the operating costs and there were a host of factors, including the supply in the labour market, which employers would take into account when determining staff remuneration and benefits.

VI. Alignment of statutory holidays with general holidays
(LC Paper Nos. CB(2)648/20-21(04) and (05))

22. At the invitation of the Chairman, SLW briefed members on the proposal to take forward the initiative of increasing progressively the number of SHs under EO so that it would be on a par with the number of general holidays ("GHs") ("the Proposal"), as detailed in the Administration's paper.

23. Members noted a background brief entitled "Alignment of statutory holidays with general holidays" prepared by the LegCo Secretariat.

The Proposal

24. Referring to the disparity in the number of days between SHs and GHs, Mr KWOK Wai-keung remarked that the Government should be proactive in eliminating such unfair arrangement for those employees currently being granted SHs only. Mr POON Siu-ping echoed a similar concern. He pointed out that the alignment of SHs with GHs was one of the 10 new initiatives to benefit grassroots and underprivileged people as announced by the Government on 14 January 2020. With respect to the proposal of increasing an additional day of SH in every two years such that in eight years' time the total number of SHs would be on a par with the number of GHs, Mr KWOK criticized that the pace was unduly long. Mr KWOK said that the labour sector had called for achieving the alignment in three years' time. The Chairman called on the Government to expedite and advance the timetable as far as practicable. Mr POON appealed to the Government to put forth a more acceptable proposal.

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25. Referring to paragraphs 11 and 12 of the Administration's paper on the estimated cost of increasing the number of SHs from existing 12 days to 17 days, the Chairman and Mr POON Siu-ping were of the view that the cost impact on businesses was not significant. The Chairman further pointed out that not all employers would need to hire substitute workers to fully make up for the manpower loss owing to additional SH entitlement.

26. The Chairman expressed the view that aligning SHs with GHs would create a win-win situation for both employers and employees. Apart from improving employment benefits, increasing SH entitlement would help stimulate the consumption activities in various sectors as more people would take part in various recreational activities and dine out while they were on the additional holidays, and consequently boost up the economy. As a matter of fact, it was proven that the consumption of low-income employees had significantly increased after the introduction of the Statutory Minimum Wage rate. The Chairman asked whether the Administration had ever studied the positive economic impacts to be brought about by increasing five days of SHs on the 1.2 million employees concerned.

27. Mr SHIU Ka-fai considered it imperative to strike a proper balance between employers' affordability and employees' rights and benefits in taking forward the Proposal. Mr SHIU drew members' attention to the deteriorating economy since mid-2019 and the outbreak of the COVID-19 epidemic and the increase of the seasonally adjusted unemployment rate to 6.6% in October - December 2020 as released by the Census and Statistics Department ("C&SD"). In face of the worsening economic situation, he cautioned that further enhancement of employees' rights and benefits at this juncture would put undue pressure on the operating costs of employers.

28. In response to members' views and concerns, SLW advised that the Administration had not conducted a study on the economic impact of increasing the number of SHs. The Administration noted the divergent views in the community in respect of the Proposal. While some employers grudgingly accepted the Proposal, some other employers expressed reservations about the Proposal in the light of prevailing economic situation. Taking into consideration the concerns of the employers, particularly those medium, small and micro enterprises and also households employing foreign domestic helpers ("FDHs"), the Government considered it appropriate to increase progressively the

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number of SHs, i.e. increase one SH every two years. It struck an appropriate balance between improving employees' benefits and facilitating employers, including households employing FDHs, to make corresponding adjustments on an incremental basis and make necessary arrangement in their business operation, such as manpower deployment.

29. Dr CHIANG Lai-wan said that Democratic Alliance for the Betterment and Progress of Hong Kong was in support of the Proposal. However, Dr CHIANG said that some middle-class employers of FDHs had expressed concern about the Proposal as they might need to take up household chores themselves or rearrange activities while their FDHs were on holidays. Dr CHIANG asked whether FDHs, who were employed under specific live-in employment contracts, would be entitled to the proposed additional SHs and whether it would be feasible for employers to make alternative arrangements with their FHDs for the additional SHs.

30. SLW advised that SHs were statutory employment benefit under EO, which were applicable to all eligible employees regardless of whether they were local or imported workers, including FDHs. Currently there were provisions under EO that alternative or substituted SHs could be arranged between employers and employees, and such arrangement would also be applicable to all eligible employees (including FDHs) in respect of the additional SHs under the Proposal.

Views of Labour Advisory Board

31. Ms Alice MAK drew members' attention to the dissatisfaction expressed by the employee representatives of LAB at the press conference held in the morning of 19 January 2021 over the saying that both the employer and employee members of LAB did not have much disagreement on the Proposal. Ms MAK was gravely concerned that the Government put forth the Proposal to LegCo in the absence of consensus among LAB members. Pointing out that LAB served as a consultative platform for labour matters and that it had been the Government's long established practice to consult LAB and secure its support prior to taking forward various labour-related initiatives, Ms MAK expressed dissatisfaction that the Government had circumvented LAB and undermined the established mechanism of LAB in this matter.

32. Mr POON Siu-ping expressed concern about the Government's stance should individual Members propose amendments to the Proposal upon the introduction of the relevant bill into LegCo. In the

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circumstances, he asked whether the Government would need to consult LAB again on the proposed amendments to the Proposal.

33. SLW said that LD consulted LAB on 14 October and 5 November 2020 on the Proposal in detail. He pointed out that as set out in the Administration's paper regarding views of LAB, the employee members considered that the implementation schedule of the proposal should be shortened. There was no consensus at LAB on the pace of achieving the alignment of SHs with GHs. However, both the employer members and employee members of LAB did not have much disagreement on the goal of increasing progressively the number of SHs, from existing 12 days to 17 days, so that it would be on a par with the number of GHs, and on introducing an enabling bill into LegCo for scrutiny with a view to designating the first additional SH, i.e. the Birthday of the Buddha, in 2022.

34. SLW further advised that in making any decisions related to employment benefits, the Government would first consult LAB with a view to reaching a consensus between the employee and employer sides before introducing the relevant proposals into LegCo. Generally speaking, it followed that if LegCo Members proposed amendments to a Government proposal which would deviate from LAB's consensus, it would normally seek the LAB's views again on the proposed amendments. That said, having regard to the controversy over the pacing of achieving alignment of SHs with GHs and the fact that there was little prospect that a consensus could be reached between the employer members and employee members of LAB in the foreseeable future, deferring action until a consensus was reached in LAB would mean that employees, especially the grassroots, who were currently enjoying SHs only, would have to wait further to enjoy the additional employment benefits. It was incumbent upon the Government to take into account the different views of employee and employer sides and strike a balance for the interest of the society as a whole, and put forward the Proposal by legislative means. SLW added that it was premature for him to respond to any possible proposed amendments to the relevant bill at this stage, pending its introduction into LegCo.

35. In concluding the discussion, the Chairman called on the Government to take heed of different views and concerns expressed by members as well as the business and labour sectors, and to take forward the Proposal and the legislative process expeditiously.

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VII. Review of the jurisdictional limit of the Minor Employment Claims Adjudication Board

(LC Paper Nos. CB(2)648/20-21(06) and (07))

36. At the invitation of the Chairman, Under Secretary for Labour and Welfare ("USLW") briefed members on a new proposal for increasing the jurisdictional limit of the Minor Employment Claims Adjudication Board ("MECAB") ("the new proposal"), as detailed in the Administration's paper.

37. Members noted a background brief entitled "Review of the jurisdictional limit of the Minor Employment Claims Adjudication Board" prepared by the LegCo Secretariat.

New proposal

38. The Chairman welcomed the new proposal. Noting that the jurisdictional limit of MECAB was proposed to be increased from \$8,000 per claimant to \$15,000 per claimant under the new proposal, the Chairman sought information on the computation basis of the proposed claim amount. The Chairman called on the Administration to consider further adjusting upward the jurisdictional limit to \$19,000 per claimant with reference to the latest median monthly wage of all employees in Hong Kong provided by C&SD.

39. Mr SHIU Ka-fai raised no objection to the new proposal. However, noting that the proposed increase in the jurisdictional limit of MECAB from \$8,000 to \$15,000 which represented an increase of 87.5%, Mr SHIU expressed concern about employers' affordability. Mr SHIU then sought information on the increase in the median monthly wage of all employees in Hong Kong since 1997.

40. USLW clarified that the proposed increase in the jurisdictional limit of MECAB did not seek to enhance employment benefits. Under the existing mechanism, any employment claims exceeding the jurisdictional limit of MECAB would be adjudicated by the Labour Tribunal ("LT"). The proposed change to the jurisdictional limit of MECAB would merely adjust the caseloads of MECAB and LT accordingly.

41. USLW further said that according to the median monthly employment earnings of all employees provided by C&SD, the relevant data increased by 80% between the second quarter of 1997 and the third

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quarter of 2020. By a similar rate of increase, the jurisdictional limit of MECAB would be increased from \$8,000 to \$14,400, which was rounded up to \$15,000 in the new proposal. In addition, the Government had taken into account Members' views on further increasing the limit when the Panel was consulted in June 2019 on the proposal to adjust the jurisdictional limit of MECAB from \$8,000 per claimant to \$12,000 per claimant, while retaining the maximum number of claimants per claim at 10.

42. Mr POON Siu-ping expressed support for the new proposal. Referring to the projected increase of the number of claims received by MECAB from 560 in 2019 to some 1 200 under the new proposal, Mr POON was concerned whether extra manpower resources were required for MECAB to handle the additional caseload and whether it would take longer time for arranging the first hearing on a claim.

43. The Chairman echoed a similar concern. In the light of the worsening economy and continued rise in the unemployment rate, the Chairman envisaged that there would be increasing cases of business closure and employment claims in relation to wage defaults.

44. USLW highlighted to members two performance pledges of MECAB i.e. arrangement for a claimant to meet with a filing officer within one week after approaching MECAB, and hearing of a claim to be conducted within five weeks after filing. According to the statistics in 2017 to 2019, it took on average four days for a claimant to meet with a filing officer and three weeks for hearing of a claim after filing. However, there was inevitable suspension of the operation of MECAB in 2020 due to the COVID-19 epidemic.

45. USLW further advised that at present, there were four adjudication officers handling the employment claims filed with MECAB. It was anticipated that the additional caseload could be accommodated within existing resources. The Administration would closely monitor the relevant manpower requirements and make adjustment as necessary so as to meet the performance pledges.

Future review of the jurisdictional limit

46. Expressing concern that the jurisdictional limit of MECAB was reviewed after more than 20 years, Mr POON Siu-ping enquired about the mechanism under which a review of the jurisdictional limit would be

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activated and whether regular reviews, say every one to two years, would be conducted as in the review of amount of compensation items under the Employees' Compensation Ordinance (Cap. 282) and the payments under the Comprehensive Social Security Assistance Scheme.

47. USLW advised that the Government noted members' views on conducting regular review of the jurisdictional limit of MECAB in future and would consider whether there was room for making further improvement to the review mechanism.

Service provided by the Labour Relations Division

48. Noting that the Labour Relations Division ("LRD") of LD provided limited counter services and conciliation service during the COVID-19 epidemic, the Chairman asked whether LRD had resumed normal office hours so as to provide the necessary service for resolving labour disputes.

49. USLW appealed to employees to approach LD for assistance with employment claims which could be referred to MECAB or LT for adjudication as appropriate. Assistant Commissioner for Labour (Labour Relations) supplemented that in the light of the latest situation of the COVID-19 epidemic, LRD provided counter services on Mondays, Wednesdays and Fridays during normal office hours. Employees could lodge employment claims and seek other assistance as appropriate.

50. The Chairman called on the Administration to strengthen its publicity efforts to raise the public's awareness of employees' labour rights and benefits. In response, USLW said that the Government had all along been promoting employment rights and benefits under EO to the public, including employees and human resource management personnel, and would continue to work in this direction.

51. In concluding the discussion, the Chairman said that members had raised no objection to the new proposal.

52. There being no other business, the meeting ended at 6:29 pm.