

立法會
Legislative Council

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LC Paper No. CB(2)1890/04-05
(These minutes have been seen by the
Administration)

Panel on Manpower

Minutes of meeting
held on Tuesday, 26 April 2005 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon LAU Chin-shek, JP (Chairman)
Hon KWONG Chi-kin (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Frederick FUNG Kin-kee, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung

Public Officers attending : Item III

Mr Matthew CHEUNG Kin-chung
Permanent Secretary for Economic Development and Labour
(Labour)

Mr TSANG Kin-woo
Assistant Commissioner for Labour (Employment Services)

Mr Byron NG
Senior Labour Officer (Employment Services)
Labour Department

Item IV

Mr Stephen IP
Secretary for Economic Development and Labour

Mr Matthew CHEUNG Kin-chung
Permanent Secretary for Economic Development and Labour
(Labour)

Mrs Jennie CHOR
Deputy Commissioner for Labour (Labour Administration)

Mr Stanley NG
Assistant Commissioner for Labour (Labour Relations) (Acting)

Mr KOO Chiu-shing
Senior Labour Officer (Wage Security)
Labour Department

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2) 1

Staff in attendance : Mr Raymond LAM
Senior Council Secretary (2) 5

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1328/04-05)

The minutes of the meeting held on 17 March 2005 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1330/04-05(01), (02) and CB(2)1273/04-05(01))

2. Members agreed that the following items would be discussed at the next meeting to be held on 19 May 2005 at 2:30 pm -

- (a) Improving the employees' compensation insurance system in Hong Kong; and
- (b) Protection for employees who are not employed under a continuous contract.

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3. The Chairman informed members that the Administration had advised that the item “Recognition of sick leave certificates issued by chiropractors as valid sick leave certificates” proposed by the Deputy Chairman, Hon CHAN Yuen-han and Hon WONG Kwok-hing would not be ready for discussion at the Panel meeting in May 2005.

4. Miss CHAN Yuen-han suggested that the Panel should consider undertaking an overseas duty visit to better understand overseas experience in resolving the problem of unemployment. The Chairman said that the matter would be considered at the next Panel meeting.

III. Work Trial Scheme to be launched by the Labour Department
(LC Paper No. CB(2)1330/04-05(03))

5. At the invitation of the Chairman, Permanent Secretary for Economic Development and Labour (Labour) (PSL) briefed members on the Labour Department’s (LD’s) proposal to launch the Work Trial Scheme (WTS), which aimed to provide 2 000 work trial places for eligible job-seekers.

6. Mr WONG Kwok-hing asked whether the Administration would encourage employers to retain participants who successfully completed the one-month work trial. He suggested that the Administration should review WTS after six months.

7. PSL responded that LD would encourage employers to employ WTS participants who had successfully completed the work trials. He undertook to review WTS six months after implementation.

8. Ms LI Fung-ying said that employees’ compensation insurance covered, among others, compensation for injury to an employee caused by negligence of the employer. She asked whether such protection would be provided under the insurance to be taken out for WTS participants.

9. PSL responded that the insurance for WTS participants, which would be the same as that for participants of the Youth Pre-employment Training Programme (YPTP), would indemnify WTS participants against damages arising from personal accidents as well as damages arising from any third party litigation arising from the participants’ negligence during the course of work trial. The maximum amount of compensation in fatal cases was no less than that provided under the Employees’ Compensation Ordinance (Cap. 282). Assistant Commissioner for Labour (Employment Services) added that the insurance for participants would cover insurance against accidents as well as hospitalisation.

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10. The Chairman and the Deputy Chairman expressed concern that accident insurance did not cover compensation arising from the negligence of participating organisations.

11. PSL responded that the Administration had not so far identified any particular problem with the insurance for participants of YPTP. He said that participants would not be required to perform tasks with a high risk. He stressed that the Administration would encourage participating organisations to employ participants.

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12. The Deputy Chairman said that accident insurance did not cover compensation for injury caused by negligence of the employer. He suggested that the Administration should consider taking out employees' compensation insurance for participants. PSL agreed to consider the suggestion.

13. Mr LEE Cheuk-yan considered that problems arising from work injury during work trial, such as that arising from injury caused by negligence of the employer, could be addressed through the establishment of an employment relationship between a participant and the participating organisation. His view was shared by Mr LEUNG Yiu-chung.

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14. PSL responded that a participating organisation could, if it so wished, employ a participant at the commencement of a work trial. He said that WTS would be reviewed six months after implementation. The Administration would revert to the Panel on the findings of the review.

15. Ms LI Fung-ying asked whether there would be guidelines on how the attendance of participants was to be taken.

16. PSL responded that participating organisations would be required to certify the attendance of participants and submit the attendance to LD for checking.

17. Mr LEUNG Yiu-chung asked how the Administration would allocate the 2 000 places to be provided under WTS among the large number of job-seekers.

18. PSL responded that WTS was intended for job-seekers who had special difficulties in finding jobs, such as those who had registered at LD for a prolonged period but remain unemployed.

19. Miss CHAN Yuen-han expressed support for WTS. She considered that measures should be introduced to assist job-seekers who were not employed after successful completion of work trials. PSL reiterated that the Administration would encourage employers to employ WTS participants who had successfully completed the work trials.

20. Mr Frederick FUNG said that the work trial period should be changed to a probation period and extended to two or three months to facilitate the assessment of a

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participant's suitability for a job. He considered that the proposed contribution of \$500 from participating organisations was too low and should be increased to \$3,000 per month.

21. PSL responded that the Administration would encourage participating organisations to employ participants. Depending on the circumstances of each case, consideration might be given to providing continued employment for a participant under the Re-employment Training Programme for the Middle-aged, which aimed to help placing the middle-aged unemployed into jobs. He reiterated that the Administration would conduct a review on WTS six months after its implementation.

IV. Prevention of abuse of the Protection of Wages on Insolvency Fund
(LC Paper Nos. CB(2)1330/04-05(05) and CB(2)1377/04-05(01))

22. At the invitation of the Chairman, Secretary for Economic Development and Labour (SEDL) briefed members on the measures being considered to further prevent abuse of the Protection of Wages on Insolvency Fund (PWIF).

23. Mr WONG Kwok-hing said that although a restaurant proprietor was recently sentenced to imprisonment, the sentence was suspended for two years. He considered that the Administration should take firm actions against offenders and impose a heavier sentence on convicted persons. Referring to paragraph 7(f) of the Administration's paper, he asked about the progress of the cases under investigation by the Commercial Crime Bureau of the Police and the Official Receiver's Office (ORO). He also asked about the Administration's position regarding the longer-term measures in the Annex to the Administration's paper (the long-term measures).

24. SEDL responded that the Administration had strengthened enforcement against abuse of PWIF. The Administration had formed an inter-departmental task force in November 2002 and established a special investigation team in May 2003 to address the problem. He stressed that prosecution would certainly be instituted in cases where there was sufficient evidence. Although the Administration hoped that heavier sentences could be imposed on offenders, the sentences were determined by the court. He said that the Administration would consider carefully the measures referred to in the Administration's paper, having regard to the views expressed by members.

25. PSL said that the Administration had made an application for review of the sentence in the case where a restaurant proprietor had been sentenced to imprisonment but the sentence was suspended for two years. He informed members that about 45 cases referred to the Task Force were still under investigation.

26. Mr WONG Kwok-hing said that the Hong Kong Federation of Trade Unions (HKFTU) had proposed in its submission certain amendments to existing legislation.

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He asked about the Administration's timetable for introduction of legislative amendments.

27. SEDL responded that the Administration hoped to introduce the long-term measures as soon as possible. Legislative amendments, if any, could not be introduced until the next legislative session, as the drafting of such amendments would take time.

28. Mr Tommy CHEUNG hoped that the public would not conclude from some employers' abuse of PWIF that there was a general abuse of PWIF in the catering sector. He said that there had been substantial decrease in the total amount of payment from PWIF for owed wages and severance payment in recent years. He asked whether the problem of outstanding wages in default mainly arose from inadequacies in existing legislation or enforcement.

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29. Referring to the recent case where a restaurant owner was sentenced to imprisonment and suspended for two years, Mr Tommy CHEUNG asked whether similar prosecution had been instituted in the past. He requested the Administration to provide the judgment delivered by the court on the case.

30. Referring to the long-term measures, Mr Tommy CHEUNG said that –

- (a) it would be unfair and not viable to introduce the mandatory requirement referred to in item 6;
- (b) the mandatory requirement in item 7 would result in delays in licensing;
- (c) the proposal in item 8 could be further considered;
- (d) the proposal of having separate funds for certain industries would have serious impacts on employers; and
- (e) he had no particular objection regarding the proposal in item 10.

31. PSL responded that existing provisions against wage offences were adequate. Nevertheless, the Administration would regularly review the adequacy of such provisions. He said that the Administration had stepped up enforcement against wage offences in recent years. In the past, prosecution was not instituted once an employer settled all the outstanding wages. In recent years, prosecution was instituted whenever there was sufficient evidence and the worker concerned was willing to testify in court. The recent case where a restaurant proprietor was sentenced to one month's imprisonment and suspended for two years was a breakthrough in the prosecution of wage offences under section 64B of the Employment Ordinance (EO) (Cap. 57). He said that LD would recruit a number of retired police officers to assist in gathering intelligence and evidence.

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32. PSL informed members that the number of successful summons in respect of wage offences had substantially increased in recent years. It could be noted that increasing attention was paid by the court to wage offences and the highest fine imposed for such offences had been increased from \$50,000 in 2003 to \$140,000 in the previous year.

33. Mr Andrew LEUNG considered that employers should not abuse PWIF, which was established for the protection of the rights of employees. He said that existing legislation against wage offences was adequate and the Administration should focus on stepping up enforcement against abuse of PWIF. The abuse problem should be tackled with the joint efforts of different government departments and ORO, which should do more against illegal transfer of assets. While expressing support for the immediate measures, he expressed concern that it would be very difficult for restaurant proprietors to obtain bank guarantees for the statutory entitlements of employees. Establishing a mandatory requirement on bank guarantees could not address problems associated with arrears of severance payment. He asked whether ORO had sufficient manpower to cope with its increased workload in recent years.

34. SEDL responded that the Administration was committed to preventing abuse of PWIF. A special investigation team had been set up for such a purpose. It should be noted that the number of applications received by PWIF had decreased. He shared the view that ORO should examine its records to identify suspected cases of illegal transfer of assets for follow-up. As enforcement alone could not address all problems, additional measures were considered to further prevent abuse of PWIF. He assured members that the Administration would carry out in-depth study of the measures referred to in the Annex to the Administration's paper.

35. Mr LEE Cheuk-yan expressed concern that many employers thought that severance payments could be settled by payments from PWIF. He considered that while the Administration should step up enforcement against abuse of PWIF, measures should be introduced to prevent abuse of PWIF. He expressed strong support for items 6 and 10 of the long-term measures. He said that the seven measures proposed by the Hong Kong Confederation of Trade Unions (HKCTU) had not been included in the measures to be considered. He suggested that –

- (a) directors of companies should be made personally liable for payment of wages in arrears;
- (b) a “black list” of abusers of PWIF, which was proposed by PWIF Board, should be established; and
- (c) legislative amendments should be introduced to hold directors of companies criminally liable for failure to pay severance payment .

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36. SEDL responded that it would be difficult to hold directors of companies personally liable for payment of wages in arrears. He said that directors of companies would be liable to prosecution for any illegal transfer of assets before the winding up of the companies.

37. PSL said that the essence of the seven measures proposed by HKCTU had been incorporated in the measures referred to in the Annex to the Administration's paper. Referring to Mr LEE Cheuk-yan's suggestion in paragraph 35(b) above, PSL clarified that the PWIF Board had not proposed a "black list". It had only written to the Food and Environmental Hygiene Department suggesting that caution should be exercised before licences were issued to applicants where the directors concerned had previously owned companies requiring the use of PWIF. He said that items 6 or 7 of the long-term measures should provide effective risk management and address concerns about restaurant proprietors having previously owned companies requiring payment from PWIF. He stressed that there was no "black list" as such. PSL revealed that LD had been communicating with about 60 catering businesses which were involved in three or more requests for LD's assistance within six months, with a view to assisting them to improve their management and ironing out any potential problem.

38. Mr LEE Cheuk-yan said that some employers were found to have transferred assets through transactions which were abnormal but not illegal, such as the sale of assets at a considerably lower price. He asked when the Administration would submit the proposal regarding bank guarantees to the Executive Council.

39. SEDL responded that any suspected transfer of assets before liquidation would be investigated. He said that proposals which were found viable after in-depth study would be referred to the Labour Advisory Board (LAB) for consideration. In response to Mr LEE Cheuk-yan's question whether the proposal regarding bank guarantees had been discussed by LAB, PSL said that although the subject matter had been raised at a meeting of LAB, it was still to be further examined.

(As the Chairman was engaged in some urgent business, the Deputy Chairman took the chair at this juncture.)

40. Mr LEUNG Kwok-hung questioned whether the situation regarding applications under PWIF had really improved. He said that the decrease in the number of applications under PWIF in 2004 was probably due to the large number of applications arising from the closure of a large number of catering businesses during the outbreak of the Severe Acute Respiratory Syndrome in 2003. He said that severance payment should be regarded as part of outstanding wages in default and employer's contribution to the Mandatory Provident Fund should not be used to offset employer's liability in respect of severance payments. He further said that restaurant proprietors should be required to provide bank guarantees for the statutory entitlements of employees. Alternatively, a new tax should be levied on all businesses so that a fund could be established specifically for settling the statutory entitlements of employees.

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41. SEDL noted the views of Mr LEUNG Kwok-hung.

42. Mr Tommy CHEUNG asked about the total amount of payment from PWIF in the past few years. Mr LEUNG Kwok-hung considered that the situation might have worsened, if the number of applications had decreased but the total amount of ex-gratia payments made by PWIF had increased. PSL responded that the total amount of ex-gratia payments made by PWIF had decreased from about \$465 million in 2003-04 to about \$315 million in 2004-05. The monthly surplus of PWIF was about \$9 million and the accumulated surplus of PWIF had already exceeded \$100 million.

43. Miss CHAN Yuen-han said that the Administration had not adopted her suggestion to introduce legislative amendments when five information technology companies became insolvent in 2001. Although she had no objection to the reintroduction of the Companies (Corporate Rescue) Bill, it would probably take a very long time before the Bill was passed. Referring to the submission from HKFTU, she said that the Administration should take prompt actions to introduce the legislative amendments proposed in the submission. The Deputy Chairman said that the legislative amendments proposed in the submission from HKFTU sought to achieve consistency in the penalty levels for wage offences in the relevant ordinances.

44. SEDL responded that as the suggestions in the submission from HKFTU were quite technical in nature, some time would be needed in studying them. He stressed that the Administration was determined to introduce further measures to prevent abuse of PWIF.

45. Mr LEUNG Yiu-chung expressed support for item 10 of the long-term measures. He said that the adoption of preventive measures against abuse of PWIF was better than remedy after abuse had occurred. He expressed concern that applicants of PWIF who had a long service with their employers could not have their entitlements fully paid from PWIF. He considered that applicants of PWIF should be paid 100% of their entitlements regardless of the length of service with their employers.

46. Mr LEUNG Yiu-chung expressed concern that the number of applications for PWIF did not reflect the actual situation. He said that an applicant had to apply for legal aid before applying for ex-gratia payment from PWIF. Thus, an applicant would not be able to apply for ex-gratia payment from PWIF, if his application for legal aid was unsuccessful. He suggested that applicants of PWIF should not be required to satisfy the eligibility requirements for legal aid. His view was shared by Mr Andrew CHENG.

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47. SEDL undertook to refer the suggestion to the Legal Aid Department. The Deputy Chairman considered that LD should, on behalf of the employee concerned, apply for a winding-up petition or a bankruptcy petition against the employer so that it would not be necessary for an applicant to apply for legal aid.

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48. PSL said that the Protection of Wages on Insolvency Ordinance had been amended seven times since its enactment some 20 years ago. The legislative amendments introduced in 1999 were a big step forward in the protection of the rights of employees. He said that the Administration would review the Ordinance again, when necessary.

49. Mr Andrew CHENG expressed reservations about item 8 of the long-term measures. He considered that the proposal in item 9 of the long-term measures was appropriate, given that a majority of the applications for PWIF came from the catering and construction sectors. He added that the Administration should continue with its work on the reintroduction of the Companies (Corporate Rescue) Bill, which sought to protect the rights of employees against irresponsible employers.

50. Mr Vincent FANG said that most employers were law abiding and did not consider that severance payments should be settled by PWIF. He considered that although requiring all restaurant proprietors to provide bank guarantees for the statutory entitlements of employees would not pose a problem to large restaurants, it would be very difficult for small and medium restaurants to seek such bank guarantees. He added that the imposition of any further requirements on limited companies should be carefully considered, as there would be wide implications. The suggestion of making restaurant proprietors personally liable for outstanding wages should be considered carefully to avoid fettering the local business environment. SEDL noted the views of Mr FANG.

51. Mr WONG Kwok-hing said that the Administration should provide a timetable on the introduction of long-term measures to prevent abuse of PWIF. He considered that the measures would not affect responsible and law-abiding employers. Referring to item 7 of the long-term measures, he asked about the actions taken by the Administration against the 297 catering establishments suspected of abusing PWIF in 2004.

52. PSL clarified that the 297 catering establishments referred to the number of eateries having to resort to PWIF in 2004. The number of eateries referred to the Task Force for investigation of suspected fraud and abuse so far was only 25. He said that item 7 of the long-term measures sought to provide a safety net.

53. Miss CHAN Yuen-han suggested that a subcommittee should be formed to study measures against abuse of PWIF and related legislative amendments. Mr Andrew CHENG supported the suggestion. He said that the Panel could consider forming a working group to study improvements to the mechanism for recovering outstanding wages in default. Mr WONG Kwok-hing supported the suggestions of Miss CHAN and Mr CHENG. Mr Andrew LEUNG considered that it would be more appropriate to refer the subject of improvements to the mechanism for recovering

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outstanding wages in default to LAB for discussion. The Deputy Chairman said that he would convey to the Chairman members' suggestions.

Admin

54. PSL assured members that the Administration would study the proposals in the submission, refer the matter to LAB for further discussion and revert to the Panel as soon as possible.

V. A review of the occupational diseases in 2004

55. In view of the time constraint, members agreed that discussion of the item would be deferred to the next meeting to be held on 19 May 2005.

VI. Any other business

56. In view of the time constraint, members agreed that the discussion on the way forward for review of the Labour Tribunal and related issues would be deferred to the next meeting to be held on 19 May 2005.

57. There being no other business, the meeting ended at 7:00 pm.

Council Business Division 2
Legislative Council Secretariat
15 June 2005