

立法會
Legislative Council

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LC Paper No. CB(2)866/05-06
(These minutes have been seen
by the Administration)

Panel on Manpower

Minutes of meeting
held on Thursday, 15 December 2005 at 2:30 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 LEE Cheuk-yan
Hon CHAN Yuen-han, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Frederick FUNG Kin-kee, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung

Member absent : Hon LEUNG Yiu-chung

Public Officers attending : Item III

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

Mr Alan WONG
Assistant Commissioner for Labour (Labour Relations)

Miss Mabel LI
Senior Labour Officer (Wage Security)
Labour Department

Item IV

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

Mr Fred TING, JP
Deputy Commissioner for Labour (Occupational Safety and
Health)

Mr TSO Sing-hin
Assistant Commissioner for Labour (Occupational Safety)

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

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

Ms Alice CHEUNG
Legislative Assistant (2)1

Action

I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)654/05-06)

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

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)653/05-06(01) and (02))

2. Members agreed that the item “Extension of temporary jobs in the public sector” and an item to be confirmed between the Chairman and the Administration would be discussed at the next meeting to be held on Thursday, 19 January 2006 at 2:30 pm.

III. Prevention of abuse of the Protection of Wages on Insolvency Fund
(LC Paper No. CB(2)653/05-06(03))

Action

3. Permanent Secretary for Economic Development and Labour (Labour) (PSL) briefed members on the strategy and action adopted by the Administration since April 2005 to prevent abuse of the Protection of Wages on Insolvency Fund (PWIF). He provided members with the following updated information –

- (a) in the first 11 months of 2005, there were 538 convictions against wage offences. Of these, 109 convictions were related to catering establishments, which represented a 153% increase over 43 convictions in the same period last year;
- (b) 29 catering establishments employing a total of 1 650 employees had been targetted under Operation COMBAT for the period of August to November 2005. Of these, 18 establishments involving a total of over 900 employees had already ceased operation. 15 of these establishments had settled the wages and termination payments of employees. About 130 employees of the remaining three establishments had applied for ex-gratia payment from PWIF. However, the average ex-gratia payment applied by these employees were about \$6,500 per employee, which was lower than the average payout of \$20,000 per employee from PWIF;
- (c) in the first 11 months of 2005, Labour Inspectors had inspected 3 275 catering establishments, which represented about 30% of the catering establishments in the territory;
- (d) among the seven veteran former Police officers employed by the Labour Department (LD) to reinforce its intelligence and evidence collection work against wage offences, one was a former Senior Superintendent of Police who possessed substantial experience in dealing with commercial crime as well as organised and serious crime;
- (e) in the first 11 months of 2005, PWIF had received 9 638 applications, which represented a decrease of 25% in comparison with the 12 889 applications for the same period in the previous year;
- (f) there were 123 applications to PWIF from the catering industry in November 2005, representing a decrease of 81% over 636 applications in November 2004; and
- (g) as at the end of November 2005, the accumulated surplus of PWIF had reached \$276.9 million.

4. PSL informed members that –

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- (a) the Administration hoped that there would not be a need to form a Bills Committee to study the legislative proposals to amend the Employment Ordinance (Cap. 57) (EO) to raise the maximum penalty for wage offences from a fine of \$200,000 and one year's imprisonment to a fine of \$350,000 and three years' imprisonment, so that the relevant legislative amendments could be enacted as soon as possible;
- (b) the Administration would continue to explore the feasibility of enacting new provisions on insolvent trading; and
- (c) regarding the suggestion of requiring all restaurant proprietors to provide bank guarantees for the statutory entitlements of employees, the Department of Justice (DoJ) had advised that such a requirement might be in breach of the principle of equality and non-discrimination and was likely to contravene the Hong Kong Bill of Rights (BOR), as the suggestion was only applicable to the catering industry.

5. Mr LEE Cheuk-yan said that section 64B of EO would have a deterrent effect, if it was amended to the effect that a director who had no reasonable excuse would be liable for an offence committed by his limited company under section 63C of EO. Mr Tommy CHEUNG said that such an amendment would lower the threshold for prosecution under the section.

6. Mr Andrew LEUNG commended the Administration for taking firm action against employers who abused PWIF. He expressed reservations about amending section 64B of EO to the effect that a director who had no reasonable excuse would be liable for an offence committed by his limited company under section 63C of EO, given that many directors were not involved in the operation of restaurants. He said that incorporating the element of "no reasonable excuse" to the section might be inconsistent with the common law principle of presumption of innocence.

7. The Deputy Chairman said that as it was difficult to institute prosecution under section 64B of EO, the section should be amended to the effect that a director who had no reasonable excuse would be liable for an offence committed by his limited company under section 63C of EO. Even after an element of "no reasonable excuse" had been incorporated in section 64B of EO, the burden of proof would still rest with the prosecution. The fact that a director was not involved in the operations of a restaurant might be a reasonable excuse.

8. PSL responded that the Administration kept an open mind in reviewing the effectiveness of section 64B of EO.

9. Mr WONG Kwok-hing and Miss CHAN Yuen-han asked about the timetable for the Administration's review on section 64B of EO.

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10. PSL responded that LD was studying the issue and seeking the advice of DoJ. The Administration would proceed with prompt action if legislative amendments were considered necessary, feasible and desirable. The Administration had in fact taken very expeditious step in the recent introduction of legislative amendments to amend EO to raise the maximum penalty for wage offences.

11. Mr WONG Kwok-hing asked why the Administration did not adopt the Deputy Chairman's suggestion at the last meeting that LD should, when dealing with cases involving wage offences, directly take statements from the employees concerned instead of first asking the employees whether they were willing to testify before the court. He expressed concern that a contractor in Sheung Wan had failed to settle outstanding wages, despite the fact that it had signed an agreement with representatives of employees, LD and labour unions.

12. The Deputy Chairman said that there should not be any problem if statements were taken from employees who reported wage offences without asking whether they would be willing to testify before the court, as the Police had adopted a similar practice for a long time.

13. PSL said that the Administration was studying the Deputy Chairman's suggestion. However, it should be noted that there were more than 20 000 claims for wages in default in a year and prosecution might not be instituted in each case. He added that the Employment Claims Investigation Division of LD would normally commence offence investigation within two weeks upon receipt of a case.

14. Mr LEE Cheuk-yan considered that sufficient manpower should be provided for LD to combat wage offences. His view was shared by Mr Andrew LEUNG.

15. PSL responded that requests for additional manpower would be made, if necessary, by LD in accordance with the Administration's established mechanism.

16. Mr LEE Cheuk-yan considered that if it was discriminatory to require all restaurant proprietors to provide bank guarantees for the statutory entitlements of employees, any measure which was specific to an industry or sector would also be discriminatory and hence contravene BOR. Mr Andrew CHENG added that public interest should be taken into account when formulating public policy. It could be noted that mandatory building inspection was only applicable to buildings above a certain age.

17. PSL responded that LD had studied carefully the suggestion of requiring all restaurant proprietors to provide bank guarantees for the statutory entitlements of employees and consulted DoJ. As the suggestion was directed at the catering sector only, the legal advice was that it would not be rational and proportionate to do so. Mr LEE Cheuk-yan and Mr Andrew CHENG requested the Administration to consider providing a paper setting out its legal view on the issue.

Action

18. Mr Andrew LEUNG expressed reservations about requiring all restaurant proprietors to provide bank guarantees for the statutory entitlements of employees. He considered that the Administration should, instead of adopting a policy on a particular sector, step up Operation COMBAT against offenders. He asked how the Administration would deal with the usual closure of a number of restaurants after the Lunar New Year period.

19. PSL responded that the Administration was aware that there was generally more closure of restaurants after the Lunar New Year. The Administration was also aware that a number of tenancy agreements signed after the outbreak of the Severe Acute Respiratory Syndrome would expire in the coming year. He stressed that the Administration would strengthen its intelligence work and step up enforcement against wage offences.

20. Mr LEE Cheuk-yan considered that Operation COMBAT should be conducted on a long-term basis. Miss CHAN Yuen-han considered that Operation COMBAT should at least be continued until the situation had substantially improved.

21. PSL responded that Operation COMBAT would be reviewed in March 2006. The Administration would not rule out the possibility of running the operation on a longer-term basis.

22. Mr Tommy CHEUNG asked why Operation COMBAT was directed at the catering industry only. He queried why the operation did not cover other industries, such as the construction industry where there was also abuse of PWIF.

23. PSL responded that Operation COMBAT would be reviewed and, if circumstances warranted, the Administration would consider the adoption of similar measures targeting other industries.

24. Referring to paragraph 6 of the Administration's paper, Mr LEE Cheuk-yan expressed concern that the interdepartmental Task Force established to tackle abuse of PWIF did not appear to have instituted any prosecution since its inception. He asked whether it was due to inadequacies in existing legislation.

25. PSL responded that since the establishment of the Task Force in November 2002, 81 suspected fraudulent cases had been referred by LD to the Task Force. 54 persons had been arrested in eight of the cases. In one of these cases, a director and an employee had each been sentenced to one year's imprisonment. Among the remaining cases, about 20 were not substantiated and more than 40 were still under investigation. Mr LEE Cheuk-yan requested the Administration to provide information on the outcome of the other cases where prosecution had been instituted, when available.

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26. Referring to paragraph 8 of the Administration's paper, Mr Andrew CHENG expressed support for the introduction of legislative amendments to raise the maximum penalty for wage offences. He expressed concern that many employees could not obtain the compensation awarded by the Labour Tribunal. He considered that the Administration should address the problem through automatic issuance of a distress warrant or a winding-up order.

27. PSL responded that, to his knowledge, the issue of enforcement of Labour Tribunal awards was being followed up by the Panel.

28. Mr Tommy CHEUNG said that the intervention of LD in cases involving wage claims might hinder the rescue of restaurants in financial difficulties. He considered it unfair to focus enforcement work on the catering industry only, given that there were also employers in other industries who abused PWIF. He asked whether the Administration would, apart from proposing increases to the maximum penalty on wage offences, propose increasing the maximum penalty on employees who abused PWIF.

29. PSL responded that Operation COMBAT was conducted in a low profile manner and thus should not affect efforts to rescue restaurants in financial difficulties. He added that the provisions in the existing legislation which dealt with the provision of false information were applicable to both employers and employees.

30. Ms LI Fung-ying commended LD for its work against abuse of PWIF. She said that besides raising the maximum penalty for wage offences, heavier sentences should be imposed by the court on offenders to increase the deterrent effect. She expressed concern that many employers had failed to settle the Mandatory Provident Fund (MPF) contribution of employees.

31. PSL responded that the sentences of convicted persons were determined by the court. In this connection, he noted that there was a trend of heavier sentences imposed on persons convicted of wage offences. He said that there was already sufficient safeguard for the MPF contribution of employees.

32. The Chairman considered that the Administration and the PWIF Board should examine how the MPF contribution of such employees could be recovered. PSL agreed to consider the suggestion.

33. Mr LEUNG Kwok-hung said that employers' MPF contribution should not be eligible for offsetting termination compensation payments to employees. He said that the decrease in the number of applications in the catering industry for payment from PWIF might only be the result of seasonal fluctuations. He considered that legislative amendments should be introduced as soon as possible to protect the rights of employees. Sufficient funds should be injected into PWIF, where necessary. He added that the profits tax rate should be increased for all sectors.

Admin

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34. The Deputy Chairman and Miss CHAN Yuen-han said that different PWIFs should be established for different industries so that different levies could be imposed on different industries in accordance with their respective extent of abuse. PSL noted the suggestion.

35. Mr Tommy CHEUNG asked about the level of surplus of PWIF at which a reduction in the levy for a Business Registration Certificate would be considered.

36. PSL responded that the Administration was aware of the views of some members on the levy. However, different people might have different views on the level of surplus that was appropriate. The Administration would, in conjunction with the PWIF Board, closely monitor the financial situation of PWIF and review the level of the levy, where appropriate.

37. Miss CHAN Yuen-han said that the community at large and many employers in the catering industry were supportive of the measures adopted by the Administration in combating abuse of PWIF in the catering industry, where abuse was the most serious.

IV. Hong Kong's occupational safety performance in the first half of 2005
(LC Paper No. CB(2)653/05-06(04))

38. PSL briefed members on the occupational safety performance in Hong Kong in the first half of 2005. He informed members that according to the preliminary statistics for the third quarter of 2005, the occupational safety performance had further improved. He added that the Administration was addressing industrial accidents involving truss-out scaffolds, where there were a number of fatal cases in 2005, through the following measures –

- (a) stepping up inspections not only on normal working days, but also at night and during Sundays and public holidays to clamp down on offending contractors;
- (b) establishing a voluntary referral system with the Association of Property Management Companies, to notify LD of any repair and maintenance work involving truss-out scaffolds in their buildings; and
- (c) launching a subsidy scheme, in collaboration with the Occupational Safety and Health Council, to assist small and medium sized contractors to purchase fall-arresting equipment and arranging their employees to attend relevant safety courses.

39. Miss CHAN Yuen-han asked why truss-out scaffolds were used instead of traditional scaffolds in the maintenance and repair of buildings.

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40. PSL explained that a truss-out scaffold was a kind of scaffold used for working at height at the external wall of buildings. Truss-out scaffolds were not unacceptable, as long as adequate safety precautionary measures were adopted. In a recent fatal case involving two young workers, investigation revealed that the brackets used for supporting the truss-out scaffolds had only one bolt, instead of three bolts, embedded into the walls.

41. Miss CHAN Yuen-han considered that the Administration should, instead of stepping up publicity, seek to improve the safety measures with the scaffolding sector.

42. PSL responded that LD had recently organised, in association with the relevant trade associations and labour unions, a large-scale seminar aimed at enhancing the safety awareness of employees involved in scaffolding work.

43. Mr LEUNG Kwok-hung, Mr LEE Cheuk-yan and Miss CHAN Yuen-han said that, in view of the anticipated increase in the use of truss-out scaffolds arising from mandatory building inspection, consideration should be given to making it mandatory to report to LD all maintenance and repair works involving truss-out scaffolds.

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44. PSL agreed to consider the suggestion. He said that the Administration was very concerned about industrial accidents involving truss-out scaffolds. However, any measure to be adopted should be enforceable and should not cause undue inconvenience to members of the public.

45. Mr LEUNG Kwok-hung considered that low-cost safety nets should be imported from overseas countries.

46. PSL responded that LD had already launched a subsidy scheme to assist small and medium sized contractors to purchase fall-arresting equipment.

47. Ms LI Fung-ying expressed concern that the statistics provided by the Administration did not cover the occupational injuries and industrial accidents of self-employed persons and cases where the employer concerned had not procured employees' compensation insurance (ECI). She asked about the actual situation regarding occupational injuries and industrial accidents after taking the above into account.

48. PSL responded that the statistics provided in the Administration's paper were compiled on the basis of information gathered through Form 2, which was designed for reporting by employers of the accidents of their employees to LD. Though the statistics did not include cases of self-employed persons, they should have covered most of the occupational injuries and industrial accident cases in Hong Kong. He said that LD had launched publicity urging employers of domestic helpers to take out ECI for their domestic helpers and report the work injuries of domestic helpers.

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49. Ms LI Fung-ying said that drivers and workers engaged in transportation services had also recorded increases in occupational injuries. She considered that the Administration should launch more publicity for employees and seek to ensure availability of ECI cover at affordable premium rates.

50. Mr Tommy CHEUNG asked whether the decrease in the number of occupational injuries in the first half of 2005 in comparison with the corresponding period in 2004 was due to an actual improvement or a decrease in economic activities. He asked whether there were statistics on the average sick leave of injured workers. He considered that the Administration should analyse the types and geographic distribution of restaurants with higher injury rates so that effort could be made in assisting these restaurants.

51. PSL responded that LD and the catering industry had been jointly organising the Catering Industry Safety Award Scheme for many years. Referring to Annex 3 to the Administration's paper, he pointed out that the major types of industrial accidents in the catering industry included contact with hot surface or substance, injury by hand tool and slip, trip or fall on same level. To address the problem, LD had been promoting the importance of safety management and maintaining safe conditions in kitchens.

52. Mr LEE Cheuk-yan expressed concern about the occupational safety and occupational illnesses of sedentary employees. He recalled that the Administration had been asked to analyse the occupational diseases dealt with by the Occupational Health Clinic of LD. He asked when the results would be available.

Admin 53. PSL responded that the Administration was concerned about the occupational safety and occupational illnesses of sedentary employees. The Administration would provide the Panel with the results of its analysis of the occupational diseases dealt with by the Occupational Health Clinic of LD, when available.

54. Mr LEUNG Kwok-hung asked whether LD had sufficient financial resources and manpower for maintaining occupational safety and health in Hong Kong. He considered that inadequate manpower was allocated for such work.

55. PSL thanked Mr Leung for his concern and indicated that LD would review from time to time its manpower and strategy for maintaining occupational safety and health in Hong Kong.

56. The meeting ended at 4:30 pm.

Action

Council Business Division 2
Legislative Council Secretariat
17 January 2006