

**立法會**  
**Legislative Council**

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LC Paper No. CB(2)3161/05-06  
(These minutes have been seen by the  
Administration)

**Panel on Manpower**

**Minutes of meeting**  
**held on Thursday, 20 July 2006 at 2:30 pm**  
**in Conference Room A of the Legislative Council Building**

**Members present** : Hon LAU Chin-shek, JP (Chairman)  
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 LI Fung-ying, BBS, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Frederick FUNG Kin-kee, SBS, JP  
Hon WONG Kwok-hing, MH  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon LEUNG Kwok-hung

**Member absent** : Hon KWONG Chi-kin (Deputy Chairman)

**Public Officers attending** : Item II  
Mr Matthew CHEUNG Kin-chung, JP  
Permanent Secretary for Economic Development and  
Labour (Labour)  
  
Mr Alan WONG Kwok-lun, JP  
Assistant Commissioner for Labour (Labour Relations)  
  
Mr Albert LAM  
Deputy Secretary for Financial Services and the Treasury  
(Financial Services)<sup>2</sup>

Ms Henden YU  
Chief Operating Officer (Compliance)  
Mandatory Provident Fund Schemes Authority

Item III

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

Mrs DO PANG Wai-yee  
Assistant Commissioner for Labour (Policy Support and  
Strategic Planning)

Mr WAI Chi-sing, JP  
Deputy Secretary for the Environment, Transport  
and Works (Works) 2

Mrs Vivian TING  
Acting Deputy Secretary for Financial Services and the  
Treasury Bureau (Treasury) 3 / Principal Executive  
Officer (Tender)

Mr Tommy YUEN  
Deputy Director of Government Logistics

Ms Ada FUNG  
Deputy Director (Development and Construction)  
Housing Department

Mr LAM Sze-chuen  
Chief Structural Engineer/2  
Housing Department

Miss Petty LAI  
Assistant Director General (Regional Cooperation)  
Trade and Industry Department

Item IV

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

Mrs DO PANG Wai-yee  
Assistant Commissioner for Labour (Policy Support and  
Strategic Planning)

Mr Keith GIANG Tsz-sheung  
Administrative Officer (Employment)  
Labour Department

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

**Staff in attendance** : Miss Josephine SO  
Council Secretary (2) 1

Miss Helen DIN  
Legislative Assistant (2) 1

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Action

**I. Confirmation of minutes of previous meeting**  
(LC Paper Nos. CB(2)2739/05-06 and CB(2)2741/05-06 )

The minutes of the meetings held respectively on 30 May 2006 and 15 June 2006 were confirmed.

**II. Issues relating to the Mandatory Provident Fund schemes**  
(LC Paper Nos. CB(2)2746/05-06(01), CB(2)2795/05-06(01) and  
CB(2)2815/05-06(02))

2. Chief Operating Officer (Compliance) of the Mandatory Provident Fund Schemes Authority (COO(C)/MPFA) gave a powerpoint presentation on the background and present position of the following issues relating to the Mandatory Provident Fund (MPF) schemes –

- (a) failure of employers in the construction and catering industries to make MPF contributions;
- (b) extending the Industry Schemes to other industries;
- (c) MPF coverage for domestic helpers;
- (d) problem of employers evading MPF contributions through renewal of employment contracts at less than 60-day intervals;

- (e) whether severance payment (SP) and long service payment (LSP) should be offset by employers' MPF contribution;
- (f) whether housing allowance should be counted towards relevant income in the calculation of employer's MPF contribution;
- (g) whether MPFA should be empowered to recover the outstanding MPF contribution from an employer if the employer had not enrolled in a MPF scheme for one or two years;
- (h) whether employees should be allowed to choose MPF schemes for themselves;
- (i) whether the threshold of withdrawing the accrued benefits in the schemes, by virtue of attaining the retirement age, should be lowered; and
- (j) education programmes of elementary workers to enhance their understanding of MPF products and investment strategies.

Details of these issues were set out in the Administration's paper and the powerpoint presentation materials.

*(Post-meeting note : The powerpoint presentation materials, provided by MPFA and tabled at the meeting, were issued to members vide LC Paper No. CB(2)2815/05-06(01) on 21 July 2006.)*

3. Mr LEE Cheuk-yan expressed concern about the offsetting arrangement allowed under the Mandatory Provident Fund Schemes Ordinance (MPFSO). He said that the arrangement whereby SP and LSP could be offset against the accrued benefits of MPF schemes had seriously undermined the retirement protection provided for employees. To his knowledge, many employers had, over the past five years, paid their employees SP or LSP by offsetting the accrued benefits attributable to employer's contribution, and the amount involved was about \$2.5 billion. Mr LEE held the view that amendments should be introduced to MPFSO to repeal the offsetting arrangement to ensure that the purpose of setting up the MPF System would not be defeated.

4. Deputy Secretary for Financial Services and the Treasury (Financial Services)2 (DS/FST(FS)2) responded that when the MPF legislation was introduced, the policy intent was to enable the long-established offsetting practice allowed under the Employment Ordinance (EO), whereby SP or LSP was to be offset against the accrued benefits in schemes under the Occupational Retirement Schemes Ordinance, to continue for MPF schemes. To his understanding, the arrangement was a consensus reached between parties concerned.

5. Mr LEE Cheuk-yan said that views were diverse when the offsetting arrangement was debated and it was not agreed by employees. In his view, the

offsetting arrangement was unreasonable.

6. Miss CHAN Yuen-han echoed with Mr LEE Cheuk-yan that there was no consensus on the offsetting arrangement. She pointed out that MPF benefits sought to provide retirement protection for employees. If an employee was made redundant for a number of times, the amount of MPF benefits left for his retirement would be reduced substantially and this would adversely affect his livelihood after retirement. Miss CHAN considered that it would be irresponsible if the Administration did not address the problem immediately. She urged the Financial Services and the Treasury Bureau (FSTB) and the Economic Development and Labour Bureau to join hands in reviewing the law. Amendments should be made to repeal the provisions enabling SP and LSP to be offset by employers' MPF contributions.

7. Permanent Secretary for Economic Development and Labour (Labour) (PSL) said that the MPF System was put into operation in December 2000 after years of study and extensive consultations, and an understanding was reached by the parties concerned to allow employers to offset SP or LSP against the accrued benefits derived from the contributions which they had made to the MPF schemes in respect of their employees. The MPF legislation was enacted on the basis of this understanding. PSL further said that the offsetting mechanism had generally worked well since the full operation of the MPF System. Removing the offsetting arrangement would be a highly complicated matter and would have far-reaching implications on employers. Any change to the present offsetting arrangement therefore needed to be examined by the Labour Advisory Board (LAB), discussed thoroughly and agreed between employer and employee bodies.

8. Miss CHAN Yuen-han said that she had received repeated complaints that there was serious default of or failure to make contributions by the employers. Miss CHAN considered that MPFA should step up enforcement actions against employers for non-payment of mandatory contributions.

9. COO(C)/MPFA replied that MPFA completed investigation into more than 9 000 complaint cases each year. Among the civil claims filed over the years, the amount of successful claims reached a level of 90% of the amount claimed. Noting Miss CHAN's concern about enforcement actions against employers suspected of contravening the provisions of making mandatory contributions, MPFA would consider deploying extra resources to proactively inspect and investigate targeted companies.

10. Mr WONG Kwok-hing noted that MPFA issued notices to employers for default contribution at a monthly average of 30 000 between January and June 2006, but the number of summonses applied during this period only ranged from 19 to 47. He queried whether MPFA had taken adequate action against employers as the number of prosecutions instituted was at a low level. Mr WONG held the view that MPFA should strengthen its role of initiating prosecutions against offending employers.

11. COO(C)/MPFA explained that MPFA issued notices to employers based on

information provided by trustees. In some cases where employers were late in remitting their contributions to the trustees of the MPF schemes, the employers would arrange to make the contributions shortly afterwards. Sometimes, notice was served due to administrative error on the part of an employer, for instance, where an employer forgot to notify the trustee of its staff members who had resigned and left the company.

12. Mr WONG Kwok-hing hoped that MPFA could step up prosecution in order to enhance the deterrent effect against non-compliance with the MPF legislation. He suggested that consideration should be given to adopting a mechanism which could keep employees posted of the latest position of their MPF accounts, e.g. by issuing a MPF passbook to each employee, so that they could report to MPFA immediately if any irregularities were detected.

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13. COO(C)/MPFA said that MPFA would consult the MPF service providers on Mr WONG's proposal for a passbook system. The Chairman requested the Administration to revert to the Panel in October 2006.

14. Mr WONG Kwok-hing said that at present, employees had to approach the Labour Department (LD) to make their claims if they were owed wages. If failure of employers to make MPF contributions was involved, the employees would be required to lodge complaints separately with MPFA. Mr WONG held the view that apart from handling complaints on arrears of wages, LD should take charge of those complaint cases which at the same time involved arrears of wages and default contributions, as this could save the employees concerned the time and trouble of commuting from and to the offices of LD and MPFA to lodge separate complaints with MPFA.

15. PSL responded that if the complaints received by LD were related solely to MPF issues, they would be referred to MPFA for investigation. For complicated cases involving claims in different areas, including outstanding wages and MPF protection, LD would coordinate the investigation and claims procedures to obviate the need for employees to approach different departments in making compensation claims.

16. Ms LI Fung-ying shared the view that there was a need to review the policies and legislation relating to employees' retirement protection. Noting that MPFA had proposed to remove the housing allowance/benefit exclusion from the relevant income definition so as to plug the loophole where employers could evade mandatory contributions by labelling part of an employee's income as housing allowance, Ms LI urged the Administration to expedite the formulation of the legislative proposal and provide members with a timetable for introducing the amendment bill.

17. DS/FST(FS)2 responded that FSTB, upon receipt of the MPFA's proposal in early July, had started the feasibility study. Meanwhile, the Administration was studying the issue and seeking the advice of the Department of Justice regarding amendment to the relevant provisions in MPFSO. It was anticipated that the legislative proposal could become available in the second half of 2007 for consideration by the Legislative Council (LegCo).

18. Referring to paragraphs 3 and 11 of the Administration's paper, Ms LI Fung-ying sought clarification on the number of complaints received by MPFA in the financial year 2005-06, as there was discrepancy between the two figures provided therein. She also enquired about the measures adopted/to be adopted by the Administration to tackle the problem of failure of employers in the construction and catering industries to make MPF contributions.

19. COO(C)/MPFA gave the following response –

- (a) while the 8 856 complaints referred to in paragraph 3 were related to non-enrolment in MPF schemes and default contribution, the 9 176 complaints in paragraph 11 included all sorts of complaints, including those concerning scheme members, trustees and intermediaries; and
- (b) MPFA had formed a working group to review the enforcement strategies and the manpower required for stepping up law enforcement efforts.

20. Ms LI Fung-ying said that as over 40% of all the complaints received by MPFA in the financial year 2005-06 were related to the construction and catering industries, efforts to enforce full compliance with the MPF legislation should be focused on these two industries.

21. Mr Tommy CHEUNG requested that a breakdown of the complaints by the nature of the cases and the number of scheme members involved should be provided to the Panel. He said that members could therefore have an overview of the causes and magnitude of the problems. COO(C)/MPFA agreed to provide the requested information after the meeting.

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22. Mr Tommy CHEUNG pointed out that when the MPF legislation was introduced, employer bodies were given to understand that the long-standing offsetting arrangement would be extended to MPF schemes. As removing the offsetting arrangement would have significant cost implications for employers, particularly small and medium-sized enterprises, he opposed making change to the present offsetting arrangement. Referring to paragraph 10 of the Administration's paper, Mr CHEUNG expressed dissatisfaction with the unfounded allegation which suggested that many unscrupulous employers in the catering industry would operate a restaurant for a couple of years on credit and siphon off all the cash before leaving the seriously indebted restaurant to close down.

23. Regarding Mr Tommy CHEUNG's concern whether approved trustees were required to report irregularities, for example, default contribution, to MPFA on a regular basis, COO(C)/MPFA said that approved trustees would be under a general duty to report irregularities and non-compliance with MPFSO. MPFA would carefully consider devising a standard reporting mechanism to monitor non-compliance.

24. Mr LEUNG Yiu-chung and Mr LEUNG Kwok-hung asked whether the Administration would bring the proposal of removing the offsetting arrangement to LAB for consideration.

25. PSL responded that the offsetting arrangement was a long-standing practice under EO. Before the MPF legislation was implemented, it had been discussed at length. As the MPF System had been in full operation for only five years, the suggestion of reviewing the offsetting arrangement had to be carefully considered. PSL stressed that removing the arrangement would be a highly complicated matter and would have far-reaching implications. The proposal could not be implemented unless it was thoroughly discussed by and agreed between employer and employee bodies. PSL informed members that the offsetting arrangement was discussed by LAB on 22 May 1995. He indicated that the Administration was open to the suggestion, and would actively consider putting the issue for discussion by LAB again. In looking at the matter, a careful balance had to be struck between the aspirations of employees and the interests of employers.

26. To enable MPF scheme members, particularly the elementary workers, understand the MPF System and their MPF benefits, Mr LEUNG Yiu-chung suggested that –

- (a) the information provided on the MPF Annual Benefit Statement to schemes members should be presented in a clear and easy to understand manner; and
- (b) the approved trustees should provide benefit statement more frequently than once a year.

27. In response, COO(C)/MPFA said that –

- (a) MPFA was at the moment conducting a public consultation on the proposals to improve the content of Annual Benefit Statement;
- (b) there were around nine to 10 proposals in the consultation paper suggesting improvements to the Annual Benefit Statement, including the use of simple and standardised terms in the Annual Benefit Statement so as to make it easier to understand, and provision of information in the same order and format in the Annual Benefit Statement for all MPF schemes; and
- (c) section 56 of the Mandatory Provident Fund Schemes (General) Regulation provided that an approved trustee of a scheme must ensure that scheme members received a benefit statement within three months after each financial period of a registered scheme. The trustees would be at liberty to provide a benefit statement more frequently or within a shorter period after each financial period.

28. Mr LEE Cheuk-yan said that according to his recollection, the offsetting arrangement had not been discussed by LAB before the Administration put in place the MPF legislation, and FSTB was the bureau which coordinated the policies on retirement protection. It was unnecessary in this context to refer the proposal of removing the offsetting arrangement to LAB. FSTB should instead decide whether the offsetting arrangements should be abolished.

29. Mr LEE Cheuk-yan enquired about the maximum penalty for failure to make MPF contributions, and the penalties imposed by the court in the past few years in respect of those prosecutions instituted against non-compliant employers, including directors of limited companies. He also asked whether heavier penalty would be imposed if malpractice was involved, for example, averting the employee's MPF contributions to other purposes leading to a loss of employee's benefits.

30. COO(C)/MPFA replied that –

- (a) in cases where the employers failed to make contributions for their employees, the maximum penalty was a fine of \$100,000 and six months' imprisonment if the employer was convicted of the offence;
- (b) for summonses applied on employers defaulting MPF contributions, a fine of a few thousand dollars was imposed for each summons;
- (c) the penalties imposed by the court on convicted directors were heavier, with the highest one in the range of \$40 000 to \$50 000; and
- (d) so far, no employer or company director was imprisoned for default of MPF contributions.

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MPFA would provide statistics on prosecutions instituted and convictions concluded in the past few years after the meeting.

31. Mr WONG Kwok-hing noted that MPFA would persuade employers in non-enrolment cases to promptly enroll their employees into a MPF scheme. He asked whether other enforcement actions would be taken.

32. COO(C)/MPFA replied that to address the issue, MPFA had proposed to the Administration that it be empowered to initiate actions under the MPF legislation to recover mandatory contributions in non-enrolment cases. DS/FST(FS)2 added that FSTB was studying this proposal together with the one on removing the housing benefit exclusion from the relevant income definition. The Administration would introduce the relevant legislative proposals into LegCo by the end of 2007.

33. Mr WONG Kwok-hing and Miss CHAN Yuen-han strongly requested that the Administration should expedite the drafting of the amendment bill, which served to address the problems of non-enrolment and conversion of wages/salaries as housing

allowances, and introduce it into LegCo by the end of 2006. The Chairman said that as these two amendments were meant to plug the loopholes in the existing legislation, the Administration should take action promptly.

34. Miss CHAN Yuen-han expressed concern that many employers, especially those under the Industry Schemes, failed to make MPF contributions. She held the view that MPFA should step up its efforts to enforce compliance. COO(C)/MPFA advised that a working group had been set up to review the enforcement strategies and the effectiveness of the measures taken.

35. Referring to paragraph 48 of the Administration's paper, Mr Tommy CHEUNG expressed grave concern that MPFA supported the principle of providing employees with the right to choose MPF schemes for themselves. He queried the justifications for the change and its possible impacts on employers, in terms of scheme management, administrative costs and responsibility for loss of benefits due to wrong investment decisions made by employees. Mr CHEUNG considered that MPFA should conduct a comprehensive study of the issues involved and the possible impacts on the employers.

36. COO(C)/MPFA said that MPFA fully subscribed to Mr CHEUNG's view that there were issues to be addressed before implementing the change. MPFA would consider carefully the issues involved before taking forward the proposal.

37. Concerning the offsetting arrangement, Mr Tommy CHEUNG stressed that an employer was allowed to offset SP or LSP against accrued benefits arising from employers' MPF contributions only, but not an employee's contributions.

38. The Chairman said that he would follow up with the Administration on the timetable to introduce the legislative proposals which sought to plug the loopholes in the existing legislation.

### **III. Implications of government procurement of goods and services under the World Trade Organization Agreement on Government Procurement on local employment**

(LC Paper No. CB(2)2746/05-06(02), CB(2)2795/05-06(02)-(03) and CB(2)2783/05-06(01))

39. Members noted that the Administration had conducted a comprehensive review of the Government's procurement policy under the World Trade Organization Agreement on Government Procurement (WTOGPA). The suggestion to impose a requirement that priority be given to safeguarding the employment opportunities for local workers in the procurement of goods and services had been considered. The findings and conclusion were set out in the Administration's paper.

40. Noting from the information provided by the Administration that many common items purchased through tender by the Government Logistics Department and uniform/acoutrements procured by the disciplined forces in the past three years were

rarely of Hong Kong origin, Mr LEE Cheuk-yan expressed concern about the negative impact of WTOGPA on local employment. Mr LEE said that the implementation of WTOGPA in Hong Kong had undermined job opportunities for local workers and led to unfair competition in the market. Although the Administration considered that imposing a requirement giving priority to safeguarding the employment opportunities for local workers in the Government's procurement might have negative impacts, for example, undermining Hong Kong's international image as a free trade centre or denying Hong Kong traders' access to the government procurement markets of other signatories to WTOGPA, the loss to Hong Kong should be minimal since there were only around 20 signatories and the chance of bidding government procurement contracts of these countries was slim. Mr LEE strongly requested that Hong Kong should withdraw from WTOGPA. He was disappointed that the review conducted by the Administration had not suggested any concrete measures to enhance the employment opportunities for local workers.

41. Acting Deputy Secretary for Financial Services and the Treasury (Treasury) 3 (Ag DS(Tsy)3) responded that WTOGPA aimed at ensuring that its contracting parties conducted government procurement in accordance with the two major principles of "non-discrimination" and "transparency" so as to obtain value for money. The spirit and objectives of WTOGPA were fully consistent with the Hong Kong Special Administrative Region (HKSAR) Government's procurement policy, as the HKSAR Government, in procuring goods and services through tenders, would base its decision on the functions and performance of the products or services to be procured, not their brand or origin. Ag DS(Tsy)3 said that the Commission on Poverty was exploring with FSTB the feasibility of including "enhancement of employment opportunities" as a criterion, among others, for tender assessment to facilitate bidding for government contracts by social enterprises, on the proviso that the WTOGPA requirements and the Government's procurement policy were complied with.

42. Assistant Director-General of Trade and Industry (ADGTI) added that the reasons for non-withdrawal from WTOGPA were stated in the Administration's paper. She advised that at present, there were a total of 28 signatories to WTOGPA and the majority of them were major trading partners of Hong Kong.

43. Mr WONG Kwok-hing recalled that at the time the Administration sought funding approval in respect of the Tamar development project from the Finance Committee, the Administration advised that the difference in the estimated construction cost between engaging local workers to undertake the construction processes and using imported precast units was nominal. Against this background, Mr WONG requested that the Administration should ensure that the relevant construction processes be taken up by local construction workers so as to address the unemployment problem in the construction sector. As regards the use of prefabricated building components in public housing developments, Mr WONG noted that a pilot project was recently tried out in Kwai Chung where prefabricated items were produced on site. He asked whether the Housing Authority (HA) would pursue the same practice in other housing developments.

44. Deputy Director (Development and Construction) of the Housing Department (DD(D&C)/HD) said that –

- (a) HA had been using prefabricated building components since mid-1980s to improve building quality, environmental performance as well as site safety;
- (b) the practice of using prefabricated units produced outside Hong Kong for housing development had been in place since mid-1990s. At present, about 20% of the reinforced concrete volume (including facades, staircases and floor slabs) in building construction works of HA were prefabricated and manufactured in the Mainland; and
- (c) in the pilot project conducted in Kwai Chung, the volume of precast units used increased to 60%, including major precast structural walls that were first used in public housing developments. To ensure effective quality control, HA required that these structural walls must be prefabricated on site. Other than this pilot project, HA had no plan to increase the use of prefabricated units in other public housing developments for the time being.

45. Mr WONG Kwok-hing expressed disappointment that HA had no plan to increase the use of prefabricated building components precast in Hong Kong. He pointed out that during the discussion of the Tamar project, the Financial Secretary had responded positively to Members' suggestion of facilitating the production of precast units in Hong Kong. HA's decision therefore was not in line with this undertaking of the Administration.

46. DD(D&C)/HD responded that if building components were to be prefabricated on site, the construction site concerned needed to have sufficient land as work sites for producing and storing the precast units. HA would review the performance of the pilot project after its completion before considering other means to encourage the use of on-site prefabrication in other public housing developments.

47. Miss CHAN Yuen-han considered that it was high time for the Administration to review its procurement policy under WTOGPA, as the long-standing structural unemployment problem in Hong Kong remained unresolved. In her view, the existing practice to procure goods and services available in the market through the most competitive tenders was not conducive to enhancing the employment opportunities for local workers.

48. Ms LI Fung-ying noted that the Tamar project was a case of special consideration which would prohibit prefabrication of certain construction elements. She asked about the details of the special consideration, and whether there was a checklist capturing all special considerations which could justify the introduction of a

local content or local production requirement that in the end helped safeguard the employment opportunities for local workers.

49. ADGTI replied that in the case of the Tamar project, the special consideration was security. The HKSAR Government might, at its discretion, apply special consideration in the light of the actual situation, and it was not required to report such action to the World Trade Organization Committee on Government Procurement. ADGTI said that there was at present no checklist under WTOGPA with exhaustive special considerations.

50. Ms LI Fung-ying said that there was no point for HA to conduct the pilot project if the existing Government's procurement policy under WTOGPA expressly prohibited the use of measures to encourage local development through requiring domestic content, and that cost-effectiveness was the primary concern in the Government's procurement of construction services. Ms LI queried the need for carrying out the pilot project.

51. DD(D&C)/HD explained that the pilot project was conducted with a view to assessing whether greater precast concrete volume could be used in public housing developments. HA would take into account the required site area, construction and maintenance cost, design and construction time, quality assurance, environmental performance as well as site safety in concluding the review.

52. Mr LEUNG Kwok-hung shared the view that Hong Kong should withdraw from WTOGPA so as to create more employment opportunities for local workers.

53. Mr LEE Cheuk-yan envisaged that imposing a local content or local production requirement could significantly improve local employment, particularly if uniform items for various government departments and prefabricated units for construction projects were to be made in Hong Kong. Mr LEE asked whether government departments could specify procurement preferences, for example, introducing a local production requirement, in inviting tenders. He suggested that such requirement should be adopted for government contracts below the GPA thresholds. Mr LEE also asked for the real reason behind the Administration's reservations about withdrawing from WTOGPA.

54. In response, Ag DS(Tsy)3, ADGTI and Deputy Director of Government Logistics made the following points –

- (a) the Government's procurement policy had remained unchanged after Hong Kong joined GPA in 1997 in that it was still guided by the principles of fair and open competition, transparency, public accountability and value for money. In line with these principles, procuring departments were required to formulate, adopt and apply tender specifications according to their needs and the functions and performance of the products or services to be procured, not their brand or origin;

- (b) of the \$5.1 billion of goods procured by government departments in 2005, most of them were not of Hong Kong origin. This was because the manufacturing base of Hong Kong had expanded beyond its boundary and many manufacturing businesses had been relocated elsewhere; and
- (c) in accordance with the procurement policy under WTOGPA referred to in paragraph (a) above, the Government sought to procure goods and services available in the market through the most competitive tenders offering value for money.

55. Referring to paragraph 25 of the Administration's paper, Mr Frederick FUNG enquired about the number of construction and technical jobs to be generated, if the HKSAR Government continued to earmark an average of HK\$29 billion annually for public works and municipal projects. PSL said that it was anticipated that over 40 000 jobs would be created for the construction sector.

56. Mr WONG Kwok-hing expressed disappointment that the Administration had not taken into full consideration the unemployment problem of Hong Kong before joining WTOGPA. In his view, the procurement policy under WTOGPA had adversely affected local employment. Mr WONG hoped that the relevant bureaux would review the Government's procurement policy and work in collaboration with LD to resolve the unemployment problem. He suggested that the Administration should take the initiative to establish factories to take up the production of some common items purchased by the Government Logistics Department, such as cotton waste.

57. Miss CHAN Yuen-han echoed Mr WONG's view. She pointed out that many social enterprises funded by the Social Welfare Department were interested in taking up outsourced government service contracts. Moreover, the Commission on Poverty was exploring how to further promote the development of social enterprises so as to improve the employment situation of the vulnerable groups, for example, the middle-aged or people with low skills and low education attainment. Miss CHAN suggested that a subcommittee should be formed to follow up the subject matter. She said that if no action was to be taken by the Administration to address the unemployment problem arising from the accession to WTOGPA, the Hong Kong Federation of Trade Unions might support the proposal that Hong Kong should withdraw from WTOGPA.

58. Mr LEUNG Kwok-hung strongly requested that the Administration should make every effort to protect the employment of local workers. He held the view that Hong Kong should withdraw from WTOGPA, if the amount of Comprehensive Social Security Assistance payable to the unemployed and the low-income group exceeded the overall gains brought about by joining WTOGPA.

59. To conclude, the Chairman said that the crux of the problem was that the implementation of WTOGPA in Hong Kong had, to some extent, undermined the employment opportunities of local workers. He shared members' views that the

Administration should objectively assess the impacts of the relevant policy and review whether adjustment should be made in the light of the prevailing circumstances. More importantly, measures to protect local employment should be devised.

60. Regarding the proposal of setting up a subcommittee to follow up the subject matter, the Chairman said that it could be considered by the Panel in the new session.

#### **IV. Age discrimination in employment**

(LC Paper No. CB(2)2746/05-06(03), CB(2)2783/05-06(02) and CB(2)2815/05-06(03))

61. Members noted two publications entitled “Practical Guidelines for Employers on Eliminating Age Discrimination in Employment” and “A Simple Guide to Employers on Eliminating Age Discrimination in Employment” tabled at the meeting. Members were shown a new Announcement of Public Interest entitled “Count on Talent Not Age in Employment” which had been broadcast on local TV channels, radio stations and buses.

62. Mr LEE Cheuk-yan said that despite the efforts of the Administration in promoting equal employment opportunities through education and publicity, age discrimination in employment still existed in Hong Kong. He cited a few airline companies, including British Airways, Cathay Pacific Airways, Hong Kong Dragonair and Japan Airlines as examples that it was prevalent for the airline industry to practise age discrimination both in recruitment and in compulsory retirement, as flight attendants of these airline companies were forced to retire between the age of 35 and 45. Mr LEE further said that it was common for recruitment advertisements found to have age range preference. He considered that the problem of age discrimination in employment could never be resolved in the absence of an anti-discrimination legislation on age. He urged the Administration to address the problem by introducing the necessary legislation.

63. PSL responded that to gauge the views of the public on the call for legislation against age discrimination in employment, the Administration had conducted a survey in 2001 and the survey findings were subsequently presented to the Panel in 2002. As the local community had yet reached a consensus on whether such legislation should be introduced, the Administration considered it more appropriate to focus on public education and publicity at this juncture in tackling age discrimination in employment.

64. As regards the case recently reported to LD by the Hong Kong Flight Attendants Alliance, PSL advised that the Administration would follow up the matter with the parties concerned including the four unions representing flight attendants. PSL said that as there was no statutory retirement age, it would be up to individual industries/companies to formulate their policy on retirement and decide on the retirement age of their employees.

65. Mr LEE Cheuk-yan asked whether a new opinion survey would be conducted

to assess the public views on the introduction of legislation. He reiterated that the Administration should seriously consider introducing legislation to tackle the problem of age discrimination in employment. Mr WONG Kwok-hing echoed the view.

66. PSL said that the Administration would consider Mr LEE's suggestion about the opinion survey. He further said that in considering whether a piece of legislation should be introduced, the Administration had to critically examine whether the introduction of the legislation would be the most effective way in achieving the intended purpose and whether the Administration would be able to enforce the legislation effectively. It was noteworthy that it would be very difficult to prove that failure in job application was solely attributed to age. The difficulties in enforcement had to be taken into account.

67. Miss CHAN Yuen-han shared the view that there was a pressing need to put in place an anti-discrimination legislation on age, as the middle-aged or people with low skills and low education attainment had great difficulty in finding employment in recent years. In her view, enforcement difficulties should not be a hurdle for enactment of legislation. Miss CHAN could not understand why legislative measures could not be implemented after years of discussion on the issue.

68. PSL responded that as the survey conducted in 2001 had revealed that there were divergent views on the effectiveness of, or need for, such legislation and a great majority of people interviewed considered promoting equal opportunities in employment through basic education effective, the Administration considered it more appropriate to focus on public education and publicity at this juncture in tackling age discrimination in employment. PSL pointed out that the number of complaints in relation to age discrimination in employment had dropped over the past few years and LD would not accept recruitment advertisements which had an age range preference or stated an age restriction.

69. Mr LEUNG Yiu-chung expressed doubt about the effectiveness of those measures taken by the Administration in the past few years in eliminating the public preconception about age discrimination. Mr LEUNG agreed that to foster a cultural change among employers about equal opportunities in employment was a mammoth task that took time to accomplish. He was concerned whether the Administration had achieved its target, thereby improving the employment situation of people aged over 40 when compared with that for 2001-02.

70. PSL said that based on the number of complaints related to age discrimination in employment received by the Equal Opportunities Commission (EOC) and LD, there was marked improvement in public awareness and understanding about equal employment opportunities. Of the enquiries EOC received between 2003 and 2005, those related to age discrimination only accounted for 1.8%, 2.2% and 1% respectively of all the cases. As for LD, the number of cases of such nature in the first half of 2006 stood at 9, representing a hefty drop from 103 in 2003.

71. Mr LEUNG Yiu-chung said that the low number of complaints could not support the argument that the employment situation of people aged over 40 had improved, as some members of the public might consider pursuing a complaint useless and hence choose not to take any action.

72. PSL responded that both EOC and LD would provide assistance to aggrieved persons and encourage conciliation between parties in dispute. Some cases were resolved after the conciliation.

73. Mr LEUNG Kwok-hung shared the view that legislating against age discrimination in employment would be the most effective measure to tackle the problem. He pointed out that the younger generation in the age group of 15 to 19 also faced similar problem and had difficulty in finding employment.

74. Mr WONG Kwok-hing suggested that the Administration should strengthen the existing channels, for example, by setting up a website and a telephone hotline, to receive complaints relating to age discrimination in employment from the public. He requested that relevant statistics should be compiled and provided to the Panel on a regular basis.

Admin 75. PSL undertook to provide the Panel with the relevant statistics, once available, on a regular basis.

76. Referring to paragraphs 4 and 5 of the Administration's paper, Ms LI Fung-ying hoped that the Administration could provide further information and explanation on why and how legislating against age discrimination in employment would hamper economic development. PSL responded that the Administration had evaluated the possible impact of such legislation on the economy in 2001 and the analyses had been presented to the Panel subsequently in 2002.

*[Post-meeting note : The afore-mentioned paper (LC Paper No. CB(2)2458/01-02(01)) circulated to Panel members in June 2002 was re-circulated to members on 4 September 2006 vide LC Paper No. CB(2)2985/05-06.]*

77. Mr Tommy CHEUNG shared the view of the Administration and opposed the introduction of legislation on age discrimination in employment. Mr CHEUNG pointed out that in many business sectors, including the airline or the catering industries, some types of jobs might genuinely require employing workers of specific attributes which were related to age, e.g. number of years of experience. He was concerned that an anti-discrimination legislation on age would impose rigidities on recruitment or business operation, and so constitute a disincentive for business investment in Hong Kong.

78. Mr LEE Cheuk-yan suggested that the telephone hotline of LD to receive complaints on age discrimination in employment should be widely publicised through

posters and leaflets and should be displayed in the Job Centres of the Employment Services Division of LD. PSL agreed to consider the suggestion.

**V. Any other business**

79. Mr LEE Cheuk-yan and Miss CHAN Yuen-han expressed concern about the formulation and implementation of the legislative proposal to amend EO to ensure that commission would be included in the calculation of statutory entitlements. They requested that a special meeting be convened in September 2006 to discuss with the Administration the progress and development of the legislative exercise.

80. PSL said that the Administration planned to introduce an amendment bill into LegCo in the 2006-2007 legislative session. Meanwhile, the consultation process was underway. The Administration would report the outcome of its discussions with relevant parties at the special Panel meeting scheduled for September 2006.

81. The Chairman said that a special meeting would be held on Friday, 15 September 2006 at 2:30 pm.

*(Post-meeting note: On the advice of the Chairman, the special meeting of the Panel originally scheduled for 15 September 2006 was re-scheduled to Monday, 25 September 2006. Members have been duly notified on 26 July 2006 vide LC Paper No. CB(2)2842/05-06.)*

82. There being no other business, the meeting ended at 5:30 pm.