

立法會 *Legislative Council*

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Report of the Panel on Manpower for submission to the Legislative Council

Purpose

This report gives an account of the work of the Panel on Manpower during the 2005-06 session of the Legislative Council. It will be tabled at the meeting of the Council on 5 July 2006 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

The Panel

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000 and 9 October 2002 for the purpose of monitoring and examining Government policies and issues of public concern relating to labour and manpower planning matters. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 13 members in the 2005-06 session. Hon LAU Chin-shek and Hon KWONG Chi-kin were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major Work

Implications of the World Trade Organization Agreement on Government Procurement on local employment

4. Members expressed concern about the negative impact of the World Trade Organization Agreement on Government Procurement (GPA) on local employment. Some members disagreed with the view of the Administration that joining GPA in 1997 had not led to any change in the Government's procurement policy. These members pointed out that many GPA parties had imposed additional requirements, such as those on environmental protection, to

protect local employment. Although Hong Kong had adopted GPA thresholds for central government entities, many GPA parties had bypassed such thresholds through sub-central government entities. They were of the view that as only a very small percentage of the goods procured by the Administration was manufactured locally, imposing a local production requirement should result in a substantial increase in the procurement of local goods. This would significantly improve local employment.

5. A member pointed out that prefabricated units for public housing and public works projects and uniforms, which were formerly manufactured locally, were no longer produced in Hong Kong. The member considered that Hong Kong should withdraw from GPA and the Administration should amend its procurement policy to require all prefabricated units for public housing and public works projects as well as uniforms to be manufactured locally. Some members urged the Administration to conduct a full review of its procurement policy and consider imposing a 50% local production requirement on the goods to be procured.

6. The Administration explained to the Panel that joining GPA was consistent with the Government's free trade and fair competition policy. 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. The Administration pointed out that among goods valued at \$4 billion procured between 1993 and 1996, 3.5 % were procured locally. Among goods valued at \$5.5 billion procured between 1997 and 2004, 4.33% were locally procured. This reflected that the percentage of locally produced goods had increased.

7. The Administration also pointed out that many of the GPA parties were the major trading partners of Hong Kong and GPA provided non-discriminatory access for Hong Kong to these markets. Withdrawing from GPA would adversely affect the image of Hong Kong and might result in other GPA parties imposing discriminatory measures against Hong Kong suppliers. In addition, such a withdrawal would not lead to any change in the Government's procurement policy.

8. The Panel passed a motion urging the Administration to conduct a comprehensive review of the Government's procurement policy under GPA and impose a requirement that priority be given to safeguarding the employment opportunities for local workers in the procurement of goods and services; or otherwise to withdraw from GPA.

Prevention of abuse of the Protection of Wages on Insolvency Fund

9. The Panel was briefed on the strategy and action adopted by the Administration since April 2005 to prevent the abuse of the Protection of

Wages on Insolvency Fund.

10. Some members suggested that section 64B of the Employment Ordinance (EO) 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, in order to give a deterrent effect on employers. Some other members, however, expressed reservations about the suggestion, given that many directors were not involved in the operation of companies. These members were of the view that such an amendment would lower the threshold for prosecution under the section.

11. Some members considered that Operation COMBAT, which was aimed at proactively forestalling problematic restaurants from evading their wage liabilities, should be conducted on a long-term basis. A member queried why Operation COMBAT was directed at the catering industry, but not other industries. The member was of the view that it was unfair to focus enforcement work on the catering industry only, given that there were also employers in other industries, such as the construction industry, who abused the Fund.

12. Members expressed support for the introduction of legislative amendments to 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 year's imprisonment. A member considered that heavy sentences should be imposed by the court on offenders in order to increase the deterrent effect.

13. The Administration stated that the Labour Department (LD) was consulting the Department of Justice (DoJ) on the review of section 64B of EO. The Administration kept an open mind in the review of the effectiveness of the section. The Administration would proceed with prompt action if legislative amendments were considered necessary, feasible and desirable.

14. Regarding the suggestion of requiring all restaurant proprietors to provide bank guarantees for the statutory entitlements of employees, the Administration informed members that LD had studied carefully the suggestion and consulted DoJ. The legal advice obtained was that such a requirement might be in breach of the principle of equality and non-discrimination and would likely contravene the Hong Kong Bill of Rights, as it was only applicable to the catering industry. In addition, it would not be rational and proportionate to do so.

Manpower development plan for the textile and clothing industry

15. While welcoming the Administration's proposal to put in place the manpower development plan for the textiles and clothing industry, some members expressed concern about the possible abuse by employers in the importation of labour. These members pointed out that there were complaints

that some employers in the industry had laid off workers in preparation for importation of labour under the plan. The labour sector was concerned that the importation of labour would adversely affect the employment opportunities and wages of local workers. They were also concerned about the possible abuse of the plan. Members urged the Administration to closely monitor the implementation of the plan to protect the rights of local and imported workers.

16. The Administration responded that LD would examine the employment records of employers for the preceding six months when vetting applications. Employers would be required to fill job vacancies with local workers or trainees through the recruitment-cum-training centre within a reasonable period of time. For employers who breached the scheme conditions after joining the scheme, the Administration would withdraw its approval for importation of workers. The employer concerned would also be debarred from importing workers for two years.

17. Regarding the monitoring mechanism, the Administration informed the Panel that LD would provide a complaint hotline and promptly investigate any complaints lodged. A Committee on Manpower Development for the Textiles and Clothing Industry comprising representatives of the Labour Advisory Board, the textile and clothing manufacturers, industry-specific labour unions, training bodies and relevant government bureau and departments would be formed to monitor the scheme. A comprehensive review of the scheme would be conducted when the number of imported workers reached 5 000.

Measures to protect the statutory entitlements of employees under the Employment Ordinance

18. The Panel discussed the measures undertaken by the Administration to protect the statutory entitlements of employees under EO in cases where the employer was solvent and still in operation or where the employer had become insolvent, and in the enforcement of awards of Labour Tribunal (LT) in adjudicating monetary disputes between employers and employees.

19. Some members considered that the Administration should be fully responsible for the execution of LT awards or bear the costs of execution. Employees should not be required to bear the costs of execution. A member suggested that problems relating to the enforcement of LT awards should be tackled through the provision in legislation for an automatic issuance of a writ of execution or a winding-up order.

20. Some members expressed concern that prosecution would be instituted against an employer only when the employee concerned was willing to serve as a witness. These members considered that prosecution should be instituted whenever there was sufficient evidence. They also suggested that statements should be taken directly from the employees concerned without asking them

whether they were willing to testify before the court when dealing with cases involving wage offences.

21. The Administration responded that the automatic issuance of a writ of execution or a winding-up order had wide implications and had to be studied cautiously. The Administration agreed to examine how problems associated with the enforcement of LT awards could be addressed.

22. Regarding the suggestion of directly taking statements from the employees concerned, the Administration informed the Panel that it had sought the advice of DoJ. The Administration pointed out that if the employee concerned was unwilling to serve as witness, it would not be possible to take out prosecution. The court had stated that bringing prosecution without sufficient evidence would be a waste of court resources. The Administration stressed that LD had stepped up publicity and education for employees on wage offences and encouraged them to serve as witnesses.

23. The Panel passed a motion urging the Government to take up the responsibility of recovering the outstanding wages awarded to the employees on the latter's behalf. The Panel also passed another motion opposing the Government's policy of instituting prosecutions only on the premise that the employees concerned were willing to serve as prosecution witnesses, and also requesting the Government to expeditiously conduct a review to plug such loopholes in prosecution and strengthen its role of initiating prosecutions against offending employers.

Training and employment programmes for youths offered by the Labour Department

24. The Panel was briefed on the progress of the Youth Pre-employment Training Programme (YPTP) and the Youth Work Experience and Training Scheme (YWETS) offered by LD, as well as the findings of the consultancy studies on the two Programmes conducted by the Hong Kong Polytechnic University.

25. Some members expressed concern that the two Programmes currently implemented by LD for young people aged between 15 and 24 were not effective in helping to address the problem of youth unemployment. In addition, the training and skills they once received and possessed might become outdated in future due to economic development or restructuring. When the youngsters grew older and reached middle age, they might become unemployed again because of skills mismatch. These members considered that the Administration should be more forward looking and draw up long-term manpower training plans for the youths.

26. A member suggested that the content of the two Programmes should be

updated and modified regularly with regard to the changing market needs and economic development. Another member pointed out that YWETS was more well received by the youths than YPTP because of the on-the-job training component built into the former Programme. The member asked whether the Administration would consider strengthening the workplace attachment training for YPTP, and what improvement measures would be put in place.

27. The Administration responded that it was also concerned about drawing up long-term manpower training plans that could meet the dynamic demands of the economy. The existing tender system of YPTP ensured that new courses proposed by non-government organisations and training bodies from the private sector would be introduced to reflect market needs. YPTP offered a wide range of job skill training courses and most of them could lead to professional qualifications in areas such as computer application, beauty and styling. In addition, the Administration had set up the Continuing Education Fund to encourage life-long learning. In view of the proposed establishment of the cross-sectoral Qualifications Framework (QF), it was the goal of LD to ensure that there would be an interface between the two Programmes and QF.

28. Regarding improvement measures for YPTP, the Administration informed the Panel that starting from 2005-06, the Work Place Attachment Allowance had been increased from \$1,000 to \$2,000 to encourage participation. Trainees might also take more training courses from a mix of options to further enhance their employability. More special tailor-made programmes for various industries and occupations, e.g., the “IT Seeds” and the “Airport Ambassadors” would be organised jointly with employers. In addition, trainees would be allowed to navigate between YPTP and YWETS at different stages during the programme year to get the best training results.

Measures to tackle the problem of arrear of wages of workers employed under public housing construction works and public works projects

29. The Panel discussed the measures already implemented and new ones to be adopted by the Environment, Transport and Works Bureau (ETWB) and Housing Authority in public works projects and public housing construction works to better monitor and safeguard the payment of wages.

30. Members pointed out that many construction workers were forced to become self-employed. They expressed concern whether the Administration had, in devising the improvement measures to manage subcontracting, taken into consideration the situation of false self-employment. A member considered that the improvement measures could in no way stop the subcontractors from forcing their employees to sign fabricated wage slips.

31. Another member was of the view that the Administration should consider more severe measures in order to combat wage offences by

contractors on ETWB's Approved Lists. The member opined that the arrangement to suspend any contractors from tendering for public works projects for six months after they had been convicted of three or more offences under EO, including offences on wage arrears, in a 12-month period did not have sufficient deterrent effect.

32. Regarding the requirement that wages should be paid through auto-pay bank account, members considered that further safeguards should be put in place to ensure that wages due were paid on time and on a regular basis. They were also concerned whether there was sufficient protection for workers who were employed on a short-term or temporary basis.

33. The Administration responded that in an effort to deter malpractice of false self-employment, contractors were required to take out separate insurance cover for an amount of \$1 million or extend their employees' compensation insurance to cover self-employed persons, as these persons were very often found working without insurance cover. Self-employed workers working in the capacity of a subcontractor were required to be registered under the Voluntary Subcontractors Registration Scheme introduced by the Provisional Construction Industry Coordination Board. Together, these measures would deter any false claim of self-employment.

34. The Administration further explained that under ETWB's current contractor management system, a contractor on its Approved List convicted of three or more offences under EO in a 12-month period would automatically be suspended for six months from tendering public works. ETWB had introduced a Subcontractor Management Plan since 2003 which included a wage payment monitoring requirement. Together with the Voluntary Subcontractors Registration Scheme, the management of subcontractors and non payment of wages under public works contracts were largely brought under control. The Administration also pointed out it was an offence for an employer to wilfully issue forged cheques or force their employees to sign fabricated wage slips. Employees should report such cases to the Police for criminal investigation. With respect to offences on wage default, prosecution would be taken out against the offending employers once sufficient evidence was obtained.

35. Regarding the monitoring of wage payment, the Administration advised the Panel that all workers, with the exception of casual workers working less than a total of seven days in the same contract, would be required to enter written employment contracts with their respective employers. The contracts would stipulate clearly the employment terms, including wage level, wage period, due date for wage payment and details of the auto-pay arrangement. Casual workers would be paid by personal cheques and this would also be monitored.

Other issues

36. The Panel had discussed other issues with the Administration. They included employment services provided by LD, Hong Kong's occupational safety performance of Hong Kong in 2005, LD's overall performance in labour administration in 2005, and a review of occupational diseases in Hong Kong in 2005.

37. The Panel was also consulted on a number of legislative and financial proposals. They included the proposal to increase the maximum penalty for wage offences under EO, extension of temporary jobs in the public sector, the proposed amendment to EO to ensure that commission is included in the calculation of statutory entitlements, and the creation of a supernumerary post for secondment as Executive Director, Employees Retraining Board.

Meetings held

38. Between October 2005 and June 2006, the Panel held a total of 11 meetings, including a joint meeting with the Panel on Housing to discuss the protection of interests of non-skilled workers engaged in services contracted out by The Link Management Limited.

Council Business Division 2
Legislative Council Secretariat
26 June 2006

**Legislative Council
Panel on Manpower**

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to labour and manpower planning matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Legislative Council
Panel on Manpower**

Membership list for 2005-2006 session

Chairman Hon LAU Chin-shek, JP

Deputy Chairman Hon KWONG Chi-kin

Members
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, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung

(Total : 13 Members)

Clerk Mrs Sharon TONG LEE Yin-ping

Legal adviser Miss Kitty CHENG

Date 13 October 2005