

立法會

Legislative Council

LC Paper No. CB(2)629/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP/1

Panel on Manpower

Minutes of meeting
held on Thursday, 15 November 2007, 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, SBS, 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, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Public Officers attending : Item III

Mr CHEUNG Kin-chung, Matthew, GBS, JP
Secretary for Labour and Welfare

Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

Mr NG Ka-kwong, Stanley
Assistant Commissioner (Employees' Rights & Benefits)
Labour Department

Dr LEUNG Lai-man, Raymond, JP
Occupational Health Consultant (1)
Labour Department

Ms LAU Pik-yiu, Femia
Senior Labour Officer (Compensation) (Central
Services) 1
Labour Department

Item IV

Mr CHEUNG Kin-chung, Matthew, GBS, JP
Secretary for Labour and Welfare

Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

Mr WONG Kwok-lun, Alan, JP
Assistant Commissioner (Labour Relations)
Labour Department

Miss LI Po-yi, Mabel
Senior Labour Officer (Wage Security)
Labour Department

Item V

Mr CHEUNG Kin-chung, Matthew, GBS, JP
Secretary for Labour and Welfare

Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

Mr FONG Ngai
Assistant Commissioner (Policy Support and Strategic
Planning)
Labour Department

Miss CHANG Kar-wai, Carrie
Senior Administrative Officer (Policy Support)
Labour Department

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

Staff in attendance : Ms Janet SHUM
Senior Council Secretary (2) 8

Miss Helen DIN
Legislative Assistant (2) 1

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I. Confirmation of minutes of the previous meeting
(LC Paper No. CB(2)215/07-08 and CB(2)311/07-08)

The minutes of the meetings held on 10 October 2007 and 18 October 2007 were confirmed.

II. Date of the next meeting and items for discussion
(LC Paper No. CB(2)310/07-08(01) and (02))

2. Members agreed that the following items would be discussed at the next meeting to be held on 20 December 2007 from 2:30 pm to 4:30 p.m. -

- (a) Hong Kong's occupational safety performance in the first half of 2007; and
- (b) Findings on a review of Section 64B of the Employment Ordinance (EO) on the criminal liability of the responsible persons of a body corporate with regard to wage offences.

Items for discussion at future meetings

3. Mr LEE Cheuk-yan asked about the progress of the issue of extending the applicability of EO to employees who were not employed under a continuous contract.

4. Secretary for Labour and Welfare (SLW) responded that pursuant to the compilation of the relevant information by the Census and Statistics Department (C&SD) which would be available shortly, the Administration would brief the Labour Advisory Board (LAB) accordingly. The Administration hoped to revert to the Panel within two months thereafter.

5. Mr LEE Cheuk-yan asked whether the Administration would be able to revert to the Panel regarding the review of the Pilot Transport Support Scheme (TSS) in January 2008. SLW said that as he had put forward the proposal to advance the review of TSS, he would accord it with high priority. In the review, the Administration would explore the possibility to extend the

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provision of transport allowances for the needy unemployed persons and low-income workers. The Administration would revert to the Panel as soon as possible.

6. Referring to item 4 of the list of outstanding items for discussion, the Chairman said that the Administration had provided a paper expressing its views on the issue of direct payment of employees' compensation by insurers. He sought members' views on whether the item should be deleted from the list

7. Mr LEE Cheuk-yan said that should the Administration consider it not feasible to require insurers underwriting employee's compensation insurance to make direct payment of employees' compensation, it should propose alternatives on how to provide assistance to injured workers' who failed to receive from their employers periodical payments for temporary incapacity at the rate of four-fifths of the difference between the employee's monthly earnings at the time of accident and his monthly earnings during the period of temporary incapacity.

8. Commissioner for Labour (C for L) said that the Administration had no plan to require insurers to make direct payments as it might result in delay in compensation payments that were not in the interest of the injured employees. Nevertheless, the Administration would look into the issue raised by Mr LEE Cheuk-yan.

Adm 9. The Chairman suggested that item 4 be deleted from the list, and the Administration should provide information on the alternative measures to assist injured employees to obtain compensation payments from employers. The issue might be further discussed if considered necessary. Members agreed.

III. Proposal to make mesothelioma a compensable disease under the Pneumoconiosis (Compensation) Ordinance
(LC Paper No. CB(2)310/07-08(03))

10. SLW briefed members on the Administration's proposal to make mesothelioma a compensable disease under the Pneumoconiosis (Compensation) Ordinance (PCO), as detailed in the Administration's paper. He said that the proposal was a significant improvement addressing the concern of members and the labour sector. At present, notwithstanding that mesothelioma was also caused by inhalation of asbestos dust, it was not compensable under PCO. For mesothelioma sufferers without fibrosis of the lungs, the Labour Department (LD) had since 2005 assisted the patients or their family members to apply for a grant from the Brewin Trust Fund. SLW added that, in order to provide employees' compensation to mesothelioma sufferers as early as possible, the Administration planned to introduce an amendment bill

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into the Legislative Council (LegCo) to give effect to the proposal by the end of January 2008.

11. Mr WONG Kwok-hing expressed support for early implementation of the legislative proposal. He asked why the Administration proposed that the aggregate percentage of incapacity sustained by the mesothelioma sufferers assessed in any particular case of claim for compensation should not exceed 100%.

12. Assistant Commissioner (Employees' Rights & Benefits) (AC(RB)) responded that, as the percentage for total incapacity in respect of a person could not exceed 100%, any particular case of claims by mesothelioma sufferer which would be assessed according to the degree of incapacity should not exceed a maximum of 100%.

13. While expressing support for the Administration's proposal, Ms LI Fung-ying considered that mesothelioma, instead of malignant mesothelioma, should be made a compensable disease under PCO, as there might be cases of benign and non-cancerous mesothelioma which would also require medical attention.

14. Occupational Health Consultant (1) (OHC(1)/LD) responded that mesothelioma, in pathological term, often referred to malignant tumor developed in the mesothelium usually of the lungs after exposure to asbestos. As for benign (i.e. non-cancerous) mesothelioma, it was unrelated to exposure to asbestos and the symptoms were different from malignant mesothelioma which would rapidly turn fatal once diagnosed. AC(RB) added that the Pneumoconiosis Medical Board (PMB), given the responsibility to assess whether claimants were suffering from mesothelioma, should be able to differentiate between a malignant and a benign case.

15. Miss CHAN Yuen-han said that unless the Administration could fully ascertain that benign and non-cancerous mesothelioma was absolutely unrelated to occupational exposure to asbestos, the legislative proposal should not be confined to malignant mesothelioma. The Deputy Chairman echoed the view.

16. The Chairman requested the Administration, in prescribing mesothelioma as a compensable disease, to consider the suggestion of not restricting its definition to malignant mesothelioma.

17. SLW said that whether the legislative proposal should include cases of benign (i.e. non-cancerous) mesothelioma would involve a legal point of view, as the purpose of the statutory compensation scheme under PCO and the proposal was to provide compensation and benefits to pneumoconiotics and mesothelioma sufferers who had been exposed to asbestos dust and suffered

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from permanent and irreversible damages. Nevertheless, the Administration would study the suggestion.

18. Mr LEUNG Kwok-hung said that in view of the sufficient cumulative balance of the Pneumoconiosis Compensation Fund Board, the Administration should be less restrictive in prescribing mesothelioma as a compensable disease.

19. Mr Alan LEONG requested the Administration to provide information on the number of benign and non-cancerous mesothelioma cases in the past ten years, as compared to the twelve cases of malignant mesothelioma.

Adm 20. OHC(1)/LD agreed to check with the Hong Kong Cancer Registry of the Hospital Authority on the relevant data and revert to the Panel in due course.

21. Referring to paragraph 11(b) of the Administration's paper, the Deputy Chairman enquired whether there would be a requirement for minimum years of residence and whether a mesothelioma sufferer residing less than five years in Hong Kong would be required to prove that he had contracted the disease caused by exposure to asbestos in Hong Kong. In his view, it would not be possible for a claimant suffering from mesothelioma to provide proof to PMB that the disease was arising out from his occupation. Mr LEUNG Yiu-chung shared the same view.

22. AC(RB) replied that in view of the long latent period between exposure to asbestos and development of malignant mesothelioma, the Administration understood that there would be practical difficulty for patients to provide proof of their specific employment and occupational exposure to asbestos some decades ago. Hence, under the proposal, a mesothelioma sufferer, similar to the pneumoconiotic, would be eligible for compensation if he had resided in Hong Kong for five years or more, or resided in Hong Kong for less than five years if he contracted the disease in Hong Kong. For those who resided in Hong Kong for less than five years, it would be sufficient if they could prove that they had worked in an occupation involving exposure to asbestos.

23. C for L added that PMB, with its rich experience in assessing claims for compensation under PCO, would be able to identify whether claimants' occupations in the past involved exposure to asbestos.

24. The Deputy Chairman said that the Administration should set out clearly the criteria under which compensation would be granted to claimants suffering from mesothelioma, and it might be necessary to set up a Bills Committee to study the amendment bill.

25. Mr Alan LEONG suggested that the Administration could provide certain criteria, such as identifying the nature of trades associated with

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occupational exposure to asbestos against which claimants residing less than five years in Hong Kong would be eligible for compensation.

26. In response to Mr LEUNG Yiu-chung, OHC(1)/LD said that according to medical literature, the latent period between exposure to asbestos and development of mesothelioma ranged from 30 to 40 years or even longer. C for L added that the number of new mesothelioma cases might peak in the next 10 to 20 years.

27. The Chairman considered that the Administration should reduce the burden of proof on the part of the mesothelioma sufferers with less than five years of residence in Hong Kong, and simplify the relevant procedure as far as possible.

Adm 28. C for L said that the Administration would provide members with the information on whether benign (i.e. non-cancerous) mesothelioma had any relevance to occupational exposure to asbestos.

IV. Proposal to revise the rate of Business Registration Certificate levy for the Protection of Wages on Insolvency Fund
(LC Paper No. CB(2)310/07-08(04))

29. SLW briefed members on the proposal to revise the rate of the Business Registration Certificate (BRC) levy for the Protection of Wages on Insolvency Fund (the Fund), as detailed in the Administration's paper. He pointed out that in 2002, the levy was increased from \$250 to the current rate of \$600 as the upsurge in claims for ex gratia payment after the Asian financial crisis had fast depleted the Fund. Concomitant with the continual improvement in the local economy in recent years and LD's all-out efforts in combating wage default, claims payment by the Fund had subsided significantly and the accumulated fund reached a record figure of \$1,045.3 million as at end of October 2007. The Administration proposed to reduce the levy rate to \$450 and accordingly amend Schedule 2 of the Business Registration Ordinance (BRO). The Administration planned to arrange gazettal of an order and tabling at LegCo early next year.

30. Mr LEE Cheuk-yan enquired whether, and if so, when the Administration would review the scope of ex gratia payment from the Fund so that employees of insolvent employers would be able to apply for ex gratia payment on other items such as annual leave pay.

31. SLW responded that the present proposal of the Administration was to revise the BRC levy rate for the Fund. As the Fund administered by the Fund Board had been under constant review since its establishment, the

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Administration would keep an open mind on how the operation of the Fund could be improved in future.

32. Mr WONG Kwok-hing enquired when the Fund Board would work out an objective mechanism for triggering future reviews of the levy rate.

33. C for L said that when the levy was increased to \$600 per annum in 2002, LAB had agreed that a review of the new levy rate be conducted in the following year. LD, together with the Fund Board, had since continued to monitor the financial position of the Fund and the levy rate. With the continual improvement of the Fund's financial position, the Fund Board unanimously agreed that the levy should be reduced to \$450 per annum. LAB also supported the proposal. Assistant Commissioner (Labour Relations) added that the Fund Board would discuss the mechanism for triggering future reviews of the levy rate at the meeting scheduled for December.

34. Mr LEUNG Kwok-hung said that it was due to the fact that the Administration did not make use of the Fund to provide more protection for employees of insolvent employers, thus, the Fund's accumulated surplus was on a continuous rise. He expressed concern whether employers would agree to raise the levy rate again after this downward adjustment.

35. The Chairman said that the issues concerned were on whether the levy should be reduced and whether the scope of ex gratia payment from the Fund should be broadened. As regards the levy rate, he informed members that when the adjustment of BRC levy was discussed at the Panel meeting in 2002, members raised no objection to the proposal that the levy rate might be adjusted downwards if the financial position of the Fund so permitted.

36. Mr Andrew LEUNG said that in view of the improvement in the local economy, LD's all-out efforts in combating wage default, and the continuous increase of accumulated surplus, the Administration should consider adjusting the levy rate downwards to the level in 2002, i.e., \$250 per annum. As regards the suggestion to broaden the scope of the ex gratia payment from the Fund, Mr LEUNG said that it was possible that the issue be put forward for discussions by members of the Fund Board and LAB.

37. Mr Tommy CHEUNG said that the levy rate should be reduced, preferably to the level in 2002. He supported the proposal to revise the levy rate as the Administration had previously agreed that the levy rate be adjusted downwards if the Fund's financial position so permitted, and both the Fund Board and LAB had supported the revision.

38. Ms LI Fung-ying asked whether, and if so, when the Administration would conduct a review on the scope of the ex gratia payment so that

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employees of insolvent employers would be able to claim ex gratia payment for items such as maternity leave pay.

39. SLW hoped that the Administration would be able to revert to the Panel on the review in the first half of 2008 as it would take time to deliberate on the issue.

40. C for L said that notwithstanding the revision of the levy rate, the Fund should still be able to maintain a healthy yearly surplus of over \$200 million as per the forecast for 2007-2008. This would allow the Fund to maintain sufficient reserve and cash flow to save for rainy days. C for L added that the Fund was set up to provide timely relief in the form of ex gratia payment to employees of insolvent employers instead of providing full compensation. The suggestion to broaden the scope of ex gratia payment from the Fund would require discussions by the Fund Board and labour-management consensus.

41. Mr LEUNG Yiu-chung expressed dissatisfaction against the Administration's response and pointed out that it was not benefits but employees' right to receive wages and severance payment in full from employers. He considered EO insufficient to give full protection to employees of insolvent employers. He also expressed regret that the Administration attended to employers' request to reduce the levy rate but gave little attention to the request of the labour sector to provide more protection for employees.

42. SLW responded that employers had to abide by EO which had stipulated clearly their statutory responsibilities. He said that the Fund was financed by an annual levy on each business registration certificate. The Fund was not set up to provide full compensation for employees of insolvent employers but enable those who were owed wages, wages in lieu of notice and severance payment to apply for ex gratia payment from the Fund. The Administration would consider the issue on the operation of the Fund subsequent to the revision of the levy rate.

43. Miss CHAN Yuen-han requested the Administration to follow up the issue and revert to the Panel before the end of this legislative session.

Adm

V. Mid-term review of the Wage Protection Movement for cleaning workers and security guards

(LC Paper No. CB(2)310/07-08(05))

44. Referring to paragraph 20 of the Administration's paper, Mr WONG Kwok-hing said that the small number of entities participating in Wage Protection Movement for cleaning workers and security guards (WPM) since October 2006 had proved it to be a failure. Instead of further promoting WPM and wasting government resources, he urged the Administration to proceed

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immediately with the preparatory legislative work on a statutory minimum wage.

45. SLW responded that the Administration had presented the data of the mid-term review of WPM for discussion by LAB in an objective manner. The Administration's analysis suggested that there were both disappointing and positive indicators for WPM. While there was much room for improvement in terms of the participation of employers, the data indicated an increase in the wage levels of cleaning workers and security guards.

46. Referring to paragraph 17 of the Administration paper, Mr LEE Cheuk-yan requested for a more detailed breakdown of figures which could reflect the distribution of the 87 800 cleaning workers and security guards receiving wages not less than the relevant market averages in the second quarter of 2006. Mr LEE held the view that the Administration should consider introducing a statutory minimum wage for low-paid workers in all sectors, as providing clear-cut definition of cleaning workers and security guards would be difficult. He expressed concern that employers might give their employees other job titles but in practice required them to carry out cleaning work and guarding service.

47. SLW said that apart from around 30 000 cleaning workers and security guards employed under the government outsourced services contracts, some 30 000 to 40 000 cleaning workers and security guards received wages not less than the relevant market averages in the second quarter of 2006 under the WPM. SLW agreed to see if further breakdown could be obtained.

Adm

48. As regards the scope and definition of cleaning workers and security guards, SLW said that it was among the various issues that would need to be tackled if and when a statutory minimum wage was to be introduced for the two selected occupations. The Administration would follow the timetable set out in the Chief Executive's (CE) 2007-2008 Policy Address and proceed with the preparatory legislative work for introducing a statutory minimum wage for the two specified occupations while stepping up the promotion of WPM.

49. Mr Andrew LEUNG asked why the average market rates as published in C&SD's Quarterly Report of Wages and Payroll Statistics (Quarterly Report) were used for WPM upon which employers participated in WPM were required to follow and adjust their wages quarterly for cleaning workers and security guards under their employment. He also asked -

- (a) whether there were other countries using average market rates as benchmark for a minimum wage;
- (b) whether the Administration would use finer statistical compilation, rather than relying on C&SD's Population By-

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census, to enable a more discerning and in-depth analysis to assess the overall result of WPM; and

- (c) whether more effective measures would be introduced to promote WPM among owners' corporations (OCs).

50. SLW responded that -

- (a) the statutory minimum wage levels in Mainland China were in the range of 40% to 60% of average wage, whereas a range from 30% to 50% of the overall median wage was used in some other countries;
- (b) as quantitative indicators were required to gauge the progress of WPM, the wage levels in the second quarter of 2006, i.e. the prevailing levels at the launch of WPM, were adopted as the benchmark for the purpose of the mid-term review; and
- (c) employers were required to adjust wages according to the average market rates as published in the Quarterly Report only when they signed up new contracts or renewed contracts with their service contractors providing cleansing and guarding services or cleaning workers and security guards. WPM allowed a transitional period for pre-existing contracts.

51. Noting an increase in the number of female workers of lower education attainment in the two selected occupations, Miss CHAN Yuen-han expressed concern that wages of the two occupations might be adjusted downwards. She urged the Administration to introduce a statutory minimum wage as early as possible in the 2008-2009 legislative session.

52. Ms LI Fung-ying held the view that the Administration should adopt a pragmatic approach and work out the benchmarks and performance indicators to facilitate the overall assessment of WPM in October 2008 as early as possible.

53. Referring to paragraph 78 of CE's Policy Address, SLW reiterated that the Administration would follow closely the timetable mapped out to put in place minimum wage legislation for cleaning workers and security guards should the overall review find that WPM had failed. He said that LAB would discuss the benchmarks and performance indicators to evaluate the overall assessment of WPM at its coming meetings.

54. Mr Frederick FUNG considered that WPM was doomed to fail and the Administration's effort to strengthen its promotion among OCs would be futile

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and wasting resources. Mr FUNG asked how many entities which had joined WPM withdrew subsequently.

55. SLW said that as at end-September, a total of three entities had withdrawn because of non-compliance with the requirements of WPM. The Administration would continue to promote WPM. As OCs employed a considerable number of cleaning workers and security guards, a new publicity campaign including new TV and radio Announcements in the Public Interest targeting households and OCs had been launched. Furthermore, a WPM publicity flyer would be included alongside the Demand for Rates and Government Rent so that all property owners/tenants (totalling over two million) would receive promotional materials directly.

56. Mr LEUNG Kwok-hung considered that the Administration should introduce a statutory minimum wage without delay in order to provide protection to low-income workers.

57. Mr LEE Cheuk-yan and Miss CHAN Yuen-han urged SLW to issue instruction to the Department of Justice for drafting a bill on a statutory minimum wage in July 2008, so that the bill would be introduced as early as possible in the 2008-2009 legislative session.

58. SLW reiterated that CE had set out clearly in his Policy Address the road map to introduce minimum wage legislation for the two selected occupations should the overall review find that WPM had failed. He would follow the timetable and ascertain that the preparatory legislative work would be set in train by the time the overall review of WPM was to be conducted in October 2008. SLW added that it would not be appropriate to draft a bill before the overall review of WPM.

59. Mr WONG Kwok-hing moved the following motion -

"鑒於工資保障運動展開一年所取得的成效很失敗，參與機構很少，基此，本委員會促請政府立即展開最低工資的前期立法準備工作，並在 2008 年 10 月提交立法草案，供立法會審議。"

(Translation)

"That, in view of the gross failure in the effect of the Wage Protection Movement after its implementation for one year with very few entities participating, this Panel urges the Government to proceed immediately with the preparatory legislative work on a statutory minimum wage and introduce a bill in October 2008 for scrutiny by the Legislative Council."

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60. The Chairman put the motion to vote. Seven members voted in favour of the motion, one member abstained and no member voted against it. The Chairman declared that the motion was carried.

61. The meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
18 December 2007