

# 立法會

## *Legislative Council*

LC Paper No. CB(2)1920/09-10

Ref: CB2/PL/MP

### **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 2009-2010 session of the Legislative Council ("LegCo"). It will be tabled at the meeting of the Council on 7 July 2010 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, 9 October 2002, 11 July 2007 and 2 July 2008 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 15 members in the 2009-2010 session. Hon LI Fung-ying and Hon IP Wai-ming were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

#### **Major Work**

##### Transport Support Scheme ("TSS")

4. The Panel continued to follow up the provision of subsidy under TSS. Noting that the Labour Department ("LD") was reviewing TSS after the implementation of its relaxation measures for one year, the Panel received views from deputations and discussed the future of TSS with the Administration. Members requested the Administration to further relax TSS to operate on a long-term basis and to cover districts other than Yuen Long, Tuen Mun, North and Islands so as to provide assistance to all low-income workers.

5. The Administration explained that TSS was a time-limited incentive scheme offering transport allowance to encourage needy job seekers and low-income workers in the four designated remote districts to seek jobs or work across districts. The proposals to extend TSS to 18 districts and to provide the subsidy on a permanent basis would depart from the policy intention of TSS. The Administration considered that the provision of the subsidy on a permanent basis was tantamount to providing an income supplement to the employees on a long-term basis. Expanding TSS to cover all other districts would have significant policy and financial implications.

6. The Administration supplemented that the review of TSS was in full swing. Apart from evaluating whether the policy objective had been achieved, the review would also cover an assessment of the overall effectiveness of TSS, the case processing procedures and practices adopted by non-government organizations participating in administering TSS, and the modus operandi, control and monitoring measures. The Administration would take all relevant factors, including members' views and suggestions of different quarters of the community, into consideration in mapping out the way forward for TSS. The Administration would report the outcome of the TSS review to the Panel as soon as possible.

#### Major findings of the 2009 Annual Earnings and Hours Survey ("AEHS")

7. The Panel was briefed by the Administration on the major findings of the 2009 AEHS, which was conducted to identify the level and distribution of wages of employees in Hong Kong.

8. As AEHS was one of the references to be made by the Provisional Minimum Wage Commission ("PMWC") in deriving the initial statutory minimum wage ("SMW") rate, members enquired about the definition of wages in AEHS and the employees covered by AEHS.

9. The Administration explained that analysis of the distribution of hourly wage in AEHS was based on wages which followed the definition adopted in the Employment Ordinance (Cap. 57) ("EO") and comprised basic wage/salary, commission, tips, allowances, bonuses of non-gratuitous nature and overtime payment. All the paid overtime hours and overtime payment were counted for the purpose of computing the hourly wage for the survey. AEHS was conducted on all employees under the coverage of EO, except live-in domestic workers.

10. Some members expressed concern about the quality of wage data. The Administration responded that the Census and Statistics Department had consulted chambers of commerce, employers' associations, trade unions, academia and other relevant stakeholders on the methodology of the survey, the design of the sample, and the method for data collection and processing. In addition, lecturers in the statistical faculty of tertiary institutions were consulted

on the computation formulae to ensure that the method adopted was compatible with the sampling method.

11. Some members expressed concern whether the survey, which was conducted in the second quarter of 2009 when Hong Kong was adversely affected by the financial tsunami and had a high unemployment rate, was an appropriate reference for determining the initial SMW rate. Given that the Minimum Wage Bill, if enacted, would not be implemented immediately, they enquired whether PMWC would take into account the findings of AEHS to be conducted in the second quarter of 2010 when determining the initial SMW rate.

12. The Administration responded that the wage statistics in the second quarter were adopted since they were relatively more stable than those in other quarters. In addition, year-on-year comparison on the basis of wage data pertaining to the same reference period in each year would be meaningful, consistent and of good reference value. The results contained in AEHS provided essential inputs for analyses relating to the initial SMW rate, although its statistics might not be the most updated due to the inevitable time lag between data collection and compilation of the AEHS report. PMWC would take more recent information such as the standard of living, labour market conditions, economic growth and inflation into account, which would offset the inherent limitation of AEHS. In view of the time required to collect data for AEHS and to compile a report, PMWC would unlikely take account of the findings of AEHS in 2010 in determining the initial SMW rate.

#### Age preference in employment

13. The Panel was briefed on the findings of a survey commissioned by the Census and Statistics Department to collect the public's views on the importance of age factor in employment. Members noted with concern that the survey revealed that age preference, to a large extent, affected the employment opportunities of job seekers looking for elementary occupations. They asked whether the Administration would consider introducing legislation against all forms of age discrimination in employment.

14. The Administration pointed out that the survey also indicated that a significant 34.8% of the target population accepted that certain occupations had a practical need to recruit employees of specific age ranges, and such a need applied to positions of service workers and shop sales workers, elementary occupations as transportation workers and security guards, and associate professionals.

15. The Administration stressed that age might not necessarily be the only consideration of employers in recruiting staff, as many other factors, such as skills, qualifications and work attitude, would also be considered. In addition, age preference in recruitment and age discrimination were two different matters. The Administration considered it more practical to tackle the issue through strengthening publicity and education rather than the enactment of legislation.

16. Some members considered that the survey might not be able to reflect the true picture, as the relevant data were collected from persons who had attended job interviews, whereas most people facing age discrimination did not even have the opportunity to attend interviews. They were concerned that despite the effort of the Administration in promoting equal employment opportunities through education and publicity, age discrimination in employment still existed in Hong Kong.

17. The Administration advised that in view of the difficulty faced by aged workers in seeking employment, LD had implemented the Employment Programme for the Middle-aged to strengthen the employment support specifically for people aged 40 or above. The programme was open to all sectors.

18. A member was concerned that in an opinion survey conducted by the Equal Opportunities Commission in 2007, a significant 31% of the target population considered the problem of age discrimination in employment serious. The member enquired about the measures taken by the Administration to eliminate age discrimination in employment, should it decide not to introduce anti-discrimination legislation on age.

19. The Administration advised that it was fully aware of the concern of members about age discrimination in employment. The Labour Advisory Board ("LAB") had discussed the issue of legislation against age discrimination in employment for a number of years. When briefed on the survey findings on 7 December 2009, members of LAB noted that the findings indicated that age was not a major factor in employment. They also noted the practical difficulties associated with legislation and enforcement. As the situation might change over time, LAB members suggested that the Administration should conduct the survey regularly, say every two to three years, to gauge attitude changes, if any, in the society.

20. The Administration stressed that in considering whether legislation should be introduced, it had to critically examine whether the introduction of legislation would be the most effective way to achieve the intended purpose, and whether it would be able to enforce the legislation effectively. Given the practical difficulties associated with legislation and enforcement, the Administration considered it more appropriate to focus on public education and publicity in tackling age discrimination in employment. The Administration would monitor the situation closely and in the event that public education and publicity were found to be ineffective, the legislative alternative might be considered.

#### Promotion of youth employment

21. The Panel was very concerned about the high unemployment rate of young people. Members were briefed on the measures adopted by the Administration to promote youth employment.

22. Some members expressed reservations about the effectiveness of the Youth Pre-employment Training Programme ("YPTP") and the Youth Work Experience and Training Scheme ("YWETS") in assisting young people to find jobs. They considered that the Administration should strengthen the element of vocational training in YPTP and YWETS.

23. The Administration explained that while YPTP provided a wide range of modular training on leadership, job-search and interpersonal skills, computer application and job-specific skills, YWETS offered job placements with on-the-job training of six to 12 months' duration with a view to enhancing the employability of young people, facilitating their smooth transition to employment and achieving further skills development. To proactively assist young people in navigating their career journey, LD had further enhanced and integrated YPTP and YWETS into a through-train programme. The revamped programme had, among other improvement initiatives, extended the provision of personalized career guidance and counselling services by 12 months for trainees who had secured employment so as to better assist them to settle in their jobs, overcome problems in the workplaces, and to pursue further learning and skills upgrading opportunities. Trainees enrolled in the revamped programme were entitled to a full range of coordinated and customized training and employment support services, including case management services rendered by registered social workers. Response of young people to the revamped programme was encouraging.

24. Some members considered that the high unemployment rate of young people arose from the failure of the existing education system in meeting the needs of multiple talents of young people at school age. They pointed out that with the provision of nine-year free education since 1978, the majority of schools in Hong Kong had been offering conventional curriculum. Given the increasingly diverse values in the community and the multi-faceted demands on Hong Kong's work force in the face of rapid changing technology and increasing globalization, there was a need to inject more diversity into the education system to give students more choices in the selection of schools and curricula which could cater for individual aptitude and interests.

25. The Administration advised that the unemployment rate of young people was persistently higher than the overall unemployment rate. This phenomenon was not peculiar to Hong Kong and was encountered by economies at various stages of economic development. With no or very little working experience, young people often found it difficult to secure and find suitable jobs. At times of economic adversity, it would be more difficult for them to seek employment. LD had all along spared no effort in promoting youth employment. It adopted a multi-pronged strategy and worked closely with stakeholders and other social partners to assist young people to develop their careers, through providing a full range of recruitment and placement services in general and administering dedicated training and employment programmes for young people in particular.

26. Regarding support for young entrepreneurs, the Administration advised that the Youth Employment Start ("YES") sought to provide one-stop and personalized advisory and support services on employment and self-employment to young people with different backgrounds and development needs. Young people registered as members of YES could have free access to a wide range of office facilities and services, including well-equipped business workstations, meeting rooms and a design corner with professional design software/hardware, for job search. For those who wanted to become self-employed, the centres could serve as a contact point for them to conduct business. To cater for the distinct needs of potential entrepreneurs, YES regularly held workshops and professional advisory sessions on self-employment, and invited renowned professionals and celebrities to offer mentoring assistance, to deliver talks and to share experience with young people. YES had served as an effective platform for young people to build up their network and to engage in self-employment.

#### Work-at-height safety of the construction industry

27. When the Administration briefed the Panel on the regulatory framework governing work-at-height safety of the construction industry in Hong Kong and the safety performance and improvements in recent years, some members were concerned that the present self-regulated system was inadequate and there was a need for all relevant stakeholders to review the policy on construction safety.

28. The Administration advised that the general duties of employers required under existing law to provide and maintain safe plants and systems of work and a safe environment, together with the concerted efforts of relevant stakeholders in the industry to promote work safety, had resulted in steady improvement in the safety performance of the construction industry. The number of industrial accidents in the construction industry had dropped from 14 078 in 1999 to 3 033 in 2008. The Administration would continue to adopt a three-pronged approach, including stepping up enforcement actions, promoting education and training for the workforce, and enhancing publicity to promote safety awareness and practice among employers and employees, and working in close partnership with the relevant stakeholders to improve construction safety.

29. Members enquired about the penalties imposed on employers for non-compliance with safety legislation and whether such penalty levels had any deterrent effect. They also enquired whether the court would impose heavier penalty on repeated offenders and whether employees who acted recklessly at construction sites had ever been prosecuted.

30. The Administration advised that while the average fine imposed on an employer or a contractor for more serious offences was about \$15,000, the amount varied with the seriousness and nature of each case. LD would provide the court with information on the defendant's previous offences and fines, if any. The court would usually impose a heavier penalty for repeated offenders.

Where there was an injury at a construction site, LD would first investigate whether the employer had provided a safe working environment to protect his employees. Besides, where employers had taken steps to ensure, as far as reasonably practicable, the work safety of his employees and an employee was found not to have taken reasonable care for the safety of himself and of other persons, LD might also initiate prosecutions against that employee.

31. Some members considered that in order to reduce accidents at construction sites, there was a need for the Administration to review the employment policy of on-site safety officers. An employer or a contractor was currently required to employ an on-site safety officer to monitor compliance with safety measures at the construction site. Given that the employment relationship between the on-site safety officer and his employer or a contractor might have impeded the proper discharge of the safety officer's duties, especially in pinpointing anomalies which might adversely impact work safety on site, these members suggested that an on-site safety officer should be recruited by as well as accountable to LD, while his wages would be paid by the employer or contractor.

32. The Administration explained that under existing law, the responsibility for ensuring the safety and health of persons working at the construction sites fell on the principal contractor. The safety officer's primary role was to advise on safety and health practices, requirements and standards. He was not playing the role of implementing and monitoring the safety plans and programmes and should not thus be held accountable for the lack of control at the site, which was a management responsibility. In addition, the conflicting roles of an in-house safety adviser and an agent of the law enforcement authority would hamper the effective discharge of his functions and would adversely affect candid communication on problem identification and risk prevention between him and other personnel in his company. This would not serve the purpose of ensuring safety at works at the construction site.

#### False self-employment

33. Some members were very concerned about the growing number of employees being labeled by their employers as self-employed despite the fact that these employees had all the characteristics of an employee. They pointed out that subsequent to the implementation of the Mandatory Provident Fund ("MPF") Scheme in 2000, some employers had arranged for their employees to become self-employed in a deliberate attempt to evade their responsibility for making MPF contributions. These members envisaged that the implementation of a SMW would aggravate the problem of false self-employment. They enquired about the possibility of introducing legislative amendments to prevent the proliferation of false self-employment.

34. The Administration responded that it had carefully considered the suggestion of amending the law to clearly distinguish an employee from those

self-employed. However, there was no single conclusive test to distinguish an employee from a self-employed person or contractor. As a matter of fact, it was not what the parties to an engagement called their relationship, but what it was in substance, that mattered. Whether an employer-employee relationship existed was often determined after considering all relevant facts. Even if an employer had engaged a self-employed person, he still had to fulfil his obligations under the law where the relationship between the parties was in essence one of employer-employee. In previous rulings on cases involving claims under EO and the Employees' Compensation Ordinance (Cap. 282) ("ECO"), the court had not simply looked at the labeling of a person to determine the employment relationship, but would apply a number of tests to examine whether a worker was an employee or a self-employed person. The Administration stressed that it had been making proactive efforts to safeguard the statutory rights and benefits of employees through rigorous enforcement of the law.

35. The Administration advised that LAB, which had been consulted on the subject, shared the Administration's views regarding the practical difficulties in amending EO and ECO to clearly distinguish employees from those self-employed. They agreed with LD that the three-pronged approach currently adopted by LD was a more pragmatic and fruitful way forward. Against this background, LAB had asked LD to step up promotional efforts with a view to encouraging employees to provide LD with intelligence to facilitate enforcement. LD was also asked to launch publicity programmes targeting small and medium enterprises, especially those in the construction and logistics sectors, where false self-employment might be more prevalent. The Administration had also undertaken to keep relevant statistics on cases relating to claims of false self-employment to facilitate better understanding of the problem.

36. Some members remained unconvinced of the practical difficulties involved in amending EO and ECO to cover people on false self-employment. They considered that although there was no single conclusive test to distinguish an employee from a self-employed person or contractor, the Administration could simply adopt the wider coverage rendered by a business reality test to determine whether an employer-employee relationship existed.

37. The Administration stressed that there was no need to introduce any legislative change at this stage. It explained that notwithstanding the good intention behind the suggestion of amending the law to clearly distinguish an employee from those self-employed, an exhaustive list of criteria to define those on false self-employment might be counterproductive, as unscrupulous employers might translate them into convenient clues to circumvent the law. Furthermore, an authoritative and legally-prescribed list of indicia to define people on genuine employment or false self-employment might fail to account for possible specific features in individual occupational groups and sectors. This might, in addition, inadvertently hinder the development of entrepreneurship, innovation and contractual freedom.



Other issues

38. The Panel had discussed other issues with the Administration. These included Hong Kong's occupational safety performance, safety in the use of tower cranes on construction sites, review of occupational diseases in Hong Kong, promotional efforts of LD on labour-related matters, policy and arrangements relating to admission of trainees to Hong Kong, LD's measures to assist the vulnerable youths, the unemployed and people with disabilities, progress of employment support initiatives in response to the financial tsunami, LD's efforts in labour administration and progress on the implementation of the Qualifications Framework.

39. The Panel was consulted on a number of legislative proposals, including a proposal to expand the scope of the Protection of Wages on Insolvency Fund to cover pay for untaken annual leave and statutory holidays under EO, and a proposal to adjust the levels of compensation under ECO and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360).

Meetings held

40. Between October 2009 and June 2010, the Panel held a total of 11 meetings and conducted one visit.

Council Business Division 2  
Legislative Council Secretariat  
30 June 2010

### **Legislative Council Panel on Manpower**

#### **Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to labour, manpower planning, vocational training and education, and qualifications framework.
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 2009-2010 session**

<b>Chairman</b>	Hon LI Fung-ying, BBS, JP
<b>Deputy Chairman</b>	Hon IP Wai-ming, MH
<b>Members</b>	Hon LEE Cheuk-yan Hon LEUNG Yiu-chung Hon Andrew CHENG Kar-foo Hon Frederick FUNG Kin-kee, SBS, JP Hon WONG Kwok-hing, MH Dr Hon LAM Tai-fai, BBS, JP Hon CHAN Kin-por, JP Hon WONG Sing-chi Hon WONG Kwok-kin, BBS Hon IP Kwok-him, GBS, JP Dr Hon PAN Pey-chyou Hon Alan LEONG Kah-kit, SC (up to 28 January 2010) (rejoined on 19 May 2010) Hon LEUNG Kwok-hung (up to 28 January 2010) (rejoined on 19 May 2010)
	(Total : 15 Members)
<b>Clerk</b>	Mr Raymond LAM
<b>Legal adviser</b>	Ms Clara TAM
<b>Date</b>	19 May 2010