

立法會

Legislative Council

LC Paper No. CB(2)2311/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting held on Tuesday, 17 May 2011, at 2:30 pm in the Chamber of the Legislative Council Building

- Members present** : Hon LEE Cheuk-yan (Chairman)
Hon LI Fung-ying, SBS, JP (Deputy Chairman)
Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
- Members attending** : Hon Miriam LAU Kin-ye, GBS, JP
Hon Paul TSE Wai-chun
- Public Officers attending** : Item III
Mr FONG Ngai
Assistant Commissioner for Labour (Policy Support)

Mr LEUNG Kwok-hung
Assistant Director of Immigration
(Enforcement and Torture Claim Assessment)

Item IV

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

Mr CHEUK Wing-hing, JP
Commissioner for Labour

Miss Mabel LI Po-yi
Assistant Commissioner for Labour (Development)

Mr Raymond HO Kam-biu
Senior Labour Officer (Labour Inspection)
Labour Department

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Miss Josephine SO
Senior Council Secretary (2) 7

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1665/10-11)

The minutes of the meeting held on 17 March 2011 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1712/10-11(01) and (02))

Regular meeting in June 2011

2. Members noted that the Administration proposed to discuss the following items at the next regular meeting scheduled for Thursday, 16 June 2011, at 2:30 pm -

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- (a) Progress report on the development and implementation of the Qualifications Framework; and
- (b) Hong Kong's occupational safety performance in 2010.

3. Mr WONG Kwok-hing expressed concern about the feasibility of recognizing sick leave certificates issued by registered chiropractors as valid sick leave certificates for entitlement of employee benefits under labour legislation. Knowing that the inter-bureaux/departmental working group set up by the Administration to study issues pertinent to the recognition of medical treatment, examination and certification given by registered chiropractors for entitlement of employee benefits under labour legislation had concluded its study, he proposed to invite the Administration to brief the Panel on the findings and recommendations of the working group at the next meeting under the item of recognition of sick leave certificates issued by registered chiropractors as valid sick leave certificates. He also suggested that deputations, including relevant professional bodies and employer and employee groups, be invited to present views at the meeting. Members agreed.

4. Regarding the agenda item proposed by the Administration in paragraph 2(b), Mr WONG Kwok-hing expressed concern over recent industrial accidents involving death of cleansing workers and tyre repair workers. He suggested that the Panel should discuss issues arising from the cases at the next meeting.

5. As members had proposed an additional item for discussion at the meeting on 16 June 2011, the Chairman suggested that discussion of the item "Progress report on the development and implementation of the Qualifications Framework" be deferred to a future meeting. Members agreed.

(Post-meeting note: On the instruction of the Chairman, the Panel meeting originally scheduled for 16 June 2011 was re-scheduled to 17 June 2011 at 10:45 am and the item "Mid-term Review of Qualifications Framework Support Schemes and Progress Report of Qualifications Framework" was included in the agenda at the Administration's request and with the Chairman's concurrence. Members were notified of the arrangements vide LC Paper Nos. CB(2)1805/10-11 and CB(2)1964/10-11 issued respectively on 19 May and 3 June 2011.)

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Joint Panel meeting in June 2011

6. The Chairman said that some members of the public had raised a request with him that the Panel should convene a joint meeting with the Panel on Food Safety and Environmental Hygiene to discuss issues relating to the creation of employment opportunities under the Administration's hawkers policy, and to invite deputations to give views on the subject. The Chairman proposed and members agreed that the Clerks to the two Panels should make necessary arrangements for the joint meeting.

(Post-meeting note: With the concurrence of the Chairmen of the two Panels, the joint meeting was scheduled to be held on 28 June 2011 at 4:30 pm. Members were informed of the meeting arrangement vide LC Paper No. CB(2)1876/10-11 on 25 May 2011.)

7. Regarding the two subject matters on which deputations' views would be received, members agreed that notices to invite public views should be posted on the website of the Legislative Council to facilitate enrollment by any parties interested in attending the meetings to present views.

III. Performance of driving duties by foreign domestic helpers

(LC Paper Nos. CB(2)1712/10-11(03) and (04))

8. Assistant Commissioner for Labour (Policy Support) ("AC for L(PS)") and Assistant Director of Immigration ("AD of Imm") briefed Members on the background and implementation of the special arrangement which allowed foreign domestic helpers ("FDHs") to perform driving duties, as set out in the Administration's paper.

9. Mr WONG Kwok-hing noted that the absolute numbers of male and female FDHs granted with special permission to perform driving duties had increased in 2010, when compared against the figures of 2008 and 2009. As an employer was required to provide full justifications and supporting information on the need of driving service to be performed by his FDH incidental to and arising from any of the five broad categories of domestic duties, namely, household chores, cooking, looking after aged persons in the household, baby-sitting and child minding, Mr WONG sought information on the distribution of the special permissions granted

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in 2010 among the five categories of domestic duties as a justification for applying for special permission for FDHs to perform driving duties.

10. AD of Imm responded that an employer who had a genuine need for his FDH to perform driving duties incidental to and arising from domestic duties could apply to the Government for permission to do so. According to the special arrangement, the employer must provide, in the application form, full justifications and supporting information on the need of driving service to be performed by his FDH incidental to and arising from any of the five broad categories of domestic duties. Although employers were required to specify the domestic duties necessitating the performance of driving duties by their FDHs, the Immigration Department ("ImmD") did not maintain statistics on special permissions granted in relation to the five categories of domestic duties.

11. Mr WONG Kwok-hing expressed concern over the measures taken by the Administration against abuse of the special arrangement. He said that to prevent employers from abusing the policy by hiring FDHs as personal chauffeurs, thus affecting the job opportunities of local drivers, the Administration should enforce the law vigorously by conducting inspections on FDHs to whom special permission to perform driving duties had been granted.

12. AD of Imm responded that -

- (a) all FDHs must not perform driving duties without special permission. The special permission, if granted, would become one of the conditions of stay imposed by ImmD on FDHs. According to the Immigration Ordinance (Cap. 115) ("IO"), an FDH who was in breach of this condition of stay was liable on conviction to the maximum penalty of a fine of \$50,000 and imprisonment of two years; the employer might be liable to penalty for aiding and abetting the breach of condition of stay by an FDH. In addition, an employer and FDH who provided false information in an application for special permission were liable on summary conviction to a fine of \$100,000 and imprisonment of two years;
- (b) the special arrangement was gate-kept by ImmD. Once complaints or reports about abuse were received, ImmD would conduct investigation immediately. From 2008 to 2010, ImmD had received and followed up six complaints involving FDHs performing driving duties without

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permission. After investigation, it was found that the allegation could not be substantiated in four of these cases, the FDH concerned in another case was found not guilty after court hearing, and the concerned party in the remaining case convicted and sentenced to imprisonment for overstaying and breach of other conditions of stay; and

- (c) apart from following up complaints, ImmD conducted inspections from time to time. In the first four months of 2011, 14 FDHs were found driving vehicles during the inspections conducted in different areas. All were confirmed having been granted with special permission to perform the concerned driving duties.

13. The Deputy Chairman held the view that the Administration should formulate more concrete measures to prevent employers from abusing the special arrangement. She expressed dissatisfaction with the little progress made in this respect by the Administration since the issue was first raised in 1999. She strongly requested the Administration to take vigorous enforcement actions against suspected abuses.

14. In response, AD of Imm advised that ImmD had conducted blitz checks from time to time in some commercial and school areas to see if there were FDHs abusing the special permission or performing driving duties without permission. In these operations, there was however no conclusive evidence to prove that the special permission for FDHs to perform driving duties had ever been abused. ImmD would continue with and if necessary, step up its law enforcement actions to crack down on the performance of driving duties by FDHs without special permission.

15. The Deputy Chairman recalled that some Members had suggested that an employer whose FDH was approved to perform driving duties should be issued and required to fix a prescribed label on his vehicle for identification purpose. She asked whether the Administration would consider this proposal put forward by Members.

16. AD of Imm responded that the Administration would consider Members' suggestion and examine its feasibility. The Chairman requested the Administration to provide the Panel with a written response, with reasons for taking or not taking the proposed measure, before July 2011.

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17. Dr PAN Pey-chyou said that other than the option of allowing FDHs with special permission to perform driving duties incidental to and arising from domestic duties, there were a number of alternative measures which could address employers' need of driving service. In his view, to protect the employment opportunities of local drivers, the Administration should impose a total ban on driving duties by FDHs. His view was echoed by Dr LAM Tai-fai.

18. In response, AC for L(PS) made the following points -

- (a) before 2000, and as a matter of fact, all FDHs could perform driving duties. However, in the light of repeated complaints from labour unions that an increasing number of FDHs were deployed as full-time chauffeurs by their employers, the Government decided to tighten up the policy by imposing a general ban on driving duties by FDHs with effect from 1 January 2000. However, a special arrangement administered by ImmD was introduced at the same time to provide an avenue for individual employers, who had genuine need for their FDHs to perform driving duties incidental to and arising from domestic duties, to apply for special permission to do so;
- (b) in introducing the special arrangement, the Administration aimed to strike a balance between addressing the genuine need of individual employers and protecting the employment opportunities of local drivers. This policy had been in force for 11 years. The number of FDHs granted with permission to perform such incidental driving duties as a percentage of the overall FDH population had remained at a stable level over the years, with about 1 000 approved cases out of some 270 000 FDHs in Hong Kong in 2009. The Administration was of the view that the policy did not affect the employment opportunities of local drivers;
- (c) at the moment, there were 1 300 job vacancies for general driver registered with the Labour Department ("LD") but only 840 job registrants were looking for driver vacancies at LD's Job Centres; and
- (d) ImmD would continue to take vigorous enforcement action against abuse to ensure that no FDHs would perform driving duties without special permission.

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19. Responding to Dr PAN Pey-chyou's enquiry as to whether the Administration would review the existing policy regarding the granting of special permission for FDHs to perform driving duties, AC for L(PS) advised that as the number and percentage of FDHs approved to perform driving duties had stayed at a stable level over the years, the Administration did not see a need for conducting a review at the present stage.

20. Mr IP Wai-ming expressed strong dissatisfaction with the Administration's response on whether it had any plan to review the existing policy. He said that the Motor Transport Workers General Union had received quite a number of complaints that the special arrangement had seriously affected the job opportunities of local drivers, especially those of private car chauffeurs. Sharing the view that a review should be conducted without delay, he sought information on the number of applications received by ImmD in the past three years for special permission for FDHs to perform driving duties, and the respective number of applications approved, rejected and withdrawn.

21. In response, AD of Imm stressed that ImmD attached great importance to playing its gate-keeping role to ensure that no FDHs breached their conditions of stay in Hong Kong, including the conditions of the special permission granted for their performance of driving duties. In considering an FDH's application for special permission to perform driving duties, ImmD would examine carefully the justifications and supporting information provided by the applicant. Where there was reason to believe that the special permission, if granted, might be abused, ImmD would reject the application. From 2008 to 2010, the numbers of applications received stood respectively at 1 545, 1 576 and 1 813. The numbers of applications refused or withdrawn in the corresponding years were in the range of 26 to 31.

22. Responding to Mr IP Wai-ming's query on whether ImmD had played its gate-keeping role effectively given the small numbers or percentages of applications rejected in the past, AD of Imm stressed that the figures did not have any relevance to ImmD's effectiveness in performing its monitoring role, since each application was considered on its own merits and circumstances.

23. Noting that the relevant FDH must possess a valid Hong Kong driving licence before he could perform driving duties incidental to and arising from domestic duties, Mr LEUNG Kwok-hung considered that

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ImmD should work with the Transport Department in tackling the problem of abuse of the policy governing the performance of driving duties by FDHs. He said that should the number of FDHs applying for a driving licence far exceed the number of special permission granted, it might be a possible cause for concern as to whether there were FDHs taking up employment as personal chauffeurs illegally. Enquiring about the number of FDHs holding Hong Kong driving licence, he also sought information on how ImmD conducted blitz checks on FDHs.

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24. AD of Imm said that it was the duty of the ImmD task force to conduct blitz checks to see whether there were FDHs in breach of their conditions of stay or performing driving duties without special permission. In the first four months of 2011, the ImmD task force had carried out four inspections targetted at some 1 500 FDHs. 14 FDHs were found driving vehicles during the inspections conducted in different commercial and school areas, such as Central, Causeway Bay, North Point and Kowloon Tong. All of them, however, were confirmed with special permission to perform the concerned driving duties. AD of Imm added that he did not have information on hand regarding the number of FDHs in possession of valid Hong Kong driving licence, but undertook to check with the Transport Department and provide the Panel with the requested information after the meeting.

25. Dr LAM Tai-fai said that he was in opposition to the special arrangement which allowed FDHs to perform driving duties incident to and arising from domestic duties, as it would affect the employment opportunities of local drivers. Expressing deep concern whether the relevant policy was being abused by some employers, he asked about the number of FDHs to whom special permission had been given and renewed more than once for a continuous period of time.

26. AD of Imm responded that ImmD did not maintain statistics on the number of times special permission was granted to a particular FDH for performing driving duties. Among the annual 1 000-odd cases where special permission was granted, there were both applications made upon contract renewal or by new applicants.

27. The Deputy Chairman said that the Administration should convince the public that employers who had such a need would apply for special permission for their FDHs to perform incidental driving duties. She was deeply concerned about the effectiveness of enforcement actions taken by ImmD against employers who disregarded the law.

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28. In response, AD of Imm stressed that all FDHs must not perform driving duties without special permission. According to IO, an FDH who contravened a condition of the special permission or performed driving duties without special permission was in breach of his condition of stay, which could lead to prosecution. On conviction, the FDH concerned was liable to a fine of \$50,000 and imprisonment of two years. The relevant employer might be liable to the same maximum penalty for aiding and abetting the breach of condition of stay by his FDH. In addition, according to IO, an employer and an FDH who provided false information in the application for special permission was liable on summary conviction to a fine of \$100,000 and imprisonment of two years. All these had provided sufficient deterrence against malpractices.

IV. Progress of implementation of statutory minimum wage

(LC Paper Nos. CB(2)1712/10-11(05) to (06), CB(2)1606/10-11(01) and CB(2)1617/10-11(01))

29. Members noted the following submissions tabled at the meeting -

- (a) Submission from The Security Industry SMW Concern Group;
- (b) Submission from Hong Kong Chamber of Professional Property Consultants Limited; and
- (c) Submission from Environmental Services Contractors Alliance (Hong Kong).

(Post-meeting note: The submissions were issued to members vide LC Paper No. CB(2)1797/10-11 on 19 May 2011.)

30. Secretary for Labour and Welfare ("SLW") briefed Members on the progress of the implementation of statutory minimum wage ("SMW"), as set out in the Administration's paper.

Requirement on keeping records of the total number of hours worked by employees

31. Mr CHAN Kin-por said that to his knowledge, there was much confusion among employers and human resources practitioners over the requirement on keeping records of the total number of hours worked by

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employees. He sought clarification from the Administration on this statutory requirement.

32. Assistant Commissioner for Labour (Development) advised that -

- (a) as amended by the Minimum Wage Ordinance (Cap. 608) ("MWO"), the Employment Ordinance (Cap. 57) ("EO") required the employer to keep records of the total number of hours worked by the employee in a wage period if wages payable in respect of the period were less than the monthly monetary cap of \$11,500; and
- (b) regarding the monthly monetary cap, the definition of wages payable followed the same definition used in determining whether an employee had been paid not less than the SMW level. Minimum wage was derived by multiplying the employee's total number of hours worked in a wage period by the SMW rate. Since the calculation of minimum wage excluded the time that was not hours worked, payments made to the employee for any time which did not constitute hours worked, such as payment for rest days and statutory holidays, should not be counted as part of the wages payable in respect of the wage period. Therefore, in determining whether the wages payable to an employee in respect of a wage period were less than the monthly monetary cap or not, payments for any time that was not hours worked were likewise disregarded. These provisions were covered in publicity activities such as briefings for employers, employees and human resources practitioners as well as the general reference guidelines on SMW.

33. Ms Miriam LAU said that the need to exclude payments for any time that was not hours worked in calculating wages payable to an employee in a wage period had attracted many complaints, as it had caused confusion to and administrative burden on employers in compliance with the requirement on keeping records of the total number of hours worked by employees. She called on the Administration to review this aspect of the SMW regime.

34. Mr Paul TSE asked whether the Administration would introduce legislative amendments to EO and MWO to make the monthly monetary cap of \$11,500 an "absolute" instead of a "fluctuating" number for exempting employers from keeping records of the total number of hours

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worked by their employees, in view of the confusion over the requirement.

35. SLW responded that while the Administration would review the special arrangement for persons with disabilities on SMW two years after its implementation, given that MWO had just been implemented, it would be premature to talk about legislative amendments. If there were great difficulties or problems concerning the monthly monetary cap for exempting employers from keeping records of the total number of hours worked by their employees, he did not rule out the possibility of a review at an appropriate time on this issue with a view to streamlining its operation.

Measures to assist employers who had difficulties in coping with the SMW-induced cost increases

36. Referring to the submissions tabled at the meeting, Ms Miriam LAU was deeply concerned that many employers had yet to fully understand the method for calculating SMW. Noting that many government service contractors were facing with cash flow problem in fulfilling their obligation to pay non-skilled workers SMW plus one paid rest day in every period of seven days, she asked about the measures adopted by the Administration to assist its service contractors to address the problem. She requested the Administration to expedite the disbursement process to ensure that the top-up payments designed to help service contractors cover increase in wage costs arising solely and directly from the implementation of SMW could reach those service contractors in need of such payments no later than 7 June 2011, which was the first pay day after MWO and the initial SMW rate of \$28 per hour had taken effect from 1 May 2011.

37. In response, SLW advised that the top-up arrangement was intended as a one-off measure to help service contractors cover increase in wage costs arising solely and directly from the implementation of SMW. This measure was made out of the Administration's deep concerns over the employment and the rights and benefits of non-skilled workers and the need to avoid disruption to public service delivery. Meanwhile, the relevant procuring departments were discussing the details with the contractors concerned. These departments would ensure that the top-up payments would go to the pocket of workers who were the target beneficiaries.

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Impact of SMW on the employment market and vulnerable employees

38. Ms Miriam LAU was concerned that, in seeking to counter-balance the cost increase triggered by SMW, employers were less willing to take up and provide training to inexperienced staff. Noting that the implementation of SMW might dampen employers' incentive to employ youngsters with no or little working experience, she enquired about the measures taken by the Administration to address the problem and whether consideration would be given to the introduction of a lower SMW rate for young people.

39. SLW responded that the Administration would closely monitor the impact of SMW and consider launching special employment programmes to provide targetted support to unemployed youths as and when necessary. Regarding the suggestion of introducing a lower SMW rate for young people, SLW advised that the subject had been fully deliberated but there was concern that it might be open to abuse.

40. The Chairman said that the Panel might discuss the problem of youth unemployment and the Administration's measures to tackle the problem in future.

41. Mr WONG Sing-chi said that he had received complaints from some employees that SMW had led to the displacement of less productive workers, with employers raising job requirements to engage workers of higher competitiveness, dismissing the least productive employees or cutting their working hours. Expressing concern about the measures adopted by the Administration to assist the vulnerable groups, he asked whether the Administration had assessed the impact of the implementation of SMW on disadvantaged workers.

42. Sharing a similar concern, Dr PAN Pey-chyou cited three cases involving displaced elderly workers to illustrate the impact of SMW on employment opportunities of the vulnerable groups. He considered that the Administration should take measures to proactively address the problems faced by the less productive workers.

43. In response, SLW said that -

- (a) the Administration was mindful of the actual impact or possible knock-on effects of SMW on the employment market, including the employment opportunities of vulnerable groups, subsequent to its implementation. It

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would closely monitor the situation and take appropriate measures, such as strengthening the support services to the unemployed, as and when necessary; and

- (b) to tie in with the implementation of SMW, LD would continue to operate its various specialized employment programmes, including the Employment Programme for the Middle-aged, for job seekers. To expedite dissemination of employment information, it would organize large-scale job fairs targetting at the low-paying sectors and workers affected by the implementation of SMW. As for the three cases cited by Dr PAN, the workers were encouraged to approach LD for assistance.

44. Mr WONG Sing-chi and Mr Paul TSE noted from paragraph 11 of the Administration's paper that since the implementation of SMW, LD received on average over 3 000 vacancies per day. They queried whether the figure included vacancies re-advertised due in part to the difficulty in securing and retaining suitable staff.

45. SLW responded that along with sustained economic growth over the past few months, there was continued creation of new jobs. The figure in paragraph 11 of the Administration's paper reflected the actual number of new vacancies filed with LD.

46. SLW further said that to enhance the employment support for job seekers, LD would organize large-scale as well as mini-job fairs in May and July 2011 specifically for the low-paying sectors that were more likely to be affected by the implementation of SMW so as to facilitate job seekers in gathering the latest job vacancy information and submitting applications on-the-spot.

47. Mr IP Kwok-him considered that the Administration had underestimated the impact of the introduction of SMW on Hong Kong's overall employment situation. He was concerned that the unemployment rate might go up, and enquired about the measures to be taken by the Administration if that happened.

48. In response, SLW advised that the number of vacancies received by LD during the first two weeks of May 2011 remained at the previous level prior to the implementation of SMW. On average, about 3 000 private sector vacancies were recorded per working day. On 6 May 2011 alone, LD recorded 4 170 vacancies. All these suggested that the overall

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sentiment of employers to hire and employ remained positive thus far after SMW implementation. Despite the large number of employment opportunities available in the labour market, the Administration would closely monitor the actual impact of SMW on the employment market and continue to adopt multi-pronged measures to facilitate the employment of vulnerable groups, including enhancing the specialized employment programmes and strengthening the employment support to job seekers.

49. The Deputy Chairman said that it had come to her notice that a substantial proportion of vacancies were part-time posts. She asked whether there was a trend of increase in the number of part-time and consequential decrease in that of full-time jobs in the employment market after the implementation of SMW.

50. SLW said that the Administration did not see an abrupt increase in the number of part-time job vacancies after the implementation of SMW. Based on analyses of job vacancies received by LD and the Employees Retraining Board ("ERB") in the first two weeks of May 2011, the percentage of full-time jobs available in the labour market remained stable. For example, among some 7 000 vacancies identified by ERB for its Career Expo held in mid-May 2011, over 60% were full-time jobs, which was comparable to the level before the implementation of SMW. For vacancies filed with LD, the percentage share of part-time jobs was within the normal range of 13% to 18%.

51. The Deputy Chairman was concerned about the effectiveness of LD's employment programmes in assisting workers displaced as a result of the implementation of SMW in their seeking of employment.

52. SLW advised that LD had set up a dedicated employment hotline (2127 4916) with effect from April 2011 to provide employment assistance to needy workers displaced as a result of the implementation of SMW. In addition, it had made a performance pledge to interview and identify suitable jobs for the displaced job seekers within five working days from the date of receiving the job seekers' request for services. In a recent case where a bakery shop closed down, LD had received more than 1 600 job vacancies within one week to assist the displaced employees.

53. Responding to Mr LEUNG Kwok-hung's enquiry about Hong Kong's latest employment situation, SLW said that owing to sustained economic growth and continued job generation, the unemployment rate

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had stayed at a relatively low level with quite a lot of vacancies in the labour market.

54. Dr LAM Tai-fai expressed concern whether higher labour costs as a result of the implementation of SMW might affect the employment and economic competitiveness, particularly of the low-paying sectors and small and medium enterprises. He was also concerned whether the unemployment rate would increase, with more university and secondary school graduates joining the labour market in the summer. He enquired whether the Administration had any measures to assist the youth in seeking employment. Sharing a similar concern, Mr Paul TSE asked whether the implementation of SMW had affected the employment of apprentices.

55. SLW responded that -

- (a) youth employment remained a major concern of the Administration. As a move to assist the fresh graduates and school leavers to enter the labour market, LD would join hands with youth organizations in staging job fairs targeted at youths during the summer months;
- (b) as shown in a job fair organized by a youth organization recently, compared with the figures of 2010, the number of job vacancies and the monthly salary offered for posts suitable for young job seekers and summer workers had on the whole increased in 2011. The seasonal influx of school leavers at Form 5 level would less likely be a problem in the summer of 2011 due to the implementation of the new academic structure for senior secondary education and higher education. Notwithstanding the above, the Administration would continue to monitor the situation and act proactively in helping new entrants to the labour market; and
- (c) LD would continue to spare no effort in assisting 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, such as the Youth Pre-employment Training Programme and Youth Work Experience and Training Scheme, which had diversified

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elements to cater for the varying needs of youths with different educational attainment and interests.

56. Mr Tommy CHEUNG said that to his knowledge, there were quite a number of vacancies in the catering industry. However, many employers had difficulty in recruiting staff. Ms Miriam LAU echoed Mr CHEUNG's concern, adding that many small contractors undertaking repair, maintenance, alteration and addition works were also facing the same problem. Ms LAU considered that it was due to employees' higher expectation for employers' provision of paid rest days, following the announcement by the Administration on the new wage arrangement for non-skilled workers engaged under government service contracts upon the implementation of SMW.

57. In response, SLW made the following points -

- (a) the Administration had thoroughly and carefully examined the likely impact of the implementation of SMW on government service contracts that relied heavily on the deployment of non-skilled workers, and sought to strike a balance among various considerations before formulating the new wage arrangement for these non-skilled workers, which sought to mandate service contractors to pay their non-skilled workers at not less than the SMW rate plus one paid rest day in every period of seven days; and
- (b) the new wage arrangement was developed solely for government service contracts that relied heavily on the deployment of non-skilled workers and in no way meant to serve as a guideline for the private sector. It would be for private enterprises to decide on their own arrangements, taking into account their own business conditions, affordability and needs.

Productivity assessment for persons with disabilities

58. Mr CHEUNG Kwok-che was concerned about the number of persons with disabilities who had invoked the productivity assessment after the implementation of SMW on 1 May 2011, and the adequacy of approved assessors to carry out the assessment. He sought information on the number of persons with disabilities who had elected to undergo a productivity assessment, and the respective numbers of registered occupational therapists, registered physiotherapists, registered social

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workers and vocational rehabilitation practitioners granted the status of approved assessor to conduct productivity assessment.

59. Commissioner for Labour ("C for L") advised that -
- (a) according to the results of a survey conducted by the Census and Statistics Department in 2007, there were some 30 000 to 40 000 persons with disabilities in employment, and around 10 000 of them were earning hourly wages below \$28. In the first two weeks of May 2011, five productivity assessments for employees with disabilities had been arranged;
 - (b) so far, a total of 992 applications had been received for registration as approved assessors and the first batch of 205 qualified applicants had been registered as approved assessors under MWO and the Minimum Wage (Criteria for Approved Assessors) Notice. Among these 205 approved assessors, 113 were vocational rehabilitation practitioners. The remaining 92 belonged to the other three categories; and
 - (c) the second batch of more than 100 eligible persons would become approved assessors upon their successful completion of the training arranged by LD. There would be an increasing number of approved assessors to carry out the assessments for persons with disabilities.

(Members agreed to extend the meeting by 30 minutes.)

Publicity and promotion

60. Noting the numbers of public enquiries on MWO and complaints about non-compliance with the law received in the first two weeks of May 2011, Mr WONG Kwok-hing said that the probable problem of non-compliance with the SMW requirement might not have fully unfolded until early June 2011 when it came to the first pay day by which employers had to pay their employees wages not less than SMW. He reminded the Administration to monitor the situation closely.

61. Sharing Mr WONG Kwok-hing's concern, Mr IP Wai-ming asked whether the Administration had any preparations for a sharp increase in the number of reports of non-compliance with the SMW requirement, which might arise in the following month.

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62. In response, SLW said that the Administration shared the views of Members that the first week of June 2011 was a critical time to assess how well the SMW requirement was met. To ensure the smooth implementation of SMW, the Administration would closely monitor the situation and take necessary actions as appropriate, including -

- (a) launching an on-line Minimum Wage Reference Calculator before the pay day at the end of May to provide a quick preliminary reference for employers and employees in ascertaining whether the employees' wages were up to the SMW level;
- (b) conducting proactive workplace inspections to establishments of various trades and mounting targeted enforcement campaigns for low-paying sectors;
- (c) strengthening LD's 24-hour enquiry hotline (2717 1771) to answer public enquiries on MWO; and
- (d) stepping up the in-person consultation and conciliation services on MWO provided by LD's Labour Relations Division for employers and employees in need to help both parties resolve their differences.

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63. Ms Miriam LAU requested the Administration to provide Members with information on the Minimum Wage Reference Calculator before rolling out the programme on LD's webpage at the end of May. SLW agreed to provide the requested information after the meeting.

64. The Deputy Chairman pointed out that many security guards were working in single block private residential buildings. She considered that the Administration should step up its promotional efforts targeting owners and residents of single block residential buildings in old districts to promote their awareness and understanding of the SMW requirement. SLW said that LD had organized publicity activities like briefings targeted at owners' corporations and arranged the distribution of SMW leaflets at Home Affairs Department's district offices.

Reference guidelines on SMW

65. Mr WONG Kwok-hing was concerned about the progress of the Administration in drawing up and finalizing the industry-specific

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guidelines on SMW. He asked when the Administration would make available the industry-specific guidelines on LD's webpage.

66. SLW replied that industry-specific guidelines covering nine industries, namely the catering, retail, property management/security/cleaning services, hotel/tourism, logistics, and real estate industries, had been drawn up in consultation with the concerned industry-based Tripartite Committees and stakeholders to address their particular mode of operation or pay arrangements. These finalized industry-specific guidelines, together with the general reference guidelines on SMW for employers and employees, had been uploaded onto LD's webpage for easy reference, access and retrieval by the public.

67. Noting that the Administration would continue to have dialogue with industry-based Tripartite Committees on SMW implementation, the Chairman considered that the Administration should bear in mind the need of resolving problems, if any, between employers and employees and reaching consensus through tripartite negotiations, so as to facilitate the smooth implementation of SMW in the relevant industries.

68. Mr IP Kwok-him held the view that the Administration should collect feedback continuously from concerned stakeholders, with a view to improving and refining the existing industry-specific guidelines.

69. In response, C for L advised that LD had printed the general as well as the industry-specific reference guidelines on SMW for wide distribution such as through LD's and Home Affairs Department's district offices, apart from uploading them onto LD's webpage. While the industry-specific guidelines were drawn up after consultation with Tripartite Committees and relevant stakeholders, comments and suggestions to the guidelines received in future would be considered carefully.

70. Mr IP Wai-ming said that he had received feedback from the Container Transportation Employees General Union about the lack of thorough consultation on the industry-specific guidelines for the logistics industry. He shared the view that the Administration should continue to keep under review and, where necessary, refine the existing reference guidelines on SMW.

71. C for L said that the logistics tripartite committee had started the discussion on the industry-specific guidelines at its meeting in January 2011. LD also issued the draft industry-specific guidelines on SMW for

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the logistics industry on 11 April 2011 and invited relevant employers' associations, trade unions and stakeholder groups to provide their views and comments before finalizing the guidelines for publication and distribution on 29 April 2011.

(Members agreed to further extend the meeting by another 15 minutes.)

72. The Chairman and Mr IP Wai-ming were concerned whether the consultation in respect of the industry-specific guidelines, especially those for the catering and logistics industries, had been conducted in haste. They emphasized the importance of conducting thorough consultation with Tripartite Committees and relevant stakeholders.

73. Sharing a similar view, Mr Tommy CHEUNG expressed strong dissatisfaction with the Administration's belated production and distribution of the industry-specific guidelines on SMW for the catering industry. He said that many employers in the catering sector, particularly those of small and medium enterprises, were yet in full understanding of their obligations under the SMW regime and the method for calculating wages. He urged the Administration to adopt a lenient approach in carrying out law enforcement actions during the initial stage of implementation of SMW. He had also observed that in the catering industry, the employer-employee relations had deteriorated in recent months owing to the implementation of SMW. The issues of whether meal breaks and rest days should be paid were the key points of contention.

74. In response, SLW stressed that neither MWO nor EO prescribed whether meal breaks and rest days should be paid. Such matters were to be agreed between employers and employees. If existing employment terms in these respects needed to be clarified or renewed because they were unclear and/or employers had genuine problems in shouldering the financial burden, there should be thorough staff consultation with a view to reaching consensus on lawful, sensible and reasonable grounds through labour-management communication and negotiation. SLW added that as SMW was a new policy, the Administration would stand ready to assist employers and employees to resolve their problems and reach consensus. Tripartite committees would also discuss the implementation of SMW in their industries at forthcoming meetings. In tandem with the implementation of MWO, LD would adopt a multi-pronged strategy to monitor compliance with the law, through conducting proactive workplace inspections to establishments of various trades and mounting targeted enforcement campaigns for low-paying sectors. During

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workplace inspections, Labour Inspectors would explain the requirements of MWO if employers and employees did not have a clear understanding of their respective obligations and entitlements under MWO. If problems or irregularities were detected, Labour Inspectors would require employers to take appropriate measures to ensure compliance with the law. Prosecution would be instituted in cases with sufficient evidence of wilful breach of legislation.

Enforcement work

75. In response to Mr Paul TSE's enquiry about LD's enforcement work, SLW advised that during the period from 1 to 16 May 2011, Labour Inspectors had conducted 1 657 inspections. Of these inspections, 23 employees suspected that their wage level was below the SMW requirement. Labour Inspectors immediately explained to the parties concerned on the requirement of the law and would take follow-up actions in order to safeguard the rights of the employees.

Other issue

76. Mr Paul TSE asked whether the number of applications for the Comprehensive Social Security Assistance ("CSSA") had increased after the implementation of SMW.

77. SLW responded that since SMW could affect eligibility for CSSA, the Administration had been keeping a close watch over the number of applications for CSSA. When compared with that in the preceding year, the number of applications for CSSA received in the first few months of 2011 had recorded a drop.

78. There being no other business, the meeting ended at 5:14 pm.