立法會
Legislative Council

LC Paper No. CB(2)40/11-12
(These minutes have been seen by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 12 July 2011, at 4:30 pm
in Conference Room A 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 Tommy CHEUNG Yu-yan, 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 IP Wai-ming, MH Hon IP Kwok-him, GBS, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung
Members absent	:	Hon Andrew CHENG Kar-foo Hon Frederick FUNG Kin-kee, SBS, JP Hon WONG Kwok-kin, BBS Dr Hon PAN Pey-chyou
Public Officers attending	:	Item II Mr Matthew CHEUNG Kin-chung, GBS, JP Secretary for Labour and Welfare

Mr CHEUK Wing-hing, JP
Commissioner for Labour

Mr Byron NG Kwok-keung, JP
Assistant Commissioner for Labour
(Labour Relations)

Ms Melody LUK Wai-ling
Chief Labour Officer (Labour Relations)
Labour Department

Miss Candice CHENG Lai-fan
Senior Labour Officer (Labour Relations)
Labour Department

Item III

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

Mr David LEUNG, JP
Deputy Commissioner for Labour
(Occupational Safety and Health)

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

Dr Mandy HO Mang-yee
Occupational Health Consultant (2)
Labour Department

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

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

Ms Kiwi NG
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)2311/10-11)

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

II. Measures adopted by the Labour Department in handling false self-employment
(LC Paper Nos. CB(2)1867/10-11(01), CB(2)2313/10-11(01) and (02))

2. Secretary for Labour and Welfare ("SLW") briefed members on the measures adopted by the Labour Department ("LD") in tackling false self-employment and statistics on cases relating to false self-employment, as detailed in the Administration's paper.

3. Members noted that LD had produced a leaflet entitled "Know Your Identity and Rights - Employee? Contractor / Self-employed Person?" ("the leaflet"), featuring relevant court cases for reference by self-employed persons and employees, for distribution to the public.

(*Post-meeting note*: The leaflet tabled at the meeting was circulated to members vide LC Paper No. CB(2)2363/10-11 on 13 July 2011.)

Proliferation of false self-employment

4. Mr WONG Kwok-hing noted that in the 20 months between October 2009 and May 2011, the Labour Relations Division ("LRD") registered 397 claim cases in which the claimants alleged to have disputes on false self-employment. He expressed concern that with the commencement of the Minimum Wage Ordinance (Cap. 608) ("MWO") on 1 May 2011, the problem of false self-employment might become more serious since employers might circumvent the requirement of paying employees the statutory minimum wage ("SMW") by forcing the latter to become self-employed persons. He enquired whether the number of complaints about false self-employment received by LD had recorded a notable increase after 1 May 2011.

5. In response, SLW said that -

(a) in the 20 months from October 2009 to May 2011, LRD registered 397 claim cases or an average of 20 cases per month in which disputes on false self-employment were involved; and

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(b) in May 2011 alone, LD received 18 complaint/claim cases involving false self-employment disputes. The figure was similar to that recorded before the commencement of MWO. So far, there was no evidence to suggest that the problem of false self-employment had a direct correlation with the implementation of SMW.

Statistics on disputes of false self-employment and case analysis

6. The Deputy Chairman sought information about the 397 claim cases which involved disputes on false self-employment.

7. Assistant Commissioner for Labour (Labour Relations) ("AC for L (LR)") responded that -

(a) the 397 cases with alleged false self-employment disputes involved 526 claimants, mostly from the transportation and personal services industries. The claimants in 186 cases, representing 47% of all alleged cases, had signed self-employment contracts. These claims normally arose after the employment or self-employment relationship had ceased and the claimants wished to claim back the employment benefits due to them during the period;

(b) 128 of the 397 alleged cases of false self-employment were settled after intervention or conciliation of LRD. 251 cases were referred to the Labour Tribunal ("LT") or the Minor Employment Claims Adjudication Board ("MECAB") for adjudication and 18 cases were still under processing; and

(c) among all the alleged false self-employment claims, it was assessed after discussion with parties to the claims and analysis of relevant work conditions that employment relationship probably existed in about 100 cases. For this category of cases where false self-employment was more evident, LD examined with priority whether there was sufficient information for criminal investigation under the Employment Ordinance (Cap. 57) ("EO") or the Employees' Compensation Ordinance (Cap. 282) ("ECO").

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8. The Deputy Chairman and Mr IP Wai-ming requested the Administration to provide after the meeting more detailed information about the 397 alleged false self-employment disputes, with a breakdown of the more common category of transportation industry in which false self-employment disputes were involved, the nature of disputes involved, the time taken for conclusion of the cases and their outcome, and if prosecution action was taken, the nature of the offence and the penalty awarded by the court.

9. In response to Mr CHAN Kin-po's enquiry on whether the statistics collected during the 20 months in question showed an upward trend in the number of false self-employment cases, C for L advised that the figures were generally steady and did not show any particular rising trend in the number of complaints involving self-employment disputes since late 2009.

Proposal of legislating against the malpractice of false self-employment

10. Expressing concern about the effectiveness of the three-pronged approach adopted by LD in tackling false self-employment, Mr WONG Kwok-hing asked whether the Administration would embark on a study to examine the feasibility of legislating against false self-employment.

11. SLW responded that the suggestion of clearly distinguishing an employment relationship from that of "self-employment" through legislation had been fully deliberated by both the Labour Advisory Board ("LAB") and the Panel on Manpower in 2009, and LAB had re-visited the issue again in May 2011. He reiterated that notwithstanding the good intention behind the suggestion, to define self-employment by legislation was not practicable. Looking at past court cases involving self-employment disputes, there was no single conclusive test to distinguish whether a person was an employee or a self-employed person. As a matter of fact, all circumstances of the case had to be taken into account and there was no hard and fast rule as to how important a particular factor should be. While it was difficult to list out all the possible scenarios clearly through legislative provisions, attempts to set out categorically in the law what constituted self-employment might be counterproductive as unscrupulous employers who intended to exploit employees might conveniently take this as guidance for circumventing the law.

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12. SLW stressed that, as observed from past court cases, employers who tried to evade their responsibilities intentionally under the guise of false self-employment could not evade their responsibilities under labour laws when their employees filed employment claims against them. A person or company found to be an employer by the court not only had to pay back the statutory rights and benefits retroactively to a worker who was falsely labelled as a self-employed person, but might also be liable to prosecution for failing to comply with EO or ECO.

13. Mr LEUNG Kwok-hung held the view that although LD would, when there was sufficient evidence of unscrupulous acts, take out prosecution against those employers who intentionally evaded their responsibilities under labour laws and caused employees to lose their employment benefits, it was necessary for the Administration to introduce new legislation with enhanced penalty provisions in order to provide an adequate deterrent against false self-employment.

14. The Deputy Chairman and Mr IP Wai-ming considered the reasons given by the Administration for not introducing legislation against false self-employment unacceptable. They strongly requested that the Administration should introduce new legislation and impose heavier punishment in order to deter unscrupulous employers from deliberately evading their statutory responsibilities under the pretext of self-employment.

15. In response, SLW and Commissioner for Labour ("C for L") made the following points -

(a) according to the General Household Survey conducted by the Census and Statistics Department, self-employed persons constituted a significant proportion of the local workforce, with a number in excess of 200 000 as at the end of 2010;

(b) to define self-employment by drawing an exhaustive list of criteria might fail to account for the possible specific features in individual occupational groups and sectors and in turn inadvertently hinder the development of entrepreneurship and the freedom of contract. Genuine self-employment could be a driving force for economic development, allowing a freer and more flexible relationship between the service provider and user and serving the specific circumstances and needs of some individuals. Hence, the Administration considered that the more effective

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ways to tackle the problem of false self-employment were through educating people and employers on the differences, merits and drawbacks as well as the legal rights and obligations of the two contractual relationships of employment and self-employment, and reminding them to clarify the relevant modes of cooperation before entering into contracts;

(c) all along, LD had endeavoured to protect the statutory rights of employees through proactive enforcement actions. Labour Inspectors conducted workplace inspections rigorously to check employers' compliance with the law and educate employees on their statutory rights and protection. Suspected breaches of labour laws, when detected, would be thoroughly investigated and prosecution would be instituted against offending employers whenever there was sufficient evidence;

(d) between October 2009 and May 2011, Labour Inspectors, apart from routine workplace inspections, conducted special enforcement inspections of establishments in industries which were more prone to have false self-employment disputes, such as transportation and personal services industries. A total of 452 establishments were inspected and five cases of suspected false self-employment in breach of EO or ECO were detected. Prosecution action was taken out against two employers;

(e) LD had, during the 20 months in question, received a total of 15 complaints on false self-employment through the telephone complaint hotline and other means. Labour Inspectors conducted follow-up inspections to the concerned workplaces for investigation. At the same time, persons met at the workplaces were briefed on their rights under labour-related legislation. Subsequent prosecution was taken out in four of these complaint cases; and

(f) including those cases mentioned in sub-paragraphs (d) and (e) above, LD had taken out prosecution in respect of 28 cases, with 21 of them convicted, two dismissed, and the remaining five still being processed. The level of fine imposed on convicted employers for non-compliance with labour-related legislation was in the range of $4,000 to $60,000.

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16. The Chairman held the view that should statistics indicate that the transportation and personal services industries were more prone to have false self-employment disputes, Labour Inspectors should conduct proactive inspections and mount targetted enforcement campaigns against establishments in these industries.

17. C for L said that the inspections conducted between October 2009 and May 2011 already covered establishments engaged in transportation, hairdressing, massage and other personal services.

18. Responding to the Chairman's enquiry on whether difficulties were encountered in taking out prosecution against the suspected employers, C for L and AC for L (LR) said that in many cases, the relevant parties claimed that they entered into a self-employment contract by mutual consent. AC for L (LR) stressed that notwithstanding that prosecution could not be taken out against each and every employer suspected of being involved in false self-employment owing to lack of sufficient evidence, an all-out effort would be made to follow up on suspected cases. Labour Inspectors conducted workplace inspections and employers were advised to carefully assess the risks involved should they wish to enter into contracts to engage someone as a self-employed person. They were also duly advised that they would still be required to fulfill their responsibilities under relevant legislation if in essence there existed an employer-employee relationship. Not only would he be required to pay back statutory benefits retroactively to employees who were falsely labelled as "self-employed", he might also have to bear the legal consequences for having committed offences under relevant labour laws. Besides, Labour Inspectors also drew workers' attention to the difference between an employee and a self-employed person and reminded them of the importance of differentiating the two distinct identities. They also distributed leaflets to the workers and left their contacts so that if the latter wished to pursue their rights and benefits after careful consideration, they would have the appropriate channel to do so. In individual cases, conciliation officers would continue to follow up with employers by telephone calls or visits, with a view to impressing upon them the above messages through detailed discussion on the issue of false self-employment and advising employers to review and improve the situation. Subsequent to LD's follow-up actions, some employers who had been involved in false self-employment disputes indicated that they had changed from hiring self-employed persons to directly employing employees across-the-board.

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19. The Chairman held the view that the measures adopted by LD could in no way stop unscrupulous employers from labelling their employees as "self-employed" despite the fact that they had all the characteristics of an employee, and hence the Administration should introduce legislation against false self-employment without further delay.

Promotion and publicity work in enhancing public awareness

20. Mr CHAN Kin-por considered the leaflet issued by LD a useful reference for relevant parties in understanding the important factors that differentiated an employee from a self-employed person and the differences in the rights and benefits enjoyed by them respectively. He suggested that the Administration should further enrich the contents of the leaflet by providing more court cases for illustration of employment relationship which had been falsely labelled as self-employment. SLW noted the suggestion.

21. Mr LEUNG Kwok-hung suggested that to facilitate public understanding of the problem of false self-employment, the Administration should translate the court cases as referred to in the leaflet and produce Announcements in the Public Interest ("APIs") for broadcasting on television.

22. SLW responded that to further arouse the awareness of the public on the subject, LD had newly produced a television API modelling on real-life workplace scenarios to illustrate to employers, employees and the general public for publicity purpose the differences between an employee and a contractor or self-employed person. Emphasis had been placed on reminding the relevant parties that they should understand the terms of the contract and clarify the rights and benefits associated with different status before entering into a contract so that a sensible decision could be made. The API had been broadcast through major television channels since October 2010 and shown in some community halls and community centres.

23. Mr LEUNG Yiu-chung expressed concern about the protection for self-employed persons who fell victims to injuries in workplaces.

24. In response, AC for L (LR) advised that if in essence there existed an employer-employee relationship, the interests of the injured employee, although falsely labelled as a self-employed person, would still be safeguarded by ECO. If the employer had not taken out a valid insurance policy, the injured employee could recover employees' compensation

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from the Employees Compensation Assistance Fund Board. However, if the injured worker was a genuine self-employed person, he would have to take out an insurance policy himself.

25. The Chairman said that the labour sector had long advocated the establishment of a central compensation insurance fund to address the problem as referred to by Mr LEUNG Yiu-chung. He said that the Panel might discuss the issue in future.

III. A review of occupational diseases in Hong Kong in 2010

(LC Paper Nos. CB(2)1972/10-11(01), CB(2)2313/10-11(03) and (04))

26. Deputy Commissioner for Labour (Occupational Safety and Health) ("DC for L (OSH)") introduced the Administration's paper which set out the situation of occupational diseases in Hong Kong in 2010 and the recent initiatives of LD in promoting occupational health, including the prevention of heat stroke at work, and enforcing relevant occupational safety and health laws.

Heat stroke at work

27. Mr WONG Kwok-hing expressed grave concern about recent incidents involving members of the public suffering from heat stroke at work, with some of the cases resulting in the death of workers. He asked whether the Administration had maintained any statistics on these cases.

28. SLW responded that since May 2009, LD had started to collate figures on injury cases owing to heat stroke at work as confirmed by medical practitioners. In 2009, there were a total of five such cases with four involving outdoor work and one involving indoor work. In 2010, there were two such cases which involved physical training and driving vehicles without air-conditioning respectively. LD would continue to collate figures on these cases to help formulate targetted strategies for the prevention of heat stroke at work.

29. The Chairman noted with concern that there were different cases of heat stroke at work in recent months. He sought information on the number of such cases in the first half of 2011. Knowing that LD had published a pamphlet on "Prevention of Heat Stroke at Work in a Hot Environment" suggesting preventive measures such as provision of drinking water, setting up of sunshades and providing rest areas for

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employers to follow, he asked whether employers were advised to make arrangements for their workers to take rest breaks at regular intervals.

30. In response, SLW advised that -

(a) so far, there were six suspected cases of heat stroke at work in 2011;

(b) given the arrival of the long summer days in Hong Kong, LD would step up law enforcement during the months between April and September, which was the peak season for heat stroke, and conduct a series of inspections to targetted workplaces with a higher risk of heat stroke, for example, construction sites, outdoor cleansing workplaces and container yards;

(c) LD would take out immediate enforcement actions if employers were found violating the relevant legal requirements, such as failure to provide employees with drinking water;

(d) LD had published a guide on the prevention of heat stroke at work in a general hot environment and practical methods for abating the risk of heat stroke. These methods included arranging outdoor work in cooler periods during daytime, providing mechanical aids to reduce the physical exertion of workers at work, providing adequate drinking water and reminding workers to drink more water, providing a shelter at the workplace and rest areas to shield off direct sunlight, enhancing ventilation at the workplace, arranging for workers to take rest breaks at intervals, and providing relevant information, instructions, training and supervision;

(e) to address the problem of heat stroke to professional drivers and workers in construction sites, LD would collaborate with relevant stakeholders to promote occupational safety and health messages among the drivers and workers; and

(f) for the non-air-conditioned buses, one of which involved in a recent accident, there were dozens of them in service. The bus companies had plans to phase out all such buses in 2012.

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31. The Chairman requested the Administration to provide further information on the six suspected cases of heat stroke at work reported to LD in the first half of 2011, including the results of the relevant medical assessments and irrespective of whether the cases were confirmed as work-induced, the causes for the heat stroke in each of the cases.

32. The Chairman took the view that many of the cases of heat stroke at work were caused by working long hours without sufficient rest. To tackle the problem at source, the Administration should consider legislating to provide for rest breaks for employees.

33. SLW responded that the introduction of specific legislation for the prevention of heat stroke at work was a complex issue, given the need to cater for different work activities, environment and processes which might pose a higher risk of heat stroke to employees. It should be noted that the existing occupational safety and health legislation was already designed to have the flexibility to cover different work activities and environment for the general protection of the safety and health of workers, including the protection of workers from heat stroke at work.

List of compensable occupational diseases in the Second Schedule to ECO and criteria for prescribing occupational diseases

34. Mr WONG Kwok-hing noted that most musculoskeletal disorders, such as low back, shoulder-neck and upper limb pain as well as osteoarthritis of the knee, were common among clerical and service personnel and manual workers, including aircraft cleaning workers and cargo handling workers in the airport, but they had not been prescribed as occupational diseases. He enquired whether the Administration would consider prescribing these musculoskeletal disorders as occupational diseases so as to provide protection to more workers.

35. DC for L (OSH) responded that in recent years, the Administration had been promoting the prevention of work-related musculoskeletal disorders among office personnel and catering workers through various channels. Apart from publishing specific guidelines on prevention of musculoskeletal disorders for distribution to employers and employees, LD proactively carried out publicity and promotion among air transport workers at the airport. For example, in 2010, 12 health talks were jointly organized with the Hong Kong Airport Authority and various ground handling service operators, covering such topics as risk assessments for manual handling operations, back care and simple stretching exercises at workplaces.

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36. On the question of prescribing musculoskeletal disorders as occupational diseases, Occupational Health Consultant (1) of LD ("OHC(1)") advised that Hong Kong followed international practices and would make reference to the criteria adopted by the International Labour Organization ("ILO") in determining whether a disease should be prescribed as an occupational disease for employees' compensation. Prescription of a disease as an occupational disease was based on the following criteria -

(a) whether workers engaged in a certain occupation in Hong Kong had a significant and recognized risk of contracting the disease; and

(b) whether the causal relationship between the disease and the occupation could be reasonably presumed or established in individual cases.

37. OHC(1) stressed that the second criterion was particularly important in differentiating occupational diseases from work-related diseases. At present, ECO, the Occupational Deafness (Compensation) Ordinance (Cap. 469) and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) ("PMCO") prescribed altogether 52 occupational diseases. These 52 occupational diseases were diseases having causal relationship with specific occupations, generally with only one causal agent, and recognized as such. Musculoskeletal disorders, on the other hand, involved diseases with multiple causal agents and resulted from the interaction of these factors, including factors in the work environment. The musculoskeletal disorders as referred to by Mr WONG Kwok-hing were common in the general population and not limited to workers engaged in a certain occupation. As they could not satisfy the criteria for prescribing as occupational diseases, they were classified as work-related diseases instead.

38. Mr WONG Kwok-hing and Mr IP Wai-ming expressed disappointment with the Administration for disregarding the interest of employees in Hong Kong when considering whether to prescribe musculoskeletal disorders as occupational diseases. They considered that the Administration should actively consider the proposal of prescribing musculoskeletal disorders as occupational diseases.

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39. The Deputy Chairman said that as the service industry had become the mainstay in Hong Kong and the manufacturing sector was shrinking in recent decades, the Administration should review the list of compensable occupational diseases in the Second Schedule to ECO to see whether its scope and coverage should be expanded to keep pace with the latest economic developments. She took the view that certain work-related diseases, such as musculoskeletal disorders and lower limb varicose vein, should be prescribed as occupational diseases.

40. SLW responded that the Administration reviewed the list of compensable occupational diseases from time to time and had updated the list in the light of international developments, making reference to the criteria adopted by ILO. As a matter of fact, mesothelioma was prescribed as a new occupational disease under PMCO in 2008. As prevention was better than cure, LD would continue with its publicity programmes to raise the awareness of the public about the prevention of occupational diseases and work-related diseases.

41. The Chairman shared the view that the Administration should commence a comprehensive review of the existing regulatory framework governing occupational safety and health of workers, with a view to mapping out more effective strategies and measures, such as introducing an insurance system, to strengthen the protection for workers against occupational diseases and work-related diseases.

42. Mr LEUNG Kwok-hung said that employees and where applicable, their representative associations, should be actively involved in the review process.

43. In response, SLW and DC for L (OSH) made the following points -

(a) the proposal of setting up an insurance system was a new concept. It should be considered with great care and prudence;

(b) once a disease was prescribed as an occupational disease, workers suffering from the disease could claim compensation if they were engaged in the designated occupations. It was important to establish the causal relationship between a disease and the occupation; and

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(c) since 1991, there had been four amendments to the list of compensable occupational diseases in the Second Schedule to ECO, which resulted in the addition of a total of 13 new occupational diseases and expansion of the coverage of three occupational diseases.

44. Mr Alan LEONG held the view that although the categorization of a disease as "occupational disease" was by no means an easy task, the Administration should make its best endeavour to study and ascertain whether certain bodily injuries or musculoskeletal disorders were caused by repetitive, excessive or strenuous movements of the relevant parts for prolonged periods at work. In the event that the causal relationship between the occupation and the disease could be reasonably presumed or established in the majority of the cases, the Administration should amend the law to make clear the circumstances under which such injuries or disorders would be considered as occupational diseases. The Administration might, for the purpose of precluding non-work induced injuries or disorders, consider adopting a more restrictive approach in defining the qualifying conditions. His view was shared by the Chairman and Mr LEUNG Kwok-hung.

45. In response, OHC(1) reiterated that in considering whether a disease should be prescribed as an occupational disease for employees' compensation, there was a need to establish the causal relationship between the disease and the occupation. He advised that even if a disease was not prescribed as occupational disease and included in the list of compensable occupational diseases in the Second schedule to ECO, an employee was still protected by ECO and could apply for compensation under section 36(1) of ECO. However, it had to be proved in individual cases that the disease was a personal injury by accident arising out of and in the course of employment.

Occupational and work-related diseases among workers in the airport

46. Mr IP Wai-ming expressed concern that many aircraft cleaning workers and cargo handling workers had developed musculoskeletal disorders after having worked in the airport for two to three years. He suggested that the Administration should conduct "tracking study" on these workers in order to understand whether there was a causal relationship between the occupations and musculoskeletal disorders suffered by workers engaging in aircraft cleansing or cargo handling work.

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47. The Chairman noted that to ensure that occupational health requirements under the Factories and Industrial Undertakings Ordinance (Cap. 59) ("FIUO") and the Occupational Safety and Health Ordinance (Cap. 509) ("OSHO") were complied with, staff of LD carried out surprise inspections at different workplaces regularly and took enforcement actions against irregularities identified. He expressed concern whether LD inspectors had the relevant professional competence to identify ergonomic problems at work and assess employees' risks of contracting occupational diseases.

48. DC for L (OSH) and OHC(1) responded that -

(a) all along, LD attached great importance to work-related musculoskeletal disorders developed among workers engaging in aircraft cleansing or cargo handling work. LD had been urging airline operators and ground handling service operators to implement preventive measures to safeguard the occupational health of their employees. It had also reviewed the risk assessments conducted by the three companies on cargo handling operations, with a view to ensuring that appropriate measures, such as the provision of mechanical devices and uniform with knee pads, had been taken to reduce the health risk caused by excessive exertion of the hands and forearms and prolonged kneeling;

(b) enforcement of OSHO and FIUO and their subsidiary legislation was undertaken by Occupational Safety Officers and Occupational Hygienists under the supervision of medical practitioners specializing in occupational medicine. These LD officers had the professional knowledge to identify ergonomic problems at work and assess employees' risks of contracting occupational diseases; and

(c) as far as protection to cargo handling workers was concerned, LD officers conducted surprise inspections of the airport ramp operations, without prior notice and sometimes also at night or by means of remote surveillance so that the employers concerned had no knowledge of the inspections and, therefore, could not make any preparation on the work environment and processes prior to the inspections. During the inspections, LD officers observed whether mechanical devices were provided to help workers lift heavy loads and whether the workers had adopted a proper posture in handling cargoes.

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49. Mr IP Wai-ming questioned the effectiveness of inspections conducted in the airport, given that employers would make preparatory work once they learned that the inspection team had applied for permits to enter the restricted areas of the airport. Echoing his view, the Deputy Chairman cited two cases involving workers handling cargo at the airport and telephone operators in Hong Kong Jockey Club's off-course betting centres and said that it was difficult to prove by surprise inspections the significant risk of contracting a particular occupational disease by people engaging in a specific industry or work process.

50. OHC(1) responded that in carrying out surprise inspections at different workplaces, the inspection teams would make use of appropriate equipment to assess employees' risk of contracting a certain disease. In assessing the noise exposure of the off-course betting centre operators in real-life situation, LD officers conducted the workplace inspections at a time when business activities were at a maximal level, and with the use of specialized equipment.

51. The Chairman said that the Administration should conduct more corroborative studies on high-risk work types or processes and if so, the findings of the studies, together with the recommendations of experts on preventive measures that should be taken by employers and employees against occupational diseases, should be made public for reference by labour unions and the workers concerned.

IV. Any other business

Progress of preparation for the implementation of the Work Incentive Transport Subsidy ("WITS") Scheme

52. The Deputy Chairman expressed concern about the progress of the preparatory work undertaken by LD for the implementation of the WITS Scheme. Noting that the Administration planned to launch the Scheme in October 2011 and members in general were concerned about the implementation details of the Scheme, she suggested that the Administration be requested to provide a progress report to the Panel before launching the Scheme in October 2011.

53. SLW and C for L advised that following the approval by the Finance Committee of the funding proposal on 25 February 2011, the Administration was pressing ahead on all fronts with the preparatory work for the implementation of the WITS Scheme. Among others, LD

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would set up a new WITS Division in Tsim Sha Tsui to perform all operational functions, including receiving and processing applications, handling appeals, effecting subsidy payments, and identifying and investigating fraudulent cases. The Administration was also devising the application procedures and implementation details of the Scheme, developing the information technology system, recruiting and providing training to staff, and drawing up and implementing publicity and promotional plans. It was the plan of the Administration to start receiving WITS applications from 3 October 2011 onwards and make 1 April 2011 as the effective date for subsidy payment. This meant that applicants might immediately apply for subsidy amounting to $3,600 for the previous six months dating back to April 2011.

54. The Deputy Chairman considered it necessary for the Panel to be briefed on the detailed arrangements in respect of the application and processing procedures for WITS, before the Administration's finalization and announcement to the public of the arrangements. The Chairman requested the Administration to provide the Panel before the end of August 2011 with an information paper for circulation first, before deciding on whether to hold a meeting to discuss the issue.

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(*Post-meeting note*: The Administration's paper was circulated to members vide LC Paper No. CB(2)2616/10-11 on 14 September 2011.)

Legislative proposal on compulsory reinstatement and re-engagement

55. The Chairman enquired about the latest development of the legislative work relating to the introduction of compulsory order for reinstatement or re-engagement in respect of cases of unreasonable and unlawful dismissal.

56. SLW responded that the Administration was working on a draft bill to amend EO for the purpose of empowering LT to impose orders for compulsory reinstatement or re-engagement in cases of unreasonable and unlawful dismissal. In the light of the read-across implications of the Employment (Amendment) Ordinance 2010 which had come into operation on 29 October 2010 to create a new offence against wilful default of the sums awarded by LT or MECAB, LAB was being consulted on the details of the proposal. The Administration aimed at completing the consultation and finalizing the legislative proposal as soon as possible.

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57. The Chairman urged the Administration to speed up its legislative work, with a view to introducing the relevant bill into the Legislative Council and completing the legislative exercise within the 2011-2012 legislative session.

Overseas duty visit to the Republic of Korea from 24 to 28 July 2011

58. The Chairman reminded members that a pre-visit informal meeting would be held on Thursday, 14 July 2011, from 10:30 am to 11:30 am to update members of the progress in the organization of the overseas duty visit to the Republic of Korea and seek members' views on various logistical arrangements for the visit.

59. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 2
Legislative Council Secretariat
12 October 2011