

立法會
Legislative Council

LC Paper No. CB(2)2723/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Wednesday, 23 May 2012, at 8:30 am
in Conference Room 3 of the Legislative Council Complex

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
Hon CHAN Kin-por, JP
Hon CHEUNG Kwok-che
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

Member absent : Hon Wong Sing-chi

Public Officers attending : Item IV

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

Mr CHEUK Wing-hing, JP
Commissioner for Labour

Mr Ernest IP Yee-cheung
Assistant Commissioner for Labour
(Employees' Rights & Benefits)

Ms Teresa FONG Yuk-sim
Senior Labour Officer (Employees'
Compensation) 1
Labour Department

Mr Raymond FONG Siu-leung
Senior Labour Officer (Employees'
Compensation) 2
Labour Department

Item V

Ms Doris HO Pui-ling, JP
Deputy Secretary for Financial Services and
the Treasury (Treasury)

Mr Charles HUI Pak-kwan
Assistant Commissioner for Labour
(Labour Relations)

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

Mr SIN Kwok-hau
Assistant Director (Grade Management and
Development)
Food and Environmental Hygiene Department

Mrs Lily TSANG CHOW Pat-ying
Assistant Director (Finance)
Leisure and Cultural Services Department

Mr HO Wing-ip
Chief Manager/Management (Support Services)
Housing Department

Mr TSE Chi-tai
Senior Property Service Manager/Services
Support (Acting)
Housing Department

Clerk in attendance : Ms Alice LEUNG
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)1978/11-12)

The minutes of the meeting held on 15 March 2012 were confirmed.

II. Information paper(s) issued since the last meeting

2. Members noted that no information paper had been issued since the last meeting.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1980/11-12(01) and (02))

Regular meeting in June 2012

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting to be held on 21 June 2012 at 2:30 pm -

- (a) Study on Legislating for the Provision of Paternity Leave in Hong Kong; and

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- (b) Measures to improve the occupational safety and health performance of the construction industry and professional drivers.

Regarding item (b), Mr WONG Kwok-hing suggested and members agreed to invite deputations to give views on the matter.

(Post-meeting note: On the instruction of the Chairman, the next regular meeting of the Panel was rescheduled to be held on Wednesday, 20 June 2012, at 8:30 am. Members were informed of the rescheduling of meeting in June 2012 vide LC Paper No. CB(2)2199/11-12 on 30 May 2012.)

Special meeting on 29 May 2012

4. The Chairman reminded members that a special meeting had been scheduled for Tuesday, 29 May 2012, from 9:00 am to 12:30 pm to discuss with the Administration and deputations on the review of the statutory minimum wage ("SMW") rate.

Other issues

5. The Chairman asked about the work progress of the Administration in respect of the review of the definition of "continuous contract" under the Employment Ordinance (Cap. 57) ("EO") and the policy study on standard working hours. He enquired whether the Administration was ready to revert to the Panel on the findings of its review and study before the end of the current term.

6. Secretary for Labour and Welfare ("SLW") responded that the Administration was pressing ahead with the policy study on standard working hours with a view to completing the study by the end of June 2012. It would strive to revert to the Panel on the outcome of the study at the meeting in July 2012. Regarding the review on the definition of "continuous contract" under EO, the Administration was conducting an in-depth analysis on the subject. If the study could not be completed within the current term, the Administration would report back to the Panel in the next term of the Legislative Council ("LegCo").

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IV. Review of the levels of compensation under the Employees' Compensation Ordinance, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance
(LC Paper Nos. CB(2)1980/11-12(03) and (04))

7. The Chairman said that the Panel on Development had discussed the Administration's proposal at its meeting on 22 May 2012 to lower the levy rate under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) ("PMCO") by 0.1% to 0.15% and at the same time, adjust upwards the levy rate under the Construction Industry Council Ordinance (Cap. 587) by 0.1% to 0.5%. Details of the said proposal, which was relevant to the subject under discussion, were set out in the Administration's paper provided for that Panel meeting (LC Paper No. CB(1)1875/11-12(03)).

8. At the invitation of the Chairman, SLW recapitulated that the Administration submitted to the Panel at its meeting on 20 January 2012 a proposal on the revision of the levels of compensation under the Employees' Compensation Ordinance (Cap. 282) ("ECO"), PMCO and the Occupational Deafness (Compensation) Ordinance (Cap. 469) ("ODCO"), in line with the findings of a review for 2009-2010. In view of some members' concern about the wage and price movements following the implementation of SMW in May 2011 and the rising funeral expenses in the period, the Administration had made a special arrangement to conduct a three-year review to take into account the wage and price movements in 2011 and re-visited the changes in the relevant review indicators in the past three years for recommending adjustments to the compensation levels. Greater increases for various compensation items were proposed according to the findings of the special review. Upholding the spirit of mutual understanding and in furtherance of harmonious labour relations, the employer representatives of the Labour Advisory Board ("LAB") had worked in unanimity with the employee representatives to lend support to the present proposal. He briefed members on the Administration's proposal to further increase the compensation levels of 15 items under ECO, PMCO and ODCO, details of which were set out in the Administration's paper.

Adequacy of further adjustments to the compensation levels

9. Mr WONG Kwok-hing welcomed the Administration's proposal to further increase the amount of a total of 15 compensation items under ECO, PMCO and ODCO. Referring to items 7 and 8 in Annex 5 to the

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Administration's paper, he noted that under the new proposal, the maximum amount of the cost for the supplying and fitting of as well as the repair and renewal of prostheses or surgical appliances under ECO would be adjusted upwards by 1.39%. Mr WONG considered the degree of adjustments unreasonable and not sufficient enough to assist the disabled persons. In his view, the compensation levels of these two items should be increased to a level on par with the prevailing inflation rate.

10. In response, SLW explained that the two compensation items as referred to by Mr WONG Kwok-hing were normally adjusted by reference to price changes as reflected by the Consumer Price Index ("CPI") (A). According to the Census and Statistics Department, CPI(A) increased by 0.4%, 2.7% and 5.6% in 2009, 2010 and 2011 respectively and hence, the price movement for 2009-2011 was +8.89%. Offsetting the cumulative negative change of 6.88% since the last adjustment of compensation levels in 1998 up to 2008 (i.e. to take into account the price movements in the years since 1998) along the established practice as agreed by LAB, the cumulative change in CPI(A) up to 2011 would be +1.39%, representing a net growth of 5.38% as compared to the finding of -3.99% in the 2009-2010 review. The compensation levels in the present proposal fully reflected the latest price changes and inflation rate.

11. Dr PAN Pey-chyou queried the propriety for the Administration to offset the cumulative rate of decrease in wage or price movement since 1998 in the latest review exercise covering 2009 to 2011. He opined that the proposed 1.39% increase for the said items was on the low side, insufficient to meet the needs of injured workers amidst the current state of high inflation.

12. SLW responded that in the four review exercises covering 1999 to 2006, both the wage and price indices either recorded negative changes in the review periods or their increases had yet to offset the cumulated rates of decrease since 1998. Other expenses relevant to the compensation items had either decreased or remained static. If the levels of compensation under ECO and PMCO were adjusted in accordance with such changes, the amount of the said items had to be reduced subsequent to each of the four reviews. When the findings of these reviews were discussed by LAB, members on compassionate ground concurred that the amount of the relevant compensation items under the two ordinances should be maintained at their existing levels, in order not to affect the interests of the injured employees and pneumoconiotics. Members of LAB also advised that the levels of compensation should not be revised upwards until the cumulated rates of decrease in wage or price

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movements were offset by future increases. The offsetting mechanism had already allowed flexibility to take into account the prevailing economic situation and allowed a freeze instead of a decrease in the levels of compensation at times of deflation.

13. Dr PAN Pey-chyou noted that it was the established practice of the Administration to review various items of compensation under the three ordinances every two years. He asked whether consideration would be given to conducting the review annually, so that more realistic rates of compensation could be determined having regard to the most up-to-date inflation situation.

14. SLW replied that the compensation levels were normally adjusted every two years in line with the wage and price movements. However, the implementation of SMW in May 2011 was a milestone in the history of Hong Kong, lifting the wage of low-income earners. A special review for the three years of 2009-2011 was thus conducted to take into account the very special circumstances brought about by the implementation of SMW in recommending adjustments to the compensation levels. SLW stressed that as the long-established practice of conducting reviews every two years had been working well, the Administration would continue to adopt the biennial review cycle in future reviews of the levels of compensation provided under the three ordinances.

15. Mr IP Wai-ming noted with concern that the daily maximum rates for medical expenses reimbursable under ECO and PMCO, which were last reviewed and fixed in 2003, were \$200 for cases requiring either hospitalization or out-patient treatment. In his view, to facilitate the early rehabilitation of injured workers, the Administration should consider raising the maximum amounts of reimbursement for medical expenses so that the injured workers could have a choice to purchase hospital services from both the public and private sectors.

16. The Chairman recalled that several years ago, there was a proposal that insurers should consider providing financial assistance to the Hospital Authority ("HA") for strengthening its rehabilitation services for injured employees, so to avoid any possible conflict of interest of the rehabilitation service providers appointed by insurers. He enquired whether the Administration would consider such proposal in the light of members' views on the need to provide timely and coordinated rehabilitation services to employees.

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17. Commissioner for Labour ("C for L") responded with the following points -

- (a) the Labour Department ("LD") had, in collaboration with the insurance industry, launched the Voluntary Rehabilitation Programme ("VRP") in 2003 to provide injured employees with an additional channel to receive free and timely medical and rehabilitation services in the private sector to facilitate speedier recovery and their early return to work;
- (b) LD had secured the agreement of HA and the insurance industry to put on trial in December 2006 an arrangement whereby VRP insurers could refer injured workers to receive medical and rehabilitation services at the three occupational medicine care service clinics of Tuen Mun Hospital, Princess Margaret Hospital and Prince of Wales Hospital. In the first six months of the trial, some 60 consultation appointments were made; and
- (c) the Administration had relayed members' views on the proposal of providing financial assistance to HA for strengthening its rehabilitation services for injured employees to the Food and Health Bureau for consideration.

18. On the Administration's response, the Chairman said that the Panel might wish to follow up the matter in future.

19. The Chairman noted with concern that under the present proposal, the Administration recommended a meagre increase of \$40 for the item of "compensation for pain, suffering and loss of amenities under PMCO". He said that the number of surviving pneumoconiotics would continue to drop, given the existing control over the use of asbestos and asbestos-containing materials in the construction and other industries. The Administration should consider further increasing the compensation level of this item for the better protection of surviving pneumoconiotics. His view was echoed by Mr LEUNG Kwok-hung.

20. In response to the Chairman's concern about the financial viability of the Pneumoconiosis Compensation Fund after the proposed reduction of the levy rate under PMCO, C for L said that the Pneumoconiosis Compensation Fund Board ("PCFB") had conducted a review of its financial position recently. As at the end of 2011, the accumulated funds of PCFB stood at some \$1,350 million. In view of the reserve

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accumulated and taking into consideration the income and expenditure forecast up to 2019, including compensation payment and the additional expenses for implementing various new programmes in the coming few years, PCFB proposed to the Administration to reduce the current levy rate of 0.25% by 0.1% to 0.15%. According to the financial estimates of PCFB, even if the levy rate was reduced to 0.15%, there would still be a surplus of around \$700 million by 2019 after deducting the relevant expenditures. The surplus should enable PCFB to meet its liabilities for two years even without any income. The Administration would review in future whether and how the compensation/benefits for pneumoconiotics could be further improved and enhanced.

21. SLW added that the Administration was fully aware of members' concerns about the need to improve the compensation for the pneumoconiotics. He undertook to explore whether there was room for further improvement in future review exercises. Concrete proposals, if made, would be submitted to LAB and the Panel for consideration.

22. Mr LEUNG Kwok-hung expressed dissatisfaction that proposals relating to employees' rights and benefits had to be considered and endorsed by LAB before they were presented to the Panel and taken forward. Expressing concern about the time spent on consultation and the resultant delay in the implementation of the upward adjustments of compensation levels, he asked how frequent LAB would meet.

23. In response, SLW and C for L advised that LAB was a tripartite consultative body to advise the Government on labour matters. It met regularly, about once in every two to three months, to discuss various issues, and would also meet on need basis. They stressed that as the proposed increases in the amount of the relevant items under ODCO and PMCO would impact on the Occupational Deafness Compensation Board ("ODCB") and PCFB, the Administration needed to consult these fund boards before reverting to LAB, should changes be made to the levels of compensation.

24. In the light of views expressed by some members, the Chairman said that the Administration should seriously consider how to make good use the surplus funds to enhance the protection of workers in respect of their rights to compensation in work injuries or occupational accidents involving death or permanent incapacity.

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Comprehensive review of the employees' compensation system

25. Mr WONG Kwok-hing said that the existing employees' compensation system had been implemented since 1953. He enquired whether the Administration had any plan to conduct a comprehensive review of and introduce improvements to the system, such as expanding its scope to make diseases, for example, muscle strain and musculoskeletal disorder, as compensable occupational diseases.

26. SLW and C for L responded that 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 therefore important to establish the casual relationship between a disease and the occupation. Regarding the suggestion of prescribing musculoskeletal disorders as occupational diseases, SLW 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. This notwithstanding, the Administration was aware of members' views and concerns, it would consider whether there was room for further improvement of the existing employees' compensation system.

27. While welcoming the revised levels of compensation as stated in the present proposal, the Deputy Chairman said that she had a mixed feeling of delight and disappointment about the belated implementation of the upward adjustments of compensation levels provided under the three employees' compensation ordinances.

28. In response, SLW stressed that the Administration had made its best effort to complete the review as early as possible. He advised that following the discussion of the original proposal at the Panel meeting on 20 January 2012 during which members requested the Administration to further review the wage and price movements in 2011 and the increase of funeral expenses in the period, the Administration immediately embarked on the special arrangement to conduct a three-year review. However, the relevant data and statistics for the full year of 2011 were not available until after the first quarter of 2012 for analyses. The Administration could only draw up a proposal by then for consultation with the Hong Kong Federation of Insurers ("HKFI") about the impact of the further increases in the levels of compensation on employees' compensation insurance premium and other stakeholders prior to the discussion with LAB. SLW added that the revised levels of compensation under the three ordinances would be subject to LegCo's approval. Should members

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support the present proposal, the Administration intended to submit the relevant legislative proposals to LegCo to effect the proposed changes starting from 14 July 2012. Despite a deferred commencement date, the revised proposal would bring greater increases in the amount of compensation payable as compared to the original proposal.

29. The Deputy Chairman and Mr IP Wai-ming shared the view that the Administration should conduct a comprehensive review on ECO, in particular, the list of compensable occupational diseases in the Second Schedule to ECO, and introduce improvements in order to keep pace with the developments in society. Citing the cases of workers performing loading and unloading operations at the airport as examples, Mr IP said that many of these workers were suffering from musculoskeletal disorder after years of service in the same post. The Administration should adopt new ideas and a forward-looking approach in considering whether a direct casual relationship existed between a particular disease and a specific occupation. It should also place more weight on "rehabilitation" in its review of the employees' compensation system.

30. SLW responded that the Administration reviewed the list of prescribed occupational diseases from time to time and had updated the list in the light of international standards. While the crux of the issue lay in the establishment of a casual relationship between a disease and an occupation, the Administration would continue to keep in view international developments in this respect and take into account Hong Kong's actual circumstances in considering whether it was necessary to amend ECO to prescribe a specific disease as compensable occupational disease. SLW assured members that the Administration would continue to adopt an open attitude towards specific proposals to improve the employees' compensation system.

31. Dr PAN Pey-chyou said that to his knowledge, post-traumatic stress disorder ("PTSD") had been included by ILO in its updated list of occupational diseases, so as to enhance the protection for workers. He asked whether the Administration would follow suit to amend the relevant provisions in ECO by including in the list of compensable occupational diseases mental impairment directly caused by work incidents and mental impairment and illnesses directly arising out of employment.

32. In response, SLW reiterated the need to establish the casual relationship between a disease and the occupation in determining whether a specific disease should be prescribed as an occupational disease. He stressed that under the existing provisions of ECO, an employer was

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liable to pay compensation to an injured employee if the employee sustained PTSD as a result of an accident arising out of and in the course of employment.

33. Mr LEUNG Yiu-chung said that as statistics considered were out of date and lagging in nature, the proposed adjustments of compensation levels failed to reflect accurately the latest price movement and address the on-going inflation problem, albeit that an upward adjustment might be recommended. The Administration should revamp the out-dated and lagged-behind adjustment mechanism with a view to perfecting it, for example, by way of applying the "weighted average" method, so that more realistic rates of compensation could be set in future.

34. SLW responded that under the existing review mechanism which was agreed by LAB, the amount of the compensation items under the three ordinances were adjusted according to a basket of indicators, including the Nominal Wage Index, CPI(A) and other relevant factors. Over the years, the Administration had been adopting an objective, flexible and evidence-based approach in setting and reviewing the compensation levels of various items and would continue to do so.

35. Mr LEUNG Yiu-chung pointed out that people suffering from occupational deafness had to endure constant and immeasurable pain for the rest of their life. He asked whether the Administration would take heed of members' views to make statutory compensation for pain arising from occupational deafness, like the one under PMCO.

36. SLW and Assistant Commissioner for Labour (Employees' Rights & Benefits) replied that Mr LEUNG Yiu-chung's proposal for the establishment of monthly compensation for pain arising from occupational deafness differed greatly from the current mechanism of providing one-off compensation under ODCO and ECO, and would need to be considered carefully from all relevant angles. The proposal had been forwarded to ODCB for a comprehensive and in-depth study. ODCB had set up a working group to study the proposal as well as the issues involved. The Administration would revert to the Panel when there was new development.

Implementation timetable

37. The Chairman said that the Administration planned to give notices for the moving of three proposed resolutions made respectively under ECO, PMCO and ODCO at the Council meeting of 13 June 2012 for the

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purpose of effecting the proposed adjustments with effect from 14 July 2012. In this connection, the House Committee ("HC") would consider at its meeting on 1 June 2012 the need to form a subcommittee to study the proposed resolutions. The Chairman sought members' views on whether a recommendation should be made to HC that it was not necessary to set up a subcommittee to study the resolutions in detail in order to have an early implementation of the proposed amendments.

38. SLW said that according to HKFI, the insurance sector needed at least one month to prepare for the implementation of the increases in the levels of compensation under ECO. To avoid any delay in the implementation of the proposed adjustments of compensation levels, he hoped that the Panel would concur with the view that there was no need to form a subcommittee to study the proposed resolutions as the Administration's proposal had been discussed in depth by the Panel.

39. The Deputy Chairman said that although members were generally of the view that there was room for further improvement, she was supportive of the revised levels of compensation in the Administration's present proposal. She hoped that the proposed adjustments could be implemented as soon as practicable, and the Panel would recommend to HC that it was not necessary to set up a subcommittee to study the resolutions to be moved by the Administration.

40. Members agreed that in order to have an early implementation of the proposed amendments, it was not necessary to set up a subcommittee to further study the proposed resolutions.

V. Government policy relating to the outsourcing of service contracts

(LC Paper Nos. CB(2)1385/11-12(01), CB(2)1980/11-12(05) and (06))

41. At the invitation of the Chairman, Deputy Secretary for Financial Services and the Treasury (Treasury) ("DS/FST(T)") briefed members on the Government policy relating to the outsourcing of service contracts and the Administration's views on the issues raised in the joint submission from the Federation of Hong Kong & Kowloon Labour Unions and H.K. Hospitals Employees Association ("joint submission"), as detailed in the Administration's paper.

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42. Mr WONG Kwok-hing said that Members belonging to the Hong Kong Federation of Trade Unions were strongly against the Government's outsourcing policy. He pointed out that many outsourced contract workers were denied pay rise, promotion prospects and fringe benefits. Besides, as an employee's entitlement to severance payment ("SP"), long service payment ("LSP") and other benefits under EO was calculated by reference to the number of fully reckonable years of service, a break in service would unduly have negative impact on the employee's entitlement. The Administration should stop outsourcing its services and critically review the need to recruit more civil servants if there was a long term need for people to perform the work outsourced.

43. DS/FST(T) responded that apart from engaging civil servants, the Government had a long history of using the private sector to deliver public services. This was in keeping with the objectives of maintaining a small and efficient civil service, and promoting business opportunities and jobs in the private sector. For example, service contracts for specific activities, such as cleansing or security job, enabled the Government to take advantage of private sector expertise and resources to provide basic services in return for a fee. Contracting out helped maintain a lean and efficient civil service on one hand, while increasing the value for money and flexibility in service delivery on the other. The Administration would continue to employ civil servants and engage the services of service providers in the market where appropriate.

44. Referring to the joint submission, the Chairman said that there was a suggestion that the Administration should mandate in government service contracts that if there was a change of contractors at the end of the contract period, the incoming contractor should take over the workers of the outgoing contractor and allow these workers to carry over their years of service to the new contract for calculation of statutory employment benefits, including SP and LSP awarded to an employee in the event of retrenchment and termination of employment. He enquired about the feasibility of imposing such a requirement on incoming contractors.

45. DS/FST(T) responded that -

- (a) according to the Administration's records, there was only a small number of labour dispute cases in the past three years concerning government service contractors' liability for statutory employment benefits, such as SP or LSP, at the time when there was a change of contractors; and

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- (b) the proposal to allow workers of the pre-existing contract to carry over their years of service to the new contract for calculation of statutory employment benefits would impose additional requirements on both the outgoing and incoming contractors. It would also considerably reduce the flexibility of service contractors in the deployment of their workers, which was essential to the business operation of the cleansing or security industry.

46. Mr IP Wai-ming and the Deputy Chairman expressed strong dissatisfaction that the Administration only considered the outsourcing policy from the employers' perspective, without giving regard to the need to enhance the protection for workers engaged under service contracts. Mr IP expressed grave concern about the adequacy of protection provided to employees under the standard employment contract ("SEC") which was for use by contractors of government service contracts in their employment of non-skilled workers to carry out government service contracts. He asked which government department was responsible for the implementation/enforcement of SEC and the handling of complaints about the improper use of SEC to the disadvantage of the non-skilled workers.

47. In response, Assistant Commissioner for Labour (Labour Relations) ("AC for L(LR)") and DS/FST(T) made the following points -

- (a) under EO, if an employee who had been employed under a continuous contract for not less than 24 months was dismissed by reason of redundancy, he was in general entitled to SP. Whether the employees of government service contractors affected by the change of contractors upon the expiry of service contracts were entitled to SP would depend on the facts and circumstances of individual cases. In accordance with EO, if the affected employees were given an offer by the outgoing contractor to renew their employment contracts with terms and conditions no less favourable than before, those employees who unreasonably refused that offer might not be entitled to SP;
- (b) "job location", as one of the terms and conditions offered by the employer on contract renewal, could be considered by the court in determining an employee's entitlement to SP;

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- (c) while LD checked contractors' compliance with SEC in collaboration with procuring departments, individual procuring departments could offer their views on the stipulations in SEC before it was finalized for implementation; and
- (d) in case labour unions wished to discuss with the Administration matters relating to or the stipulations in SEC, LD could help line up different parties, including representatives from the relevant procuring departments and the Financial Services and the Treasury Bureau ("FSTB"), where necessary, for holding a meeting with the labour unions.

48. Responding to Mr LEUNG Kwok-hung's enquiry as to whether the new term Government had indicated any intention to put a halt to the outsourcing policy, DS/FST(T) replied that so far, FSTB had not heard of any such plan.

49. The Deputy Chairman expressed grave concern that the Government's policy of outsourcing service contracts had given rise to exploitation of outsourced workers. She stressed that according to the Administration, contract staff were engaged to supplement the civil service when the service needs were time-limited, seasonal or might be subject to market fluctuations. In her view, the increasing trend of government departments outsourcing their services indicated that there was an abuse of the policy within the Government. The Administration should therefore consider improving the provisions in SEC with a view to eradicating labour exploitation.

50. DS/FST(T) responded that SEC was mainly intended for the protection of outsourced non-skilled workers in respect of monthly wages, working hours and method of wage payment. Other employment terms and conditions, including fringe benefits to be enjoyed by the workers concerned, should be determined by the mutual agreement between employers and employees.

51. The Chairman and the Deputy Chairman expressed similar concern on whether outsourced workers were sufficiently protected under the existing legislative framework in respect of their length-of-service related statutory entitlement such as annual leave, LSP and SP.

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52. In response, DS/FST(T) advised that the Administration had considered the proposal that when there was a change of contractors at the end of the contract period, existing employees' years of service with the outgoing contractor should be taken over by the incoming contractor so that those length-of-service related statutory employment benefits under EO, for instance, SP and LSP, would continue to accrue. The Administration, however, was of the view that there were problems with the proposal. Firstly, if the incoming contractor had to take over the existing employees of the outgoing contractor, he would have practical difficulties in estimating his liability for provision of employment benefits, in particular those contingent liabilities like SP or LSP, if he was to assume the responsibility for the years of service of the outgoing contractor's employees. Secondly, contractors who wished to bid for such government contracts would need to know the employment profile of individual workers currently working on the site before they could assess the cost implication of taking over their years of service in the new contract. It would nonetheless be very difficult for them to have access to such information, as there might be concern about privacy/commercial secrecy if the employment records were made available to potential bidders.

53. AC for L(LR) supplemented that employees of the outgoing contractor would either receive termination payment, including SP, if the eligibility criteria under EO were met; or have their years of service with the outgoing contractor continued to accrue if they opted to stay with the outgoing contractor by accepting the offer to renew their employment contracts.

54. Mr CHAN Kin-por considered it necessary for the Administration to closely monitor the effect of its outsourcing policy. He asked whether the Administration had any plan to commence a comprehensive review of the current policy relating to the outsourcing of service contracts.

55. DS/FST(T) responded with the following points -

- (a) at present, the strength of the civil service stood at 158 527. After lifting the recruitment freeze in 2007, the Administration had since 2007-2008 contained the growth of the civil service establishment to about 1% annually to meet new and improved services;
- (b) should the approximately 20 000 non-skilled workers currently engaged under outsourced service contracts of the

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Food and Environmental Hygiene Department ("FEHD") and the Leisure and Cultural Services Department ("LCSD") be employed as civil servants, it would make the civil service less flexible to cater for changes in time of economic downturn. Even if departments were allowed to create additional civil service posts, they would need to consider carefully how best these posts should be deployed to meet the most pressing demands of the community;

- (c) the Administration was conscious of the need to adopt the most cost-effective and efficient means for delivery of public services. Civil servants were employed for meeting long-term operational needs which should be delivered by government departments direct and when alternative modes of service delivery had been critically examined and considered inappropriate. These functions included policy formulation, regulatory control, law enforcement and statutory functions; and
- (d) government services were outsourced not to save costs but for increasing the value for money and flexibility in service delivery. This was in line with the Government's objectives of maintaining a small and efficient civil service and promoting business opportunities and jobs in the private sector.

56. Responding to Mr CHAN Kin-por's further enquiry about the wage level of non-skilled workers employed under government outsourced service contracts, Assistant Director (Grade Management and Development)/FEHD said that all contractors undertaking government outsourced services had to observe the requirements under the Minimum Wage Ordinance (Cap. 608) and pay the employees concerned a wage at no less than the SMW rate. DS/FST(T) supplemented that under the tendering system for government service contracts, contractors offering their staff a salary higher than the SMW requirement and additional work-related benefits could attract higher scores in the tender evaluation. According to her understanding, the increasingly tight and buoyant labour market drove contractors to offer a higher salary.

57. The Chairman sought information on the numbers of contractors currently undertaking government outsourced services respectively of FEHD, LCSD and the Housing Department which paid their workers wages at the SMW rate or offered to pay a wage level higher than the

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SMW requirement. He requested FSTB to collate the required information and provide the Panel with the statistics after the meeting.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)2699/11-12 on 23 August 2012.)

58. Mr LEUNG Yiu-chung shared the view that if there was a long term need for people to perform the work/services outsourced, the work/services should not be contracted out and should be performed by workers engaged on a long term contracts. Regarding the 20 000-odd posts currently outsourced, the Administration should seriously consider converting them into permanent ones and including them into the civil service. In his view, the lack of job security for contractors' staff was not conducive for the procuring departments to ensure service quality and the contractors to build up a long term employment relationship with their employees.

59. In response, DS/FST(T) said that the Administration had considered measures to ensure that in outsourcing contracts, proper attention would be given to the interests of outsourced workers. In this connection, where an outsourced service contract was going to expire, existing employees would be informed of it three months before the expiry date. The relevant procuring department would post up a notice so that the affected workers might seek assistance from LD, if necessary. In conducting a tender exercise for a new contract, invitation for tenders would be issued ahead of the expiry of the existing contract with a view to awarding the next contract at the earliest possible time, so as to allow time for the outgoing and incoming contractors to discuss and make necessary arrangements for the takeover. DS/FST(T) reiterated that while the Administration was conscious of the need to adopt the most cost-effective and efficient means for delivery of public services, she was not aware of any major plan to extend the outsourcing arrangements to other areas of work beyond those services (such as cleansing and security services) which had been outsourced to the private sector.

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

60. Dr PAN Pey-chyou considered the Government's outsourcing policy unfair to workers undertaking the outsourced work as they were not provided with job security. He was strongly opposed to the Administration's continued adoption of such policy, as many outsourced workers were being exploited by employers. Referring to the two proposals relating to SP and years of service as stated in the joint submission, he said that he was not convinced of the Administration's

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explanation that they could not be pursued owing to practical difficulties identified.

61. DS/FST(T) stressed that the Administration also attached importance to the interests of outsourced workers. Under the tendering system for government service contracts, contractors willing to offer their staff a higher wage rate and not violating employment-related laws or SEC terms might attract higher scores in the tender evaluation. The scores in these aspects might carry a weighting as high as some 20% in the tender evaluation.

62. The Chairman said that the Hong Kong Confederation of Trade Unions and the Labour Party were in opposition to the Government's policy of outsourcing service contracts, as such policy had created problems of job insecurity and staff exploitation. In his view, the difficulties identified by the Administration in pursuing the proposals relating to SP and years of service only involved technical issues and could be addressed. A possible solution would be to impose a mandatory requirement on contractors to re-engage/take over the existing employees. He strongly urged the Administration to actively follow up the proposal of members to recognize the years of service of outsourced workers, so as to enhance the protection for non-skilled workers employed under government outsourced service contracts.

63. DS/FST(T) responded that the Administration had studied the proposals raised in the joint submission. Given their implications on public money and service delivery, it was necessary for the Administration to adopt a prudent approach in deciding whether to take forward the proposals.

64. The Chairman considered that the Administration should not ignore the interests of outsourced workers and their aspiration for job security/stability. His view was echoed by Mr IP Wai-ming.

65. Concluding the discussions, the Chairman said that the Panel would continue to follow up the matter in future.

66. There being no other business, the meeting ended at 10:45 am.