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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 17 November 2011**

Continuous contract under the Employment Ordinance

Purpose

1. This paper provides background information on the discussions of the Panel on Manpower ("the Panel") on the subject of continuous contract under the Employment Ordinance (Cap. 57) ("EO").

Background

2. Schedule 1 of EO defines continuous contract as a contract of employment under which an employee has been employed for four weeks or more and has worked for 18 hours or more in each week. This is commonly known as the "4-18" threshold for a continuous contract. Employees engaged under a continuous contract are entitled to employment benefits under EO, including rest days, pay for statutory holidays, paid annual leave, paid maternity leave, paid sickness days, severance payment and long service payment, subject to the respective qualifying requirements. According to the Administration, the notion of continuous contract rests on the premise that employees who have a regular employment relationship with their employers should be entitled to the full range of employment benefits. In any dispute as to whether a contract of employment is a continuous contract, section 3 of EO provides that the onus of proving that the contract is not a continuous contract rests on the employer.

3. In recent years, there have been concerns over the growing number of employees who are not engaged under a continuous contract and hence are not eligible for the benefits which are available to "4-18" employees. In the third quarter of 2001, the Census and Statistics Department ("C&SD") conducted a special topic enquiry via the General Household Survey to gather information on those employees who were not working under a continuous contract. The

Labour Department ("LD") commissioned C&SD to conduct another survey in the first quarter of 2006 as a special topic enquiry via the General Household Survey.

Deliberations of the Panel

4. The protection for employees not employed under a continuous contract was discussed at the Panel meeting on 16 June 2005. There was a suggestion that employees not employed under a continuous contract should be entitled, on a pro-rata basis, to the rights and benefits of a full-time employee. There were also suggestions that the "4-18" threshold should be removed and the subject matter should be examined in a wider context in association with the issues of minimum wage and standard working hours of employees.

5. According to the Administration, removing or lowering the "4-18" threshold for continuous contract under EO would have cost implications for employers, as they would also have to offer the full range of employment benefits to those employees who work for shorter hours. The retail, catering and entertainment businesses had a greater demand for part-time staff. Employers in these trades might need to reduce their workforce so as to contain the additional staffing cost if the "4-18" threshold was relaxed. Removing the threshold would also adversely affect the employment opportunities of those who preferred to work shorter hours. Besides, it would impact on the marginal workforce who might have difficulty competing with other job-seekers in the full-time employment market. Furthermore, it might reduce the flexibility of certain industries which would normally adjust their part-time workforce when there were fluctuations in the demand for their goods and services. Given the wide implications on employers and employees, any proposal to remove or reduce the "4-18" threshold for continuous employment should be considered carefully in this light.

6. The Panel noted that the Administration would conduct a special topic enquiry to gather updated information on employees who were not working under a continuous contract ("the survey") and study overseas experience. The findings would be discussed by the Labour Advisory Board before discussion by the Panel.

7. The Panel was briefed on the survey findings at its meeting on 17 January 2008. Concern was raised over a substantial increase in the number of non-"4-18" employees working less than 18 hours per week from 28 900 in 2001 to 52 400 in 2006. Members called on the Administration to amend EO to minimize unscrupulous employers' exploitation of part-time workers.

8. Information was sought on whether the Administration would consider removing the "4-18" threshold and extending the rights and benefits of "4-18" employees under EO to part-time employees on a pro-rata basis. There was a view that removing the threshold might have a positive effect and enable non-"4-18" employees to work for longer hours and help simplify the task of human resource management.

9. According to the Administration, economic growth might be conducive to the increase of non-"4-18" employees. While employees engaged under a continuous contract were entitled to additional benefits under EO compared to non-"4-18" employees, the latter, irrespective of their hours of work, were also entitled to basic rights and benefits under EO. As revealed in the survey, some employers of non-"4-18" workers had voluntarily provided their non-"4-18" employees with benefits exceeding the statutory requirements of EO.

10. The Administration further advised that the survey had revealed that the majority of non-"4-18" employees working less than 18 hours per week did not work longer hours for personal reasons. From the perspective of human resource management, some trades such as the retail and catering industries might prefer to employ part-time workers to cater for their operational needs. The employment of part-time workers could also provide opportunities for those who preferred to work on a flexible basis. Removal of the threshold might have a negative impact on employment.

11. The Panel noted that the Administration would conduct an in-depth study based on the statistics obtained and explore the feasibility of introducing amendment to EO to enhance the rights and benefits of non-"4-18" employees.

12. The Panel passed a motion at its meeting on 17 January 2008 urging the Government to proceed immediately to amend EO for protection of non-"4-18" employees so that they would be entitled to the statutory employment rights and benefits.

13. The Panel also noted that the Administration would conduct a review on the definition of "continuous contract" under EO in the light of the recent developments in the labour market.

14. At the Panel meetings on 21 October 2010 and 17 February 2011, information was sought on the progress of the review conducted by the Administration on the definition of "continuous contract" under EO and the Administration's timetable for completing the review.

15. According to the Administration, LD had commissioned C&SD to collect further statistical data of employees who were not engaged under a "continuous

contract", including their distribution and proportion in the labour market as well as their occupational characteristics. The review on the definition of "continuous contract" was carried out in the light of the survey findings. The Administration would strive to complete the data compilation and analysis of the survey findings in mid-2011 and revert to the Panel.

Relevant papers

16. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
11 November 2011

**Relevant papers on
continuous contract under the Employment Ordinance**

| Committee | Date of meeting | Paper |
|---------------------|-------------------------|---|
| Panel on Manpower | 16.6.2005 (Item VI) | <u>Agenda</u> <u>Minutes</u> |
| Panel on Manpower | 17.1.2008 (Item IV) | <u>Agenda</u> <u>Minutes</u> |
| Panel on Manpower | 21.10.2010 (Item II) | <u>Agenda</u> <u>Minutes</u> |
| Legislative Council | 10.11.2010 | <u>Official Record of Proceedings</u> <u>(Question 18)</u> |
| Panel on Manpower | 17.2.2011 (Item II) | <u>Agenda</u> <u>Minutes</u> |
| Legislative Council | 16.3.2011 | <u>Official Record of Proceedings</u> <u>(Question 9)</u> |

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