

立法會
Legislative Council

LC Paper No. CB(2)910/12-13
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Friday, 25 January 2013, at 9:30 am
in Conference Room 3 of the Legislative Council Complex

- Members present** : Hon LEE Cheuk-yan (Chairman)
Hon WONG Kwok-kin, BBS (Deputy Chairman)
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon CHAN Kin-por, BBS, JP
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
Hon LEUNG Kwok-hung
Hon Michael TIEN Puk-sun, BBS, JP
Hon CHAN Chi-chuen
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP
- Members attending** : Hon WONG Kwok-hing, MH
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
- Members absent** : Hon Albert HO Chun-yan
Hon LEUNG Yiu-chung
Dr Hon LEUNG Ka-lau
Hon LEUNG Che-cheung, BBS, MH, JP

Public Officers attending : Item IV

Mr Eddie NG, SBS, JP
Secretary for Education

Mrs Cherry TSE, JP
Permanent Secretary for Education

Ms Michelle LI, JP
Deputy Secretary for Education

Ms Pecvin YONG
Principal Assistant Secretary (Further Education)
Education Bureau

Item V

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

Miss Annie TAM Kam-lan, JP
Permanent Secretary for Labour and Welfare

Mr CHEUK Wing-hing, JP
Commissioner for Labour

Mr Byron NG Kwok-keung, JP
Deputy Commissioner for Labour
(Labour Administration)

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

Ms Lydia LAM Sui-ping
Principal Assistant Secretary for
Labour and Welfare (Manpower)

Item VI

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

Mr CHEUK Wing-hing, JP
Commissioner for Labour

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

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

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Ms Rita LAI
Senior Council Secretary (2) 1

Ms Mina CHAN
Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

Action

I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)449/12-13)

The minutes of the meeting held on 20 November 2012 were confirmed.

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

2. Members noted that a referral from the Public Complaints Office of the Legislative Council ("LegCo") Secretariat regarding the review of the continuous contract requirement under the Employment Ordinance

Action

("EO") had been issued since the last meeting and the subject had already been included in the Panel's list of outstanding items for discussion. The Chairman advised that a meeting would be arranged to receive deputations' views on the subject. Members would be informed of the meeting arrangements in due course.

III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)515/12-13(01) and (02))

Joint meeting on 19 February 2013

3. The Chairman informed members that a joint meeting of the Panel on Manpower and the Panel on Welfare Services would be held at 3:30 pm on 19 February 2013 to discuss the manpower situation in residential care homes for the elderly.

Regular meeting in February 2013

4. Members agreed to discuss the Administration's proposal to revise the rate of Business Registration Certificate ("BRC") levy for the Protection of Wages on Insolvency Fund ("PWIF") at the next regular meeting on 19 February 2013.

IV. Briefing by the Secretary for Education on relevant policy initiatives in the Chief Executive's 2013 Policy Address

(LC Paper No. CB(2)489/12-13(01) and The 2013 Policy Address booklet entitled "Address by the Chief Executive The Honourable CY Leung")

5. At the invitation of the Chairman, Secretary for Education ("SED") briefed members on the latest progress of the development and implementation of the Qualification Framework ("QF"), one of the on-going initiatives of the Education Bureau ("EDB") in the Chief Executive ("CE")'s 2013 Policy Address, as detailed in the Administration's paper.

(Post-meeting note: The speaking note of SED was issued to members vide LC Paper No. CB(2)558/12-13 on 28 January 2013.)

Action

Development of QF

6. Referring to the development of the credit accumulation and transfer system, Mr WONG Kwok-hing enquired about the implementation timetable and the relevant details.

7. SED said that the Government announced the introduction of the use of QF Credit last year and EDB would explore the development of a credit accumulation and transfer system as the next step, making reference to the successful experiences in other places. Deputy Secretary for Education ("DS(Ed)") added that EDB had announced the introduction of the Award Titles Scheme ("ATS") and the use of QF Credit in October 2012. She elaborated that ATS specified the award titles that could be used for qualifications at various QF levels, and QF Credit was a measure of volume or size of learning programmes recognised under QF. By simplifying and standardising the use of titles, ATS would ensure consistency and transparency of award titles and reflect more clearly the level of qualifications. The adoption of QF Credit would provide clear and transparent information on the size or volume of learning programmes and the efforts and outcome expected from learners to complete the programmes. DS(Ed) advised that starting from 1 January 2014, programmes newly registered in Qualification Register ("QR") must adopt titles that conformed to ATS. At the same time, providers should indicate the QF credit values of such programmes if they were pitched at QF levels 1 to 4. Starting from 1 January 2016, all programmes in QR had to adopt titles that conform to ATS. To facilitate practitioners to make early learning planning, QR provided web-based information on qualifications and their respective learning programmes that had been quality assured and recognised under QF. While the Administration would explore the development of a credit accumulation and transfer system, five education institutions had already signed a memorandum of understanding to give mutual recognition to credits awarded under their respective learning programmes.

8. Noting that the implementation of ATS for programmes newly registered in QR would start from January 2014, Mr WONG Kwok-hing was concerned about whether prior qualifications attained as well as the knowledge, skills and previous experience acquired at the workplace would be recognised under the new arrangement.

Action

9. DS(Ed) replied that prior qualifications attained would not be affected by the implementation of ATS. She further advised that the Recognition of Prior Learning ("RPL") mechanism had been implemented in eight industries to enable employees to obtain formal recognition of their competence acquired so that they could pursue continuous learning without starting from scratch. Under the RPL mechanism, applications for recognition would be processed by the assessment agency. The introduction of ATS and the use of QF Credit would further strengthen the infrastructure of QF.

10. Mr TANG Ka-piu declared that he had actively involved in the development of the RPL mechanism for the automotive industry when he was the representative of the Motor Transport Workers General Union. He, however, noted with concern that the number of applications from property management industry accounted for more than 60% of the total applications for recognition under the RPL mechanism, which had outnumbered those of other industries. Mr TANG sought more information on the phenomenon.

11. DS(Ed) responded that the establishment of QF and the setting up of Industry Training Advisory Committees ("ITACs") were industry-led. ITACs played an important role in promoting QF in their respective industries. The positive response of the property management industry could largely be attributed to the active participation of the relevant stakeholder groups in the industry to implement QF. That said, the Administration was committed to working with the various ITACs and strived to assist other industries in implementing the RPL mechanism.

12. Pointing out that the RPL mechanism assisted practitioners in obtaining recognition of their skills, knowledge and working experience up to QF level 4, Mr TANG Ka-piu enquired about the articulation ladder for employees recognised at QF level 4 to pursue further studies at higher QF levels. Mr TANG also expressed concern that to his knowledge, completion of individual industry-specific vocational and technical courses organised by Vocational Training Council ("VTC") was not recognised by the relevant authority for granting licences.

13. In response, DS(Ed) advised that QF was a seven-level hierarchy, which established an accessible articulation pathway to enable individuals to pursue different levels of academic and training attainment according to their own roadmaps. The Administration had actively encouraged co-operation between ITACs as well as education and training providers to provide more relevant programmes at different QF levels. With the

Action

introduction of use of QF Credit, it was envisaged that the collaboration between tertiary institutions and other course providers would be strengthened in offering programmes at different levels. Notably, apart from tertiary institutions, VTC also provided programmes pitched at QF level 5 at present.

14. Mr KWOK Wai-keung expressed concern that some of the 19 ITACs had not yet drawn up the Specification of Competency Standards ("SCSs") of their respective industries. He sought an update on the progress. SED and DS(Ed) responded that ITACs had made good progress in drawing up SCSs of their respective industries. Twelve ITACs had drawn up their SCSs, and apart from the Security Services ITAC which was newly set up on 1 January 2013, the remaining six ITACs would complete drawing up their SCSs in 2013 or 2014.

15. Mr KWOK Wai-keung said that under the RPL mechanism, there was a five-year transitional period for each participating industry during which practitioners might apply for recognition of qualifications at QF levels 1 to 3 by producing documentary proofs of their years of relevant working experience, without the need to take any formal assessment tests. Given that the five-year transitional period for the three industries of Printing and Publishing, Watch and Clock and Hairdressing would expire in May 2013, he asked whether consideration would be given to extending the transitional period.

16. DS(Ed) said that the Administration had been working out the post-transitional arrangements with the respective ITACs, and were consulting the stakeholders of the relevant industries. The arrangements would be duly worked out before the expiry of the transitional period, and that the relevant details would be made available soon. The Chairman requested that the Administration to revert to the Panel on the post-transitional arrangements in due course.

17. Noting that almost all applicants (99.5%) for assessment under the RPL mechanism were successful, Mr Michael TIEN cast doubt about the standard of competencies acquired by the applicants.

18. DS(Ed) said that the competency standards of various levels of specific industries were specified in the respective SCSs. To ensure its credibility, the RPL mechanism was developed based on SCSs. It was noteworthy that applicants for recognition at QF levels 1 to 3 under the RPL mechanism had been working in the relevant industries and had acquired the relevant skills, knowledge and work experience.

Action

Recognition at QF level 4 would require the applicant to prove his possession of relevant competency standards. Separately, the introduction of use of QF credit for programmes at QF levels 1 to 4 would facilitate employees to pursue further studies at higher levels.

19. Mr Michael TIEN was concerned about the recognition of QF in the community at large. In his view, an objective quality assurance mechanism should be developed to ensure its credibility. Consideration might also be given to conducting tracking studies on the career advancement of employees after obtaining higher qualifications under QF.

20. DS(Ed) said that many of the industries concerned welcomed the development of industry-specific SCSs. Permanent Secretary for Education ("PS(Ed)") advised that the establishment of QF provided multiple pathways among academic, vocational and continuing education. It also defined clearly the standards of different qualifications, ensure their quality and indicated the articulation ladders between different levels of qualifications. She further advised that the competency standards of various levels of QF were gaining wider acceptance by employers as useful guides and reference for human resources management, such as staff recruitment and performance assessment in different industries.

Coverage of QF

21. Mr CHEUNG Kwok-che asked about the development plan for implementing QF, in particular whether the Administration would consider implementing QF in new emerging industries, such as social services, personal care and retail business, to enable serving employees to pursue further studies and training.

22. DS(Ed) advised that ITACs had been set up in a wide range of industries. As the development of QF was industry-led, ITACs would be established for industries which were ready to do so. So far, ITACs had been formed for 19 industries, including Retail, Elderly Care Service and Property Management, and covered about 46% of the workforce in Hong Kong. The Administration would continue to encourage and assist more industries to set up ITACs.

23. Mr CHEUNG Kwok-che considered that the implementation of QF in respect of elderly care service should be expanded to cover care service for persons with disabilities having regard to the similarity in the skills and knowledge required. DS(Ed) stressed that ITACs would be set up in

Action

specific industries where there was adequate support from the stakeholders. The Administration would continue to assist various industries to set up their ITACs in a progressive manner.

24. In response to Mr WONG Kwok-hing's enquiry about whether consideration would be given to setting up an ITAC for the construction industry, DS(Ed) advised that the Construction Industry Council, which was a statutory body, had been set up to pursue initiatives conducive to the long-term development of the construction industry, including the manpower development in the industry.

Provision of support

25. Mr TANG Ka-piu enquired whether consideration would be given to providing incentives to employers, such as granting study leave, to employees to attend QF-recognised courses.

26. Mr POON Siu-ping said that the Federation of Hong Kong and Kowloon Labour Unions had all along advocated for the provision of paid study leave to encourage employees to pursue further education and training. To tie in with the development of QF, Mr POON enquired whether consideration would be given to legislating for the provision of study leave.

27. Mr Michael TIEN was concerned whether practitioners in the industries concerned would receive financial assistance in attending QF-recognised training courses.

28. Responding to members' concerns, DS(Ed) said that course fees for individual QF programmes would be determined by the course providers. Practitioners could make application under the Continuing Education Fund or the subsidy schemes of the training providers, if applicable, for attending QF-recognised courses. PS(Ed) advised that industry practitioners who had successfully completed RPL assessments might immediately apply for reimbursement of 75% of the assessment fees, while the remaining 25% of RPL assessment fees might be reimbursed upon completion of any QF-recognised programmes. As regards the suggestion of providing study leave to employees to attend QF-recognised programmes, DS(Ed) said that the Administration would relay to the Labour and Welfare Bureau ("LWB") for consideration.

Action

V. Briefing by the Secretary for Labour and Welfare on relevant policy initiatives in the Chief Executive's 2013 Policy Address
(LC Paper No. CB(2)489/12-13(02) and The 2013 Policy Address booklet entitled "Address by the Chief Executive The Honourable CY Leung")

29. At the invitation of the Chairman, SLW briefed members on the new and on-going key initiatives pertaining to labour and manpower under LWB in the 2013 Policy Address, details of which were set out in the Administration's paper.

30. SLW said that CE had stated in his election manifesto the guiding concept of the manpower policy. The Government would strive to take forward the various initiatives step by step. Notably, it was stated in the 2013 Policy Address that the Administration would commence the legislative process in respect of the provision of statutory paternity leave as soon as possible, strengthen the support to job-seekers with different degree of employment difficulties, and follow up on the policy study on standard working hours ("SWH").

(Post-meeting note: The speaking note of SLW was issued to members vide LC Paper No. CB(2)558/12-13 on 28 January 2013.)

Alignment of statutory holidays with general holidays

31. Mr WONG Kwok-hing was concerned about the disparity between the days of statutory holidays and general holidays, which were adopted when there was a clear distinction between blue-collar and white-collar workers. Following the shrinking of the manufacturing industry over the years, he called on the Administration to expedite the alignment of the statutory holidays with the general holidays with a view to standardizing the leave entitlement of all employees and further promoting family-friendly employment practices. Mr WONG Kwok-kin raised a similar concern.

32. SLW said that the Administration was aware of the views expressed over the alignment of statutory holidays with general holidays. To have a better grasp of the issues, the Labour Department ("LD") had commissioned the Census and Statistics Department ("C&SD") to collect statistics on characteristics of employees taking statutory holidays and general holidays in Hong Kong. The Administration would revert to the Panel in due course after the Labour Advisory Board ("LAB") deliberated on the subject.

Action

33. In response to the further enquiry of Mr WONG Kwok-hing and the Chairman about the timeframe concerned, SLW advised that C&SD had completed the relevant data collection and it was expected that the data analysis would be completed before the end of 2013 for reporting to LAB.

Abolishing the collection of the Employees Retraining Levy ("ERL") from employers of foreign domestic helpers ("FDHs") and importation of labour

34. Mr WONG Kwok-hing was concerned that there had been an increasing call from the employers in the construction industry for importation of labour under the Supplementary Labour Scheme ("SLS") to relieve their labour shortage since the announcement of abolishing the collection of ERL from FDH employers. The Chairman expressed similar concerns. He pointed out that there had been an increasing number of young new entrants to the construction industry, and he did not see the need for importing construction workers. They sought clarification on the Administration's stance in this regard. Mr TANG Ka-piu asked whether the Administration would consider abolishing the collection of levy from employers of workers imported under SLS.

35. Mr WONG Kwok-kin expressed concern about CE's remarks made in the Question and Answer Session of the 2013 Policy Address in January 2013 that when the local workforce was insufficient to support the development needs, the Administration had to consider importing construction workers from outside Hong Kong.

36. Responding to members' concerns, SLW clarified that the Administration proposed to abolish the collection of ERL from FDH employers to ease the burden on families employing FDHs. It did not affect the established mechanism for importing workers to fill vacancies in certain trades under SLS. He stressed that the Government's policy was to ensure priority of employment for local workers. Employers must accord priority to local workers in filling job vacancies. Only employers who had genuine need but encountered difficulties in getting suitable staff locally might be considered for importing workers under SLS to fill vacancies. As regards the shortfall of workers in the construction industry, SLW said that the Administration would provide more training for local construction workers and improve the work environment and conditions, with a view to attracting new entrants, particularly young people, to the construction industry.

Action

37. Mr POON Siu-ping expressed concern about the financial impact on the Employees Retraining Board ("ERB") in connection with the abolition of the levy. Mr POON enquired about the long-term financial arrangements for ERB.

38. While expressing support for the abolition, Dr KWOK Ka-ki was concerned about the long-term financial planning for ERB and in particular the financial support and commitment to train low-skilled workers. He enquired about the Administration's plan in this regard.

39. SLW responded that ERB played a pivotal role in enhancing the employability of local employees and maintaining the competitiveness of the economy over the years by offering a great variety of training and retraining courses to a considerable number of trainees. As a long-term commitment to provide sustained and stable financial support to ERB for enhancing the productivity of the local workforce, he would make a proposal to the Financial Secretary on the long-term financial arrangement for ERB. He informed members that on the basis of the existing utilisation of training places, it was estimated that the Employees Retraining Fund could sustain ERB's service until the end of 2015. SLW added that the Administration would continue to collaborate with ERB to take forward its Three-year Strategic Plan.

40. In response to Mr TANG Ka-piu's suggestion of introducing other source of funding for ERB by extending the collection of ERL to the Admission Scheme for Mainland Talents and Professionals administered by the Immigration Department, SLW advised that the source of funding might be considered in the context of the long-term financial arrangement for ERB.

Manpower planning

41. Dr CHIANG Lai-wan expressed concern about the problem of manpower mismatch. She noted with concern that although the overall unemployment rate was not that high, the youth unemployment rate was relatively high and there was labour shortage in specific industries, in particular the construction industry. She held the view that the Administration should conduct sector-specific manpower requirement projection in response to the development of various industries. Further, consideration should be given to providing young people and students with information on the anticipated manpower demand in specific industries so as to facilitate them to start career planning at an early stage. Dr CHIANG said that as stated in the 2013 Policy Address, the

Action

Administration would take forward the initiatives relating to the development of innovation and technology industry and testing and certification industry, the Labour and Welfare Bureau ("LWB") should provide the tertiary institutions with the future manpower requirement of the economy for better course planning to meet the anticipated manpower demand in various industries.

42. SLW responded that the Administration was fully aware of the concerns about the relatively high unemployment rate for young people aged 15 to 24, which was about 7.7% as shown from the latest figure. SLW assured members that LWB and the relevant bureaux and departments would continue to keep under review the sectoral manpower requirement and supply in consultation with the respective bodies and education institutions in ensuring adequate human resources for various industries.

Legislating for standard working hours

43. Pointing out that CE had pledged in his election manifesto that the Government would set up a special committee to follow up on legislating for SWH, Mr WONG Kwok-kin expressed dissatisfaction that the subject was not included in the policy initiatives for 2013.

44. Mr KWOK Wai-keung expressed grave concern about the phenomenon of long working hours in Hong Kong and that employees had not been compensated for overtime work. While the Administration would set up a Special Committee on SWH ("the Special Committee") within the first quarter of 2013, Mr KWOK expressed dissatisfaction at the Administration's open stance and lack of concrete timetable for legislating for SWH. He pointed out that Hong Kong lagged far behind some other Asian economies in the implementation of SWH. He took the view that the Administration should have a clear stance on the issue and the Special Committee should focus its work at building consensus towards legislating for SWH.

45. SLW stressed that the subject of SWH was highly complex and controversial. There were a number of key issues that needed to be discussed in depth, as highlighted in the Report of the Policy Study on SWH ("the Report"), before taking a view on the way forward. The Special Committee comprising representatives of labour unions and employers' associations, Government officials, academics and community leaders would follow up on the study on SWH and provide an effective platform for different sectors of the community to communicate on the subject and identify the way forward.

Action

46. Mr Michael TIEN expressed the view that instead of studying legislating for SWH for all types of jobs across the board, the Administration should consider improving EO to put it beyond doubt that the employers must stipulate expressly the components of working hours and the overtime work arrangements in the employment contracts.

47. SLW responded that the Administration kept an open mind on the matter. He was confident that the Special Committee would study and discuss the various issues of concern thoroughly and objectively in the deliberation of the policy direction of SWH, including the suggestion of making amendments to EO, and identify the way forward.

48. Mr POON Siu-ping expressed concern that it would take a long time for the Special Committee to discuss the various issues relating to SWH before reaching a consensus on the subject. He asked about the interim measures in place to tackle the problem of long working hours.

49. SLW said that the Special Committee would commence its study on the subject of SWH upon formation in March 2013. It would provide an effective platform for in-depth discussion on the various issues of concern on SWH as outlined in the Report, which were far more complicated and controversial than the introduction of statutory minimum wage ("SMW").

50. Mr LEUNG Kwok-hung considered it imperative to introduce SWH to safeguard employees' right. He was concerned about the concrete timetable for legislating for SWH. He enquired whether the consensus of LAB was a prerequisite for establishing an SWH regime.

51. The Chairman said that he was given to understand from the 2013 Policy Address that the Administration would set up a Special Committee merely to identify the way forward for SWH, although its work included but not limited to studying on legislating for SWH. In his view, this was departed from CE's pledge of legislating for SWH in Hong Kong as stated in his election manifesto.

52. SLW said that CE had stated in his election manifesto to set up a Special Committee to follow up on the study on SWH, and the committee would examine issues relating to employees' overtime work conditions and arrangements as well as legislative proposals on SWH. SLW stressed that the Special Committee would be an effective platform for in-depth discussions on SWH, building consensus and identifying the way forward.

Action

Support to job-seekers with different degree of employment difficulties

53. Noting that the Administration had put in place various employment programmes to enhance the employability of job-seekers, Mr CHAN Kin-por sought information on the participation rates of such programmes. Mr CHAN asked whether, apart from providing training allowance to employers for employing target job-seekers, the Administration would provide other incentives to employers.

54. Commissioner for Labour ("C for L") said that of the some 9 400 participants of the Youth Pre-employment Training Programme and Youth Work Experience and Training Scheme in 2011-2012, 3 800 or so were placed in jobs or training vacancies of the programme. As regards participants of the Employment Programme for the Middle-aged and the Work Orientation and Placement Scheme, some 3 000 to 4 000 of them found employment in each of the past three years.

55. Mr CHAN Kin-por enquired whether enhancement measures would be taken to encourage more employers to participate in these employment programmes. C for L said that efforts had been made to promote various employment programmes to employers. He drew members' attention to the fact that as a result of the vibrant economy in the past few years, the overall unemployment rate remained low. Most participants of these employment programmes were job-seekers with different degree of employment difficulties.

Implementation of SMW

56. Mr CHAN Kin-por noted with concern that there were 144 suspected cases of non-compliance with the Minimum Wage Ordinance and 34 summonses convicted following the implementation of the initial SMW rate from 1 May 2011. He enquired about the measures to be taken to enhance the compliance with the SMW requirements and the reporting mechanism.

57. SLW responded that since the implementation of SMW, LD had conducted over 60 800 workplace inspections on establishments of low-paying sectors, and the compliance was satisfactory. The Administration would continue with its public education and promotional efforts to assist employers and employees in understanding their respective obligations and entitlements. In addition, prior to the implementation of the revised SMW rate in May 2013, the Administration would organise extensive publicity activities to enhance public awareness of the new requirements.

Action

58. Mr Tommy CHEUNG expressed disappointment that the Administration had underestimated the knock-on effect and ripple effect brought about by the implementation of SMW. He held the view that the implementation of the revised SMW rate from \$28 to \$30 per hour would further jeopardize the economic competitiveness and the development of Hong Kong in the long run. He was particularly concerned about the manpower shortage in the catering industry and the mismatch of manpower in various industries following the implementation of SMW.

59. SLW said that the Minimum Wage Commission ("MWC") had reviewed and deliberated the SMW rate through an evidence-based approach and in an objective and balanced manner. Furthermore, MWC had taken into consideration views from various sectors of the community, including the impact on the affordability of business, in recommending the revised SMW rate at \$30 per hour. As regards the manpower shortage in specific industries, a series of employment assistance programmes for job seekers and employers had been put in place. For example, LD had since 2009 set up a Recruitment Centre for the Catering Industry to provide employment service and job referrals for vacancies in the catering industry.

Employees' compensation

60. Mr POON Siu-ping noticed from CE's election manifesto that a special taskforce comprising employees, employers and representative of C for L would be set up to undertake a study on improving protection for workers in high-risk occupations in relation to insurance, compensation for work injuries, therapy and rehabilitation. Mr POON enquired about the Administration's plan in this regard.

61. SLW advised that the Administration would follow up on the proposal and revert to the Panel in due course.

BRC levy for PWIF

62. Mr TANG Ka-piu expressed no objection to the proposed reduction of the rate of BRC levy from \$450 to \$250 per annum. However, he noted with concern that PWIF, which was mainly financed by BRC levy, had persistently recorded surpluses and the number of applications for ex gratia payment received by PWIF dropped significantly in recent years. He attributed such phenomenon to the existing arrangements of allowing employers to use the Mandatory

Action

Provident Fund ("MPF") accrued benefits to offset severance payments, such that employees did not have to make claims for severance payment to PWIF. He enquired whether the Administration would consider raising the offsetting arrangement for the discussion of LAB at its future meetings.

63. SLW said that the offsetting arrangement under the MPF schemes was adopted after extensive consultation and balancing all relevant considerations. The Mandatory Provident Fund Scheme Authority ("MPFA") was reviewing certain arrangements of the MPF system.

64. Mr Tommy CHEUNG expressed support for the proposed reduction of the rate of BRC levy from \$450 to \$250 per annum. He took the view that the surplus recorded by PWIF was due to the drop in the number of business closures in recent years.

Occupational safety and health ("OSH")

65. Dr KWOK Ka-ki cast doubt about the effectiveness of the safety measures adopted by LD and the Occupational Safety and Health Council ("OSHC") in curbing the occurrence of serious occupational injuries and fatal industrial accidents in recent years. Noting the commencement of a number of mega infrastructure projects, he asked whether new counter measures would be taken to enhance the safety performance of the construction industry.

66. SLW responded that LWB had maintained close liaison with the Development Bureau ("DevB") in respect of monitoring the safety performance of contractors of public works projects. Deputy Commissioner for Labour (Occupational Safety and Health) ("DC for L(OSH)") supplemented that LD had all along strived to protect the safety and health of people at work through a multi-pronged approach of inspection and enforcement, publicity and promotion, as well as education and training, so as to foster a culture of safety and health at work. In the light of the commencement of mega infrastructure projects, DevB had formulated a series of enhancement measures, including enhancing the existing merit and demerit system for the contractors of public works projects, such that the past performance and accident rates of contractors would be taken into account under the current tender assessment system for public works contracts.

Action

67. DC for L(OSH) further advised that to encourage contractors to be more proactive in implementing safety measures at work sites, LD and OSHC had jointly launched the Occupational Safety and Health Star Enterprise-Pilot Scheme on RMAA (Repair, Maintenance, Alteration and Addition) Safety Accreditation in June 2012, under which those accredited as star enterprises could enjoy up to 50% premium discount when procuring employees' compensation insurance from the Employees' Compensation Insurance Residual Scheme. Furthermore, LD had since July 2012 launched a programme for caring of new construction workers. Under the programme, those who newly joined the industry were identified with the label "P" (i.e. Probationer) and those who were new to a construction site were identified with the label "N" (i.e. Newcomer). Contractors were encouraged to assign mentors to take care of workers who newly joined the industry and would also provide basic induction safety training to these workers. DevB and relevant works departments had incorporated a similar arrangement into the safety regulatory system of public works contractors to promote the programme.

Other issues

Arrangements of the MPF system

68. Mr WONG Kwok-kin expressed grave concern about the Administration's plan to progressively reduce the proportion of accrued benefits attributed to employer's contribution in the MPF account that could be used by the employer to offset long-service or severance payments, which was stated in the CE's election manifesto.

69. SLW said that the Administration had been working together with MPFA with a view to improving certain arrangements of the MPF system, including exploring the feasibility of the implementation of Full Portability within three years.

Universal retirement protection

70. Mr Michael TIEN noted with concern that the subject of universal retirement protection was not included in the 2013 Policy Address. He held the view that both the Old Age Living Allowance ("OALA") and the provision of financial assistance for the needy elderly under the Comprehensive Social Security Assistance Scheme were not able to fully meet the basic needs of the poor elderly. He called on the Administration to implement retirement protection scheme for the needy elderly without further delay. Mr WONG Kwok-kin also raised concern about the Administration's plan to implement universal retirement protection.

Action

71. Mr LEUNG Kwok-hung took a strong view that the introduction of OALA could not meet the retirement needs of the elderly, but the assets limit had given rise to problems like transfer of asset. SLW said that the Administration would launch publicity programme to enhance the public awareness of OALA application requirements.

72. SLW advised that a task force on Social Security and Retirement Protection was set up under the Commission on Poverty to study the subject of retirement protection.

VI. A proposal on legislating for paternity leave
(LC Paper Nos. CB(2)515/12-13(03) and (04))

73. SLW briefed members on the Administration's proposal to legislate for the provision of paternity leave by employers to their male employees, as detailed in the Administration's paper. He said that subject to the Panel's view, the Administration would proceed with the drafting of the legislation with a view to introducing it into LegCo early in the 2013-2014 legislative session.

74. Members noted the background brief prepared by the LegCo Secretariat on the subject.

75. Mr WONG Kwok-hing said that he had been urging the Administration to legislate for paternity leave since 2006, and was thus pleased with the Administration's proposal. However, noting that a male employee would be paid during paternity leave at a daily rate equivalent to four-fifths of his average daily wages, Mr WONG considered the proposed paternity leave pay meagre when there had been a strong call for maternity leave on full pay. He also criticized the disparity treatment between employees in the private sector and the civil service as government employees were currently entitled to five days' paid paternity leave.

76. Concerning the paternity leave pay, SLW pointed out that under the Employment Ordinance (Cap. 57) ("EO"), for an employee who took paid maternity leave or sick leave, the maternity leave pay and sickness allowance was pitched at four-fifths of the average daily wages earned by the employee before the maternity leave or sick leave. For the sake of consistency with the existing labour legislation, the Administration proposed that the paternity leave pay should be aligned with those

Action

applicable to maternity leave and sick leave under EO. SLW added that same as maternity leave pay, the daily rate of paternity leave to be provided in the law would only be a statutory minimum for employers. He said that many employers were offering employees full pay for maternity and paternity leave on their own initiative.

77. SLW advised that in proposing the duration of statutory paternity leave at three days, the Administration had made reference to the prevailing practice in the provision of paternity leave on a voluntary basis by local organisations as revealed from the findings of a survey on paternity leave conducted by the Labour Department ("LD"), and taking into account the possible impact of legislating for paternity leave on local employers, particularly small-and-medium sized enterprises which comprised more than 90% of all enterprises in Hong Kong. It was mindful of the need to maintain an appropriate balance between safeguarding the interests of employees and the affordability and flexibility of employers. SLW said that the Administration would continue to organise promotional and publicity activities to encourage employers to adopt good people management practices which included offering more favourable employment terms than statutory provisions.

78. Mr Tommy CHEUNG said that the Liberal Party supported the recommendation made by the Labour Advisory Board ("LAB") on the duration of statutory paternity leave. He was, however, gravely concerned about the impact on the operation of enterprises if male employees, under the proposal, were allowed to take the statutory paternity leave at any time during the period from the four weeks before the expected date of confinement to 10 weeks after the actual date of the childbirth and might take all three days of paternity leave in one go or on discrete days. Such arrangement would undermine the relationship between employers and employees, in the event that the employee was allowed to take paternity leave at any time if he so wished. In his view, the period and mode of taking paternity leave should be worked out mutually by the employer and employee concerned. Mr CHEUNG asked about the penalties, if any, for employees taking paternity leave by way of presenting forged documents. He cautioned that the Administration should take into account the possible loopholes in drafting the legislation on paternity leave.

79. SLW responded that as set out in paragraph 10 of the Administration's paper, to enable employers to prepare for their employees taking paternity leave, it was proposed that the male employee who intended to take paternity leave be required to inform his employer

Action

of his partner's pregnancy and expected date of confinement in advance so that the employer could have sufficient time to make necessary manpower deployment arrangements. It would be a criminal offence for an employee to present forged documents with a view to taking paternity leave by deception. In addition, under the proposal, the employer might deduct the employee's wages to recover the paternity leave pay already granted if the employee could not present a valid birth certificate.

80. Mr TANG Ka-piu pointed out that the need to take care of the newborn and the mother was not necessarily confined to the period immediately before and after confinement. New fathers, especially those without helpers, might need to take up more childcare duties during the postnatal period. It was thus understandable that male employees should be allowed to take paternity leave during the period up to 10 weeks after the actual date of the childbirth.

81. In response to Mr TANG Ka-piu's question as to whether the male employee was entitled to payment in lieu of any untaken statutory paternity leave, SLW answered in the negative. He explained that the arrangement would ensure consistency with the existing law, as paternity leave emanated from similar cause as maternity leave, and the nature of paternity leave resembled that of sick leave and maternity leave.

82. Mr Kenneth LEUNG said that the Hong Kong Women Development Association had previously conducted a study on the provision of paternity leave. Of those respondents indicated that they would take leave to take care the newborn and the mother, 30% of them would take four to six days' leave after childbirth and nearly 25% would take leave from seven to 10 days. Mr LEUNG pointed out that male employees in Shenzhen and the Philippines could enjoy 30 days and seven days of paid paternity leave respectively. Given that government employees had already been granted five days' paid paternity leave, Mr LEUNG was of the view that the Administration should give due consideration to extending the duration of statutory paternity leave to five days.

83. SLW pointed out that instead of surveying on male employees, LD's survey on paternity leave was conducted on member establishments of its 18 Human Resources Managers Clubs ("HRM Clubs"). It was revealed that the majority of the respondent companies offered one to three days of paternity leave, and the average duration was three days. He added that in the neighbouring Asian economies such as Macao and Korea, two days' no pay and three days' paid paternity leave was provided

Action

respectively. In the circumstances, the Administration proposed setting the duration of statutory paternity leave at three days. SLW added that the arrangements of statutory paternity leave would be reviewed in the light of the socio-economic conditions etc after implementation.

84. Mr TANG Ka-piu asked whether a male employee was eligible for paternity leave if his partner suffered a miscarriage. Mr Kenneth LEUNG raised a similar concern as to how cases where the newborn died shortly after birth would be handled under the new legislation if the father had already taken paternity leave.

85. Assistant Commissioner for Labour ("AC for L") explained that under EO, where a female employee suffered a miscarriage, instead of maternity leave, she would be entitled to sick leave for any day on which she was absent from work by reason of such miscarriage. Given that paternity leave was provided for a father to help look after the newborn at around the time of delivery, there was insufficient justification for paternity leave to be granted with respect to cases of miscarriage. Furthermore, extending paternity leave to cover miscarriage cases would present practical difficulties in verifying the father-child relationship, taking into consideration that a child conceived outside of marriage would also be covered under the proposal. SLW said that the Administration would take note of members' concerns in this regard when drafting the relevant legislation.

86. Mr CHEUNG Kwok-che pointed out that it was unreasonable for an employee on maternity leave or sickness day to be paid partially. In his view, the Administration should legislate for fully paid paternity leave, and then extend similar arrangements to the maternity leave pay and sickness allowance. Noting that some respondent organisations of the LD's survey had provided paternity leave to their employees of up to 14 days, he cast doubt about the basis for proposing the three-day paternity leave. He demanded that the statutory paternity leave period and pay should at least be in line with the paternity leave arrangements for government employees.

87. SLW stressed that it was not easy for LAB to come to a consensus on the proposal. Should LAB be invited to revisit the proposed arrangements of statutory paternity leave, it would probably unduly delay the legislation for paternity leave. As explained earlier, the three-day paternity leave paid at the rate of four-fifths of the average daily wages earned by the employee was the statutory minimum proposed having regard to the prevailing practice in the provision of paternity leave on a

Action

voluntary basis by member establishments of the aforesaid 18 HRM Clubs and the views of LAB. As a matter of fact, some employers had been offering paternity leave above the proposed statutory requirements.

88. Pointing out that the prevailing rates of maternity leave pay and sickness allowance had been in force for a long time, Mr POON Siu-ping considered it high time for the Administration to review whether maternity leave and sickness day should be provided with full pay. He asked whether consideration be given to specifying the timeframe for further increasing the duration of statutory paternity leave.

[To allow sufficient time for discussion, the Chairman suggested and members agreed to extend the meeting for 30 minutes.]

89. Mr KWOK Wai-keung considered that it was inappropriate to grant sickness allowance at a daily rate equivalent to four-fifths of the employee's average daily wages and regard the nature of paternity leave the same as sick leave. Mr KWOK pointed out that 30 days of paid paternity leave were granted on the Mainland even though it adopted birth control, and that one week of paternity leave was provided in Singapore where more births were encouraged. In his view, the Administration had yet to formulate a long-term population policy or introduce measures to cope with the problem of low birth rate in Hong Kong. To this end, the Administration should draw up a concrete plan to progressively increase the statutory paternity leave period and pay.

90. SLW explained that the proposed rate for statutory paternity leave pay would be pitched at the same level as the maternity leave pay and sickness allowance for consistency with the existing law. He appealed to members' understanding as it was not easy for LAB to reach a consensus on the proposed arrangements of paternity leave. He assured members that, having considered the Panel's views on the proposal, the Administration would proceed with the drafting of the bill expeditiously for its early introduction into LegCo in the 2013-2014 legislative year.

91. Dr CHIANG Lai-wan and Dr Elizabeth QUAT said that the Democratic Alliance for the Betterment and Progress of Hong Kong had all along strived for the provision of statutory paternity leave and welcomed the proposed arrangements of statutory paternity leave in response to the strong call from the community. They called on the Administration to expedite the introduction of the relevant legislation.

Action

92. SLW reiterated that subject to the views of the Panel, the Administration would proceed with the drafting work and aimed to introduce a bill into LegCo after the 2013-2014 legislative session commenced.

93. Dr KWOK Ka-ki expressed concern that the arrangements of paternity leave in Hong Kong was less favourable than those of some developing countries in Africa, where the number of days of paternity leave offered ranged from five to 14 days. Pointing out that LD's survey on paternity leave collected statistics from member establishments of HRM Clubs only, Dr KWOK criticized that the results so obtained were not comprehensive. In his view, the proposed three-day paternity leave was far from adequate for a father to look after his newborn and its mother. More importantly, many working fathers, especially those vulnerable workers, did not dare to take statutory annual leave for fear of being stigmatized in the workplace if doing so. This explained why they needed legislation to protect their employees' rights. In the light of the disparity between the duration of proposed statutory paternity leave and that for government employees, he called on the Administration to align the arrangements. Dr KWOK asked whether male employees would be allowed to take unpaid additional paternity leave under the proposed legislation.

94. SLW said that as shown from the findings of LD's survey on paternity leave, the norm of offering paternity leave by respondent organisations was one to three days. He stressed that the proposed three-day paternity leave was a starting point for a statutory paternity leave. It was considered appropriate after making reference to the practices in neighbouring Asian economies, for example, five days in Korea with pay for the first three days, two days without pay in Macao and three days with pay in Taiwan. SLW further said that the legislative proposal would not include the provision of unpaid paternity leave. However, the Administration did not rule out the possibility that unpaid paternity leave could be considered in future.

95. While welcoming the provision of statutory paternity leave, Dr Elizabeth QUAT said that the proposed three-day paternity leave period was insufficient, particularly for taking care of mothers with postnatal depression. Notwithstanding this, she agreed that the Administration should proceed with the current proposal to give effect to the statutory paternity leave as early as practicable. Dr QUAT further said that the Administration should provide clear guidelines to employers with respect to the advance notice required to be given by employees for

Action

taking paternity leave. She asked whether the Administration would consider introducing other family-friendly employment measures, such as flexible working hours and the provision of parental leave.

96. SLW advised that in response to LAB's request, the Administration had agreed to conduct a review in about one year's time after the implementation of statutory paternity leave. He assured members that the Administration would publicize the implementation details of statutory paternity leave. The proposal of requiring an employee to give advance notice for taking paternity leave merely sought to enable employers to have sufficient time to make the necessary manpower deployment arrangements. SLW stressed that the provision of statutory paternity leave signified a major step forward in promoting family-friendly employment practices. The Administration would continue to encourage employers to adopt other family-friendly employment practices through various publicity channels.

97. Mr LEUNG Kwok-hung was dissatisfied with the proposed duration of paternity leave at three days only. Mr LEUNG added that the legislation should stipulate explicitly that employers should under no circumstances dismiss their male employees on the ground of failing to give sufficient notice for taking leave to take care of their partners during and after pregnancy.

98. SLW said that the entitlement of male employees to statutory paternity leave would be protected under the proposed legislation. The employee concerned could take his own annual leave beyond the statutory paternity leave period subject to mutual arrangement between the employer and the employee.

99. The Chairman said that the Hong Kong Confederation of Trade Unions called on the provision of seven-day paternity leave on full pay to male employees. Given that the existing statutory maternity leave period and pay were outdated, female employees should be entitled to 12 weeks' maternity leave on full pay.

100. The Chairman requested the Administration to take into account in drafting the legislation members' views on the paternity leave entitlement in the event of miscarriage or stillbirth, the statutory paternity leave period and pay.

Action

101. There being no other business, the meeting ended at 12:20 pm.

Council Business Division 2
Legislative Council Secretariat
8 April 2013