

立法會
Legislative Council

LC Paper No. CB(2)772/12-13
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 19 February 2013, at 5:00 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon LEE Cheuk-yan (Chairman)
Hon WONG Kwok-kin, BBS (Deputy Chairman)
Hon LEUNG Yiu-chung
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 CHAN Chi-chuen
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon SIN Chung-kai, SBS, JP

Member attending : Dr Hon Helena WONG Pik-wan

Members absent : Hon Albert HO Chun-yan
Dr Hon LEUNG Ka-lau
Hon IP Kwok-him, GBS, JP
Hon LEUNG Kwok-hung
Hon Michael TIEN Puk-sun, BBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP

Public Officers attending : Item IV

Mr CHEUK Wing-hing, JP
Commissioner for Labour

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

Miss Bonny WONG Wai-man
Senior Labour Officer (Wage Security)
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

Ms Kiwi NG
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper Nos. CB(2)605/12-13 and CB(2)606/12-13)

The minutes of the meetings held on 3 and 18 December 2012 were confirmed.

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

2. Members noted that the following papers had been issued since the last meeting -

- (a) a submission from 香港駕駛學院駕駛教師工會 requesting the Panel to discuss the right to form and join trade unions; and

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- (b) a letter dated 8 February 2013 from Mr Albert HO proposing the Panel to discuss issues relating to the monitoring of employment agencies for foreign domestic helpers ("FDHs").

3. In respect of Mr Albert HO's letter suggesting the Panel to form a subcommittee to study issues relating to the monitoring of employment agencies for FDHs, the Chairman said that as the number of subcommittees on policy issues in action had reached the maximum number of eight as stipulated in the House Rules, and that there were several subcommittees placed on the waiting list for activation, the Panel might wish to consider discussing the subject at a future meeting. Members agreed that the subject be included in the Panel's list of outstanding items for discussion.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)622/12-13(01) and (02))

Regular meeting in March 2013

4. Members agreed that the following items be discussed at the next regular meeting on 19 March 2013 -

- (a) Continuous contract requirement under the Employment Ordinance; and
- (b) Protection for participation in trade unions.

Members further agreed that deputations would be invited to give views on the two items separately, and the meeting would be advanced to start at 4:00 pm.

IV. Proposal to revise the rate of Business Registration Certificate levy for the Protection of Wages on Insolvency Fund
(LC Paper Nos. CB(2)622/12-13(03) and (04))

5. At the invitation of the Chairman, Commissioner for Labour ("C for L") briefed members on a proposal to revise the rate of Business Registration Certificate ("BRC") levy for the Protection of Wages on Insolvency Fund ("PWIF"), details of which were set out in the Administration's paper.

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6. Members also noted the background brief on the subject prepared by the Legislative Council Secretariat.

7. Mr Tommy CHEUNG said that the Liberal Party was in support of the proposal to revise the rate of BRC levy for PWIF from the current level of \$450 to \$250 per annum.

8. Mr LEUNG Yiu-chung said that he was not in support of the proposal to reduce the BRC levy. Having regard to the improved and stable financial position of PWIF, he considered it unreasonable that employees whose employers had become insolvent could not receive the full amount of outstanding wages and pay in arrears for other statutory entitlements as provided for under the Employment Ordinance (Cap. 57) ("EO"), i.e. wages in lieu of notice, severance payment ("SP"), and pay for untaken statutory holidays and untaken annual leave. He urged the Administration to review the scope of PWIF under the Protection of Wages on Insolvency Ordinance (Cap. 380) ("PWIO") with a view to raising the maximum payout from PWIF to better safeguard employees' right under EO.

9. C for L responded that apart from the financial position of PWIF, there had been all along other fundamental principles to comply with in considering the expansion of the scope of PWIF. These included the prudent approach to managing PWIF and improving its coverage in a progressive manner, with a view to enhancing employees' protection while ensuring the sustainability of PWIF by setting the maximum level of amounts and limits on the period for ex gratia payment which an employee could receive from PWIF. C for L stressed that PWIF was set up to provide timely financial relief to employees affected by the insolvency of their employers, instead of seeking to recover all the outstanding wages and entitlements in arrears for insolvent employers in accordance with the employment contracts. The scope of coverage and the maximum amount of the ex gratia payment for the outstanding wages and other statutory entitlements were clearly specified under PWIO, whereas employees could seek to recover all the wages in arrear and outstanding payment of statutory entitlement under EO through other established channels. In 2011-2012, 75% and 99% of the applicants were paid ex gratia payment from PWIF to fully cover their respective claims of outstanding wages and wages in lieu of notice.

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10. While expressing understanding of the rationale for the proposed reduction of the BRC levy rate, Dr KWOK Ka-ki was concerned that the maximum amount of ex gratia payment for arrears of wages or other statutory entitlements had remained unchanged over a long period of time. He enquired about the basis for setting the ceiling of ex gratia payment that might be made out of PWIF. In his view, the payment ceiling should be reviewed and adjusted in accordance with the accumulated wage increase over the years.

11. C for L said that the maximum amount of ex gratia payment which an employee could receive from PWIF in respect of wage arrears and wages in lieu of notice were set in 1996 and that for SP was set in 1999. A review of the maximum amount of ex gratia payment that might be made out of PWIF could be considered by the PWIF Board if considered necessary.

12. Assistant Commissioner for Labour (Employees' Rights & Benefits) ("AC for L (ER&B)") added that making ex gratia payment from PWIF in respect of wage arrears owed to an applicant by his insolvent employer and recovery of outstanding wages owed to employees from their employer were separate issues. He drew members' attention to the fact that consequent upon LD's vigorous effort in combating wage offences, wages applied by an applicant for PWIF in respect of services rendered to his insolvent employer would seldom exceed the prescribed limit of four months, or the payment ceiling of \$36,000. As mentioned earlier, 75% of the applicants in 2011-2012 could get ex gratia payment made from PWIF to fully cover the amount of outstanding wages claimed to be owed by their insolvent employers.

13. Dr KWOK Ka-ki remained concerned about whether the maximum amount of ex gratia payment made from PWIF could adequately protect employees' right to recover all outstanding wages and pay for other statutory entitlements in respect of services rendered to their insolvent employers. Dr KWOK Ka-ki and the Chairman requested the Administration to provide information on the number of cases in which the ex gratia payment made out of PWIF did not fully cover wages claimed because the wages owed to the applicant exceeded four months' wages or the payment ceiling of \$36,000.

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14. Mr CHAN Kin-por supported in principle the proposal to reduce the BRC levy rate in accordance with the established review mechanism whereby the levy rate could be adjusted upwards or downwards if so

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justified. Noting from Annex II of the Administration's paper that the total accumulated fund for the financial year 2012-2013 would be \$2,912.8 million if the levy rate was reduced to \$250, Mr CHAN was of the view that the reserve of PWIF would remain adequate to meet an upsurge in claims for ex gratia payment even up to the level of \$514 million in 2002. In the circumstances, he considered that the financial position of PWIF was stable and healthy and that the BRC levy could be reduced as proposed.

15. Mr SIN Chung-kai expressed no objection to the proposed reduction of the BRC levy rate. However, he noted with concern that a flat rate of BRC levy was adopted for all types of businesses across the board, irrespective of their respective risks of insolvency. He enquired whether consideration would be given to collecting the BRC levy according to the potential risk of insolvency of individual businesses by reference to the scale of business. For instance, employers of large companies and enterprises with greater number of employees would be required to pay a higher BRC levy rate.

16. Mr Kenneth LEUNG said that the collection of BRC levy for PWIF according to the size of business would help alleviate the financial burden of small and medium-sized enterprises. Consideration could be given to setting several BRC levy rates for PWIF according to the amount of the authorised capital of the business.

17. C for L said that it would be practically difficult to devise and administer a BRC levy system with different levy rates based on the scale of business. In addition, the risk of business closures might not necessarily have a direct correlation with the scale of business and their amount of authorised capital.

18. The Chairman recalled that during the scrutiny of the Protection of Wages on Insolvency (Amendment) Bill 2011 ("the Amendment Bill"), members of the relevant Bills Committee had raised concerns about the scope of the coverage of PWIF. Members had called on the Administration to abolish the ceiling on the number of days for calculating the amounts of pay for untaken annual leave and pay for untaken statutory holidays. However, the Administration refused to take on board the suggestion and proposed only to expand the scope of the PWIF to cover pay for untaken annual leave in a period for not exceeding two leave years and untaken statutory holidays within four months before the applicant's last day of service.

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19. C for L advised that the PWIF Board had agreed to conduct a review one year after the implementation of the Amendment Bill which took effect on 29 June 2012, based on the actual experience of operation and the financial position of PWIF.

20. As regards the claims payment for SP from PWIF, the Chairman sought clarification on the calculation of ex gratia payment on SP made out of PWIF to an applicant given that SP could be met by the offsetting arrangement under the Mandatory Provident Fund ("MPF") schemes, i.e. employers were allowed to use the accrued benefits from their contribution to MPF to offset SP.

21. C for L advised that about 40% of the applications could get ex gratia payment made from PWIF to fully cover their SP claims in 2011-2012. AC for L (ER&B) added that employees of insolvent employers could receive ex gratia payment from PWIF for SP of \$50,000 plus 50% of the remainder of the entitlement, where the SP entitlement should be calculated in accordance with the provisions in EO. Within the prescribed limit of ex gratia payment from the Fund, the claims for SP made by an employee affected owing to the insolvency of his employer would first be met by the employee's accrued benefits derived from employer's contribution under the MPF schemes, and the ex gratia payment made from PWIF in respect of SP would cover the remainder of entitlement of the employee.

22. Mr LEUNG Yiu-chung reiterated that apart from reducing the BRC levy rate to alleviate the burden of employers, it was equally important to safeguard employees' rights and entitlements as provided for under EO. Given the reserve level of PWIF, he was of the view that the Administration should take into account the accumulated wage increase in the past years and undertake to conduct a comprehensive review of the scope of PWIF, including the coverage of the ex gratia payment and the ceiling for claims payment.

23. The Chairman was of the view that an employee should be entitled to claim the remaining SP after deduction of the accrued benefits derived from employer's contribution under the MPF schemes from PWIF. He strongly called on the Administration to review and expand the coverage of PWIF with a view to providing employees affected by the insolvency of their employers with ex gratia payment for all untaken annual leave and untaken statutory holidays as well as full amount of SP. Although he did not object to the proposed reduction of the BRC levy rate, he expressed reservation about supporting the proposal to reduce the levy

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rate in the absence of an undertaking of conducting a comprehensive review of the scope and coverage of PWIF to address members' concerns. The Chairman pointed out that assuming the levy rate of \$450, the estimated reserve of PWIF would amount to \$3,126 million by the end of the financial year 2012-2013, the Fund could effectively cope with the claims arising from further expanding the scope of PWIF. It was high time to review the scope and coverage of PWIF. In his view, the Administration should put forward the proposal to reduce the BRC levy rate after conducting a comprehensive review of the scope of PWIF.

24. C for L advised that the PWIF Board, established under PWIO, had the statutory functions of administering the Fund and making recommendations to the Chief Executive with respect to the rate of levy. While the Administration would convey members' views to the PWIF Board for consideration, it was not in a position to commit the Board for conducting a review of the scope of PWIF right away. Nonetheless, the PWIF Board was aware of members' concerns raised at the relevant Bills Committee on the Amendment Bill and had undertaken to review the coverage of PWIF one year after the implementation of the Amendment Bill which only took effect on 29 June 2012. C for L further advised that as explained earlier, the PWIF Board and LD had reviewed the level of the BRC levy in the light of the financial position of the Fund and other relevant consideration, it was agreed that the BRC levy rate should be reduced from the current level of \$450 to \$250 per annum, i.e. returning to the level prior to May 2002. C for L stressed that the protection of employees' entitlement for claims payment from PWIF would remain unchanged after the proposed reduction of the BRC levy rate.

25. There being no other business, the meeting ended at 5:40 pm.

Council Business Division 2
Legislative Council Secretariat
15 March 2013