

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1724/12-13  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/MP

**Panel on Manpower**

**Minutes of meeting**  
**held on Tuesday, 28 May 2013, at 8:30 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 Albert HO Chun-yan  
Hon LEUNG Yiu-chung  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon CHAN Kin-por, BBS, JP  
Dr Hon LEUNG Ka-lau  
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 LEUNG Che-cheung, BBS, MH, JP  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung  
Hon POON Siu-ping, BBS, MH  
Hon TANG Ka-piu  
Dr Hon CHIANG Lai-wan, JP
- Member attending** : Hon CHAN Yuen-han, SBS, JP
- Members absent** : Hon Frederick FUNG Kin-kee, SBS, JP  
Hon Kenneth LEUNG  
Hon SIN Chung-kai, SBS, JP

**Public Officers attending** : Item III

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

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

Ms Jade WONG Sin-yee  
Senior Labour Officer  
(Employment Claims Investigation)  
Labour Department

Ms Cecilia CHAN Pui-ching  
Senior Labour Officer (Labour Inspection)  
Labour Department

Item IV

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

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

Mr Raymond HO Kam-biu  
Chief Labour Officer  
(Working Hours Policy)  
Labour Department

Miss Carrie LAU Ka-wai  
Senior Labour Officer  
(Workplace Consultation Promotion)  
Labour Department

Ms Esther CHAN Lai-heung  
Senior 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 Kiwi NG  
Legislative Assistant (2) 1

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Action

**I. Information paper(s) issued since the last meeting**

Members noted that a joint letter dated 8 May 2013 from Mr TANG Ka-piu and Mr KWOK Wai-keung proposing the Panel to follow up the work progress of the Standard Working Hours Committee ("SWH Committee") had been issued since the last meeting. The Chairman informed members that the Administration had advised that it would be in a better position to revert to the Panel on the matter after the SWH Committee had held its second meeting which would be held in late July 2013. The Chairman proposed and members agreed that the regular meeting of the Panel in July 2013 would be postponed to tie in with the meeting schedule of the SWH Committee. The Chairman added that members would be informed of the meeting arrangements in due course.

*(Post-meeting note: The meeting of the Panel in July 2013 would be rescheduled for 31 July 2013.)*

**II. Date of next meeting and items for discussion**  
(LC Paper Nos. CB(2)1177/12-13(01) and (02))

Regular meeting in June 2013

2. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 4:30 pm on 18 June 2013 -

- (a) Intermediary charges for foreign domestic helpers; and
- (b) Latest development of the employment services of the Labour Department ("LD").

Action

Members further agreed that deputations would be invited to give views on the item in paragraph 2(a) above.

**III. Enforcement of labour legislation by the Labour Administration Branch of the Labour Department**  
(LC Paper Nos. CB(2)1122/12-13(01) and CB(2)1177/12-13(03))

3. At the invitation of the Chairman, Deputy Commissioner for Labour (Labour Administration) ("DC for L (LA)") briefed members on the enforcement of labour legislation by the Labour Administration Branch of LD, details of which were set out in the Administration's paper.

4. Members noted the background brief entitled "Enforcement of labour legislation" prepared by the Legislative Council ("LegCo") Secretariat.

Abuses of the Protection of Wages on Insolvency Fund ("PWIF")

5. Mr Tommy CHEUNG was concerned about the disparity in the sentences among company responsible persons and relevant employees for convicted cases involving PWIF abuses. He pointed out that the former would not only be sentenced to imprisonment or imposed a fine, but also might be disqualified from being company directors and taking part in the promotion, formation or management of companies for periods ranging from one and a half years to five years. He considered that the level of penalty for employers was disproportionate to the gravity of the offence. In this connection, Mr CHEUNG sought information on the sentences for convicted employees. Dr KWOK Ka-ki and Mr KWOK Wai-keung, however, considered the levels of penalty for PWIF abuses appropriate.

6. DC for L (LA) said that the Hong Kong Police Force ("the Police") had successfully secured conviction of 16 employees for cases involving PWIF abuses between 2003 and April 2013. Of these, some were sentenced to imprisonment of six to 12 months, some others were sentenced to community service orders for a duration of 160 to 240 hours. DC for L (LA) added that the sentence for convicted cases was a question for the court. Separately, the Official Receiver's Office would, having regard to the seriousness and circumstances of individual cases, recommend to the court to disqualify the concerned company responsible persons from being directors and to take part in the promotion, formation or management of a company.

Action

7. Expressing concern about the small number of conviction cases involving PWIF abuses from 2011 to the first quarter of 2013, i.e. one person was sentenced to imprisonment, 11 persons were sentenced to community service orders and one person was fined, Mr CHAN Chi-chuen sought information on the number of cases involving suspected PWIF abuses detected by LD during the period and the details of the sentences. Mr CHAN also enquired about the reasons for the limited number of convictions.

Admin

8. DC for L (LA) said that since the setting up of the inter-departmental Task Force in 2003, the Police had secured convictions against four employers, four company directors and 16 employees from cases involving PWIF abuses in the period from 2003 to April 2013. The sentences upon conviction included imprisonment from four months to three years and community service orders ranging from 160 to 240 hours. He would provide information on the number of cases involving suspected PWIF abuses detected by LD after the meeting. DC for L (LA) added that following the rigorous enforcement action taken by LD, coupled with extensive publicity efforts and the vibrant economy in recent years, there was significant improvement in law compliance, resulting in a decreasing number of cases involving suspected PWIF abuses.

Compulsory insurance under the Employees' Compensation Ordinance ("ECO")

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9. Mr Tommy CHEUNG noted from paragraph 12 of the Administration's paper that there were 765 convicted summonses recorded in 2012 for employers' failure to take out insurance policies under ECO, and 233 convicted summonses were recorded in the first quarter of 2013. He requested the Administration to provide the corresponding figures in 2010 and 2011 after the meeting. Expressing concern about the increasing number of non-compliant cases, he considered that the crux of the problem was due to the difficulties encountered by small enterprises, in particular those in the catering sector, in taking out employees' compensation insurance (commonly known as labour insurance) as well as the high premiums. He appealed to the Administration to address the problem squarely and consider setting up a central employees' compensation fund to replace the current arrangement of having employers to take out labour insurance policies with insurance companies.

Action

10. DC for L (LA) said that in recognition of the difficulties in procuring insurance on the part of individual employers, with the Administration's encouragement, the Hong Kong Federation of Insurers had set up the Employees' Compensation Insurance Residual Scheme ("the Scheme") to address the concerns and problems faced by individual industries in taking out employees' compensation insurance from the open insurance market. The Administration would continue to maintain close contact with the relevant stakeholders and institutions to keep in view if and how the current system could be improved. Mr Tommy CHEUNG, however, pointed out that the premium rates under the Scheme was even higher than that in the open insurance market, which was beyond the affordability of employers.

11. Referring to the 998 convicted summonses for employers' failure to take out insurance policies under ECO from 2012 to the first quarter of 2013, Mr CHEUNG Kwok-che asked about the breakdown of the figure by industries. In reply, DC for L (LA) said that the Administration did not keep separate breakdowns for ECO. But for ECO and wage offences together in 2012, the catering industry recorded the highest number of convicted summonses, followed by community, social and personal services, and wholesale and retail trade.

Enforcement of the Employment Ordinance ("EO")

12. Dr CHIANG Lai-wan was concerned about the protection for employees' entitlements under EO, particularly offences relating to employers evading their wage liabilities, in the event that there was no written employment contract.

13. DC for L (LA) said that as stipulated under EO, an employer must inform each employee clearly of his conditions of employment. A contract of employment could be made orally or in writing, and include both express and implied terms. Nonetheless, as the use of written employment contract might help employees better understand the terms of their employment, remind both employers and employees of their contractual obligations, minimise unnecessary labour disputes and protect the interests of both parties, employers were encouraged to enter into written employment contracts with their employees as far as possible. To this end, the message was conveyed to the public through a series of promotional activities including displaying posters at various locations and broadcasting Announcement in the Public Interest in major television channels.

Action

14. Dr CHIANG Lai-wan was of the view that the Administration should consider requiring employers to enter into written employment contracts with their employees within a specified period. DC for L (LA) said that while the Administration acknowledged the merits of the use of written employment contracts, it would be in the best interest of both employers and employees to allow certain flexibility in this regard. Moreover, the proposal would have read-across implications on the existing provisions in EO. As such, any change to the existing arrangement would require the consensus of employees and employers.

15. Noting that LD secured 525 convictions on wage offence cases in 2012, Mr LEUNG Che-cheung enquired about the respective numbers of complaints handled and prosecutions instituted. DC for L (LA) informed members that LD had handled some 19 000 civil claims cases in 2012. Of these, 5 444 cases involved wage claims and LD had taken out 713 prosecutions, resulting in 525 convictions.

16. Dr CHIANG Lai-wan sought information on a breakdown of the 525 convictions secured for wage offences in 2012 by industries. DC for L (LA) said that the Administration did not keep such statistics. He stressed that under EO, employers had the statutory obligations to pay wages on time. Any employer who failed to do so wilfully and without reasonable excuse was liable to prosecution.

17. In the light of the increasing population in Tuen Mun and Yuen Long, Mr LEUNG Che-cheung asked whether the Administration would consider setting up a new office of the Labour Relations Division of LD in Yuen Long to alleviate the workload of the Tuen Mun Office. DC for L (LA) said that while LD had currently no plan to set up a new Labour Relations office in Yuen Long, it would constantly review the capacity of Tuen Mun Office and the service needs in the nearby district. Consideration would be given to setting up new offices in other districts if such needs arose.

*The Deputy Chairman took the chair during the temporary absence of the Chairman.*

Enforcement of the Minimum Wage Ordinance ("MWO")

18. Mr TANG Ka-piu said that as learnt from the media reports, some government service contractors were unable to meet the additional wage bill arising from the implementation of the revised Statutory Minimum Wage ("SMW") rate in May 2013. The contractors had therefore asked

Action

their employees to take no pay rest days in order to cut the wage costs. Mr TANG asked whether the Administration would provide top-up payments to government service contractors to tackle the problem.

19. DC for L (LA) said that the Administration had decided to provide, on an exceptional and one-off basis, top-up payments to government service contractors to meet the increase in wage costs of their non-skilled workers arising solely and directly from meeting the SMW requirement with effect from 1 May 2011 until the expiry of the contracts concerned. This was because the Administration recognized that the implementation of the initial SMW rate was unique in that many government service contractors, particularly those relying heavily on the deployment of non-skilled workers, were unable to capture the impact of SMW on their contract prices when offering bids at the tendering stage. DC for L (LA) stressed that the Administration had made it clear that it would not provide such top-up payments in subsequent reviews of the SMW rate in the light of the employers' obligation to pay their workers additional remuneration to meet the shortfall if the wages of their workers were below the SMW requirement.

20. As regards the rest day arrangements, DC for L (LA) said that as stipulated in the Standard Employment Contracts ("SEC"), for government service contracts tendered on or after 1 May 2011, contractors would be mandated to pay their non-skilled workers at not less than SMW plus one paid rest day in every period of seven days. Should individual government service contractors have encountered difficulties in meeting the tender requirements, they should raise the matter and discuss with the relevant procuring departments. DC for L (LA) stressed that unilateral variation of employment terms by employers was not allowed. He assured members that the Administration would closely monitor and ensure employers' compliance with the statutory requirements through enforcement action, publicity activities and conciliation services.

21. The Chairman and the Deputy Chairman sought further clarification on whether the government service contractors had been notified of non-provision of top-up payments for service contracts in subsequent revision of the SMW rate. DC for L (LA) replied in the affirmative. He said that tenderers were expected to estimate and take into account the likely impact of SMW during the contract period in making their bids. DC for L (LA) said that the Administration had met with representatives of government service contractors and reiterated the Administration's stance on the matter and reminded them of their contractual and employers' obligations.



Action

22. In the light of some existing government service contracts tendered before 1 May 2011 and straddling 1 May 2013, Mr Michael TIEN enquired whether the Administration would continue with the top-up payment arrangement till the expiry of these contracts. In his view, it was unfair to these contractors if they were unable to capture the impact of SMW on their contract prices when offering bids at the tendering stage. DC for L (LA) said that the number of such contracts was estimated to be limited and most of them would expire within two years. He reiterated that the decision on the top-up arrangement in May 2011 was intended as an exceptional and one-off measure, taking into consideration different concerns including the possible great wage gap between the wage level at that time and the initial SMW rate, and the possible closure of business and disruption to public service.

23. Mr POON Siu-ping sought information on the criteria and frequency for conducting workplace inspections by labour inspectors of LD to check compliance with SEC by government service contractors.

24. DC for L (LA) said that the Labour Inspection Division of LD had set up special enforcement teams to conduct workplace inspections and to ensure the compliance of government service contractors with the statutory and contractual requirements. Labour inspectors would conduct inspections to workplaces of various industries in different districts to ensure compliance with the labour legislation. Additional inspections would be conducted to those workplaces with wage offence records. To encourage prompt reporting of breaches of EO, a complaint hotline had been set up to receive complaints. Upon receipt of such complaints, inspection would be conducted to workplaces concerned. LD would collaborate with the relevant procuring departments to follow up the suspected wage offence cases involving government service contractors.

25. Mr LEUNG Kwok-hung was of the view that the Administration should impose heavier penalty for non-compliance with the SMW requirement in order to deter employers from deliberately evading their statutory responsibilities.

26. Mr TANG Ka-piu said that the Hong Kong Federation of Trade Unions had called on the Administration time and again to include provision of severance payment in the tender requirements for government service contracts and amend SEC accordingly. DC for L (LA) said that completion of a government service contract did not necessarily mean that the employment relationship between the

Action

contractor and his employees had come to an end. Therefore, the provision of severance payment was not specified in SEC. It was also difficult for tenderers to include an estimate on amount of severance payments when making bids for the contracts. Nonetheless, new government service contractors were encouraged to engage workers of previous service contractors to continue with the service delivery.

27. Referring to the productivity assessment for persons with disabilities following the implementation of SMW, Mr CHEUNG Kwok-che was concerned about the number of serving employees with disabilities who had undergone the relevant productivity assessment and the timeframe for conducting a review on the arrangement. DC for L (LA) said that as the arrangement had just been implemented for about two years, the Administration would commence a review on the effectiveness of the arrangement, and would revert to the Panel on the review findings in due course.

False self-employment

28. Dr KWOK Ka-ki was concerned that the phenomenon of false self-employment would aggravate following the implementation of the revised SMW rate, in particular in the logistics industry. To his knowledge, there were complaints of employees being forced by their employers to become self-employed persons ("SEP") so as to circumvent the requirement of paying employees by SMW. He sought information on the number of detected cases of false self-employment. Dr CHIANG Lai-wan shared a similar concern. She anticipated that the situation would deteriorate further should standard working hours ("SWH") be introduced. Both members asked whether the Administration had conducted relevant study on the matter and what measures would be adopted to deter unscrupulous employers from deliberately evading their statutory responsibilities under the pretext of self-employment.

29. In response to members' concerns, DC for L (LA) said that the Administration was aware of concerns over the possible increase in false self-employment cases after the implementation of MWO. The Administration considered that the more effective way to tackle the problem of false self-employment was through publicity and promotion on the differences, merits and drawbacks as well as the legal rights and obligations of the two types of contractual relationships, viz. employment and self-employment. LD had since November 2009 embarked on a full range of publicity and promotional activities to raise the attention and awareness of the public on the differences in the rights and benefits under

Action

EO between an employee and a SEP. Employers were reminded to cautiously assess the risks involved before entering into a contract to engage someone as a contractor/SEP, including the consequences for committing offences under relevant labour legislation should they falsely label an employee as a SEP and fail to provide appropriate employment benefits to him. DC for L (LA) further said that the Administration did not observe a growing number of claims involving false self-employment after the implementation of SMW. Prior to the implementation of SMW, LD recorded on average 20 claims involving false self-employment each month, and the corresponding figure after the implementation of SMW was 16. The Administration would continue to adopt a three-pronged approach to tackle the problem of false self-employment through publicity and promotion, conciliation services and enforcement action.

30. Mr LEUNG Che-cheung was concerned that it was sometimes not easy to distinguish the employment status of an employee, especially when the latter was regarded by his employer as a SEP. DC for L (LA) said that there was no single test to distinguish conclusively whether a person was an employee or a SEP. LD would provide assistance to the parties concerned in case of doubt.

31. Mr LEUNG Kwok-hung held the view that the deterrence against false self-employment could be enhanced by imposing heavier penalty on the employers concerned.

32. Mr CHEUNG Kwok-che was concerned that, apart from false self-employment, proliferation of fragmentation of work and underemployment had been brought about by the implementation of SMW. He enquired whether the Administration would consider introducing legislative amendments to plug the loopholes of the existing labour legislation.

33. In reply, DC for L (LA) said that the Administration would consult the Labour Advisory Board ("LAB") on the results of the review on the definition of continuous contract under EO at the end of May 2013 and would revert to the Panel in July 2013.

Anti-union discriminatory act

34. Dr KWOK Ka-ki was of the view that the Administration should have adopted a more proactive approach to resolve the strike taken place earlier at the Hong Kong International Terminals. Pointing out that a dock worker participated in the strike was dismissed recently, Dr KWOK

Action

asked whether the dismissal constituted anti-union discrimination and if so, whether LD would take appropriate follow-up. He was concerned about the protection for employees taking part in union activities.

35. DC for L (LA) said that the Administration attached great importance to the industrial action at the Hong Kong International Terminals. Right from the start of the industrial action, a team of officers from the Labour and Welfare Bureau and LD had made all-out efforts to follow up and monitor the labour dispute closely and proactively. With the strenuous and unceasing efforts of the team, rounds of conciliation meetings were held in the process. DC for L (LA) further said that the port operator and contractors concerned had affirmed that no retaliatory action would be taken against workers on strike after they resumed work. LD would closely monitor the situation and follow up on any suspected cases as appropriate. He added that no complaints against union discriminatory act in this respect had been received so far.

36. Mr LEUNG Kwok-hung expressed the view that legislating for collective bargaining could deter discrimination of trade unions.

37. While acknowledging LD's efforts in handling the industrial action, Mr KWOK Wai-keung was of the view that LD played no more than a liaison role in the process. He said that the labour sector had called on legislating for collective bargaining such that employees' rights to negotiate with employers in respect of employment terms and labour relations could be duly recognized. Mr KWOK took the view that the right to collective bargaining could help resolve labour disputes expeditiously and thus minimize the impact on the economy and employees. In this connection, he enquired about the Administration's plan in formulating the relevant legislative proposal.

38. DC for L (LA) said that LD was committed to fostering direct dialogue and effective communication between employers and employees or their respective organizations on labour issues. To this end, LD encouraged and promoted the mechanism of voluntary negotiation between employers or employers associations and employees unions at the central, industry and enterprise levels. At the central level, LAB with both employers and employees representatives advised the Government on the formulation of labour policies and legislation. At the industry level, nine industry-based tripartite committees had been set up to conduct discussion on industry-specific issues pertaining to labour relations and employment of mutual concern. At the enterprise level, employers were encouraged to maintain effective communication with

Action

their employees and employees' unions on employment matters. Employers, in general, showed more understanding to the role of trade unions nowadays as compared with the past. As regards legislating for the right to collective bargaining, DC for L (LA) said that the Secretary for Labour and Welfare would provide a response to a motion on the subject to be moved at the Council meeting of 5 June 2013.

39. In response to Mr POON Siu-ping's enquiry about the prosecutions taken out in respect of anti-union discriminatory acts in 2012, DC for L (LA) said that investigation would be conducted upon receipt of each established complaint against anti-union discrimination. In consultation with the Department of Justice, prosecution would be initiated whenever there was sufficient evidence. He informed members that during the period from 2005 to 2012, prosecutions had been instituted against eight employers in five cases and two of them were successfully convicted with a fine of \$5,000 and \$150,000.

Efforts in combating illegal employment

40. In response to Mr POON Siu-ping's enquiry about the enforcement action against illegal workers, DC for L (LA) said that LD collaborated with the Immigration Department and the Police in combating illegal employment. During the workplace inspections, labour inspectors of LD would also detect suspected cases of illegal employment. With the concerted effort in the gathering and exchange of intelligence and conducting joint enforcement operations amongst various departments, the Administration had combated illegal employment effectively and would keep up efforts on this front.

**IV. Cultivating good people management and family-friendly culture in employment**

(LC Paper Nos. CB(2)1177/12-13(04) and (05))

41. At the invitation of the Chairman, DC for L (LA) briefed members on LD's efforts in encouraging employers to adopt employee-oriented and enlightened human resources management measures as well as family-friendly employment practices ("FFEP"), details of which were set out in the Administration's paper.

42. Members noted the background brief entitled "Promoting family-friendly employment practices" prepared by the LegCo Secretariat.

Action

Adoption of FFEP by employers

43. Mr KWOK Wai-keung considered it unrealistic to rely on the employers to adopt FFEP voluntarily to help employees balance their work and family lives. It was incumbent upon the Administration to spearhead the cultivation of a family-friendly culture in employment. Miss CHAN Yuen-han echoed a similar view. Citing the unsuccessful experience of the voluntary Wage Protection Movement which had delayed the introduction of SMW, Miss CHAN expressed grave reservations about adoption of FFEP measures by employers on their own accord.

44. Mr Albert HO was of the view that FFEP could either be cultivated through legislative means or be encouraged by provision of financial incentives to employers, such as tax exemption or deduction.

45. With reference to his motion on "Urging the Government to promote a new occupational culture campaign for work-life balance" moved at the Council in 2009, Mr CHAN Kin-por expressed support for the promotion of a work-life balance. He cited the experience of Singapore and said that the provision of financial incentive by the government received positive response and support from employers in the promotion of work-life balance. He enquired about the Administration's stance in this regard.

46. DC for L (LA) said that apart from safeguarding employees' rights and benefits through legislative means and law enforcement actions, LD's efforts in promoting good people management practices were also important in enhancing the well-being of the employees. While acknowledging the need to balance the interest of employees and the affordability of employers in the formulation of family-friendly labour policies, the proposal of providing financial incentive to employers would require community-wide discussion. Nonetheless, through LD's promotional efforts to showcase exemplary examples in implementing FFEP by enterprises of different sizes, employers were enlightened on the business case of adopting such measures and encouraged to devise relevant practices in a flexible manner that best suit the interests of the employees and the enterprises.

Action

Legislating for SWH

47. Dr KWOK Ka-ki considered it imperative that SWH be introduced to help create a family-friendly working environment conducive to maintaining a work-life balance. He expressed disappointment that the Government was passive in taking steps to establish an SWH regime by legislative means. The Chairman echoed a similar view and said that the long working hours situation had made it difficult for employees to fulfil their work and family responsibilities simultaneously. The setting up of the SWH Committee to follow up the policy study on SWH within its three-year term, in both members' view, was a tactic to delay legislating for SWH. Expressing great reservations about putting forward the legislative proposal on SWH within the tenure of the current Government, the Chairman asked whether the time required for the SWH Committee to follow up on the policy study could be expedited.

48. Responding to members' concerns, DC for L (LA) said that the Administration acknowledged concerns of the community about the relatively long working hours situation in Hong Kong. Comprising representatives of labour unions and employers' associations, Government officials, academics and community leaders, the SWH Committee would provide an effective platform for different sectors of the community to communicate on the subject and identify the way forward, including whether a statutory SWH regime or any other alternatives should be introduced. DC for L (LA) added that the Administration adopted an open mind on the matter. The SWH Committee had held its first meeting in May 2013 and would meet again in July 2013 to discuss its future workplan.

49. Citing the experience of western countries in pursuing eight-hour workday centuries ago, Mr LEUNG Kwok-hung expressed dissatisfaction that there was little progress in respect of legislating for SWH in Hong Kong. Miss CHAN Yuen-han expressed disappointment at the Administration's lack of stance on legislating for SWH. Both members held the view that it was incumbent upon the Administration to honour the Chief Executive's election manifesto and to follow up on the policy study on SWH with a view to legislating for SWH.

50. Dr CHIANG Lai-wan said that most employers expressed reservations towards the introduction of SWH in Hong Kong because of the concerns about the overtime work arrangements under an SWH regime. She called on the Administration to conduct an in-depth study to better understand the concerns of the business sector before putting forward any proposals.

Action

51. Mr Michael TIEN was of the view that the experience of overseas jurisdictions in implementing an SWH regime showed that legislating for SWH was proven not effective in addressing the issue of long working hours and safeguarding the interests of employees, if a number of jobs and occupations or industries were exempted from the SWH regime. In his view, the problem of long working hours could be resolved if the employees could refuse to work overtime. Instead of legislating for SWH, the Administration should consider improving EO to the effect that the number of contractual working hours and overtime pay rates should be spelt out expressly in the employment contracts.

52. DC for L (LA) responded that while employers could not unilaterally change the conditions of employment including the working hours, overtime work and its pay rates were subject to mutual agreements between employers and employees on individual employment terms. He would convey Mr TIEN's views to the SWH Committee.

53. Mr Albert HO expressed concern that even if written employment contracts had been drawn up between employers and employees, the conditioned hours of work so stipulated in the contracts could be unreasonable. In his view, the objective of implementing an SWH regime was to ensure that the hours and pattern of work of employees were reasonable, and thereby protecting the entitlements and health of employees.

Provision of maternity and paternity leave

54. Dr KWOK Ka-ki considered that the existing arrangements of paid maternity leave in Hong Kong lagged far behind other developed economies. Dr KWOK enquired whether the Administration would consider extending the length of statutory maternity leave to, say, six months to enable the mothers to take care of their newborn babies.

55. DC for L (LA) said that the Administration was aware of the different views on the duration of maternity leave. LAB had kept under review employees' leave entitlement, which had been enhanced in a progressive manner. Examples included the recent enactment of the General Holidays and Employment Legislation (Substitution of Holidays) (Amendment) Ordinance 2011 for alteration of the holiday in substitution under EO and the General Holidays Ordinance as well as the impending legislation on paternity leave. DC for L (LA) further said that the Administration would review the maternity leave provisions from time to



Action

time, taking into account the need to balance employees' interests and employers' affordability in the contemplation of enhancing such leave entitlements.

56. Pending the introduction of the legislation on paternity leave in the 2013-2014 legislative session, Mr KWOK Wai-keung considered that the Administration should consider extending the length of the proposed statutory paternity leave from three days to five days so as to align with the entitlements of the government employees.

Sickness allowance

57. Mr Albert HO was concerned that an employee employed under a continuous contract was entitled to sickness allowance only if the sick leave period was more than four consecutive days. In his view, sickness allowance should be provided to an employee with a medical certificate, irrespective of the length of the sick leave.

58. While recognizing that most employers generally offered sickness allowance for sick leave less than four consecutive days, the Deputy Chairman held the view that the Administration should consider reviewing the relevant provisions under EO.

59. DC for L (LA) said that under EO, an employee was entitled to sickness allowance at a daily rate equivalent to four-fifths of the employee's average daily wages if he took no less than four consecutive days of sick leave and could provide an appropriate medical certificate. The existing arrangement had been adopted after balancing all relevant considerations. He stressed that the rights and benefits afforded by EO to all employees were the minimum standards to which employees were entitled and with which employers had to comply. The Administration had been encouraging employers to adopt employee-oriented management policies and, according to their own capability and specific conditions, offer employment terms and conditions that were more favourable than those provided under EO.

Alignment of statutory holidays with general holidays

60. The Chairman was concerned about the disparity between the numbers of general holidays and statutory holidays to which different employees were entitled. He considered it essential to standardize the leave entitlement of all employees in the promotion of a family-friendly culture in employment. He further enquired whether the Administration

Action

would consider aligning the number of statutory holidays with the general holidays, i.e. increasing the statutory holidays to 17 days in a year.

61. DC for L (LA) said that LD had commissioned the Census & Statistics Department to collect statistics on the characteristics of employees taking statutory holidays and general holidays in Hong Kong and the relevant data analysis was being conducted. The Administration would revert to the Panel in the 2013-2014 legislative session after LAB had deliberated on the matter.

62. Dr CHIANG Lai-wan and Mr KWOK Wai-keung pointed out that given the distinction between blue-collar and white-collar workers had become less clear following the economic restructuring in Hong Kong over the years, it was high time for the Administration to review the respective entitlements of statutory holidays and general holidays under EO.

63. DC for L (LA) explained that statutory and general holidays, instead of making a distinction between blue- and white-collar workers at the outset, were two types of holidays with different nature and backgrounds. General holidays, as provided for under the General Holidays Ordinance, were days on which banks, educational establishments, public offices and government departments needed not open and they were primarily holidays for the relevant establishments. Statutory holidays were benefits accorded to employees which employers had to provide under EO. DC for L (LA) said that the Government constantly reviewed the labour legislation from time to time in the light of the changing social circumstances and the pace of economic development to ensure that the relevant legislative provisions struck a reasonable balance between the interests of employers and employees, and that the statutory rights and benefits accorded to employees kept abreast of times. On this basis, employers were encouraged to offer their employees benefits over and above the requirements of EO, having regard to their operational needs and individual circumstances.

64. Mr TANG Ka-piu was concerned about the difficulties encountered by working single mothers, who were mostly engaged in the retail and service trade, to take leave during the weekends. Under the premise of developing a family-friendly culture in employment, Mr TANG considered it important to assist these females in fulfilling their family responsibilities while staying in employment by offering flexible leave arrangement to cater for their specific needs. He asked whether and how the Administration would address the problem.

Action

65. DC for L (LA) said that issues relating to leave arrangement had been considered by the industry-based tripartite committees in the service sector when deliberating on the strategies for staff recruitment and retention. Some companies had put flexible leave arrangement during weekends into practice. The increasing recognition of FFEP by employers had proven the effectiveness of LD's promotional efforts.

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

Employment and support services for female employees

66. Dr KWOK Ka-ki expressed concern that the entitlements of those female employees who were engaged under employment contracts with short duration or working hours were inadequately safeguarded. Although members were repeatedly advised that the Administration was reviewing the definition of continuous contract under EO, he was concerned about the concrete timetable of the review.

67. DC for L (LA) said that as explained earlier, the Administration would consult LAB on the results of the relevant review at the end of May 2013 and would revert to the Panel in July 2013.

68. Dr KWOK Ka-ki was of the view that provision of comprehensive child care support services was crucial to releasing females to join the labour force. He considered that the Administration should set up an interdepartmental task force to further study the subject matter.

69. Mr Michael TIEN held the view that the Administration should enhance the subvented child care services in remote areas by extending the service hours, say, from 7 am to 8 pm, so as to enable and support residents in these districts to take up employment in other districts.

70. Mr LEUNG Kwok-hung expressed concern that the remuneration for child carers of the Neighbourhood Support Child Care Project was as low as \$19 per hour. He urged the Administration to review the arrangement under the project.

71. DC for L (LA) said that the provision of subvented child care services was under the purview of the Social Welfare Department ("SWD"). He would convey members' views to SWD.

Action

Work during inclement weather

72. Mr KWOK Wai-keung said that he had received complaints about the work arrangements during adverse weather. He took the view that LD should provide clear and practical guidelines for employers to make prior work arrangements for staff members in times of inclement weather. Mr KWOK was also concerned about the provision of insurance protection when employees travelling from home to workplaces under such weather conditions. Mr CHAN Kin-por raised a similar concern. Both members sought clarification on the arrangements.

73. DC for L (LA) said that under ECO, employers were liable to pay compensation for deaths or injuries incurred when employees were travelling by a direct route from their residences to workplaces, or from workplaces to residences, within four hours before or after working hours on a day when Typhoon Signal No. 8 or above or a Red or Black Rainstorm Warning was in force.

Collective bargaining

74. Miss CHAN Yuen-han said that the labour sector had urged for enacting legislation on the right to collective bargaining for more than two decades. In her view, the numerous labour disputes and strikes in the past years had fully demonstrated the need for introducing legislation on the right to collective bargaining, which would be crucial to improving the labour relations. DC for L (LA) said that the Administration endeavoured to promote direct dialogues between employers and employees or their respective organizations on labour issues and matters of mutual concern.

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