

立法會
Legislative Council

LC Paper No. CB(2)1480/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 21 April 2015, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

- Members present** : Hon WONG Kwok-kin, SBS (Chairman)
Dr Hon CHIANG Lai-wan, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon CHAN Kin-por, BBS, JP
Dr Hon LEUNG Ka-lau
Hon IP Kwok-him, GBS, JP
Hon LEUNG Kwok-hung
Hon CHAN Yuen-han, SBS, JP
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, JP
Hon CHUNG Kwok-pan
- Member attending** : Hon WONG Kwok-hing, BBS, MH
- Members absent** : Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon CHEUNG Kwok-che
Hon LEUNG Che-cheung, BBS, MH, JP

Public Officers attending : Item IV

Ms Agnes LO Kit-mui
Assistant Commissioner for Census and Statistics
(Labour)

Ms Wanda YUE Sze-fan
Senior Statistician (Labour)
Census and Statistics Department

Miss Mabel LI Po-yi, JP
Assistant Commissioner for Labour (Development)

Mr Desmond HOU Ka-chun
Principal Economist, Economic Analysis and
Business Facilitation Unit
Financial Secretary's Office

Item V

Miss Winky WONG Wai-man
Principal Executive Officer (Tender)
Financial Services and the Treasury Bureau

Miss Rochelle LAU Shuk-fan
Assistant Director (Libraries & Development)
Leisure and Cultural Services Department

Mrs Mary CHENG LAU Mei-lee
Chief Librarian (Administration and Planning)
Leisure and Cultural Services Department

Ms Melody LUK Wai-ling
Assistant Commissioner for Labour
(Labour Relations)

Mr Sam SUM Kai-wah
Senior Labour Officer (Labour Inspection)
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

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1258/14-15)

The minutes of the meeting held on 17 March 2015 were confirmed.

II. Information paper issued since the last meeting

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

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1260/14-15(01) and (02))

Regular meeting in May 2015

3. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 4:30 pm on 19 May 2015 -

- (a) Latest developments in the employment services of the Labour Department; and
- (b) Hong Kong's Occupational Safety Performance in 2014.

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(Post-meeting note: With the concurrence of the Panel Chairman, a new item "Designating on a one-off basis 3 September 2015 as a Special Holiday" had been added to the agenda of the meeting and the item on "Hong Kong's occupational safety performance in 2014" would be deferred to a future meeting.)

4. Referring to the Panel's list of outstanding items for discussion, the Deputy Chairman said that the Panel should discuss issues relating to mental impairment arising from work injury. At the invitation of the Chairman, Assistant Commissioner for Labour (Development) ("AC for L(D)") said that during the medical clearance procedure for injured employees, the Labour Department ("LD") would ascertain as to whether the injured employees concerned had received psychiatric medical treatment because of mental impairment caused by work injury and would make arrangement for medical assessment where appropriate, so as to determine the level of compensation under the Employees' Compensation Ordinance (Cap. 282). LD would closely monitor the situation and provide assistance to the employees concerned in handling such cases as appropriate. In addition, LD would strengthen its publicity efforts in disseminating information to employers and employees in respect of mental impairment arising from work injury and the entitlement of employees' compensation. The Deputy Chairman said that having regard to the Administration's information, she would further consider the need to discuss the matter at a future meeting.

5. Pointing out that the Labour Advisory Board ("LAB") was considering enhanced measures for importation of skilled construction workers under the Supplementary Labour Scheme ("SLS") for public sector works contracts, Mr LEE Cheuk-yan suggested the Panel to follow up on the progress of LAB's consideration and the implementation details. Mr TANG Ka-piu was in support of Mr LEE's suggestion. At the invitation of the Chairman, AC for L(D) said that LD administered SLS which served as a platform for processing applications for importation of technician-level labour to Hong Kong as necessary. In the light of members' concerns, the Chairman requested the Administration to advise on the timing for reverting to the Panel on the subject.

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IV. Major findings of the 2014 Annual Earnings and Hours Survey
(2014 Report on Annual Earnings and Hours Survey, LC Paper Nos. CB(2)1260/14-15(03) and (04))

6. With the aid of powerpoint presentation, Assistant Commissioner for Census and Statistics (Labour) ("AC/C&S") highlighted to members the major findings in the 2014 Report on Annual Earnings and Hours Survey ("AEHS").

(Post-meeting note: The softcopy of the powerpoint presentation materials was issued to members vide LC Paper No. CB(2)1316/14-15(01) on 22 April 2015.)

7. Members noted the updated background brief entitled "Annual Earnings and Hours Survey" prepared by the Legislative Council ("LegCo") Secretariat.

AEHS findings and Statutory Minimum Wage rate adjustment

8. In respect of the major findings in the 2014 AEHS Report, Mr WONG Kwok-hing observed that most grassroots employees performed manual work and worked for long hours but received meager wage only. Mr WONG held the view that the Administration should make appropriate policy changes so as to provide more assistance to these vulnerable workers, say, by conducting review of the Statutory Minimum Wage ("SMW") rate on a yearly basis and legislating for standard working hours ("SWH"). Noting from Table 13 of the 2014 AEHS Report that there were only some 170 500 employees whose hourly wage was below \$32.5 during the reference period of May to June 2014, Mr WONG was concerned about the time lag between the data collection/analysis of AEHS and the review of the revised SMW rate in 2015 as the latter would make reference to the 2014 AEHS findings.

9. Mr LEE Cheuk-yan, Mr TANG Ka-piu and Mr KWOK Wai-keung echoed similar views on the need to conduct an annual review on the SMW rate. Mr KWOK referred members to the estimation of the Minimum Wage Commission ("MWC") in 2012 that about 223 100 employees would be covered if the SMW rate was to be revised to \$30 in 2013. However, as shown from the 2013 AEHS Report, there were only 98 100 employees with hourly wage at \$30 during the reference period of May to June 2013. Mr KWOK anticipated that similar situation would happen when the recommended SMW rate of \$32.5 per hour took effect

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from 1 May 2015. Mr LEE and Mr TANG also noted that the number and percentage of employees receiving an hourly wage below \$32.5 had decreased from some 255 200 (8.7%) during the reference period in 2013 to 170 500 (5.8%) in 2014. As such, although the 2014 AEHS Report revealed that there were 170 500 employees (i.e. 5.8% of all employees) receiving an hourly wage below \$32.5 during the reference period of May to June 2014, with the rise in wages, it was anticipated that the actual number and percentage of employees receiving an hourly wage of \$32.5 would have been decreased by May 2015 when the next SMW rate took effect and thus the number of beneficiaries would decrease. The revised SMW rate was in fact far below the market wage rate. Mr TANG and Mr KWOK remarked that MWC had overestimated the number of employees who could benefit from the revised SMW rate. Mr TANG queried whether MWC was aware of such phenomenon.

10. Notwithstanding the prevailing low unemployment rate and robust labour demand, Mr LEE Cheuk-yan noted with grave concern that the hourly wage of the lowest income group registered a year-on-year increase of 3.5% in 2014 when compared with 2013 and therefore wage increase of the lowest income group could hardly catch up with the inflation which was around 4% in 2014. The problem was further worsened as a result of the biennial review of the SMW rate.

11. Mr WONG Kwok-hing was concerned about the computation of working hours under AEHS, given that meal breaks would be regarded as working hours for the purpose of the Minimum Wage Ordinance (Cap. 608) ("MWO") only with the agreement of the employers or having stipulated in the employment contracts. In his view, the vulnerable grassroots employees would have little bargaining power over the issue of paid meal breaks. Under such circumstances, Mr WONG was of the view that the Administration should be proactive in taking forward the subject of legislating for SWH.

12. Mr CHAN Kin-por, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung and Mr IP Kwok-him expressed concern about the long-lasting problem that employees in the low-paid industries, including the catering sector and retail trade, worked for long hours but their wage level remained on the low side. The major findings in the 2014 AEHS Report revealed that the median working hours of employees in the catering sector was 54 hours per week and the median monthly wage amounted to \$10,500 only. These members held the view that the Administration should draw up specific measures to address the situation. Mr CHAN and Mr IP were specifically concerned about measures in

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connection with work-life balance. Mr IP noted with concern that the weekly working hours of some 64 300 employees engaged in the low-paid industries was 72 or above, which meant that the average daily working hours were some 14.4. Mr IP enquired whether the Administration would conduct study on regulating the maximum working hours. Mr LEUNG Yiu-chung, on the other hand, considered that the phenomenon was due to the lack of SWH legislation and the biennial review of the SMW rate.

13. Mr LEUNG Kwok-hung said that it was imperative for the Administration to regulate the maximum number of working hours when setting the SMW rate. Mr LEUNG considered it unreasonable that following the implementation of the SMW rate, a considerable number of employees still relied on the overtime work payments for maintaining the basic livelihood, and not to mention that there were cases of uncompensated overtime work. Expressing concern about the legislative timetable for SWH which should not merely be addressed by legislating for contractual working hours, Mr LEUNG remarked that the SMW rate should be adjusted upward accordingly.

14. In response to members' concerns and views, AC for L(D) made the following points -

- (a) the SMW regime provided a wage floor with a view to forestalling excessively low wages but without unduly jeopardizing the labour market flexibility and economic competitiveness, and without causing significant negative impact on the employment opportunities for the grassroots employees. Referring to the latest figures for the period of November 2014 to January 2015 collected from the General Household Survey ("GHS"), the average monthly employment earnings for full-time employees (excluding government employees and live-in domestic workers) in the lowest decile group (i.e. the group of the lowest-paid employees) had registered a rise of 12.7% in real terms after discounting inflation as compared with the corresponding figure before the implementation of SMW. In addition, based on the statistics of AEHS, an average annual increase of 7.5% had been registered for the median monthly wage in low paying sectors during the period of 2010 to 2014, exceeding the corresponding figure for all industries; and

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- (b) in accordance with MWO, the SMW rate had to be reviewed at least once in every two years, without precluding more frequent rate review if warranted. This provided the necessary buffer and flexibility to respond to unanticipated changes in the economy and employment market particularly when there was economic downturn, and was beneficial to both employers and employees. In the light of limited experience in the implementation of SMW in Hong Kong, it was necessary to maintain the existing arrangement of reviewing the SMW rate at least once in every two years.

15. Principal Economist of the Financial Secretary's Office ("Principal Economist") added that MWC was aware of the time gap between data collection/analysis and implementation of the revised SMW rate. In making recommendation on the SMW rate, MWC had also considered a host of factors and conducted different scenario testings based on the macroeconomic outlook and inflation trend. Principal Economist clarified that coverage in terms of the number and percentage of employees of a recommended SMW rate reflected the result rather than a target or key factor of consideration by MWC in deliberating the SMW rate.

16. Miss CHAN Yuen-han, however, remained concerned about the low wage level of grassroots workers engaged in the low-paid industries even after the implementation of the SMW rate. Miss CHAN was of the view that these employees might resort to the safety net of the social security system as necessary. She called on the Administration to address the phenomenon, which in her view, was attributed to the biennial review of the SMW rate in making timely adjustment to the SMW rate.

17. In respect of members' concerns about measures relating to work-life balance, AC for L(D) said that the Government had been encouraging employers to adopt different types of family-friendly employment practices ("FFEP"), having regard to the company size, resources and culture as well as employees' needs, to help employees achieve a better balance between work and family lives. LD would continue to disseminate relevant information through various publicity channels and promotional activities such as publications, seminars, exhibitions, newspaper feature articles and meetings of industry-based tripartite committees. AC/C&S added that employees with weekly working hours more than 72 were mostly engaged in the real estate maintenance management, security services and cleaning services. Given that these

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employees usually worked for six days a week, their average daily working hours were around 12. That said, there were also employees with weekly working hours over 72 engaged in some comparatively high-paid trades and industries.

18. As regards the subject of working hours policy, AC for L(D) said that it was a complex issue with widespread and far-reaching implications for the community and economy. In response to members' concerns, the Government had further briefed the Panel at its meeting on 17 March 2015 on the latest work of the Standard Working Hours Committee ("SWHC"). SWHC would continue to work expeditiously with a view to identifying working hours policy options suitable for Hong Kong and submitting its report to the Government in the first quarter of 2016 as scheduled.

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19. Mr LEUNG Yiu-chung and the Chairman requested the Administration to provide specific information on the working hours situation for low-paid workers when the subject of AEHS was discussed at future meetings.

Impact of the SMW rate on low-paid employees

20. Mr KWOK Wai-keung noted that during the period of 2010 to 2014, the monthly wage for the lowest decile group and the low-paid industries registered an average year-on-year increase of 7.9% and 7.5% respectively. However, the SMW rate was increased by 7.1% in 2013 and 8.3% in 2015, i.e. an average of around 4% each year. He raised queries about whether the adjustment to the SMW rate was lower than the wage adjustment rate in the market.

21. Principal Economist pointed out that according to anecdotal evidence, the wage level of some grassroots employees was far below \$28 per hour before the introduction of the initial SMW rate in 2011. Given that the SMW regime was introduced in 2011, it might not be appropriate to assess the increase in the wage level for grassroots workers brought about by SMW by referring to the magnitude of upward adjustments of the SMW rate since 2011. In response to Mr KWOK's request for conducting a relevant comparison for the period of 2011 to 2014, Principal Economist advised that with reference to the latest statistics collected from GHS, the average monthly employment earnings for full-time employees (excluding government employees and live-in domestic workers) in the lowest decile group (i.e. the group of the lowest-paid employees) registered a growth of 34.5% (or close to 13% in

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real terms after discounting inflation) for the period of November 2014 to January 2015 as compared with the corresponding figure before the implementation of SMW, reflecting notable improvement in the earnings of the grassroots employees over the past few years.

22. Mr POON Siu-ping noted that the rate of increase in wage level of employees with education attainment at tertiary level (i.e. 3.5%) was lower than those at primary and below level (i.e. 6.3%) during the reference period of May to June 2014 when comparing with the corresponding figures in 2013 and the inflation rate. Mr POON sought explanation in this regard.

23. AC/C&S explained that there was fluctuation in the year-on-year increase in the wage level of employees with education attainment at tertiary level. In effect, the average rate of increase in wage level of these employees during the period of 2010 to 2014 was 4.1%. The comparatively lower increase in the wage level of these employees, when comparing with employees with education attainment below the tertiary level, might be attributed to the fact that the effect of the SMW rate was moderate on this group of employees. AC/C&S further drew members' attention to the definition of wage(s) published in the 2014 AEHS Report, which followed the definition of "wages" under the Employment Ordinance (Cap. 57) ("EO") and thus did not cover bonuses and allowances of gratuitous nature paid to an employee in the wage period. Notably, a large number of employees with education attainment at tertiary level were managers and professionals. Given that take-home pay of these employees usually comprised payment of such discretionary nature, the year-on-year increase in take-home pay of these employees might not necessarily be lower than the inflation rate.

Working hours statistics

24. Mr LEE Cheuk-yan expressed grave concern about the severe long working hours situation in Hong Kong when comparing with other countries. Referring to the Report of the Policy Study on SWH which was released in November 2012, Mr LEE raised concern about the average weekly total working hours of 49.0 for all full-time employees in Hong Kong in 2011 while those in Korea and Turkey in 2013 were 43.8 and 47.9 respectively as shown from the statistics of the Organisation for Economic Co-operation and Development ("OECD").

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25. AC/C&S responded that according to the 2014 AEHS Report, the average total weekly working hours for full-time employees in 2014 were 47.4 hours and the figure was slightly lower for all employees in Hong Kong, as some 7% of the employees were part-timers with less total weekly working hours. At the request of Mr LEE Cheuk-yan and the Chairman, the Administration agreed to study the OECD statistics and explore if it was possible to compare the average weekly total working hours and the average annualised working hours between employees of Hong Kong and employees of OECD member states from 2009 onwards as appropriate.

26. Mr TANG Ka-piu sought explanation about the decrease of the median weekly working hours of Hong Kong employees from 45 during the reference period of May to June in 2012 and 2013 to 44.3 during the same reference period in 2014.

27. In response, AC/C&S said that the working hours statistics published in the 2014 AEHS Report followed the definition of hours worked under MWO and thus covered contractual/agreed working hours and overtime hours worked at the direction of employers. Overtime hours not worked with the agreement or at the direction of employers were not included. With respect to the decrease in the number of median weekly working hours of Hong Kong employees in 2014, AC/C&S explained that it might be attributable to the fact that the number and percentage of full-time employees with comparatively shorter working hours (i.e. below 40 working hours per week) had increased while there was a decrease in the number and percentage of full-time employees who worked for long hours (e.g. those who worked over 60 working hours per week).

28. Mr CHAN Kin-por, however, expressed great reservations about the definition of hours worked under MWO. Pointing out that overtime worked not under the direction of employers was common in Hong Kong, Mr CHAN held the view that the Administration should collect such overtime work hours from employees so as to have a comprehensive statistics on the phenomenon of long working hours situation in various trades and industries, in particular the banking and accounting industries.

29. AC/C&S explained that the working hours statistics published in the 2014 AEHS Report had been collected from employers in accordance with the definition of hours worked under MWO, which facilitated the analysis of SMW-related issues. To her understanding, SWHC through a

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consulting firm had conducted the first ever territory-wide household survey between June and August 2014 to collect comprehensive working hours statistics and relevant information on a working hours regime and that some 10 000 employed persons had successfully been enumerated.

30. Noting from the 2014 AEHS Report that the number of weekly working hours for all employees in the retail trade during the reference period of May to June 2014 was higher than the corresponding figure in 2013, Mr POON Siu-ping sought explanation for the increase.

31. AC/C&S said that the slight increase in the number of weekly working hours for all employees in the retail trade from 48.0 during the reference period of May to June 2013 to 48.1 during the same period in 2014 might be attributed to the buoyant retail trade and that the total number of employees in the industry had increased while there was a slight decrease in the number of part-time employees.

32. In response to Mr POON Siu-ping's follow-up enquiry about the situation in the catering sector, AC/C&S said that there was also an increase in the overall number of employees but there was no distinct change in the proportion and number of full-time and part-time employees.

Disparity of wage level between male and female employees

33. Miss CHAN Yuen-han and Mr IP Kwok-him expressed concern about the disparity of monthly median wage and wage increase between male and female employees during the reference period of May to June 2014 when comparing with the corresponding figures in 2013, which were \$16,500 (i.e. an increase of 4.6%) and \$12,700 (i.e. an increase of 4.5%) respectively. Miss CHAN was concerned about the implementation of gender equality at work. Mr IP enquired about the specific measures taken by the Administration to safeguard females' wage level, in particular after they had quitted their jobs for various family reasons and rejoined the labour market at a later stage.

34. While acknowledging the disparity in wage level between male and female employees, AC/C&S advised that the education attainment of male employees was in general higher than that of female employees. Even with the same education level, the income of male and female employees would be affected by their choice of occupations. AC/C&S further drew members' attention to the fact that such phenomenon was not uncommon in other places. For instance, the differences in income of

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full-time male and female employees in the United Kingdom and Australia were some 20% and 19% respectively. Miss CHAN Yuen-han requested the Administration to provide information on the disparity in wage level between male and female employees in other overseas places, including Finland and Denmark.

35. AC for L(D) added that the Administration had introduced various measures to facilitate females in entering or re-joining the labour market.

V. Government policy relating to the outsourcing of service contract and protection for staff of public libraries service contractors

(LC Paper Nos. CB(2)1260/14-15(05) and (06))

36. At the invitation of the Chairman, Principal Executive Officer (Tender) of the Financial Services and the Treasury Bureau ("PEO(T)), Assistant Director (Libraries & Development) of the Leisure and Cultural Services Department ("LCSD")("AD/L&D") and Assistant Commissioner for Labour (Labour Relations) ("AC for L (LR)) briefed members on the existing arrangements on the outsourcing of government services, the outsourcing of services in public libraries and the concerned employees' rights and protection under EO as well as the recent incident whereby a contractor failed to perform its obligations under a few contracts for the provision of manpower/shelving services to public libraries ("the default contractor").

37. AD/L&D added that in connection with the incident, LCSD had put in place contingency measures to minimise disruption of library services to the public and to procure new short-term manpower/shelving services to public libraries which would take effect around May 2015. AC for L (LR) advised that as the default contractor had indicated his inability to pay wages to his employees working in different libraries ("the affected employees"), LD would provide appropriate assistance to the affected employees to file claims for outstanding wages and other termination payments and refer the cases to the Protection of Wages on Insolvency Fund for application of ex gratia payments, if applicable.

38. Members noted the background brief entitled "Outsourcing of government service contracts" prepared by the LegCo Secretariat.

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Outsourcing of services in public libraries

39. Mr KWOK Wai-keung queried about the rationale for outsourcing public library services, given that sorting, shelving, processing of new library materials and providing technical support to the public in using IT facilities were routine duties. Mr TANG Ka-piu shared a similar view. Mr TANG considered it unjustifiable to outsource the public library services to the private sector.

40. Mr LEUNG Kwok-hung said that the demand for public library services would not be subject to seasonal fluctuation. He criticised the outsourcing arrangement of public library services and cast doubt about the extent to which the current mode of service delivery at public libraries could meet the purpose of formulating a cost-effective manpower strategy to meet the increasing demand for library services.

41. Responding to members' concerns and views, AD/L&D advised that at present LCSD operated 67 static and 12 mobile libraries. Taking the recommendations of the Efficiency Unit made after a review of the mode of delivery of frontline and support services at public libraries in 2006, LCSD had implemented a new mode of service delivery at public libraries by phases from 2011 onwards. Currently, LCSD maintained a team comprising civil servants and Non-Civil-Service-Contract staff for the delivery of core library services for the public. To complement the in-house workforce, LCSD also hired services for the provision of manpower to assist in support services and meet certain operational needs where additional manpower was required, including sorting, shelving, processing of new library materials and providing technical support to the public in using IT facilities.

Protecting employees' rights and benefits

42. In respect of the labour dispute between the default contractor and the affected employees, Mr KWOK Wai-keung expressed grave concern that employees' right and benefits were not duly safeguarded under the outsourced contracts. To his understanding, the default contractor ceased business operation in early March 2015 and the service fee for February 2015 had been withheld by LCSD. Mr KWOK considered that the Administration should make use of the amount withheld to settle the unpaid wages of the affected employees for the month of February 2015. Mr TANG Ka-piu and Miss CHAN Yuen-han shared similar concerns and views. Referring to the requirement under EO regarding the liability

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of principal contractors in the construction industry to pay two months' unpaid wages of their sub-contractors' employees if the wages were not paid by the sub-contractors, Mr TANG and Miss CHAN called on the Administration to make reference to such provisions in EO and settle the outstanding wages of the affected employees.

43. Mr LEUNG Kwok-hung and Mr LEE Cheuk-yan echoed similar concerns. Mr LEUNG said that LCSD should use the default contractor's deposit for the outsourced service contract to settle the defaulted wages. Mr LEE enquired whether the Administration would consider paying outstanding wages to the affected employees first and recover such payment from the default contractor at a later stage.

44. In the light of the incident involving some 420 employees of the default contractor, Mr POON Siu-ping was not convinced that it was an isolated incident. The crux of the problem was the deficiencies of the monitoring mechanism. Mr POON sought information on the progress of the incident and asked whether prosecution would be initiated against the default contractor for contraventions of EO.

45. In response to members' views and concerns, AD/L&D made the following response -

- (a) the default contractor had legal obligation under EO to clear the outstanding wages and other termination payments to its employees;
- (b) since the eruption of the incident from 6 March 2015, LCSD had to make necessary arrangements for the smooth provision of library services to the public. In accordance with the terms of the service contracts, loss, damage and costs so incurred by the procuring department, would be deducted from outstanding service payments due to the contractor. As such, the exact amount of the remaining service payments after deduction was yet to be calculated. Moreover, as there was no employer-employee relationship between LCSD and the affected employees, LCSD had no discretion to make use of the contract payments for other purposes, such as paying wages to the contractor's employees; and

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- (c) a performance monitoring mechanism was put in place to ensure that the contractor would perform up to the service standards in accordance with the terms of contracts. The past performance record of the default contractor was satisfactory. The circumstances of the incident in early March 2015 suggested that it was an isolated case. LCSD would keep under review the prevailing mode of library operation in the light of experiences, latest developments and good practices, with a view to ensuring the smooth and efficient operation of public library services.

46. In response to members' views of making reference to the relevant provisions under EO concerning the construction industry to settle the outstanding wages of the affected employees, PEO(T) said that in government works contracts, the Government might make wage payment to any person employed by the contractor in and for carrying out the contract concerned in case of default or dispute by the contractor in making such payment. However, the payment of such claims on behalf of the contractor would only be made when the claim or dispute was handled by LD and/or ruled by the court in favour of the employee, and any sums so paid shall be recoverable by the Government from the contractor.

47. AC for L (LR) said that since the incident had erupted, LD had been closely monitoring the case and would continue to follow up with parties concerned with an aim to assisting the employees to recover the defaulted wages and other termination payments through all necessary legal means. Where there was sufficient evidence, LD would institute prosecution against the default contractor for wage defaults as appropriate.

48. Mr KWOK Wai-keung expressed strong dissatisfaction about LCSD's response to the suggestion of making use of the withheld amount to pay the outstanding wages of the affected employees. Miss CHAN Yuen-han criticised that the Administration was bureaucratic and inflexible. Miss CHAN further expressed strong dissatisfaction about the policy of outsourcing government services which resulted in the suppression of wage level of grassroots employees.

49. Noting that LCSD would engage part-time staff for provision of shelving services, Mr KWOK Wai-keung sought information on the number of the affected employees who had been recruited to fill these posts. AD/L&D responded that to her understanding, around three to four affected employees had attended the selection interviews.

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Review of policy relating to outsourcing of government services

50. Mr POON Siu-ping said that labour unions had all along criticised the outsourcing of government services, which gave rise to the situation of unequal pay for equal work. Mr POON called on the Administration to review whether the arrangement of outsourcing government services should be abolished.

51. Mr KWOK Wai-keung, Mr TANG Ka-piu and Miss CHAN Yuen-han expressed grave concern about the insufficient protection of employees' rights and benefits of outsourced service staff. They urged the Administration to seriously consider expanding the scope of application of section 43C of EO concerning the liability of a principal contractor and superior sub-contractor(s) to pay wages of employees of sub-contractors in the construction industry to employees of government service contractors. To this end, they called on the Administration to conduct a review of the policy relating to the outsourcing of service contracts and make necessary amendments to EO.

52. AC for L (LR) said that application of section 43C of EO was confined to the construction industry. Should it be expanded to cover other trades and industries, it would involve a major policy change and immense financial implications. EO was also not applicable to the Government.

53. Mr LEE Cheuk-yan said that consideration should be given to stipulating in the outsourced service contracts that the contractors should make wage adjustment annually and pay severance payment ("SP") to their employees upon the expiry of the service contracts, so as to further enhance the rights and protection of outsourced service employees.

54. PEO(T) advised that adjustment of wage level was market driven, and there were provisions under EO governing payment of SP by employers. LD would take enforcement action against employers who without reasonable excuse failed to pay SP to their employees.

55. Mr LEE Cheuk-yan and the Chairman requested the Administration to take into account the following and conduct a review of the policy relating to outsourcing of government service contracts, and revert to the Panel on the outcome in due course -

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- (a) in respect of handling of wage defaults, the requirements under EO regarding the liability of principal contractors in the construction industry to pay two months' unpaid wages to their sub-contractors' employees should be extended to cover employees of outsourced service contractors;
- (b) making annual upward wage adjustment for employees of outsourced service contractors; and
- (c) requiring outsourced service contractors to pay SP to their employees upon the expiry of the service contracts.

Motion

56. The Chairman put the following motion proposed by Mr TANG Ka-piu and seconded by Mr KWOK Wai-keung to vote -

"本事務委員會要求政府當局全面檢討現行的政府外判制度，包括把現時《僱傭條例》當中，建造業總承判商需要為分判承判商員工墊支兩個月欠薪的規定，擴大至政府外判服務員工，以加強保障外判工人的權益，並促請財經事務及庫務局盡快處理與康樂及文化事務署圖書館外判服務有關的欠薪事宜。"

(Translation)

"That this Panel requests the Government to conduct a comprehensive review of the existing outsourcing system, including whether the requirement under the existing Employment Ordinance regarding the liability of principal contractors in the construction industry to pay two months' unpaid wages of their sub-contractors' employees can be extended to cover staff of government outsourced services, so as to strengthen the protection of entitlements of such workers; and that this Panel also urges the Financial Services and the Treasury Bureau to expeditiously settle the issue of wage defaults in connection with the outsourced libraries services of the Leisure and Cultural Services Department."

The Chairman said that all six members present voted for the motion and declared that the motion was carried.

Action

57. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 2
Legislative Council Secretariat
18 May 2015