

# 立法會 *Legislative Council*

LC Paper No. CB(2)1824/14-15

Ref: CB2/PL/MP

## **Report of the Panel on Manpower for submission to the Legislative Council**

### **Purpose**

This report gives an account of the work of the Panel on Manpower ("the Panel") during the 2014-2015 session of the Legislative Council ("LegCo"). It will be tabled at the Council meeting of 8 July 2015 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

### **The Panel**

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining Government policies and issues of public concern relating to labour and manpower planning matters. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 18 members in the 2014-2015 session. Hon WONG Kwok-kin and Dr Hon CHIANG Lai-wan were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

### **Major Work**

#### Protection for employees' rights and benefits

*Special arrangement for employees with disabilities under the Statutory Minimum Wage regime*

4. The Panel had been monitoring the implementation of the Statutory Minimum Wage ("SMW") regime since its introduction in 2011. Members

noted that a special arrangement was provided in the Minimum Wage Ordinance (Cap. 608) ("MWO") such that employees with disabilities whose productivity might be impaired by their disabilities had the right to undergo a productivity assessment ("the assessment") to determine whether they should be remunerated at no less than the SMW rate or at a rate commensurate with their productivity. At the request of members, the Administration reported to the Panel on the results of the review on the special arrangement.

5. Members were concerned about the impact of SMW on the employment opportunities and wage level of persons with disabilities. According to the Administration, many stakeholders of the rehabilitation sector pointed out during the review that SMW had not brought about a significantly adverse impact on the employment opportunities of persons with disabilities. In addition, over 80% of the employees with disabilities and employers were satisfied with the assessment results. The Administration advised that in accordance with MWO, employees with disabilities and able-bodied employees were protected by SMW alike. Serving employees with disabilities who had opted for the transitional arrangement might, prior to the assessment, retain their original wage rate which would follow the same percentage of adjustment of the SMW rate. The Administration stressed that the right to invoke the assessment was solely vested in the employees with disabilities, not the employers.

6. On some members' concerns about whether an appeal mechanism should be put in place to review the assessment results under the special arrangement, the Administration drew members' attention to the fact that an appeal/review arrangement would complicate the assessment mechanism and could create undue psychological pressure on employees with disabilities, which would in turn affect their performance during the assessment. The arrangement of periodic reviews could also impose a labelling effect on the employees with disabilities concerned or dampen employers' willingness to employ persons with disabilities.

7. In the view of the Administration, with the limited experience of implementing SMW and the related special arrangement, it was considered prudent and appropriate to maintain the existing assessment mechanism. Members were assured that the Administration would closely monitor the impact of SMW on the employment of persons with disabilities and enhance various support and services for promoting the employment for persons with disabilities to ensure that they had equal access to employment in the open labour market.

*Compilation of wage statistics and review of the SMW rate*

8. Since the launch of the mandatory Annual Earnings and Hours Survey ("AEHS") by the Census and Statistics Department ("C&SD") in 2009 to collect wage, employment and demographic information of employees from business undertakings in Hong Kong, the Administration reported to the Panel annually on the major findings of the survey.

9. Many members noted with concern that the Minimum Wage Commission ("MWC") had to make reference to the AEHS findings in the preceding year for recommending the revised SMW rate which would take effective in the next year. Consequently, the adjustment to wage level of those low-income employees receiving the SMW rate could hardly catch up with the inflation. These members strongly requested the Administration to look into the time lag between data collection for AEHS and the implementation of the revised SMW rate.

10. According to the Administration, MWC was aware of the inevitable 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.

*Protection for employees of government outsourcing contractors*

11. Arising from the media reports about a labour dispute whereby a public library service contractor failed to perform its contract obligations for the provision of manpower and shelving services to public libraries and pay wages to his employees working in different libraries, the Panel examined the existing arrangements on the outsourcing of government services as well as the rights and protection of the employees concerned under the Employment Ordinance (Cap. 57) ("EO").

12. Members queried the rationale for outsourcing public library services for the provision of sorting and shelving services which, in their views, were routine duties. The Administration explained that 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, the Leisure and Culture Services Department ("LCSD") had implemented a new mode of service delivery at public libraries by phases from 2011 onwards. 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 computer facilities.

13. Given that the wage default incident involving some 420 employees, members expressed grave concern that employees' rights and benefits were not duly safeguarded under the outsourced contracts. Some members requested the Administration to 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 default government service contractors. The Administration explained that as far as government works contracts were concerned, it 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 the Labour Department ("LD") and/or ruled by the court in favour of the employee, and any sums so paid would be recoverable by the Government from the contractor. Should section 43C of EO be expanded to cover other trades and industries in addition to the construction industry, it would involve a major policy change and immense financial implications. Members were assured that LD would assist the employees concerned to recover the defaulted wages and other termination payments through all necessary legal means. Prosecution against the default contractor for wage defaults would be instituted as appropriate.

14. Notwithstanding the Administration's explanation, most members took the view that the Administration should review as to whether the arrangement of outsourcing government services should be abolished. The Panel passed a motion urging the Administration to, among others, conduct a comprehensive review of the existing outsourcing system and expeditiously settle the issues of wage defaults in connection with the outsourced library services.

#### *Protection for foreign domestic helpers*

15. In the wake of wide public concern about several court cases concerning abuse of foreign domestic helpers ("FDHs"), the Panel continued to monitor the policies relating to FDHs and regulation of employment agencies ("EAs") placing FDHs.

16. Members noted with concern that some FDHs, particularly those from Indonesia, had incurred huge debts in order to meet the high level of fees and commissions charged by the intermediaries in their home countries. Upon arrival in Hong Kong, these FDHs had to make monthly repayment for the huge debts through the local EAs placing FDHs. This had deterred these FDHs from

coming forward to lodge claims and following through the legal process even if their employment rights were infringed. Members called on the Administration to look into the matter seriously and draw up appropriate measures to tackle the problem.

17. The Administration advised that the operation of EAs providing FDH placement services was regulated through licensing, inspection and complaints investigation, and prosecution would be instituted against EAs for breaching the law. EAs were only allowed to receive from FDHs the prescribed commission specified in the Second Schedule of the Employment Agency Regulations (Cap. 57A). FDHs who were over-charged by EAs could file a complaint with LD. The Administration pointed out that some FDH-exporting countries, such as Indonesia, required first-time FDHs to attend prerequisite relevant training courses before taking up employment overseas. Given that Hong Kong did not have any jurisdiction on overseas operations, the Administration had brought the concern about "bonded labour" to the attention of the relevant Consulate Generals of FDH exporting countries and urge them to tackle the issue at source. In addition, an inter-departmental regular liaison mechanism with both the Indonesian and Philippines Consulate Generals respectively had been set up since 2014 for exchanging views and coordinating efforts in systemic issues, and tackling individual cases relating to FDHs.

18. Notwithstanding the Administration's explanation, members maintained the view that the Administration should strengthen the regulation of local EAs to better safeguard the interests of both employers and FDHs. Members were advised that to strengthen the regulation of EAs, the Administration was preparing a Code of Practice ("CoP") for the industry, in which acts that were permissible and those that should be avoided by EAs, such as EAs should not be involved in the financial or loan affairs of FDHs would be spelt out. Members, however, were gravely concern about the lead time taken for preparing CoP and its effectiveness in strengthening the regulation of EAs. According to the Administration, it was working with the Department of Justice on the drafting of CoP. The Commissioner for Labour would consider revoking or refusing to renew the licences of any EAs for non-compliance with CoP. LD would consult the relevant stakeholders and the Panel after the draft was ready in the second half of 2015.

### Promoting employees' welfare

#### *Legislating for standard working hours*

19. Legislating for standard working hours ("SWH") was another major concern of the Panel. To enable the Panel to follow up closely on the subject, at

the request of members, the Administration provided periodic update on the latest work progress of the Standard Working Hours Committee ("SWHC") following its formation in April 2013.

20. Noting that SWHC had established two working groups on "Working Hours Consultation" and "Working Hours Study" to conduct wide public consultation and comprehensive working hours surveys respectively, members were concerned about the timeframe for the consultants to submit their respective reports to SWHC and its way forward. The Administration advised that the consulting firms were finalising their respective reports which were expected to be submitted to SWHC for its reference by the second quarter of 2015. In addition, SWHC had set up a task force to further explore the future directions of a working hours policy and the further work of SWHC for SWHC's in-depth discussion, with a view to building consensus and identifying working hours policy options suitable for Hong Kong and submitting its report to the Government in the first quarter of 2016.

21. Members expressed strong dissatisfaction about the unduly long time to be taken for preparing the SWHC report. Most members were gravely concerned that even if SWHC was in support of a statutory SWH regime, the relevant legislative process would be under a very tight timetable given that the tenure of the Fifth LegCo and the current-term Government would expire in 2016 and 2017 respectively. The Administration stressed that SWHC would adhere to its work plan closely and submit its report to the Government as scheduled.

22. To enable more focused discussion, the Panel agreed at its meeting on 10 February 2015 to appoint a subcommittee to study issues relating to SWH. The subcommittee would commence work when a vacant slot became available to accommodate its activation.

#### *Holiday entitlements of employees*

23. Members continued to call on the Administration to address the disparity in the holiday entitlements of employees. To facilitate understanding of the proportions and characteristics of employees taking statutory holidays ("SHs") under EO and general holidays ("GHs") as provided under the General Holiday Ordinance (Cap. 149) ("GHO") in Hong Kong, the Panel received a briefing by the Administration on the findings of a relevant survey conducted by C&SD.

24. Noting from the survey findings that among the employees entitled to paid SHs, 49.5% were taking GHs, most members expressed concern that different numbers of holidays were provided for different employees under EO

and GHO. The non-alignment of SHs and GHs was an unfair and discriminatory policy against employees engaged in service industries, especially grassroots workers, who were normally provided with 12 days of paid SHs in a year. These members considered it high time for the Administration to review the respective entitlements of SHs and GHs under the two Ordinances. They strongly urged the Administration to expedite the alignment of two types of holidays for employees.

25. Some other members, however, cautioned that as revealed from the survey findings, the estimated annual compliance cost for one additional day of SH would amount to \$0.37 billion, hence the alignment of the number of SHs with GHs would impose additional financial burden on employers, in particular the low-paying sectors, such as restaurants, estate management, security and cleaning services. The impact on business operation and costs should be carefully assessed in contemplating increase in the number of SHs.

26. The Administration stressed that SHs and GHs were two types of holidays with different nature and backgrounds. GHs, as provided for GHO, were days on which banks, educational establishments, public offices and government departments needed not open and they were primarily holidays for the relevant establishments. SHs or the so-called "labour holidays", on the other hand, were benefits accorded to employees which employers had to provide under EO and were determined on the basis of a community consensus after extensive consultation. Moreover, given any increase in the number of SHs would be applied across the board to all employees, careful consideration would need to be given to the potential impact that such a legislative change might have on employers, especially the small and medium enterprises and employers of FDHs, who were less resilient in coping with the rise in operating cost and reduction in manpower.

27. According to the Administration, members of the Labour Advisory Board ("LAB") had been heavily engaged in the discussion of alignment of SHs with GHs. At its meeting in May 2015, the employee representatives had put forth some specific proposals for the consideration of the employer representatives. LD would also collect more information as requested by LAB to facilitate its further deliberation on the subject. Members were assured that the Administration would review from time to time the labour legislation in the light of the changing socio-economic situation to ensure that a reasonable balance between employees' interests and employers' affordability was struck, and that the statutory rights and benefits accorded to employees would be progressively improved according to the consensus reached by employer and employee representatives at LAB.

*Proposal to designate 3 September 2015 as a special holiday*

28. The Panel was consulted on the Administration's proposal to designate 3 September 2015 on a one-off basis as both an SH and a GH. While supporting in principle the legislative proposal, some members were concerned about the rationale and need for designating on a one-off basis 3 September 2015 as a special holiday. Some members also expressed concern about the financial implications of the proposal given that the proposal would affect the operation of one business day for most employers, who had to rearrange the duties of existing staff or to engage temporary workers to continue their business operations on 3 September 2015.

29. According to the Administration, the year of 2015 marked the 70th anniversary of the victory of the Chinese people's war of resistance against Japanese aggression, the Central People's Government would organise a range of large scale commemorative activities throughout the country and had designated 3 September 2015 as a National Holiday. The Hong Kong Special Administrative Region Government would host a number of activities to commemorate the important occasion. To facilitate community participation in these activities in remembrance of history, the Administration therefore proposed to designate on a one-off basis 3 September 2015 as both an SH and a GH by way of a bill. Members were advised that based on the 2011 wage level, it was estimated that the overall increase in compliance cost would be \$0.37 billion for an additional SH. However, given that business establishments would have some time to plan ahead for the extra day of GH cum SH, the potential implications arising from the one-off proposal for the economy as a whole should be largely manageable.

30. With the support of the Panel, the Administration introduced the Special Holiday (3 September 2015) Bill into LegCo on 27 May 2015.

*Arrangement of offsetting severance payments and long service payments against Mandatory Provident Fund accrued benefits ("the offsetting arrangement")*

31. The impact of the offsetting arrangement was of great concern to the Panel. Pointing out that the Chief Executive had stated in his election manifesto the initiative to progressively reduce the proportion of accrued benefits attributable to employers' contribution to the Mandatory Provident Fund Schemes that could be applied for the offsetting arrangement, some members expressed strong disappointment that the Administration had not followed up on the matter. They strongly called on the Administration to devise a concrete work plan and a timetable for implementation. According to the Administration,



the subject was an issue with wide read-across implications and of major concern to the community, it would continue to listen to the views of different sectors and examine the issue in a holistic and careful manner. To enable more focused discussion, the Panel and the Panel on Financial Affairs agreed to appoint a joint subcommittee under the two Panels to study issues relating to the offsetting arrangement. The joint subcommittee would commence work when a vacant slot became available to accommodate its activation.

### Promoting employment and developing manpower

#### *Employment support services*

32. The Panel continued to attach great importance to ensuring that the employment services provided by LD could adequately assist job seekers in securing suitable employment. In the light of the prevailing low unemployment rate of 3.3% and the tight manpower situation in various industries, members expressed concern how the Administration could unleash the potential workforce, including early retirees, female homemakers and ethnic minorities ("EMs") so as to mitigate the labour shortage problem.

33. Members were advised that LD provided a wide range of free employment and recruitment services to job seekers and employers through a network of 13 job centres throughout the territory, two recruitment centres for the catering and retail industries, a Telephone Employment Service Centre and a Job Vacancy Processing Centre. To enhance the efficiency of the recruitment process, job centres would organise district based job fairs for employers in their respective districts. In addition, LD provided customised employment support to job seekers with diverse needs. Notably, LD would extend the Employment Programme for the Middle-aged to part-time jobs in the second half of 2015 to provide more suitable part-time employment opportunities to persons aged 40 or above, including female homemakers and early retirees. As regards EMs, LD launched a pilot project "Employment Services Ambassador Programme for Ethnic Minorities" to directly employ EMs participating in the Youth Employment and Training Programme as Employment Services Ambassadors in the job centres and job fairs of LD, which sought to help job centres proactively reach out to other EM job seekers and enhance the provision of employment services to them.

34. Some members were particularly concerned about the effectiveness of the pilot project "Employment Services Ambassador Programme for Ethnic Minorities". The Administration advised that the programme had enabled LD to provide better service to meet the employment needs of EMs. A review of the programme would be conducted after completion of the on-the-job training of

the second batch of employment services ambassadors. LD would consider the way forward of the programme in light of the actual experience and review findings.

35. Given that there was a considerable number of EMs and vulnerable families in Tung Chung who needed specific employment services, the Panel examined the effectiveness of the new Tung Chung Job Centre ("TCJC") in strengthening employment support to residents living in remote districts following its commissioning in October 2014. While welcoming the setting up of the new job centre, members considered that the Administration should proactively reach out to the EM community to enhance their awareness of the employment support services provided by LD. The Administration advised that upon the commencement of TCJC's soft commissioning, LD had carried out promotion through various channels to publicise the establishment and services of TCJC, such as mailing flyers in various languages to all households in Tung Chung.

#### *Work Incentive Transport Subsidy Scheme*

36. In the current session, the Panel continued to monitor the implementation of the Work Incentive Transport Subsidy ("WITS") Scheme, which aimed to help low-income employees reduce their travelling cost to and from work. Noting that the Administration was conducting a comprehensive review of the Scheme, the Panel received views from deputations on the subject.

37. Members shared the views of deputations that the provision of monthly WITS at a flat full-rate subsidy of \$600 per month was inadequate for the low-income workers to relieve their burden of work-related travelling when working across districts, which amounted to over \$1,000 per month. To this end, members strongly requested the Administration to consider adjusting upwards the monthly WITS and introducing a two-tier subsidy rates based on the distance between the location of work and residence. Noting that as at end-January 2015, a total subsidy payment of \$891 million had been made to 86 470 applicants, members expressed concern that the take-up rate of the WITS Scheme was far below the Administration's estimation of 200 000 beneficiaries put forward in the relevant funding proposal. They urged the Administration to enhance its publicity efforts in promoting the WITS Scheme to the eligible applicants.

38. The Administration explained that to keep the WITS Scheme simple and easy to administer, a flat rate of \$600 per qualified applicant per month was adopted. According to the General Household Survey conducted by C&SD in the first quarter of 2014, the average monthly expense of WITS target

beneficiaries on public transport for travelling to and from work was \$427, and that for those working across districts was \$475. A transport subsidy of \$600 per eligible person per month was considered adequate to relieve the burden of travelling expenses of the beneficiaries. Members were assured that views of deputations and members would be fully taken into account in the comprehensive review of the WITS Scheme underway, including its objectives, eligibility criteria, level of subsidy rate, modus operandi and effectiveness, which was expected to be completed in the latter half of 2015. The Administration undertook to report the outcome to the Panel as soon as practicable.

39. Members also expressed concern about whether the WITS Scheme was to be replaced with the impending implementation of the Low-Income Working Family Allowance ("LIFA"). The Administration explained that it aimed to implement the LIFA Scheme in the second quarter of 2016. As a general principle, LIFA would be granted on a family basis to relieve the financial burden of non-Comprehensive Social Security Assistance low-income working families, and beneficiaries of LIFA should not receive household-based WITS concurrently. Yet, all working members in a LIFA family (except for the LIFA applicants themselves) might apply for individual-based WITS, and their WITS payment would be counted towards the family income in LIFA's income test.

#### Occupational safety performance

40. The Panel attached great importance to the occupational safety performance in various industries to ensure that adequate preventive and enforcement measures were adopted by the Administration to safeguard the safety and health of employees at work. Members were particularly concerned that the construction industry recorded the highest number of fatalities and accident rate among all industries. In the light of commencement in sequence a number of mega infrastructure projects, members expressed grave concern about whether the construction workers were under extreme work pressure so as to meet the tight project deadlines. They raised concern about the specific measures put in place to safeguard the occupational safety of construction workers.

41. The Administration advised that more than half of the construction fatal accidents were related to fall of persons from height. Apart from stepping up the publicity and promotional efforts on raising the awareness of occupational safety in the construction industry, LD and the Occupational Safety and Health Council ("OSHC") had jointly launched the RMAA (repair, maintenance, alteration and addition) safety accreditation scheme to encourage small and medium sized contractors to adopt safe working methods. Under the scheme,

those accredited as star enterprises could enjoy up to 50% premium discount when procuring employees' compensation insurance from the Employees' Compensation Insurance Residual Scheme. In addition, complementary to the conventional inspections to the regular worksites to deter unsafe work practices, LD had adopted a new enforcement mode under which surprise audit inspections were conducted by LD inspectors to construction sites of large-scale infrastructure projects engaging a large number of construction workers.

42. Pointing out that a significant number of new entrants to the construction industry were EMs who might encounter communication problem at work, some members expressed grave concern about the specific measures put in place by the Administration to raise their occupational safety awareness. Members were advised that LD had prepared promotional leaflets and posters with simple and easy-to-understand pictorial aids which were printed in various ethnic languages. In addition, LD in collaboration with labour unions in the construction industry organised outreaching seminars at construction sites to deliver occupational safety message to EMs.

#### Proposal to revise the levels of compensation under three Ordinances

43. The Panel's view was sought on the Administration's proposal to increase the amounts of a total of 18 compensation items under the Employees' Compensation Ordinance (Cap. 282), the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) and the Occupational Deafness (Compensation) Ordinance (Cap. 469).

44. While expressing general support for the proposed upwards adjustment of 18 compensation items under the above three Ordinances, members expressed concern about the adequacy of the compensation. There was a view that the Administration should take into account the actual needs of the eligible claimants in proposing adjustments and conduct the review exercise on an annual basis so as to ensure that more up-to-date compensation levels could be determined. The Administration advised that under the established mechanism which was agreed by LAB, the levels of compensation under the three Ordinances were reviewed every two years. The amount of the compensation items under the three Ordinances were adjusted according to a basket of indicators, including Nominal Wage Index, Consumer Price Index (A) and other relevant factors. The Administration had been adopting an objective, flexible and evidence-based approach in setting and reviewing the compensation levels of various items and would continue to do so. With the support of the Panel, the Administration moved a motion to seek the LegCo's approval of the proposal at the Council meeting of 4 February 2015.

Meetings held

45. During the period between October 2014 and June 2015, the Panel held a total of nine meetings. The Panel has scheduled another meeting in July 2015.

Council Business Division 2  
Legislative Council Secretariat  
29 June 2015

## **Appendix I**

### **Legislative Council Panel on Manpower**

#### **Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to labour, manpower planning, vocational training and education, and qualifications framework.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Legislative Council  
Panel on Manpower**

**Membership list for 2014-2015 session**

**Chairman** Hon WONG Kwok-kin, SBS

**Deputy Chairman** Dr Hon CHIANG Lai-wan, JP

**Members** Hon LEE Cheuk-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 CHAN Yuen-han, SBS, JP  
Hon LEUNG Che-cheung, BBS, MH, 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

(Total : 18 members)

**Clerk** Miss Betty MA

**Legal adviser** Ms Clara TAM

**Date** 9 October 2014