

立法會
Legislative Council

LC Paper No. CB(2)1996/15-16
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 19 April 2016, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

- Members present** : Hon KWOK Wai-keung (Chairman)
Dr Hon CHIANG Lai-wan, JP (Deputy Chairman)
Hon LEUNG Yiu-chung
Hon CHAN Kin-por, BBS, JP
Dr Hon LEUNG Ka-lau
Hon WONG Kwok-kin, SBS
Hon IP Kwok-him, GBS, JP
Hon LEUNG Kwok-hung
Hon CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan
- Member attending** : Hon Emily LAU Wai-hing, JP
- Members absent** : Hon LEE Cheuk-yan
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon CHEUNG Kwok-che
Dr Hon KWOK Ka-ki

**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)³
Census and Statistics Department

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

Mr Desmond HOU Ka-chun
Principal Economist
Financial Secretary's Office

Item V

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

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

Mr Donald TONG Chi-keung, JP
Commissioner for Labour

Ms Queenie WONG Ting-chi
Assistant Commissioner for Labour
(Policy Support)

Ms Fronde LUI Wai-fong
Senior Labour Officer (Employment Agencies)
Labour Department

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

Staff in attendance : Ms Rita LAI
Senior 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)1292/15-16)

The minutes of the meeting held on 16 February 2016 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)1258/15-16(01) and CB(2)1294/15-16(01))

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

- (a) joint letter dated 8 April 2016 from Miss CHAN Yuen-han and Miss Alice MAK proposing the Panel to discuss the provision of maternity leave ("ML"); and
- (b) letter dated 13 April 2016 from Mr TANG Ka-piu regarding the implementation of the Guidance Notes on Prevention of Trapping Hazard of Tail Lifts issued by the Labour Department ("LD") in October 2015.

3. With respect to paragraph 2(a) above, the Chairman advised that the subject would in the meantime be included in the Panel's "List of outstanding items for discussion". The Secretariat would liaise with the Administration in respect of the timing for discussion on the subject.

4. In respect of paragraph 2(b) above, members noted that the Administration had been requested to provide written responses to issues and concerns raised in Mr TANG Ka-piu's letter.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(2)1428/15-16 on 6 May 2016.)

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III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1295/15-16(01) and (02))

Regular meeting in May 2016

5. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 4:30 pm on 17 May 2016:

- (a) Results of the review of the Work Incentive Transport Subsidy Scheme; and
- (b) Implementation and review of statutory paternity leave.

(Post-meeting note: With the concurrence of the Panel Chairman, a new item "Provisions on maternity leave under the Employment Ordinance" had been added to the agenda of the meeting and item (a) above would be deferred to the meeting in June 2016.)

IV. Major findings of the 2015 Annual Earnings and Hours Survey
(2015 Report on Annual Earnings and Hours Survey, LC Paper Nos. CB(2)1295/15-16(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 2015 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)1337/15-16(01) on 20 April 2016.)

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

Data collection and methodology for AEHS and review of the Statutory Minimum Wage ("SMW") rate

8. Pointing out that the Minimum Wage Commission ("MWC") would make reference to the 2015 AEHS findings in recommending the next SMW rate to be effective in 2017, Mr POON Siu-ping expressed

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concern about the time gap between data collection for AEHS and implementation of the revised SMW rate under the biennial review of the SMW rate. Mr POON enquired whether LD would work with MWC to address the problem.

9. Raising a similar concern, the Chairman pointed out that the existing SMW rate, which was revised in May 2015 with reference to the wage statistics in 2014, would remain in force for two years until 2017, there was indeed a time gap of three years for the next SMW rate adjustment. The Chairman expressed concern about how the Administration would address the problem in the next SMW rate adjustment.

10. Assistant Commissioner for Labour (Development) ("AC for L(D)") explained that while the AEHS findings could provide useful reference in the review of the SMW rate, MWC would also look into an Array of Indicators which included a large number of other relevant data being released and updated more frequently, such as labour statistics in the General Household Survey ("GHS") and the quarterly Survey of Employment and Vacancies.

11. Principal Economist of the Financial Secretary's Office ("Principal Economist") added that MWC was aware of the time gap between data collection/analysis of AEHS and implementation of the revised SMW rate (if any). To adopt a more holistic approach in reviewing the SMW rate, MWC had considered a host of social and economic factors and conducted scenario testing for the local economic outlook. Before submitting its last report on the recommended SMW rate in October 2014, MWC had examined various latest statistical data up to August 2014. Also, MWC had considered qualitative analysis of relevant information collected from other surveys and the extensive six-week public consultation together with consultation meetings during which views from members of the public and stakeholders on the review of the SMW rate were received.

12. Noting that there were around 170 500 employees whose hourly wage was below \$32.5 during the reference period of May to June 2014, and the number of these employees during the corresponding period in 2015 had dropped to around 41 900, the Chairman expressed concern that the AEHS findings had overestimated the number of low-income employees covered under the revised SMW rate when it took effect in 2015. Principal Economist said that the number and percentage of employees earning the recommended SMW rate reflected the result

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rather than a target or key factor of consideration by MWC in deliberating the SMW rate. The low percentage of employees covered by the SMW rate in effect could be considered as a positive sign showing that many lower-paid employees had notable wage gain with their hourly wage rates exceeding SMW. The Chairman, however, maintained the view that review of the SMW rate should be conducted on an annual basis so as to ensure that the SMW rate could catch up with inflation.

13. Mr LEUNG Yiu-chung expressed concern that data on wage components in AEHS was collected from employers only. AC/C&S explained that data on employment earnings and working hours were collected from employees under GHS and it was noteworthy that rough information was usually provided by the respondents. As compared with GHS, employers were required under AEHS to provide wage statistical data according to the employment records kept by their business undertakings, which was more accurate and reliable. Mr LEUNG Yiu-chung, however, remained of the view that raw data on employment earnings should also be obtained from employees under AEHS.

Disparity of wage level between male and female employees and related issues

14. Mr POON Siu-ping sought explanation for the disparity of median monthly wage between male and female employees during the reference period of May to June 2015, which were \$17,600 and \$13,600 respectively. Miss CHAN Yuen-han was of the view that sex discrimination in employment, in particular among low-income grassroots employees, was severe. She was concerned about the policy initiatives taken by the Administration to address such disparity so as to encourage the 500 000 economically inactive females to join the labour force. The Chairman considered that sex discrimination in employment should not be viewed merely from the difference in the median monthly wage between male and female employees, having regard to the traditional role of homemaker played by women and a considerable number of females had taken up low-paid part-time jobs.

15. Responding to members' concerns, AC/C&S advised that the disparity in wage level between male and female employees would be attributable to a number of factors, including educational attainments, choice of occupations and industry sections, age as well as years' of service in the serving business undertaking. Notably, there was a greater

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proportion of male employees engaged in the construction sector and the wage level was comparatively higher. On the other hand, when compared with male employees, a greater proportion of female employees took up part-time jobs and their years' of service in the business undertakings, in particular married women with children, were relatively shorter as some of the female employees might have left the labour market temporarily in earlier years after marriage or giving birth to children. As such, these female employees' monthly earnings might likely be lower than those of male employees. AC/C&S, however, drew members' attention to the fact that such phenomenon was not uncommon in other places. For instance, the differences in median weekly income of male and female employees in the United Kingdom and Australia were 34.7% in 2015 and 31.5% in 2014 respectively.

16. AC for L(D) supplemented that it was unlawful to discriminate in employment on the ground of sex under the Sex Discrimination Ordinance (Cap. 480). The Administration had also updated the Panel in February 2016 on the implementation of population policy initiatives related to unleashing the potential of the women workforce. For example, to remove the barriers for women to enter or stay in employment, the Administration had been launching a series of measures to enhance child care services. The Employees Retraining Board and LD had also strengthened relevant training and employment services.

Household income

17. Notwithstanding there was an increase of 4.9% in the median monthly wage of all employees in 2015 as compared with 2014, Mr LEUNG Kwok-hung expressed concern about the increase in real wage level after discounting the impact of inflation, which was 3.1% based on the Composite Consumer Price Index ("CCPI") in the same period. Mr LEUNG enquired whether the Administration had conducted a comparison study between employment earnings and other income tools in providing household income and requested it to provide information in respect of changes in household income and Gross Domestic Product in 2015 as well as changes in the CCPI in the same period.

18. AC/C&S said that she did not have the information on hand and would provide the information, if available, after the meeting.

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Working hours statistics

19. Miss CHAN Yuen-han sought clarification as to whether uncompensated overtime ("UCOT") was included in data collection of AEHS. AC/C&S said that the working hours statistics published in the reports of AEHS followed the definition of hours worked under the Minimum Wage Ordinance (Cap. 608) and thus covered contractual/agreed working hours and overtime hours worked at the direction of employers, regardless of whether there was compensation for the overtime hours worked in terms of overtime pay or time-off in lieu. Overtime hours not worked with the agreement or at the direction of employers, for which records or data were not available from the employers, were not included. That said, some business undertakings had responded that their employees had been requested to undertake overtime work without compensation.

20. Miss CHAN Yuen-han expressed grave dissatisfaction that overtime working hours had not been obtained from employees in order to reflect accurately the phenomenon of long working hours situation in different trades and industries. Pointing out that overtime work not under the direction of employers was not uncommon, for instance, in the accounting field, Miss CHAN called on the Administration to improve its survey methodology in data collection such that UCOT would also be included in AEHS. Mr LEUNG Yiu-chung and the Chairman echoed similar concerns.

21. AC/C&S informed members that working hours data were also collected from employees in GHS which was conducted on a monthly basis. Respondents of GHS were asked to provide information on the actual number of hours worked during the seven days before enumeration, comprising contractual hours, compensated (with overtime pay and/or time-off in lieu) overtime hours and uncompensated (without overtime pay or time-off in lieu) overtime hours. It was noteworthy that the number of working hours would be shorter if the respondents had taken leave or had not attended to work owing to holidays during the survey period. At the request of members, AC/C&S agreed to provide information on the patterns of hours of work of employees covered in the Quarterly Report on GHS for April to June 2015 after the meeting. The Chairman suggested that such information be provided to the Panel when the subject of AEHS was discussed in future.

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22. Mr LEUNG Kwok-hung asked whether information on the compensation arrangements for overtime work and contractual working hours had been obtained for compilation of the AEHS report. AC/C&S advised that overtime hours worked with the agreement or at the direction of employers and the compensation arrangement, if any, were obtained from the 2015 AEHS. It was noted that there were different practices for individual business undertakings, and the overtime pay rate was in general the same as the hourly wage rate while some companies made compensation at 1.5 times of the hourly wage rate or even higher.

23. Mr POON Siu-ping was concerned about the longer weekly working hours of full-time male employees aged 55 or above at the 75th percentile (i.e. 57.4 hours) than that of employees of other age groups at the same percentile which were in the range of 51.2 to 54.0 hours. AC/C&S explained that this was mainly because a greater proportion of male employees aged 55 or above were engaged in real estate maintenance management and security services and their average daily working hours was longer than those engaged in other trades and industries.

24. Referring to the median weekly working hours of 49.4 for all employees in estate management, security and cleaning services during the reference period of May to June 2015, Mr LEUNG Yiu-chung sought information on respective figures of individual sub-sectors and the corresponding figures in 2014.

25. AC/C&S responded that the median weekly working hours for all employees in the sub-sectors of real estate maintenance management, security services and cleaning services during the reference period of May to June 2015 were 54.0, 57.2 and 48.0 respectively whereas the corresponding figures in 2014 were 54.0, 59.1 and 48.0. The median weekly working hours for all employees in the industry as a whole during the corresponding period in 2014 was 51.9. While the median weekly working hours for all employees in real estate maintenance management as well as cleaning services remained unchanged in 2015, employees in security services had generally worked for shorter hours.

V. Draft Code of Practice for Employment Agencies
(LC Paper Nos. CB(2)1295/15-16(05) and (06))

26. At the invitation of the Chairman, Secretary for Labour and Welfare ("SLW") briefed members on the draft Code of Practice ("CoP")

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for Employment Agencies ("EAs"), details of which were set out in the Administration's paper.

27. Members noted the background brief entitled "Regulation of employment agencies placing foreign domestic helpers" prepared by the LegCo Secretariat.

The draft CoP

28. Expressing concern about overseas intermediaries' overcharging of foreign domestic helpers ("FDHs") in their home countries, Mr SIN Chung-kai held the view that the criteria for local licensed EAs undertaking job placement business for FDHs ("FDH EAs") in Hong Kong in selecting their business partners in FDHs' home countries should be clearly stipulated in CoP. Ms Emily LAU suggested that local EAs be required to disclose their business partners in FDH-sending countries, in particular intermediaries involved in money-lending activities.

29. SLW said that the Government did not have any jurisdiction on overseas EAs. According to the law, local EAs were only allowed to receive from job-seekers, including FDHs, the prescribed commissions specified in the Second Schedule of the Employment Agency Regulations (Cap. 57A) ("EAR") which was no more than 10% of the latter's first month's salary for successful job placement service. Permanent Secretary for Labour and Welfare ("PSLW") referred members to paragraph 4.12 of the draft CoP which stipulated that EAs should avoid involving in financial affairs of job-seekers, including helping any other persons, organizations or companies (including recruiting agents or intermediaries located in or outside Hong Kong) to collect fees for arranging FDHs concerned to come to Hong Kong, or training fees for any local or overseas recruiters, agents or training centres, etc. They should not advise, arrange, encourage or force FDHs to borrow money from any institutions in or outside Hong Kong. As regards Mr SIN Chung-kai's suggestion, PSLW advised that it would be further examined, in the light of legal advice.

30. In response to the Deputy Chairman's enquiry about the implementation timetable of the CoP, SLW said that the Government had already briefed the relevant Consulates-General ("CGs") about the draft CoP and received positive response from them. LD would collect views, including arranging consultation sessions for different stakeholder groups and receiving written submissions, etc., during the consultation period which would end on 17 June 2016 so as to further refine the CoP.

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Depending on the amount and complexity of feedback received, it was hoped that the CoP would be published in the third quarter of 2016. The Deputy Chairman called on the Administration to enhance its efforts in raising the awareness of FDHs and their employers about their respective rights and obligations, and the points to note when engaging EAs.

31. Mr IP Kwok-him considered that the Administration had taken a step forward in protecting the rights and interests of both FDHs and employers by issuing the CoP. Mr IP was concerned whether fees that might be charged by EAs as stipulated in paragraph 3.5 of the draft CoP would be applicable to employers of FDHs seeking referral services from EAs.

32. SLW advised that there was no restriction under the law on the level of fees that could be charged by EAs on employers for services provided. Similar to other commercial transactions, the amount of fees charged was subject to the mutual agreement between the customers (i.e. FDH employers) and the service providers (i.e. EAs).

33. Miss CHAN Yuen-han expressed concern about unscrupulous operation of some EAs placing FDHs and raised queries about the effectiveness of the CoP in addressing the situation. To enhance the deterrence effect against unscrupulous operation of EAs, Miss CHAN called on the Administration to consider publishing the names of these EAs at LD's website. Expressing her support, Ms Emily LAU suggested that a rating system for evaluating EAs' performance be set up. The Chairman enquired whether the Administration would consider introducing a demerit points system for regulating EAs.

34. SLW advised that to enhance transparency, LD had been publishing a list of licensed EAs at its website for public information. While the Government and relevant CGs would share intelligence with regard to some unscrupulous EAs, it might not be appropriate to disclose their names. LD would also issue press statements upon the conviction of EA(s), and/or when the licence of an EA had been revoked or refused for renewal. Such information was also available on LD's website. Nonetheless, the Government would further explore ways to enhance transparency and whether a rating system for EAs could be introduced.

35. Commissioner for Labour ("C for L") referred members to Chapter 4 of the draft CoP regarding C for L's expectation of the minimum standards of EAs, and advised that in relation to the

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implementation of the CoP, LD would issue warning letters to EAs for rectification of irregularities detected, including but not limited to failing to meet the statutory requirements and/or standards set out in the CoP. For instance, EAs were required to keep records relating to their dealings with job-seekers and their employers, including the service agreements and payment receipts issued in addition to the employment records as required under the law. The Administration might also consider, amongst other relevant factors, the relevant track record (for example whether EAs had persistently failed to meet the requirements and/or standards set out in the CoP, as well as records of failure to rectify upon warning of LD, etc.) of EAs and/or their capability of meeting such requirements/standards, in making decision of revoking, or refusing to grant or renew EA licenses under section 53(1)(c)(v) of the Employment Ordinance (Cap. 57) ("EO").

36. Expressing appreciation of significant contribution of FDHs to Hong Kong, Ms Emily LAU considered it imperative to safeguard the rights of FDHs as well as those of FDH employers. Ms LAU was disappointed at the lack of legal consequence for non-compliance with the CoP. Ms LAU pointed out that not only the abuse case of Erwiana was detrimental to the reputation and status of Hong Kong as an international city, the Trafficking in Persons Report 2015 had also highlighted the situations of debt bondage of FDHs in Hong Kong. Ms LAU urged the Administration to take proactive measures to enhance FDHs' awareness of their rights while working in Hong Kong. She took the view that it was important for the Administration to make regulations have binding effect on both FDHs and their employers and put in place a complaint mechanism for handling disputes of FDH-related matters. Miss CHAN Yuen-han was concerned that FDHs faced considerable pressure when lodging complaints against their employers. Miss CHAN held the view that the Administration should render assistance to these FDHs, such as provision of temporary accommodation.

37. In response, SLW said that the Administration acknowledged the contribution made by FDHs to Hong Kong and attached great importance to the welfare and well-being of some 343 000 FDHs in Hong Kong. The Administration was addressing the concerns raised by members as follows:

- (a) the objective of issuing the CoP was to step up monitoring of EAs to ensure that they provided reasonable and professional services to both local employers and FDHs. It was expected that the implementation of the CoP would bring about a

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culture change and the Administration would keep in view the situation after implementation. If the effectiveness of the CoP was far from satisfactory, consideration would be given to adopting other means including introducing legislative amendments to suitably regulate the industry;

- (b) LD would continue with its public education efforts to enhance the professionalism and service quality of the EA industry, as well as promoting the awareness of job-seekers about their rights and entitlements, including staging more information kiosks at FDHs' popular gathering places during their rest days and distributing useful reference materials. Since mid-2014, LD staff had regularly attended briefings for newly-arrived FDHs organized by CGs of the Philippines and Indonesia so as to brief them on their employment rights and important points to note while working in Hong Kong. LD also maintained regular communication with FDH groups and other stakeholders on FDH matters, e.g. the meetings on the Minimum Allowable Wage review. As enhancement to the publicity efforts, LD had issued a Dos and Don'ts pamphlet which was available in Chinese, English, Tagalog, Indonesian and Thai languages (with the Tagalog, Indonesian and Thai versions to be available shortly), setting out the rights and obligations of all sides, including employers, FDHs and EAs. A handy card was also produced in the major mother languages of FDHs on employment rights and complaints channels for wide distribution to FDHs to enhance their awareness in this regard. Furthermore, LD had launched a dedicated website for FDHs so that they could have access to employment-related information in their major mother languages before they arrived in Hong Kong; and
- (c) LD provided free conciliation service to employers and employees, including FDHs, involved in labour disputes.

38. Miss CHAN Yuen-han suggested that the information pack and the leaflets be also distributed to FDHs through their community networks.

39. Mr LEUNG Yiu-chung was concerned about the assessment criteria for evaluating the effectiveness of CoP and the need for legislating for CoP. SLW advised that the Administration would closely monitor the implementation of CoP, in particular complaints against EAs.

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If the effectiveness of CoP was far from satisfactory, the Government would not rule out the possibility of introducing legislative amendments to further regulate EAs. Mr LEUNG called on the Administration to enhance its publicity efforts in respect of the complaints mechanism.

40. Mr IP Kwok-him expressed concern that there were cases involving EAs' provision of false descriptions or misleading information on FDHs' profile. Mr IP noted from paragraph 3.8 of the draft CoP that EAs were obliged to observe the existing requirements against unfair trade practices prohibited by the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 ("the Amendment Ordinance"). As prospective employers of FDHs relied heavily on the information provided by EAs in deciding whether to employ the FDH concerned, Mr IP expressed concern about how the draft CoP could help ensure EAs' provision of accurate information.

41. SLW said that for employers who considered the services provided by EAs unsatisfactory or failed to meet with the service agreements, they could lodge complaints with the Consumer Council ("CC") and seek advice and assistance as appropriate. The Customs and Excise Department would take appropriate enforcement actions against EAs for contravention of the Amendment Ordinance. PSLW added that to facilitate EAs' compliance and for ease of reference by FDHs and their employers, LD had provided some sample forms in the Appendices of the draft CoP, including sample service agreements which EAs should respectively draw up with FDH job-seekers and FDH employers. In addition, the Administration was seeking the views of CC on the draft CoP.

42. C for L further said that Appendix 3 of the draft CoP provided a "Sample Form for Profile of Foreign Domestic Helper". In drawing up the service agreement with employers, EAs had to provide a copy of the resume of the selected FDH to the prospective employers. EAs should also exercise due diligence in checking the accuracy of the information in the resume of the job-seekers as far as practicable (e.g. the accuracy and/or validity of the qualification and work experience set out therein). It was believed that such information would facilitate employers to make an informed decision when selecting FDHs and the service agreement/resume could serve as supporting documents for legal proceedings as necessary.

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Application of the CoP

43. Mr POON Siu-ping sought clarification as to whether non-profit-making training bodies, such as labour unions, providing placement services were within the meaning of EAs for the purpose of CoP.

44. C for L said that the CoP was applicable to all EAs in Hong Kong as defined under section 50(1) of EO as well as non-profit-making training bodies providing placement services which were operating with a certificate of exemption issued by C for L pursuant to Part XII of EO and EAR. C for L added that the operation of these training bodies had been taken into consideration in the drafting of the CoP, and they were welcome to provide their views on the draft CoP during the consultation period.

[The Chairman directed that the meeting would be extended by 15 minutes.]

Manpower requirement

45. In the light of the impending implementation of the CoP, Miss CHAN Yuen-han expressed concern about whether there would be sufficient manpower for the regulation of EAs.

46. C for L advised that having regard to public expectations and concerns, especially those from employers and job-seekers (with particular regard to the situation of FDHs) on services of EAs, the Employment Agencies Administration of LD had increased its manpower in 2014-2015 and 2015-2016 to strengthen the monitoring of EAs by increasing the annual inspection targets to EAs from 1 300 to 1 800 inspections each year (representing a 38% increase). In addition, the Government had worked closely with the CGs and exchanged information to ensure that the inspections were done effectively and efficiently. PSLW supplemented that LD would initiate investigation immediately upon receipt of malpractice complaints of EAs. LD would review the manpower requirements from time to time and would bid for additional resources as necessary.

Receiving public views

47. Ms Emily LAU suggested and members agreed that the Panel would schedule another meeting to receive public views on the draft CoP.

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The Chairman advised that members would be informed of the arrangement in due course.

(Post-meeting note: A special meeting was held on 24 May 2016 at 2:30 pm to receive deputations' views on the draft CoP.)

Other issues

Regulation of EAs

48. Mr POON Siu-ping noted with concern that in 2015, C for L revoked/refused to renew licences to five EAs and that nine EAs were convicted of overcharging commission from job-seekers. Mr POON sought details on the cases concerned.

49. SLW responded that the Administration had taken stringent enforcement actions against EAs which had violated EO and EAR. In 2015, of the 12 EAs prosecuted by LD, nine were convicted of overcharging commission from job-seekers as compared with one such case in 2014. C for L added that the numbers of revocation of licences were three in 2013, three in 2014, four in 2015 and one in 2016 (up to March). As regards non-renewal of licences in 2013, 2014 and 2015, the respective numbers were one, two and one. Reasons for revocation and refusal for renewal of EA licences included the licensees being convicted of overcharging commission from FDHs, offences involving dishonesty or providing forged documents to the Immigration Department ("ImmD") as well as C for L's conclusion that there were reasonable grounds that the licensee was not a fit and proper person to operate an EA.

50. In the light of the small number of revocation and refusal for renewal of EA licences in the past few years, Mr LEUNG Yiu-chung expressed concern about the effectiveness of the inspections conducted by LD to EAs. C for L said that LD adopted a risk-based approach in devising the inspection strategies to EAs.

51. The Chairman was concerned about the operation of some EAs providing placement services for on-site carers. To his understanding, some of these EAs charged the job-seekers with referral fees, which exceeded the prescribed commission under EAR and that some EAs were in fact employers of the job-seekers. The Chairman enquired how the Administration would address the situation.

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52. C for L responded that LD would take follow-up actions promptly upon receipt of complaints about contraventions of EO and EAR; and would seek advice from the Department of Justice as appropriate. If there was sufficient evidence and subject to the availability of prosecution witness, prosecution would be taken out against the EA concerned.

Overcharging of intermediary fees

53. Expressing concern that some Indonesian domestic helpers ("IDHs") had to pay a huge amount of intermediary and training fees in Indonesia, resulting in incurring heavy debts before taking up employment in Hong Kong, the Deputy Chairman called on the Administration to take proactive measures to address the situation.

54. SLW advised that the Administration had all along maintained contact with FDH sending countries and their CGs in Hong Kong to exchange views on FDH-related matters. Among others, it had been raising its serious concerns with the Indonesian Government on the huge amount of intermediary and training fees that IDHs were required to borrow from the intermediaries in their home countries prior to arriving in Hong Kong, and requested that the problem be tackled at source so as to alleviate the burden of IDHs. It was understood that consequent upon the discussions, such fees had been reduced accordingly. SLW said that both labour ministers reaffirmed their commitment in working together closely to protect IDHs in Hong Kong. It was agreed that both governments would continue the high-level contacts of senior officials to update each other on their policies and efforts on protecting FDHs. SLW further advised that the Government had strengthened collaboration with the relevant CGs in Hong Kong to coordinate mutual efforts and share intelligence, with a view to enhancing protection of FDHs.

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

Viability of probation period

55. Pointing out that some FDH employers had expressed grave concern about the performance of newly recruited FDHs, the Deputy Chairman suggested that a probation period be stipulated in the standard employment contract ("SEC") such that the requirements of employers paying the wages in lieu of notice in the event of contract termination be waived during the probation period.

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56. SLW advised that as stipulated in SEC, either the employer or the employee could terminate the employment contract by giving not less than one month's notice in writing or by paying one month's wages to the other party. The proposal of introducing a probation period might give rise to higher risk of job hopping of FDHs and additional financial burden on both the employers and employees. Notably, the employers would have to bear the travel expenses for the employee's return passage to his/her place of origin when the employment contract was terminated during the probation period. On the other hand, FDHs would have incurred considerable costs and expenses (such as the training fee) before taking up the employment in Hong Kong. In view of the above, the Administration considered that the current arrangement could provide sufficient flexibility for both employers and employees and strike a balance between the interests of parties concerned.

Premature termination of employment contracts

57. Pointing out that some FDHs deliberately discharged substandard performance hoping that their employers would terminate their contracts prematurely so that they could take up another employment, the Deputy Chairman was concerned how the Administration would address the problem of job hopping of FDHs.

58. SLW advised that ImmD had tightened the assessment of employment visa applications of FDHs whose contracts were often terminated prematurely. ImmD would, in processing the employment visa applications of FDHs, closely scrutinize their case details such as the number of and reasons for premature contract termination with a view to detecting any abuse of the arrangements for premature contract termination. If ImmD suspected such abuse, the application could be refused. Notably, ImmD had refused a certain number of applications for employment visa from FDHs who were suspected of job hopping.

59. There being no other business, the meeting ended at 7:01 pm.