

立法會
Legislative Council

LC Paper No. CB(2)776/16-17
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 20 December 2016, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon LEUNG Yiu-chung (Chairman)
Hon HO Kai-ming (Deputy Chairman)
Hon James TO Kun-sun
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon LEUNG Kwok-hung
Hon YIU Si-wing, BBS
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon Andrew WAN Siu-kin
Hon Jimmy NG Wing-ka, JP
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon Tanya CHAN
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Hon Jeremy TAM Man-ho
Hon Nathan LAW Kwun-chung
Dr Hon LAU Siu-lai

Members absent : Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Michael TIEN Puk-sun, BBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon HUI Chi-fung
Hon Kenneth LAU Ip-keung, MH, JP

Public Officers attending : Item IV

Mr Carlson CHAN Ka-shun, JP
Commissioner for Labour

Mr William MAK Chi-tung
Assistant Commissioner for Labour
(Employees' Rights & Benefits)

Ms Kate TAM Wing-tsz
Senior Labour Officer (Employees' Compensation
Division) (Central Services Section) 1
Labour Department

Miss Christine BUT Wing-tung
Senior Labour Officer (Employees' Compensation
Division) (Central Services Section) 2
Labour Department

Item V

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

Mr Carlson CHAN Ka-shun, JP
Commissioner for Labour

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

Ms Cecilia CHAN Pui-ching
Senior Labour Officer (Labour Relations)
(Policy Support)
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)406/16-17)

The minutes of the meeting held on 15 November 2016 were confirmed.

II. Information paper issued since the last meeting
(LC Paper No. CB(2)316/16-17(01))

2. Members noted that a letter dated 2 December 2016 from Mr LUK Chung-hung suggesting the Panel to discuss issues relating to the comprehensive review of employees' compensation system, including coverage of the Employees' Compensation Ordinance (Cap. 282) ("ECO") and establishment of a central compensation insurance fund, had been issued since the last meeting. The Chairman advised that the above issues had been included in the Panel's list of "Outstanding items for discussion".

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III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)408/16-17(01) and (02))

Regular meeting in January 2017

3. Members agreed that the Panel would receive briefings by the Secretary for Labour and Welfare ("SLW") and the Secretary for Education respectively on the relevant policy initiatives in the Chief Executive's 2017 Policy Address at the next regular meeting scheduled for 23 January 2017 at 8:30 am.

IV. Adjustment of the levels of compensation under the Employees' Compensation Ordinance, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance
(LC Paper Nos. CB(2)408/16-17(03) and (04))

4. Commissioner for Labour ("C for L") briefed members on the proposal to increase the amounts of a total of 18 compensation items under ECO, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) ("PMCO") and the Occupational Deafness (Compensation) Ordinance (Cap. 469) ("ODCO"), as detailed in the Administration's paper.

5. Members noted a background brief entitled "Adjustment of the levels of compensation under the Employees' Compensation Ordinance, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance" prepared by the Legislative Council ("LegCo") Secretariat.

Adequacy of the levels of compensation

Adjustment cycle

6. Dr Fernando CHEUNG criticized that the biennial adjustment of the levels of compensation under the abovementioned three Ordinances lagged behind the actual economic situation and caused considerable hardship and pressure to the livelihood of the eligible claimants. He held a strong view that the adjustment should be conducted on an annual basis. The Chairman said that members had time and again raised similar concerns about the biennial and lagged-behind adjustment mechanism.

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7. C for L explained that under the established mechanism, the levels of compensation under the three Ordinances were adjusted every two years where appropriate. C for L further elaborated on the necessary procedures involved in conducting an adjustment exercise in respect of the levels of compensation, notably, collation of latest statistics in relation to the wage and price movements in the relevant period, including Nominal Wage Index ("NWI"), Consumer Price Index (A) ("CPI(A)"), benefits provided under the Comprehensive Social Security Assistance ("CSSA") Scheme and other relevant factors, consultation with the Hong Kong Federation of Insurers, the Occupational Deafness Compensation Board ("ODCB") and the Pneumoconiosis Compensation Fund Board on the impact of the proposed adjustments in the levels of compensation. Then, the relevant findings and proposal had to be discussed by the Labour Advisory Board ("LAB") before submission to the Panel for deliberation. After having secured support from various stakeholders, the Administration would introduce the relevant amendment proposal into LegCo for approval. C for L said that the biennial adjustment cycle was considered appropriate.

8. C for L and Assistant Commissioner for Labour (Employees' Rights & Benefits) ("AC for L (RB)") added that apart from upward adjustments to the amounts of most compensation items with reference to the established indicators including NWI and CPI(A), special adjustments were also proposed to the amounts of certain compensation items having regard to the actual needs of the eligible claimants. For instance, the aggregate financing limit for hearing assistive devices ("HADs") had been increased by 44.44% from \$36,000 to \$52,000 in 2015. In the adjustment exercise covering 2009 to 2011, the Administration had taken into account the rising trend of funeral expenses in the period and the cost of funeral services, and substantially adjusted upwards the maximum amount of funeral expenses from \$35,000 to \$70,000 under both ECO and PMCO. In the current adjustment exercise covering 2014 and 2015, it was proposed that this amount be further increased from \$76,220 to \$83,700 with reference to the price movement reflected by CPI(A) in the period.

Levels of compensation under the Employees' Compensation Ordinance

9. While welcoming the proposal of increasing the amounts of a total of 18 compensation items under ECO, PMCO and ODCO, Mr POON Siu-ping was concerned about the adequacy of adjustment to

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the levels of compensation. He pointed out that six out of the nine fatal industrial accidents in the first half of 2016 occurred at construction sites and that the monthly earnings of construction workers of specific work types, such as bar-bending, formboard erecting and concreting, amounted to some \$50,000 and therefore far exceeded the proposed ceiling of monthly earnings (i.e. \$28,360) for the purpose of calculating compensation for death and permanent total incapacity under ECO. He asked whether the Administration would consider adjusting the ceiling of compensation items further upwards for specific industries, such as the construction industry. The Chairman shared a similar view. Mr POON sought information on the number of compensation claims in which the monthly earnings of employees concerned exceeded the existing ceiling in the past two years.

10. C for L advised that since the statutory employees' compensation mechanism was based on a no-fault system whereby compensation was payable by employers to employees concerned irrespective of any fault of the parties and the industries concerned, it was necessary to strike a reasonable balance between the rights and benefits of employees and the affordability of employers. AC for L (RB) said that adjustment to the ceiling of the monthly earnings for calculating compensation for death and permanent total incapacity under ECO had been made in the light of the wage movement as reflected by NWI. ECO provided for the payment of statutory compensation to injured employees and family members of deceased employees for specified occupational diseases, injuries or deaths caused by accidents arising out of and in the course of employment. Other than that, compensation claims could be made to the court for Common Law damages as well. The compensation so determined by the court would not be subject to the limit as stipulated under ECO. Of the 59 work-related fatal cases settled in 2015, the monthly earnings of the deceased employees in 11 cases had exceeded the ceiling of monthly earnings for calculating compensation for death and permanent total incapacity (i.e. \$26,070). In calculating employees' compensation under ECO, the earnings of an employee for the month immediately preceding the date of accident, or the earnings during the previous 12 months, whichever calculation was more favourable to the employee, would be taken into account.

11. Expressing the view that the present level of protection for injured employees under ECO was insufficient, the Deputy Chairman enquired whether the Administration would consider conducting a comprehensive review of ECO so as to enhance compensation for work injuries arising

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from industrial accidents and expand the list of occupational diseases to cover work-related musculoskeletal disorders and sudden death of employees due to overexertion at work.

12. In response, C for L said that the Labour Department ("LD") reviewed the labour legislation, including ECO, from time to time. It was noteworthy that there was an established mechanism under ECO for adjustment of the levels of different compensation items. As stated in SLW's reply to a question raised at the Council meeting of 30 November 2016 regarding sudden death of employees resulted from overexertion at work, relevant information would be collected and analysed and the issue would be followed up as appropriate. C for L also drew members' attention to the fact that most countries or places had not drawn up guidelines on sudden deaths caused by overexertion at work or definitions of such in the context of employees' compensation. As a matter of fact, the causes of sudden deaths other than by work accidents in the course of employment were complex and might involve a multitude of factors. As regards the timeframe, C for L said that LD would from 2017 commence collecting detailed information on fatal cases of employees in the course of employment not caused by work accidents, including obtaining relevant information from the employers and family members of deceased employees, such as whether the employees concerned had worked for a prolonged period of time prior to their death and their working hours. To study whether there was a relationship between workload/work pressure and sudden death of employees in the course of employment in Hong Kong, it was necessary to collect relevant information and conduct analysis for a few years' time.

13. In response to Mr LEUNG Kwok-hung's query about making reference to the CSSA Scheme in determining the level of compensation under ECO, AC for L (RB) explained that section 11(5) of ECO provided that where an employee earned less than a specified amount per month, his/her monthly earnings would be deemed to be that amount for the purpose of calculating compensation. The current minimum monthly earnings under ECO was \$3,690, which was set by reference to the standard rate and other payments (i.e. rental allowance, water charges allowance and long-term supplement) for a single and able-bodied adult under the CSSA Scheme in the relevant period.

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Coverage and compensation under the Occupational Deafness (Compensation) Ordinance

14. Mr LUK Chung-hung was concerned that no amendment had been made to the scope of specified noisy occupations under ODCO since 2003. Mr LUK called on the Administration to consider expanding its coverage to include bus drivers, employees having to wear headset or use walki talki at work and airport staff working in the apron, as these employees were also exposed to noisy working environment which would likely cause hearing impairment.

15. C for L and AC for L (RB) said that LD reviewed ODCO from time to time and came up with proposals to enhance the protection accorded by the Ordinance as appropriate. Notably, since 2003, eligible employees of four new specified noisy occupations, including slaughterhouse employees working in the immediate vicinity of electric stunning of pigs for the purpose of slaughter, mahjong parlour workers employed to play mahjong as the main duty, bartenders and waiters working near the dancing area in discotheques, and disc jockeys working in discotheques, had become eligible for compensation for occupational deafness if they met the conditions stipulated under ODCO. The findings of LD's study to assess the sound level of workplaces such as fee collection areas of tunnels, game centres and various kinds of telephone customer service centres did not indicate that noise exposure levels of employees in such workplaces reached the level for developing occupational deafness i.e. daily exposure in a working environment to a sound level at an average of 90 decibel or above for eight hours. Nevertheless, the Administration would closely monitor the situation.

16. The Chairman said that to his understanding, similar to persons suffering from pneumoconiosis and/or mesothelioma, workers who suffered from noise-induced deafness by reason of their employment in specified noisy occupations (hereinafter referred to as "OD persons") also suffered from pain. He called on the Administration to revisit the proposal of establishing "Compensation for Pain arising from Occupational Deafness" as in the case under PMCO. In addition, the Chairman also requested the Administration to consider providing OD persons who had contracted occupational deafness prior to the last amendment to ODCO with further compensation. The Chairman further called on the Administration to consider expanding the ODCB's membership by including representatives from the labour sector so that its views could be duly represented. C for L responded that these concerns and suggestions were noted.

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Medical expenses under the Employees' Compensation Ordinance and Pneumoconiosis and Mesothelioma (Compensation) Ordinance

17. Mr LUK Chung-hung expressed disappointment that the daily rate of maximum medical expenses reimbursable under ECO and PMCO, which was \$200, had remained unchanged since 2003. Noting that the rate was set by making reference to fee level of public healthcare services, Mr LUK was of the view that the amount was inadequate for meeting medical expenses charged by the private healthcare sector. The Chairman shared a similar concern.

18. C for L responded that the daily maximum rates for medical expenses under the two Ordinances were last revised on 4 April 2003 to align with the revision of the fee structure of public healthcare services in 2003. Since then, the charges in public hospitals and clinics for these treatments remained at the same level, hence a freeze in the daily limits for reimbursement. AC for L (RB) added that under ECO and PMCO, a claimant who had received medical treatment as a result of work injury or in connection with pneumoconiosis and/or mesothelioma might claim reimbursement of the actual amount of medical expenses incurred, subject to a daily maximum i.e. \$200 for receiving outpatient treatment or inpatient treatment on any one day and \$280 for receiving both outpatient treatment and inpatient treatment on the same day. The maximum amounts were set to cover the costs for consultation, medicine, injection and dressing, physiotherapy and hospitalisation, etc. on any one day in a public hospital or clinic. In the absence of a standard fee structure in the private healthcare sector, the Administration considered it appropriate to adopt the charges for public healthcare services as the basis for medical expenses under ECO and PMCO.

19. Noting that the Hospital Authority would propose upward adjustment to the admission fee of Accident & Emergency services to \$220, Dr Fernando CHEUNG expressed concern about whether the levels of compensation under the two Ordinances would be adjusted upwards correspondingly. The Chairman was concerned that under the biennial adjustment mechanism, the adjustment to medical expenses under the two Ordinances would lag behind the fee revision in public hospitals.

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20. C for L and AC for L (RB) responded that the Administration would closely monitor the situation. Should there be any changes to the fee structure of public healthcare services, the Administration would consider reviewing and revising the reimbursable ceilings for medical expenses in accordance with changes in the standard fees and charges in public hospitals and clinics as appropriate.

21. The Chairman called on the Administration to study the viability of issuing healthcare vouchers to injured employees to facilitate them to have more choices of receiving medical treatment in either the public or private healthcare sectors. C for L responded that the suggestion was noted.

Financing limits for hearing assistive devices under the Occupational Deafness (Compensation) Ordinance

22. Mr Jeremy TAM sought clarification about the time limit for making applications for HADs and the adequacy of the aggregate financing limit for meeting the recurrent expenses for HADs.

23. AC for L (RB) said that it was the Administration's current proposal that the aggregate financing limit for HADs be adjusted every two years with reference to the price movement as reflected by CPI(A) where appropriate. Having consulted ODCB which administered the HAD financing scheme, the Administration considered that the proposed increase of the aggregate financing limit to \$57,110 should be able to cater for the needs of OD persons in respect of the acquisition, fitting, repair or maintenance of HADs.

24. In response to Mr Jeremy TAM's concern about the financial support for OD persons after they had exhausted the aggregate amount for HADs, Senior Labour Officer (Employees' Compensation Division) (Central Services Section) 2 of LD explained that under the HAD financing scheme, the financing limit for first-time applications was proposed to be increased from \$15,000 to \$16,470, and the aggregate financing limit to be increased from \$52,000 to \$57,110. Apart from making reference to the price movement as reflected by CPI(A), LD had also taken into account ODCB's experience in administering the HAD financing scheme. It was noteworthy that none of the OD persons entitled to compensation had exhausted the existing aggregate amount for HADs in 2014 and 2015. Mr Jeremy TAM, however, suggested that consideration should be given to replacing the aggregate financing limit by setting an annual financing limit.

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Coverage of expenses on rehabilitation services

25. The Deputy Chairman said that the Hong Kong Federation of Trade Unions was concerned about the inadequate rehabilitation services for injured employees. To his understanding, expenses on rehabilitation services were covered under the employees' compensation packages in neighbouring places including the Mainland and Taiwan. With a view to facilitating injured employees' speedier recovery, learning new skills as necessary and early return to work, the Deputy Chairman asked whether the Administration would consider covering expenses on occupational rehabilitation under ECO and ODCO.

26. Dr Fernando CHEUNG remarked that the coverage of the existing statutory employees' compensation was bare minimum. The Administration should consider covering expenses on rehabilitation services in the employees' compensation packages.

27. AC for L (RB) said that at present, public hospitals provided a range of comprehensive services, including accident and emergency, outpatient, inpatient and rehabilitation, to employees suffering from work injuries. Those in need would also be referred to receive appropriate follow-up treatment and rehabilitative care (including physiotherapy and occupational therapy).

Establishment of a central employees' compensation fund

28. Expressing concern that LD was not empowered to adjudicate on cases in which employers did not recognize the employees' injuries were work related and as a result, the employees concerned would need to undergo time-consuming litigation process for establishing the claims for employees' compensation, Dr Fernando CHEUNG was of the view that the Administration should consider setting up a central employees' compensation fund to address the problem.

29. Echoing a similar view, Mr LEUNG Kwok-hung said that employers should make contribution to such a central employees' compensation fund for the purpose of covering medical expenses of injured employees.

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30. AC for L (RB) said that LD would handle each work injury dispute case in the light of information provided by employers and employees as well as the relevant medical reports. LD would give its views on the likelihood of the case being a work injury case from the medical point of view and according to the provisions of ECO, which would be furnished to the employers and employees concerned. It was noteworthy that in 2015, of some 52 000 claims over work injury compensation reported to LD, the majority of the cases were settled in the year with LD's assistance. Only 669 cases (i.e. around 1.3%) were referred to the Court or the Legal Aid Department for further action.

31. The Chairman added that the subject of establishing a central employees' compensation fund had been included in the Panel's list of "Outstanding items for discussion".

V. Progress of the lapsed Employment (Amendment) Bill 2016
(LC Paper Nos. CB(2)408/16-17(05) and (06))

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

33. SLW briefed members on the progress of the lapsed Employment (Amendment) Bill 2016 ("the 2016 Bill") and the key elements of the current legislative proposal ("the revised bill"), as detailed in the Administration's paper. He highlighted that under the revised bill, the ceiling of the further sum would be raised from \$50,000 to \$72,500, so as to reflect the new consensus reached by LAB in September 2016. Other features of the revised bill would be same as those of the 2016 Bill. It was hoped that the revised bill could be introduced and passed through LegCo for early implementation.

34. Members noted a background brief entitled "Proposed amendments to the Employment Ordinance for the making of compulsory reinstatement or re-engagement orders for unreasonable and unlawful dismissals" prepared by the LegCo Secretariat.

Ceiling of the further sum

35. Dr KWOK Ka-ki considered that the proposed revised ceiling of the further sum was still too low to provide sufficient deterrence against non-compliance with an order for reinstatement ("RI") or re-engagement

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("RE") by employers. In his view, an employer who failed to reinstate or re-engage an employee as ordered by the court or Labour Tribunal ("LT") should be subject to more severe penalties, such as a higher amount of the further sum, say, \$150,000 to \$200,000.

36. SLW drew members' attention to the fact that the further sum was in addition to the terminal payments and compensation (up to a maximum of \$150,000) which an employer was liable to pay to the employee if the employer did not comply with an order for RI or RE made in a case of unreasonable and unlawful dismissal ("UUD"). As such, the total cost to be borne by an employer for non-compliance of an order for RI or RE could be substantial. Having regard to the affordability of employers, particularly those of small and medium-sized enterprises ("SMEs"), it was considered that the proposed revised ceiling of the further sum would achieve adequate deterrence against non-compliance with an order for RI or RE by the employer.

[At this juncture, the Chairman resumed the chairmanship.]

37. Mr KWOK Wai-keung pointed out that the 2016 Bill could not be resumed for Second Reading debate in the Fifth LegCo was largely due to the controversy over the amount of the further sum, which was drawn up based on the consensus reached by LAB in 2007 without making any adjustment in the light of the accumulated wage increase over the years. Given that making an order for RI or RE was not something common and it was hardly realistic for employers and employees involved in most UUD cases to remain in good employment relationship, Mr KWOK considered that the 2016 Bill, which sought to amend the Employment Ordinance ("EO") to, among others, empower the court or LT to make an order for RI or RE without the need to secure the consent of the concerned employer, marked a great step forward in enhancing the protection for employees in such cases. Noting that the new consensus on the ceiling of the further sum was a hard-won outcome after detailed discussions by LAB members, he hoped that the revised bill could be introduced into LegCo and enacted as early as possible.

38. SLW pointed out that any significant amendments proposed to the revised bill would have to be reverted to LAB for consideration, and hence would inevitably delay its implementation. He assured members that the Administration would keep in view the implementation of the legislative proposal upon enactment.

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39. The Deputy Chairman sought information on the respective numbers of UUD cases and orders for RI or RE made in the past five years. Assistant Commissioner for Labour (Labour Relations) ("AC for L (LR)") advised that the number of UUD cases represented less than 2% of the total number of claims handled by the Labour Relations Division of LD in a year, and among them, there were three to four cases in a year in which the employee requested RI or RE. The Chairman enquired about the size of the companies involved in such UUD cases. AC for L (LR) pointed out that as a substantial portion of the cases were related to unlawful dismissal during pregnancy, paid sick leave or sick leave as a result of work-related injury, many of the employers concerned were SMEs which were usually not very well versed with the relevant labour legislation.

40. Noting that orders for RI or RE were seldom made in UUD cases, the Deputy Chairman took the view that a further upward adjustment in the ceiling of the further sum would have minimal impact on the vast majority of employers. Mr Jeremy TAM pointed out that as far as higher salaried professionals were concerned, the ceiling of the further sum, though being increased to \$72,500 under the revised bill, was still on the low side. SLW responded that the Administration considered the revised ceiling of the further sum adequate to protect most employees given that around 75% of employees had a monthly salary below \$25,000.

Review on the ceiling of the further sum

41. While respecting the new consensus reached by LAB on the ceiling of the further sum and agreeing that the revised bill should be enacted as early as possible, Mr POON Siu-ping asked whether the Administration would consider making reference to the adjustment mechanism for the levels of compensation under ECO and establishing a biennial review mechanism for the ceiling of the further sum.

42. SLW advised that the 2016 Bill had a mechanism to adjust the ceiling of the further sum by way of subsidiary legislation. The Chairman and Mr POON Siu-ping, however, remained concerned about the absence of a mechanism under EO requiring C for L to review the amount of the further sum within a specified period.

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43. Expressing support for the early introduction of the revised bill, the Deputy Chairman asked whether the Administration would consider reviewing the amount of the further sum one to two years after its implementation. SLW replied that a review on the ceiling of the further sum could be considered where appropriate after its implementation.

Non-compliance with the reinstatement or re-engagement order

44. While supporting the legislative proposal, Dr Fernando CHEUNG expressed concern that the revised bill had not incorporated the Committee stage amendment ("CSA") proposed by Mr LEE Cheuk-yan to the 2016 Bill which provided that if the employer failed to reinstate or re-engage the employee as ordered by the court or LT, the employee could choose not to accept the monetary remedies specified in the order for RI or RE, but file an application to the court or LT for an order for compliance. Dr CHEUNG remarked that the proposed CSA could safeguard the RI rights of employees, particularly those participating in trade union activities.

45. SLW explained that as proposed under the revised bill, the court or LT might make an order for RI or RE in a case of UUD without the employer's agreement if the employee sought RI or RE and the court or LT found that such an order was appropriate and compliance with the order by the employer was reasonably practicable. In response to concerns over how the court or LT would find such an RI or RE order appropriate, SLW further explained that in making such an order, the court or LT had to take into account the circumstances of the case having regard to a number of factors, including the relationship between the employer and the employee concerned.

46. Dr Fernando CHEUNG did not subscribe to the Administration's response, and stressed that the proposed CSA would safeguard the rights of employees who were dismissed unreasonably and unlawfully, especially those participating in trade union activities, to resume the original position if they so wished. AC for L (LR) reiterated that the legislative proposal was a hard-earned consensus reached by LAB following rounds of discussion, having balanced the interests of both employers and employees.

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47. Mr LEUNG Kwok-hung criticized that the proposed further sum was unable to provide sufficient deterrence against UUD. He was strongly of the view that the employer's failure to reinstate or re-engage the employee concerned should be made a criminal offence. SLW responded that LAB had discussed the subject in depth and maintained its consensus that an employer's non-compliance with an RI or RE order should not be criminalized.

Other issues of concern

48. Mr Jeremy TAM asked about the protection for employees against UUD for participating in trade union activities. AC for L (LR) explained that dismissal by reason of the employee exercising trade union rights per se was a criminal offence under EO. Besides, EO afforded remedies to employees in UUD cases, including dismissal by reason of exercising trade union rights. Under the revised bill, the court or LT might, without the agreement of the employer, make an order for RI or RE requiring the employer to reinstate or re-engage the employee concerned. She further advised that if no order for RI or RE was made in a case of UUD, the court or LT might make an award of terminal payments and an additional award of compensation up to \$150,000 as it considered just and appropriate in the circumstances. Such compensation would only be awarded for UUD cases, and was not applicable to unreasonable dismissal ("UD") cases. In response to the Deputy Chairman's enquiry about the timetable for reviewing the anti-union discrimination legislation, SLW advised that the Administration would review the labour legislation from time to time, and would consider introducing amendments as and where appropriate.

49. Mr SHIU Ka-chun asked whether the Administration would consider extending the scope of UD to cover cases arising from discrimination on grounds of the employee's sexual orientation, religious belief and political opinion. Echoing the view of Mr SHIU, Mr Andrew WAN was concerned that the revised bill was not applicable to UD cases. AC for L (LR) drew members' attention to the fact that the main object of the revised bill was to enhance employees' protection against UUD.

50. In closing, SLW appealed to members' support for the revised bill. He stressed that any significant amendments proposed to the revised bill would have to be brought back to LAB for deliberation and would inevitably delay its implementation. The 2016 Bill had already been

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thoroughly scrutinized by the Bills Committee in the last term of LegCo. He therefore appealed to members that it was not necessary to form a Bills Committee for the revised bill so as to speed up its enactment.

51. There being no other business, the meeting ended at 6:41 pm.

Council Business Division 2
Legislative Council Secretariat
8 February 2017