

立法會

Legislative Council

LC Paper No. CB(2)1870/16-17
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 16 May 2017, 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 Tommy CHEUNG Yu-yan, GBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Michael TIEN Puk-sun, BBS, JP
Hon YIU Si-wing, BBS
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Dr Hon Pierre CHAN
Hon LUK Chung-hung
Hon Jeremy TAM Man-ho
Hon Nathan LAW Kwun-chung
Dr Hon LAU Siu-lai

Member attending : Hon KWONG Chun-yu

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Public Officers attending : Item IV

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

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

Mr Raymond HO Kam-biu
Assistant Commissioner for Labour
(Development)

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

Item V

Mr Carlson CHAN Ka-shun, JP
Commissioner for Labour

Mr Jeff LEUNG Wing-yan
Deputy Commissioner for Labour
(Occupational Safety and Health)

Mr WU Wai-hung
Assistant Commissioner for Labour
(Occupational Safety)

Mr MAK Ping-sang
Chief Occupational Safety Officer
(System and Support)
Labour Department

Mr Albert LEE Wai-bun
Project Manager, Hong Kong-Zhuhai-Macao Bridge
Hong Kong Project Management Office
Highways Department

Mr WONG Sai-fat
Deputy Director of Marine

Dr Raymond CHEUNG Wai-man
Chief Assistant Secretary (Works) 5
Development Bureau

Mr Henry LAM Kai-yung
Assistant Secretary (Works Policies) 5
Development Bureau

Attendance : Item V
by invitation

The Civic Party

Mr CHENG Man-kit
District Developer of the Kowloon East Branch

Individual

Mr LO Kin-man

The Democratic Party

Mr AU Nok-hin
Representative

Labour Party

Ms WU Sui-shan
Chairperson

The Federation of Hong Kong Electrical & Mechanical
Industries Trade Unions

Mr NG Kwong-king
Rights Supervisor

Poseidon from the Ling Ting Channel

Mr LEUNG Hoi-fu
Chief of Duty

Lam Tin Community Network

Mr LAU Ki-wang

The Federation of Hong Kong & Kowloon Labour Unions

Mr CHU Hon-chung
Chair of Social Affairs Committee

Construction Site Workers's General Union

Mr CHAN Pat-kan
Chairperson

The Hong Kong Federation of Occupational Safety and Health Association

Mr YU Yiu-kwong
Honorary Advisor

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)1355/16-17)

The minutes of the meeting held on 21 March 2017 were confirmed.

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II. Information paper issued since the last meeting

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

III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)1357/16-17(01) and (02))

Regular meeting in June 2017

3. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting on 20 June 2017:

- (a) Hong Kong's occupational safety performance in 2016; and
- (b) Follow up on the report of the Standard Working Hours Committee.

Members further agreed that deputations would be invited to give views on item (b) above and the meeting would be advanced to start at 3:00 pm.

Abolishing the "offsetting" arrangement progressively

4. In response to Mr POON Siu-ping's concern about the timing for discussion of the Government's proposal of abolishing the "offsetting" arrangement progressively, the Chairman informed members that the subject would be followed up by the Subcommittee on Retirement Protection at its meeting to be held in June 2017.

IV. Major findings of the 2016 Annual Earnings and Hours Survey

(2016 Report on Annual Earnings and Hours Survey, LC Paper Nos. CB(2)1357/16-17(03) and (04))

5. With the aid of powerpoint presentation, Assistant Commissioner for Census and Statistics (Labour) ("AC/C&S") highlighted to members the major findings in the 2016 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)1436/16-17(01) on 17 May 2017.)

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6. Members noted a 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 rate

7. Mr LUK Chung-hung pointed out that there were only around 90 400 employees or 3% of the total number of employees whose hourly wage was below \$34.5 (i.e. the revised statutory minimum wage ("SMW") rate which took effect from 1 May 2017) during the reference period of May to June 2016. It was, however, noted from overseas experience that the minimum wage rate would benefit the lowest 10% of all the employees concerned. He considered that the SMW rate was too low and called on the Administration to review the SMW rate on an annual basis so as to ensure that the wage level of low-income employees could catch up with the economic development.

8. Mr KWOK Wai-keung also expressed concern about whether the SMW rate could provide a wage floor in the labour market, having regard to the continuous decrease in the number of employees receiving the SMW rate. Pointing out that the younger generation was attracted to work in the retail trade, which was, however, one of the low-paid industries, Mr KWOK considered it imperative to improve the upward mobility for employees in the retail sector.

9. Mr Nathan LAW was gravely concerned that the median monthly wage of employees in cleaning services industry (\$8,700) was about one-half of the overall median monthly wage of all employees in Hong Kong (\$16,200) only. In his view, the suppression of wage level of workers in the cleaning services industry was largely attributable to the Government's outsourcing policy of awarding contracts to the lowest bid. Dr LAU Siu-lai and Mr LEUNG Kwok-hung expressed similar views. Dr LAU said that to her knowledge, the monthly wage of cleaning workers directly engaged by government departments was some \$12,000, while those engaged under government outsourced service contracts were paid at the SMW rate. She appealed to the Administration to require government service contractors to offer higher wages to their employees, which should be on a par with government employees. Mr LAW and Dr LAU urged the Administration to give more weightings to those outsourced service contractors offering higher wages in tender evaluation.

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Mr LEUNG, on the other hand, expressed the view that the Administration should consider providing wage supplement to employees engaged in the low-paid industries.

10. AC/C&S explained that the disparity in the wage levels among employees in various trades and industries was attributable to the structural difference in the trades and industries concerned. It was noteworthy that there was a greater proportion of lower-skilled employees with low educational attainment engaged in cleaning services and thus the wage levels of these employees were comparatively lower.

11. Dr LAU Siu-lai expressed concern about the widening disparity in the median wage level between male and female employees. Dr LAU called on the Administration to address the situation so as to safeguard female employees' rights and benefits.

12. Dr Fernando CHEUNG was gravely concerned about the low wage level, coupled with long working hours situation, in Hong Kong. Dr CHEUNG held the view that employees receiving the median monthly wage of \$16,200 could hardly meet the high living cost in Hong Kong. He was particularly concerned about the earnings of vulnerable workers, and requested the Administration to consider providing further information on the levels and distribution of wages of employees with disabilities, and employees who were ethnic minorities and new arrivals in the future AEHS reports.

13. In response, AC/C&S advised that wage data for compilation of AEHS statistics were collected from employers who might have difficulties in providing information on the background and demographic characteristics of their employees. That said, the Census and Statistics Department had carried out a population by-census in June to August 2016, which would provide a comprehensive database for compiling statistics on population subgroups. The detailed results, such as employment earnings of ethnic minority groups, would be released in phases starting from mid-2017.

Working hours statistics

14. Mr LUK Chung-hung and Mr KWOK Wai-keung expressed reservations that only overtime hours worked at the direction of employers was included in AEHS. Both members pointed out that overtime worked not at the direction of employers was common in Hong

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Kong, in particular in the banking, accounting, education, design industries as well as employees undertaking clerical work. Mr KWOK called on the Administration to improve the data collection methodology for the working hours statistics in order to reflect accurately the working hours situation. Mr LUK held the view that the Administration should collect the actual working hours from employees so as to have comprehensive statistics on the long working hours situation in various trades and industries.

15. The Deputy Chairman was gravely concerned about the severe long working hours situation in Hong Kong, in particular employees in the low-paid industries. He noted with concern that the median weekly working hours for all employees in the catering sector during the reference period of May to June 2016 was 54 hours and that for employees with hourly wage at or below the 5th percentile (i.e. \$35.6 for May to June 2016) was 51 hours. The corresponding figures for employees with hourly wages at or below the 15th, 20th and 25th percentiles were more or less the same, i.e. 48 hours. The Deputy Chairman enquired about the work progress of the relevant study on regulating working hours.

16. Mr POON Siu-ping sought information on the proportion of overtime work hours to the total working hours of employees in Hong Kong.

17. In response to members' concerns and views, AC/C&S said that the working hours statistics published in the AEHS reports 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. She advised that during data collection, employers were required to provide wage and working hours data according to the employment records kept by their business undertakings. Overtime hours not worked at the direction of employers, for which records or data were not available from the employers, were not included. It was noted that overtime work hours accounted for around 2% of the total working hours, and the median daily overtime work hour was about 0.5 hour. The proportion of overtime work hours of grassroots employees was smaller as their contractual working hours were in general relatively longer. AC/C&S added that working hours data were collected from employees in the General Household Survey ("GHS") which was conducted on a monthly basis. Respondents of GHS were asked to provide information on the actual

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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 of employees covered in the Quarterly Report on GHS for April to June 2016 was lower than the corresponding figure in 2015.

18. Mr SHIU Ka-chun was gravely concerned that according to a UBS Group survey conducted in 2016, Hong Kong almost topped all countries/places in terms of working hours and the number of median weekly working hours was more than 50 hours. Echoing a similar concern, Dr LAU Siu-lai pointed out that according to the 2016 AEHS findings, the number of weekly working hours for 54.3% of employees (i.e. some 1.637 million employees) during the reference period of May to June 2016 was 44 hours or more. Expressing particular concern that the 50th percentile weekly working hours for employees working in the Chinese restaurants was 57 hours, Mr SHIU enquired about how the Administration would take forward its work in regulating working hours and the work progress of the Standard Working Hours Committee ("SWHC").

19. Assistant Commissioner for Labour (Development) said that SWHC had submitted its report to the Government in January 2017. The Government would take full account of the report and the views of various sectors of the community, and strive to map out within the term of the current Government the working hours policy direction that would suit the socio-economic situation of Hong Kong. It had been scheduled that the Panel would have discussion on SWHC's report at its meeting in June 2017.

20. The Deputy Chairman, however, expressed concern that the current-term Government would eventually adopt the approach of legislating for "contractual working hours" in addressing the long working hours situation. He raised query about the effectiveness of adopting such approach in tackling the problem, given that many employees already had their working hours stipulated in the employment contracts.

21. Dr LAU Siu-lai echoed a similar view and urged the Administration to seriously consider legislating for SWH so as to safeguard employees' rights and benefits.

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22. Mr POON Siu-ping was concerned about the long working hours of full-time employees in the estate management, security and cleaning services industries. Notably, 18.2% of employees concerned worked for 72 hours or more each week. Mr POON asked whether the working hours of employees engaged under the government outsourced services contracts had been stipulated in their employment contracts and whether these employees were covered under AEHS.

23. AC/C&S advised that a large number of employees in estate management, security and cleaning services were security guards, and a considerable number of them worked for 12 hours per shift. She further advised that employers were not required under AEHS to provide a breakdown of their employees by whether they were engaged under government outsourced services contracts or otherwise.

24. The Chairman considered that data on employment earnings and working hours should also be obtained from employees under AEHS in future. AC/C&S responded that due consideration had been given to the survey design, sample selection, data coverage and data collection method of AEHS taking into account the objective of the survey when AEHS was launched. It was noteworthy that employers were required under AEHS to provide data on wages and working hours of their employees according to the employment records kept by their business undertakings, which were more accurate and reliable.

[The Deputy Chairman took the chair during the temporary absence of the Chairman.]

V. Occupational safety concerning the construction of Hong Kong-Zhuhai-Macao Bridge

(LC Paper Nos. CB(2)1173/16-17(01), (03), CB(2)1183/16-17(01) to (04), CB(2)1357/16-17(05) to (09), CB(2)1393/16-17(01) and CB(2)1430/16-17(01))

25. Commissioner for Labour ("C for L") briefly took members through the Administration's consolidated reply to the issues raised and the motion passed at the special meeting of the Panel on 12 April 2017 concerning the occupational safety performance of the construction of the Hong Kong-Zhuhai-Macao Bridge ("HZMB") local projects, as well as the relevant written enquiries from Dr KWOK Ka-ki, Mr Jeremy TAM, Mr Nathan LAW, Dr Fernando CHEUNG and Dr LAU Siu-lai.

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26. Members noted an updated background brief entitled "Occupational safety of the Hong Kong-Zhuhai-Macao Bridge local projects " prepared by the LegCo Secretariat.

Presentation of views by deputations

27. At the invitation of the Deputy Chairman, a total of 10 deputations/individual presented their views on the occupational safety concerning the construction of HZMB. A summary of views of these deputations/individual is in the **Appendix**.

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

Discussion

Administration's responses to the views expressed by deputations

28. C for L made the following overall responses to the views expressed by deputations:

- (a) the occupational safety and health ("OSH") legislation stipulated the legal obligations of duty-holders undertaking construction works, including contractors' duty to ensure OSH of workers employed by them. Irrespective of whether the same contractor was responsible for the design and construction of the works, the contractor's legal obligation to protect the workers' OSH remained unchanged. The contractor should assess the potential risks and have them properly managed before commencement of the works, carry out the works in accordance with the formulated method statements and comply with the contract requirements and relevant OSH legislation and guidelines; whereas the consultants' resident site staff ("RSS") should monitor the contractor to ensure that the works were adequately supervised throughout the construction stage;
- (b) the Labour Department ("LD") was highly concerned about the cases of industrial fatalities, in particular those involving "persons falling from height". LD had completed two special enforcement operations in March and April 2017 respectively, with focus on high-risk operations such

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as scaffolding work. During the April operation, 2 029 inspections were conducted, with 461 warnings, 71 suspension notices and 155 improvement notices issued and 175 prosecutions initiated. LD would continue to launch special enforcement operations targeting at work above ground from time to time; and

- (c) in order to increase the deterrent effect of court penalties, LD had been adopting different approaches to seek heavier penalties for duty holders. As explained at the special meeting of the Panel on 12 April 2017, LD would, in consultation with the Department of Justice ("DoJ"), review the relevant provisions in relation to penalties under the OSH legislation, and amend the law if necessary to further enhance the deterrent effect of the penalty.

29. Project Manager, HZMB Hong Kong Project Management Office of the Highways Department ("HyD") added that:

- (a) at the time of the fatal accident at the works site under the "HZMB Hong Kong Link Road - Section between HKSAR Boundary and Scenic Hill" project that happened on 29 March 2017 ("the Accident"), the workers were dismantling a temporary working platform underneath the completed viaduct which was not a critical part in accordance with the works programme of the contractor concerned. The relevant work arrangement would be the direction for investigation of the Accident;
- (b) safety should not be compromised due to tight construction programme. HyD had requested the consultants and contractors of the HZMB local related projects to conduct a comprehensive review of the overall safety management system and safety measures being implemented. HyD had also urged all RSS to step up monitoring of the contractors' safety performance and required all contractors to strictly implement the safety management system and safety measures to ensure all operations were carried out safely;
- (c) Director of Highways had met with the high-level management personnel of relevant contractors and consultants of the HZMB local related projects in a safety

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forum in April 2017, urging them to enhance the safety management system, safety supervisions at work as well as safety culture, including raising construction workers' safety awareness, so as to eliminate the potential work hazards in the remaining construction period for HZMB; and

- (d) pursuant to the Factories and Industrial Undertakings (Safety Management) Regulation (Cap. 59AF) ("the Safety Management Regulation"), the contractor of public works contract should set up a site safety committee, which included representatives from site workers, to review the OSH initiatives of the construction sites and suggest improvements.

30. Chief Assistant Secretary (Works) 5 of the Development Bureau ("CAS(W)5/DevB") supplemented that:

- (a) a number of initiatives had been adopted, including safety management system covering the engagement of qualified RSS, safety monitoring system and various regulatory measures, to enhance site safety level;
- (b) the Formula Approach for tender evaluation was adopted for most public works contracts, which took into account the tender price and the tenderer's performance in the past three years under public works contracts. The respective weights for price and performance score were 60:40 and a combined price and performance (overall) score would be worked out. The performance score for each tenderer was the sum of the "performance rating" and the "safety rating". The 40% weighting for performance score comprised 37% weighting for performance rating which included management, quality of works and safety performance and 3% additional weighting for safety rating which was worked out from the past accident rates of the tenderer under public works contracts. It was noteworthy that an overall "Very Poor" rating in site safety would result in an "Adverse" report. This would be recorded in the quarterly report which would be a consideration factor in future tender evaluation and would affect the contractor's eligibility for tendering public works contracts in the following three years. In the event that the tenderer had a low performance score, it was

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believed that the tenderer concerned would have to significantly lower the tender price in order to get a higher price score and thus boost the overall score;

- (c) in case a contractor, who was on the List of Approved Contractors for Public Works ("the List"), had performed poorly or had been involved in serious incidents in any public or private sector works contracts, DevB could take regulatory actions against it according to the provisions as stipulated in the Contractor Management Handbook, which included issuing warning letters to the concerned contractor, requiring an independent safety audit, suspending the contractor from tendering public works contracts for a maximum of 12 months or even removing the contractor from the List depending on the level of severity; and
- (d) a performance based payment approach had been adopted in public works contracts under the Pay for Safety and Environment Scheme to incentivize contractors to strive for better safety performance. For example, a contractor would be provided with a lump sum rebate if there was no reportable industrial accident in a certain period.

Occupational injuries and counter measures

31. Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr POON Siu-ping, Mr SHIU Ka-chun and Dr LAU Siu-lai expressed grave concern about the considerable number of fatalities and injuries in connection with the construction of HZMB. Having regard to various deficiencies in monitoring the occupational safety of construction workers in the construction of HZMB as pointed out by various deputations and labour associations, Dr CHEUNG asked about the specific measures to be taken by the Administration to address the situation.

32. Mr POON Siu-ping expressed further concern about media reports on unsafe work practices on construction sites and queried about the effectiveness of the Administration's regulatory efforts and enforcement actions to address work hazards of work-at-height. He enquired whether the Administration would consider conducting a comprehensive review on occupational safety related issues, including safety policy and management, enforcement actions as well as introduction of legislative

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amendments to the OSH legislation in relation to liability of employers/contractors.

33. Responding to members' concerns and enquiries, C for L made the following points:

- (a) LD had zero tolerance towards industrial injuries/fatalities and had rolled out a series of initiatives to curb recurrence of similar accidents. LD in consultation with DoJ would conduct a review on the penalty level for non-compliance with the OSH legislation. It had commenced the relevant preparatory work with reference to the penalty level under similar legislation in other jurisdictions;
- (b) LD had met with the construction industry stakeholders to discuss how to further enhance the safety awareness of employers and employees, and remind the industry to take suitable and adequate safety measures. As a number of the fatal accidents involved workers falling from height, LD had stepped up enforcement effort and launched special enforcement operations targeting at work-at-height safety with special attention to scaffolding works and other high risk processes, to deter unsafe work practices. LD and the Occupational Safety and Health Council had launched from 25 April 2017 the new Safety Helmets with Y-type Chin Straps Sponsorship Scheme for Small and Medium-sized Enterprises of Construction Industry, which would provide subsidy to small and medium-sized enterprises engaged in the construction industry to acquire safety helmets with Y-type chin straps that conformed to safety standards in order to encourage the use of such helmets. LD had also liaised with the Buildings Department in respect of provision of air-conditioner platforms, anchoring devices for installation of suspended working platforms and other design safety initiatives in new buildings to facilitate safe conduct of external wall works; and
- (c) LD had also launched a large-scale continuous Occupational Safety Enhancement Campaign "Construction Industry: Safety First" in April 2017 with various initiatives to remind the stakeholders of the construction industry, including project proponents, contractors, subcontractors, workers and

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safety practitioners, the importance of work safety, especially the risks of work-at-height, and taking appropriate precautions to prevent accidents.

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34. In response to Dr Fernando CHEUNG's enquiry about the implementation timetable for the various initiatives in the abovementioned campaigns and the timetable for the review of the penalty level for non-compliance with the OSH legislation, C for L agreed to provide the requisite information after the meeting.

Site safety practitioners

35. Pointing out that registered safety officers ("RSOs") were employees of construction contractors, Mr LUK Chung-hung raised query about the independent role played by RSOs and whether they would be proactive in reporting their employers' non-compliance with OSH requirements. Mr LUK was concerned whether the Administration would review the role and responsibilities of RSOs. Mr LUK further called on the Administration to strengthen the professional development of RSOs.

36. In response to Mr POON Siu-ping's concern about regulating the performance of site safety practitioners under the Safety Management Regulation, Assistant Commissioner for Labour (Occupational Safety) ("AC for L (OS)") said that a proprietor or contractor was statutorily required to appoint a registered safety auditor ("RSA") to conduct a safety audit in relation to his industrial undertaking, which referred to an arrangement for collecting, assessing and verifying information on the efficiency, effectiveness and reliability of a safety management system and considering improvements to the system. Where an RSA had failed to comply with any of the legal provisions applicable to an RSA or ceased to be competent or fit and proper to be so registered, C for L might refer the matter to the Disciplinary Board for hearing and consideration of necessary disciplinary actions. He further said that RSOs were required under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z) to give advice and recommendations on relevant OSH measures and standards to the contractor, particularly assisting the contractor in establishing a safety management system to prevent accidents. Disciplinary actions would be taken, including suspension or cancellation of registration as RSO, if an RSO failed to discharge his duties.

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Tender evaluation for public works contracts

37. Drawing reference to overseas practices of allocating some 20% to 30% for a tenderer's past accident rates in the formula for tender evaluation, Dr LAU Siu-lai expressed grave dissatisfaction that only 3% weighting was assigned for safety rating for assessing the tenderer's past safety performance in the formula for tender evaluation for public works contracts. Dr LAU held the view that such low weighting could hardly safeguard construction workers' occupational safety. Dr LAU was particularly concerned that the China Harbour Engineering Company Limited ("the Contractor"), which reportedly had extreme adverse records on occupational safety performance in various works projects in different countries/places since 2012, had been awarded contracts for the HZMB local projects. She cast doubt about the effectiveness of the tender evaluation mechanism. Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Mr SHIU Ka-chun echoed similar concerns. Mr LEUNG and Dr KWOK expressed grave concern why the Contractor with poor safety performance records had not been removed from the List and that the relevant consultant, namely Ove Arup & Partners Hong Kong Limited, had also been repeatedly awarded the consultancy agreements. The Chairman sought information on the score of the Contractor in the past tender assessment exercises.

38. CAS(W)5/DevB reiterated that each tenderer's performance score was the sum of the performance rating and the safety rating. The performance rating was worked out after taking into account the management, quality of works and past performance of the tenderer included safety performance. The safety rating was worked out from the accident rates under public works contracts in the past three years, which was indeed an additional weighting accorded to the past safety performance of the tenderer. On the assumption that a tenderer scored no mark in the safety rating, the tenderer would need to lower the tender price by 6% so as to compensate the score so subtracted for the purpose of achieving a higher overall score. That said, the tenderer's latest performance, such as whether the tenderer had been involved in serious misconduct or serious incidents, would be taken into account to ensure the recommended tenderer was fully capable of undertaking the contract.

39. The Chairman sought clarification about how serious incident was defined in tender evaluation. CAS(W)5/DevB said that serious incidents were not confined to industrial fatalities or injuries. Whether LD had taken enforcement actions against a contractor would be taken into

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account when considering its safety performance. Dr LAU Siu-lai, however, remained concerned about the relatively low weighting of safety rating in the tender evaluation mechanism.

40. Pointing out that performance rating for a tenderer was worked out based on the tenderer's past performance under public works contracts only, Mr LEUNG Kwok-hung and the Chairman considered the criteria incomprehensive and ineffective in fully reflecting the past safety performance of the tender's in other non-public work projects.

41. The Chairman and Mr SHIU Ka-chun enquired whether the Administration would review the formula adopted for tender evaluation for public works projects. CAS(W)5/DevB said that the Administration was open-minded about conducting a review on the tender evaluation mechanism for public works projects. It was noteworthy that an Independent Investigation Task Force had been set up to investigate the possible causes of the Accident to prevent recurrence of similar accidents and to develop improvement measures on site safety. The Administration would take appropriate follow-up actions following the release of the investigation report.

42. Mr LUK Chung-hung expressed concern about the deficiency of the tender evaluation mechanism for public works projects whereby tenderer's adverse records of safety performance could be offset by lowering the tender price. To his knowledge, the Contractor had successfully been awarded various contracts after having offered extremely low tender price. Mr LEUNG Kwok-hung, Dr Fernando CHEUNG, Mr SHIU Ka-chun and Dr LAU Siu-lai shared similar concerns. Mr LUK sought information on the number of contractors which had been prohibited from bidding for public works tenders because of poor safety performance in the past five years.

43. CAS(W)5/DevB said that contractors' tender would not be accepted, irrespective of the tender price, if they had adverse records on performance including safety performance. In the past 10 years, 130 contractors had been regulated for non-compliance with safety requirements, among which 30 contractors had been suspended from tendering for public works projects for six to 12 months. Dr LAU Siu-lai held the view that the regulating level was too low to have sufficient deterrence on the contractors.

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Level of penalty

44. Mr LUK Chung-hung pointed out that given the difficulties in proving that an employer had intentionally committed an offence under the Factories and Industrial Undertakings Ordinance (Cap. 59), no employer had so far been sentenced with an imprisonment term. Mr LEUNG Kwok-hung and the Chairman shared similar concerns. Mr LUK and Dr KWOK Ka-ki urged the Administration to conduct a review on the relevant provisions in the Ordinance to plug the loopholes.

45. C for L said that currently, breaching the OSH legislation would be liable to a maximum fine of \$500,000 and an imprisonment term of 12 months. As mentioned earlier, LD would, in consultation with DoJ, review the provisions in relation to penalty under the OSH legislation, and amend the law if necessary to further enhance the deterrent effect of the penalty.

46. Dr KWOK Ka-ki and the Deputy Chairman took the view that the amount of fine for non-compliance with the OSH legislation was disproportionate to the contract value of the HZMB local projects.

47. Expressing concern that the amount of fine imposed on contractors concerned for failure to prevent any person from falling from a height of 2 meters or more under the Construction Sites (Safety) Regulations (Cap. 59I) had been decreasing from \$15,000 in 2012 to \$9,000 in 2015, Dr LAU Siu-lai sought explanation for such a decrease. The Chairman sought clarification as to whether DoJ would request the court to impose heavier penalty on convicted cases as appropriate.

48. C for L advised that the amount of fines imposed on convicted contractors was determined by the court, having regard to the individual circumstances of each case. In a bid to raise the level of penalty for non-compliance with safety requirements, LD submitted comprehensive information to the court for reference in sentencing. Depending on the circumstances of individual cases, LD would request DoJ to consider filing a review or an appeal to the court in respect of the conviction and the penalty when necessary, to increase the deterrent effect. The fines imposed by the court on convicted cases related to fatal industrial accidents in the construction industry had increased notably from an average of \$20,000 to \$28,000 in the past three years.

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Other concerns

49. The Deputy Chairman was concerned that the court proceedings for some prosecutions in connection with the HZMB Project with offence date as early as 13 October 2014 were still in progress. The Deputy Chairman sought explanation for the lengthy legal proceedings which, in his view, could hardly achieve deterrent effect for non-compliance with the OSH legislation.

50. AC for L(OS) said that there was a statutory time bar for LD to take out prosecutions against law-defying employers within six months. As regards prosecutions for which the court proceedings were still in progress as listed in Appendix II to the Administration's paper, LD had already instituted summonses. To his knowledge, full trial hearing needed to be arranged for most of these cases as employers/contractors concerned did not plead guilty in the relevant court cases or legal proceedings were required to deal with legal disputes in some cases.

51. There being no other business, the meeting ended at 7:35 pm.

Council Business Division 2
Legislative Council Secretariat
14 July 2017

Panel on Manpower

Meeting on Tuesday, 16 May 2017, at 4:30 pm

Meeting to receive views on

"Occupational safety concerning the construction of Hong Kong-Zhuhai-Macao Bridge"**Summary of views and concerns expressed by deputations/individual**

No.	Name of deputation/individual	Submission / Major views and concerns
1.	The Civic Party	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1437/16-17(02)
2.	Mr LO Kin-man	<ul style="list-style-type: none"> ● Concern was expressed about the considerable number of fatalities and injuries in connection with the construction of Hong Kong-Zhuhai-Macao-Bridge ("HZMB") since the commencement of work in 2011. ● The Administration should consider imposing heavier penalty on convicted cases related to the construction of HZMB so as to increase the deterrent effect against non-compliance with the occupational safety and health ("OSH") legislation.
3.	The Democratic Party	<ul style="list-style-type: none"> ● Concern was expressed about the considerable number of fatalities and injuries in connection with the construction of HZMB since the commencement of work in 2011. ● The Administration should consider imposing heavier penalty on convicted cases related to non-compliance with the Occupational Safety and Health Ordinance (Cap. 509) and Factories and Industrial Undertaking Ordinance (Cap. 59) so as to increase the deterrent effect of court penalties. ● Consideration should be given to increasing the weighting for occupational safety in the tender evaluation for public works projects.
4.	Labour Party	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1406/16-17(01)
5.	The Federation of Hong Kong Electrical & Mechanical Industries Trade Unions	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1413/16-17(01)
6.	Poseidon from the Ling Ting Channel	<ul style="list-style-type: none"> ● Concern was expressed about the considerable number of fatalities and injuries in connection with the construction of HZMB since the commencement of work in 2011. ● Contracts with contractors in breach of the OSH legislation should be rescinded.

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7.	Lam Tin Community Network	<ul style="list-style-type: none"> ● Concern was expressed about the considerable number of fatalities and injuries in connection with the construction of HZMB since the commencement of work in 2011. ● Disappointment was expressed at the fact that no legislative amendments had been made to increase the penalty for non-compliance with the OSH legislation. ● Query was raised about the effectiveness of the efforts made by the Labour Department ("LD") to reduce work hazards in the construction of HZMB.
8.	The Federation of Hong Kong & Kowloon Labour Unions	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1420/16-17(01)
9.	Construction Site Workers' General Union	<ul style="list-style-type: none"> ● Concern was expressed about the considerable number of fatalities and injuries in connection with the construction of HZMB since the commencement of work in 2011 as well as the significant number of days of works suspension resultant from the issuance of suspension notices. ● Query was raised about the work safety of workers on the temporary working platform in the industrial accident occurred on 29 March 2017. The Administration should conduct investigation in full gear to identify the cause of the accident. ● The Administration should conduct a review on how to enhance protection of workers' OSH, including the independent role of safety personnel, workers' representation on site safety committee and imposition of severe penalty (including imprisonment) on employers for contravention of the OSH legislation.
10.	The Hong Kong Federation of Occupational Safety and Health Association	<ul style="list-style-type: none"> ● The investigation findings of the HZMB accident on 29 March 2017 would help identify the cause of the accident and thereby making improvement as necessary. ● It was unfair to establish a causation between the quality and independent role of site safety practitioners and the occurrence of industrial accidents on construction sites. ● The statutory duties of site safety practitioners was to make recommendations to their clients/employers in respect of the relevant OSH measures and standards to be put in place on construction sites and to render assistance to them in establishing safety management systems to prevent accidents. Should the clients/employers overrule or neglect their advice, they or construction workers could report to LD for follow-up.