



Labour Department (Headquarters)

勞工處 (總處)

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28 July 2017

Clerk to Panel on Manpower
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Miss Betty Ma)

Dear Miss Ma,

The List of follow-up actions of the Panel on Manpower

I refer to the list of follow-up actions, showing the position as at 14 June 2017, of the Panel on Manpower. Having consulted relevant government bureaux/departments including the Labour and Welfare Bureau, the Civil Service Bureau, the Immigration Department, the Economic Analysis and Business Facilitation Unit and the Census and Statistics Department, the consolidated response is provided at Annex for Members' reference.

Yours sincerely,

(Ms Queenie Wong)
for Commissioner for Labour

c.c.

Secretary for Labour and Welfare

(Attn : Mr Nicholas Chan)
Mr Daniel Fong)

Secretary for Civil Service
Director of Immigration

(Attn : Ms Vivien Li)
(Attn : Ms Silvia Lam)

Government's response to the list of follow-up actions of the Panel on Manpower (the Panel)

Follow-up item	Subject	Government's response
3	Drawing up a talent list	<p>The 2015 Policy Address proposed to study the feasibility of drawing up a talent list to attract, in a more effective and focused manner, high-quality talent to support Hong Kong's development as a diversified and high value-added economy. The Labour and Welfare Bureau has convened an inter-departmental working group to follow up with the proposal and engaged an independent consultant to conduct a study. The consultancy's work includes study on overseas experiences of similar policies, and consultation of the relevant local stakeholders (including human resources companies and representatives of professional sectors) with a view to assisting the inter-departmental working group in drawing up a talent list. The study is expected to be completed within this year.</p>
4	Elderly employment	<p>As a long-term solution to address emerging challenges posed by demographic changes, the retirement age of new recruits appointed to the civil service on or after 1 June 2015 has already been raised from 60 to 65 for civilian grades and from 55 or 57 to 60 for disciplined services grades. In the second half of 2016, there were 36 new recruits to the civil service aged 60 to 64. As regards the number of non-civil service staff aged 60 to 64 recruited by bureaux and departments during the period, the Civil Service Bureau does not have the relevant information.</p> <p>According to the provisional figures of the Census and Statistics Department (C&SD), as at end-2016, the population of the age group of 60-64 was about 511 100.</p>
5	Statutory Minimum Wage	<p>In recommending the initial Statutory Minimum Wage (SMW) rate of \$28 per hour, the Provisional Minimum Wage Commission had made reference to, among other things, the wage distribution data of the 2009 Annual Earnings and Hours Survey (AEHS) which indicated that the number of employees earning less than \$28 per hour in the second quarter of 2009 was 314 600.</p> <p>In recommending the SMW rate of \$34.5 per hour, the Minimum Wage Commission (MWC) had made reference to, among other things, the wage distribution data of the 2015 AEHS which indicated that there were 154 500 employees in May to June 2015 with an hourly wage less than \$34.5. Taking into account the wage data subsequently released by C&SD and assuming Hong Kong's economy would grow by 2% year-on-year in real terms for the first half of 2017, MWC crudely estimated that the number of employees involved with an hourly wage less than \$34.5 in the first half of 2017 before the</p>

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		<p>implementation of the new SMW rate would be around 74 100. As pointed out by MWC, since the labour market would keep adjusting before and after the revision of the SMW rate, and assumptions underlying the estimates might differ from actualities, the related crude estimate should be used for reference only.</p> <p>From the experience in the past few years, it is worth noting that with a relatively tight labour market, the uprating of SMW benefited not only the employees earning the SMW rate, but also employees earning wages above the SMW rate as they were granted corresponding wage increases. Taking into account the impact of knock-on effect on pay hierarchies, the number of employees with a pay rise attributable to the uprating of SMW would eventually be greater than the number of employees earning just the SMW rate.</p>
6	Strengthening the regulation of employment agencies	<p>Currently, there are over 360 000 foreign domestic helpers (FDHs) working in Hong Kong. To tackle suspected abuse of the arrangement for premature termination of contracts for change of employers by individual FDHs, the Immigration Department (ImmD) has set up a special duties team since June 2013 to strengthen the assessment of new visa applications from FDHs who have a record of premature termination of contracts twice or more in the past 12 months with a view to stepping up actions against "job-hopping". As at 31 May 2017, ImmD vetted some 9 500 suspected "job-hopping" cases and refused around 1 500 of them upon close scrutiny. ImmD does not maintain the number of newly recruited FDHs who had changed employers during the first three months of their employment.</p>
7	Central employees' compensation insurance fund	<p>The existing employees' compensation (EC) system is primarily premised on a "no-fault" principle and employers' liability to pay compensation under the Employees' Compensation Ordinance (ECO). At the same time, employers must, in accordance with ECO, take out EC insurance with authorised insurance companies. This is to ensure employers' ability to pay employees injured at work or family members of the deceased employees compensation stipulated in ECO and common law compensation awarded by the Court. Given that the cost-effectiveness of a central EC insurance fund has yet to be established and the current system has been working well and better caters for the circumstances of Hong Kong, it is not advisable to make any substantial change at present.</p>

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8	Handling of disputes in work injury compensation claims under the Employees' Compensation Ordinance	<p>The Government's consolidated response to the recommendations made in submissions from deputations attending the Panel meeting on 21 March 2017 is set out as follows:</p> <p>(a) <u>Coverage of ECO</u></p> <p>ECO accords protection to employees who sustain an injury or die as a result of an accident arising out of and in the course of their employment (including sudden death) and employees suffering from an occupational disease prescribed by ECO owing to the nature of their work, and enables them to receive compensation in an expeditious manner through a "no-fault" system. In this regard, the existing legislation has already provided for protection for cases of sudden death caused by work. As the actual circumstances of each case are different, whether the sudden death of an employee at work is caused by an accident arising from work depends on the relevant facts and situation of the case.</p> <p>ECO also provides for EC protection to employees travelling to or from their place of work. The basic principle is that the employer is to be held responsible for circumstances related to the work in question and circumstances over which the employer can exercise control, such as when the employee is travelling to or from his/her place of work by a means of transport operated or arranged by the employer. Certain circumstances involving greater danger are included in the coverage of ECO, such as when employees travel to and from work when Typhoon Warning Signal No. 8 or above is hoisted or when the Red/Black Rainstorm Warning is in force.</p> <p>The suggestion of further extending the coverage of ECO to all cases of death that happen at work, irrespective of whether such cases are caused by accidents arising from work, and to all cases of injury or death that occur in the course of travelling to and from work and meal breaks in general circumstances, would involve a fundamental change to the basic principles and have far-reaching implications for the current EC system. Given the "no-fault" principle adopted in ECO, it is necessary to strike an appropriate balance between the interests of employees and the affordability of employers in determining the statutory compensation liability of employers.</p> <p>It is noteworthy that the causes of sudden death other than by work accident in the course of the employment are complex, and may involve a multitude of factors including personal health condition, heredity, eating or living habits, work nature and environment, etc. It is a very difficult and complicated issue to determine whether workload or work pressure has contributed to the sudden death of an employee in the course of the employment and the extent, and to conclude whether the employer shall be liable to pay compensation.</p>

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		<p>The Labour Department (LD) will continue to accord importance to employees' occupational safety and health, which includes strengthening employees' awareness of work pressure and helping them alleviate such pressure. We understand that people in Hong Kong generally face problems of work pressure. In an attempt to understand the relationship between work situations and the death cases, the Government will conduct a survey on the sudden death of employees at work and will, depending on the survey results, decide on the way forward. At this stage, the Government has no plan to set up any funds to cover sudden death of employees, self-employed persons, employers and voluntary workers in the course of work but is not caused by work accident.</p> <p>(b) <u>Handling of dispute in work injury compensation claims</u></p> <p>LD administers ECO to assist employees who sustain a work injury or suffer from an occupational disease prescribed by ECO to receive compensation in accordance with ECO promptly. In case the employer or the employee raises dispute in a work injury case, LD will scrutinise the case in detail, explain the provisions of ECO to both parties and collect comprehensive information relating to the accident, and advise both parties on the likelihood and relevance of the case being a work injury. Most of the cases in dispute are resolved with LD's assistance. For those cases which cannot be resolved, the employee is entitled to seek adjudication from the Court and LD will assist him/her to apply for legal aid from the Legal Aid Department.</p> <p>When processing work injury cases, some employers, insurers who have underwritten EC insurance or their representatives (such as loss adjusters) may contact the employees to follow up on the latest progress of the cases. If the employees have any queries, LD will explain the relevant provisions of ECO in detail, with a view to protecting the employees' statutory rights and benefits under ECO. In case the employees have any complaints about the practices of the insurers or their representatives, they may approach the respective law enforcement agencies.</p> <p>To protect the statutory rights and benefits of employees under ECO and to forestall dispute in work injury cases, LD has prepared a handy booklet for distribution through various channels such as the Accident and Emergency Unit of public hospitals to introduce the general procedures on handling a work injury case and the necessary actions to be taken by the employees and points to note after sustaining a work injury.</p> <p>Moreover, LD has since May 2016 enhanced its support services for handling dispute in work injury cases through dedicated follow-up, early intervention, proactive contact with employers and employees, and arrangement of face-to-face meetings. The enhanced mode of services facilitates communication between employers and employees, clarification of issues under</p>

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		<p>dispute and timely resolution of differences so as to protect the rights and benefits of employees.</p> <p>(c) <u>Protecting the statutory entitlements of employees to periodical payments</u></p> <p>If LD receives complaints concerning employers' failure to pay periodical payments (i.e. work injury sick leave payments) under ECO when processing work injury compensation claims, it will proactively follow up and explain to the employers the relevant requirements under ECO. If the employers refuse or delay the payment of compensation under ECO without reasonable grounds, LD will urge or warn them to pay compensation to the employees promptly. LD will also conduct investigation and take out prosecution against offending employers when there is sufficient evidence.</p> <p>LD will continue to actively conduct investigations and take out prosecutions against suspected offences under ECO.</p> <p>(d) <u>Work injury assessment</u></p> <p>According to ECO, if the injury sustained by employees may result in permanent incapacity, LD will arrange the employees to attend the Employees' Compensation (Ordinary Assessment) Board (Assessment Board) for assessing the percentage of loss of earning capacity permanently caused by the injury and the necessary period of absence from duty.</p> <p>The Assessment Board will make reference to the medical records, actual medical conditions and latest degree of recovery of the employees and, in accordance with the First Schedule of ECO, assess the percentage of loss of earning capacity permanently caused by the injury. The First Schedule specifies the percentage of loss of earning capacity for a number of common injuries such as loss of limbs, impairment of function of organs or ankylosis of joints, etc. ECO also stipulates that in case the injury is not specified under the First Schedule, the percentage shall be assessed having regard so far as possible to the First Schedule. Where necessary, the Assessment Board may also make reference to the criteria adopted by other economies.</p> <p>(e) <u>Work injury rehabilitation</u></p> <p>Integrated treatment and rehabilitation services provided by hospitals and clinics under the management of the Hospital Authority are available for use by injured employees. Moreover, the insurance industry has launched the Voluntary Rehabilitation Programme (VRP) to provide injured employees with an additional channel to receive free rehabilitation services in the private sector through the insurers' arrangements to facilitate their speedy recovery and early return to work under safe circumstances. The participating insurers will identify appropriate cases, initiate contacts with the injured</p>

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		<p>employees and invite them to join VRP. Participation of injured employees in VRP is entirely voluntary. They can decide on their own whether to accept the insurers' invitation or not. Participation in VRP will not affect the injured employees' rights and benefits under ECO.</p> <p>(f) <u>Central EC insurance fund</u></p> <p>Please refer to the preceding response as per follow-up item 7 on this issue.</p>																
10	Work Incentive Transport Subsidy Scheme	<p>Since the implementation of the Work Incentive Transport Subsidy (WITS) Scheme in October 2011 and up to end-June 2017, a total of 406 120 applications (including 210 239 household-based applications and 195 881 individual-based applications) were received, involving 141 504 applicants. The relevant breakdowns are tabulated as follows:</p> <p>(a) <u>Respective number of WITS applicants who had submitted one or more round(s) of applications</u></p> <table><tr><th>Round(s) of application submitted</th><th>No. of applicants</th></tr><tr><td>1 round</td><td>54 682</td></tr><tr><td>2 rounds</td><td>25 912</td></tr><tr><td>3 rounds</td><td>16 540</td></tr><tr><td>4 rounds</td><td>12 149</td></tr><tr><td>5 rounds</td><td>9 372</td></tr><tr><td>6 rounds or above</td><td>22 849</td></tr><tr><td>Total</td><td>141 504</td></tr></table>	Round(s) of application submitted	No. of applicants	1 round	54 682	2 rounds	25 912	3 rounds	16 540	4 rounds	12 149	5 rounds	9 372	6 rounds or above	22 849	Total	141 504
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		(b) <u>A breakdown of household-based applications by household size</u> <table><tr><th>Household size</th><th>No. of applications received</th></tr><tr><td>1 person or individual-based application*</td><td>207 870</td></tr><tr><td>2 persons</td><td>69 357</td></tr><tr><td>3 persons</td><td>63 064</td></tr><tr><td>4 persons</td><td>49 611</td></tr><tr><td>5 persons</td><td>12 146</td></tr><tr><td>6 persons or above</td><td>4 072</td></tr><tr><td>Total</td><td>406 120</td></tr></table> <p>* Including 195 881 individual-based applications for which applicants did not provide information about their household size.</p>	Household size	No. of applications received	1 person or individual-based application*	207 870	2 persons	69 357	3 persons	63 064	4 persons	49 611	5 persons	12 146	6 persons or above	4 072	Total	406 120
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Government's response to the list of outstanding items for discussion of the Panel on Manpower (the Panel)

Item	Subject	Government's response
5	Implementation of the Protection of Wages on Insolvency (Amendment) Ordinance 2012	<p>At the work plan meeting on 4 November 2016, the Chairman and Deputy Chairman of the Panel requested the Government to provide an information paper on the latest progress of the review of the Protection of Wages on Insolvency Fund (Fund), including the financial position of the Fund. Having consulted the Fund Board, the Government provides below the information.</p> <p>With the passage of the Protection of Wages on Insolvency (Amendment) Ordinance 2012 (Amendment Ordinance) by the Legislative Council in April 2012, the scope of protection of the Fund has been expanded to cover pay for untaken annual leave and pay for untaken statutory holidays¹. When proposing the relevant legislative amendments, the Fund Board agreed to review the scope of protection and the ceiling of ex gratia payment of pay for untaken annual leave and pay for untaken statutory holidays one year after implementation of the Amendment Ordinance on the basis of the actual operational experience and information. Taking into account the suggestions expressed by Members of the Panel at the meeting in February 2013 when discussing a proposal to adjust the rate of levy on business registration certificates (BRCs)² financing the Fund, the Fund Board agreed to also examine other existing items covered by the Fund, including the ceiling of ex gratia payment for arrears of wages, wages in lieu of notice and severance payment (SP), in its review of the Amendment Ordinance.</p> <p>The Fund Board kick-started a comprehensive review of the coverage of the ex gratia payment items under the Fund in the second half of 2013 based on the information and data collected. In the process of review, the Fund Board had to examine carefully and take into account all the relevant information and factors, including the requirements under the Employment Ordinance, the well-established principles in expanding the scope of protection of the Fund, the data pertaining to applications for different payment items and wage movement, etc. In 2014, the Fund Board also agreed to review the rate of levy on BRCs in tandem with the review of the coverage of the ex gratia payment items under the Fund. However, a case of judicial review concerning the method of calculation of ex gratia payment on SP had yet to complete at that time, and the Court's ruling might have an impact on the Fund. Therefore, the Fund Board considered it necessary to await the final ruling of the judicial review case so as to ascertain the impact of the judgment on the ex gratia payment on SP and the financial position of the Fund.</p>

¹ The Amendment Ordinance has come into operation on 29 June 2012.

² The proposal has taken effect since 19 July 2013, with the rate of BRC levy reduced from \$450 per annum to \$250 per annum.

Item	Subject	Government's response
		<p>The Court of Final Appeal (CFA) handed down judgment on the aforesaid case of judicial review on 17 May 2016, overturning the previous rulings of the Court of First Instance and the Court of Appeal of the High Court and allowing the appeal of the applicant. Immediately after the handing down of judgment by CFA, LD has followed the method ruled by CFA in calculating the ex gratia payment on SP payable by the Fund. Between the date of CFA's judgment and the end of May 2017, the Fund granted \$12.2 million on ex gratia payment on SP, increasing by \$6.4 million or 110% over that calculated in accordance with the method adopted before. As at the end of June 2017, the accumulated surplus of the Fund stood at around \$4.7 billion.</p> <p>The Chief Executive delivered the 2017 Policy Address on 18 January 2017, putting forward, among other things, a concrete proposal to progressively abolish the "offsetting" of SP or long service payment with Mandatory Provident Fund contributions. On 23 June 2017, the Chief Executive announced that the policy direction of progressively abolishing the "offsetting" arrangement be reaffirmed and that the Government's original proposal be adopted as the basis for taking the matter forward. The Fund Board has to consider the possible impact on the Fund, such as the number of applications for the Fund and the additional expenditure on ex gratia payment on SP.</p> <p>The Fund Board will assess the latest position as mentioned in the preceding two paragraphs and then resume in the fourth quarter of this year its review of the scope of coverage of the ex gratia payment items under the Fund and the rate of levy on BRCs. Following the completion of the review by the Fund Board, the Government plans to report the outcome of the review and the proposals to the Labour Advisory Board and the Panel in 2018.</p>