

立法會

Legislative Council

LC Paper No. CB(2)953/18-19

(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 15 January 2019, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

- Members present** : Dr Hon Fernando CHEUNG Chiu-hung (Chairman)
Hon HO Kai-ming (Deputy Chairman)
Hon LEUNG Yiu-chung
Hon Starry LEE Wai-king, SBS, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, 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, JP
Hon Jeremy TAM Man-ho
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun, MH
- Members absent** : Hon WONG Kwok-kin, SBS, JP
Hon CHUNG Kwok-pan

Public Officers : Item III
attending

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

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

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

Item IV

Dr LAW Chi-kwong, GBS, JP
Secretary for Labour and Welfare

Miss Mabel LI Po-yi, JP
Deputy Commissioner for Labour (Labour Administration)

Mr Simon LI Chi-chung
Assistant Commissioner for Labour
(Employees' Rights and Benefits)

Mr Sam SUM Kai-wah
Senior Labour Officer (Labour Inspection)
Labour Department

Ms Tracy CHU Lai-fong
Principal Assistant Secretary for Financial Services and
the Treasury (Treasury) (E)
Financial Services and the Treasury Bureau

Mr CHIU Yu-chow
Assistant Director (Grade Management and Development)
Food and Environmental Hygiene Department

Mr Rex LAW Chi-wai
Assistant Director (Finance)
Leisure and Cultural Services Department

Mrs Helen CHEUNG LO Pik-yuk
Chief Manager / Management (HK Island and Islands)
Housing Department

Mr Kevin SIU Ka-yin, JP
Deputy Government Property Administrator
Government Property Agency

Mr Aaricf MOK Chun-yu
Chief Property Manager (Property Management)
Government Property Agency

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

Staff in attendance : Ms Rita LAI
Senior Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Information papers issued since the last meeting
(LC Paper Nos. CB(2)516/18-19(01) and CB(2)586/18-19(01))

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

- (a) Administration's response to the joint letters from Dr KWOK Ka-ki and Mr Jeremy TAM as well as Dr CHIANG Lai-wan and Mr Vincent CHENG in respect of working hours of non-franchised bus drivers; and
- (b) letter dated 10 January 2019 from Mr LUK Chung-hung relating to the coverage of the Employees' Compensation Ordinance (Cap. 282) ("ECO").

2. Referring to paragraph 1(a) above, the Chairman said that as advised by the Secretary for Transport and Housing, the Administration was discussing with the non-franchised bus service operators on guidelines on working hours and rest times for the drivers in the industry.

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To allow time for the discussion, the Chairman suggested and members agreed that a meeting of the Panel would be held to discuss the matter later.

(Post-meeting note: A letter dated 14 January 2019 from the Transport and Housing Bureau ("THB") regarding safety of non-franchised bus service was issued to members vide LC Paper No. CB(2)642/18-19(01).)

3. With respect to paragraph 1(b) above, the Chairman said that the subject of coverage of ECO had already been included in the Panel's list of outstanding items for discussion.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)563/18-19(01) and (02))

4. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 4:30 pm on 19 February 2019:

- (a) Latest development in the employment services of the Labour Department; and
- (b) Enforcement of labour legislation by the Labour Administration Branch of the Labour Department.

(Post-meeting note: In the light of the discussion under agenda item IV below, the Administration subsequently suggested and the Chairman agreed that the public hearing on the item "Enhancing the protection of non-skilled employees engaged by government service contractors" would be held at the next meeting and the proposed item (b) above would be deferred to a future meeting.)

III. Hong Kong's occupational safety performance in the first half of 2018
(LC Paper Nos. CB(2)563/18-19(03) and (04))

5. At the invitation of the Chairman, Deputy Commissioner for Labour (Occupational Safety and Health) ("DC for L (OSH)") briefed members on Hong Kong's occupational safety performance in the first half of 2018 as detailed in the Administration's paper.

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6. Members noted an updated background brief entitled "Occupational safety performance in Hong Kong" prepared by the Legislative Council ("LegCo") Secretariat.

Occupational injuries statistics

7. In respect of Hong Kong's occupational safety performance in the first half of 2018, Dr KWOK Ka-ki expressed grave concern that there were 106 fatal cases and 16 705 non-fatal cases in the period. Mr CHU Hoi-dick was concerned that the number of industrial accidents and fatalities in the construction industry remained high among all sectors. Mr CHU referred members to the Development Bureau's publication entitled "Construction 2.0" issued in September 2018 and highlighted Hong Kong's relative underperformance in the safety performance of the construction industry when compared with that in other developed countries, such as Singapore, Australia, United Kingdom and the United States, in terms of the fatality rate per 100 000 workers.

8. With reference to the occupational injuries statistics in the past few years, Dr Pierre CHAN expressed disappointment that there was no notable improvement in the occupational safety performance. Dr CHAN held the view that employers should be held responsible for safeguarding the occupational safety of their employees. Having regard to the dire consequences of industrial fatalities on the families of workers concerned, Dr CHAN called on the Administration to step up its regulatory efforts to safeguard employees' occupational safety.

9. In response, DC for L (OSH) said that the Labour Department ("LD") had launched a series of targeted measures to enhance the protection of construction workers' OSH. Notably, LD had stepped up participation in site safety management committee meetings of public work projects to appreciate more accurately the projects' OSH conditions and risks, with a view to devising more focused inspection strategies accordingly. During the meetings, LD would give advice on work processes of higher risk and urge the contractors and relevant duty holders to conduct risk assessments, devise safe working procedures and adopt adequate safety measures with respect to the high-risk processes as early as possible. In 2018 (up to October), LD's representatives participated in over 200 site safety management committee meetings of public work projects.

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10. DC for L (OSH) further advised that LD conducted in-depth surprise inspections targeting work sites with high risk processes or poor safety performance. Apart from identifying unsafe operations, LD also focused on whether the duty holders of the work sites had established and implemented safe systems of work and whether there were any deficiencies in their safety management systems, with a view to urging the relevant contractors to take immediate remedial measures and render systemic safety protection for workers.

Level of penalty for non-compliance with the legislation of occupational safety and health

11. Having regard to the considerable number of fatalities and injuries in connection with the construction of Hong Kong-Zhuhai-Macao Bridge ("HZMB") works projects and in the light of commencement in succession of major infrastructure projects, including the Three-Runway System, Dr KWOK Ka-ki was concerned about the Administration's efforts in improving the occupational safety of construction workers and preventing recurrence of similar accidents. Expressing the view that the penalty for breaching the OSH legislation was too low to achieve a deterrent effect, Dr KWOK sought information on the number and results of the appeals filed by the Department of Justice ("DoJ") at LD's request in respect of the penalty imposed by the court on OSH offences in the past two years.

12. DC for L (OSH) responded that LD would request DoJ to consider filing a review or an appeal to the court in respect of the conviction and the penalty for non-compliance with safety requirements under the Occupational Safety and Health Ordinance (Cap. 509) ("OSHO") and the Factories and Industrial Undertakings Ordinance (Cap. 59) ("FIUO") where necessary. LD was reviewing the penalties of the OSH legislation in full swing with a view to enhancing the deterrent effect. Assistant Commissioner for Labour (Occupational Safety) added that according to the available information, there was an average of about 10 cases of applications for review or appeal in 2017 and 2018 (up to November), and some cases were still being processed. The Chairman requested the Administration to supplement the information requested by Dr KWOK in writing after the meeting.

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13. Mr POON Siu-ping asked about the progress of the legislative proposal to enhance the deterrent effect of the penalty on duty holders for non-compliance with the OSH legislation. Expressing dissatisfaction at

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the slow progress in taking forward the matter, the Deputy Chairman was concerned about whether there was sufficient manpower in LD to deal with various OSH issues and whether LD had bid for additional manpower as necessary.

14. DC for L (OSH) advised that LD had successfully bid for additional manpower resources under various resources allocation exercises for OSH-related duties. The existing staffing establishment was considered sufficient for carrying out the relevant work. DC for L (OSH) further advised that the Government's plan of bringing in higher penalties under the OSH legislation was announced in the 2017 Policy Address. After reporting to the Panel in July 2018, LD was reviewing the penalties of OSH legislation in full swing with a view to enhancing their deterrent effect and further safeguarding employees' OSH. LD had proposed to suitably raise the maximum fine levels and imprisonment terms. LD had also proposed to take out prosecutions as indictable offences for very serious cases, to peg the fines of these offences with the turnover of the convicted companies and to raise the maximum imprisonment terms. LD was studying the details of the legislative amendments which involved a considerable number of provisions under various OSH legislation. Depending on the progress of law drafting, the Government aimed to introduce the amendment bill into LegCo within the 2019-2020 legislative session.

Safeguarding occupational safety and health

Work-at-height safety

15. Mr CHU Hoi-dick noted that among the 106 occupational fatalities in the first half of 2018, there were six fatal cases in the construction industry and five cases involving persons falling from height. He sought explanation for the high fatality rate and the follow-up measures taken by the Administration to address the situation.

16. Mr LUK Chung-hung said that the Hong Kong Federation of Trade Unions had all along been concerned about work-at-height safety, in particular the risk involved in the use of truss-out scaffolds as well as suspended working platforms. Mr LUK was concerned how the Administration could strengthen the work safety of workers undertaking maintenance of the external walls of existing buildings as well as new buildings. Mr POON Siu-ping sought information on the work progress in improving the building design so as to strengthen the work safety of workers undertaking maintenance works at external walls.

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17. Noting from the Development Bureau's reply to his question raised at the Council meeting of 13 June 2018 that the Administration planned to make legislative amendment to the Building (Construction) Regulations (Cap. 123B) ("the Regulations"), Mr SHIU Ka-fai remained concerned about safety of workers carrying out maintenance and repair of building facilities on external walls of buildings, in particular when workers undertaking maintenance work for air-conditioning facilities on the external walls of the new buildings. Mr SHIU enquired whether LD was aware of the progress of the legislative proposal.

18. In response to members' views and concerns, DC for L (OSH) made the following points:

- (a) the Administration was very concerned that there was a number of constructional fatal accidents relating to fall of persons from height in 2018. During the investigation of these industrial accidents, it was found that in some cases employers had failed to provide a safe working platform or sufficient personal protective equipment or relevant guidance for workers when working at height, and in some other cases, workers concerned had not made proper use of the personal protective equipment provided by their employers, such as independent lifelines or full body safety harnesses;
- (b) LD would enhance construction workers' OSH awareness. To enhance the effectiveness of publicity and promotion, LD had commenced producing Work Safety Alert in the form of animation videos in 2018 to enable the industry to better comprehend how accidents happened and the necessary preventive measures to be taken for preventing recurrence of accidents;
- (c) LD launched the revamped "Construction Green Card Course" at the end of March 2018 to better meet the actual needs of construction workers, so as to enhance their knowledge of common risks, particularly the risk of fall from height, and their ability to eliminate these risks;
- (d) LD would propose amendments to raise the penalties of OSH legislation, which would strengthen the deterrent effect of the penalties and improve the overall OSH performance;

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- (e) to encourage the contractors employed by property management companies and tenants to use suitable working platforms for above ground work and raise the awareness of workers engaging in renovation and repair works and tenants to use safe working platforms, LD in collaboration with the Hong Kong Association of Property Management Companies and the Occupational Safety and Health Council ("OSHC") launched the "Pilot Partnership Scheme on Promotion of Light-duty Working Platforms by Property Management Companies" in January 2018. Around 300 light-duty working platforms were provided free of charge to property management companies, for lending to contractors/workers working in properties under their management; and
- (f) LD had been working in collaboration with the Buildings Department ("BD") and other stakeholders in the Task Force on Work Safety of Repair, Maintenance, Alterations and Additions Sites under the Committee on Construction Site Safety of the Construction Industry Council to explore how best to enhance workers' safety when conducting external repair and maintenance works through building design and strengthening preventive and protective measures for existing buildings. It was understood that BD was now proactively looking into the legislative amendment of the Regulations, including introduction of requirements to mandate provision of adequate safety facilities in building design to facilitate future repair and maintenance works on external walls. The direction of which was to stipulate the requirements for duty holders undertaking works-at-height (including works on external walls), including provision of safe working platforms for workers working at height with a view to safeguarding the occupational safety of them. As regards existing buildings, LD had recently started to step up engagement with property management companies and further enhance the promotion work to owners' corporations ("OCs") to raise their awareness on the common hazards associated with repair and maintenance works, including work-at-height safety. At the district level, in conjunction with the Home Affairs Department, LD had taken part in seminars organized for OCs etc. to promote work safety messages.

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19. Mr SHIU Ka-fai called on the Administration to revert to the Panel on the progress of making legislative amendment to the Regulations.

20. Mr LEUNG Yiu-chung and Mr LUK Chung-hung remained concerned about the measures taken by the Administration to enhance the safety of building exterior works, such as installation of air-conditioner. Mr LEUNG pointed out that OC members who were mainly residents of the buildings might not have the professional knowledge of work safety when undertaking building maintenance. DC for L (OSH) said that LD had maintained liaison with OCs. While they could seek advice from professional personnel, individual OCs might approach LD for assistance as necessary.

Prevention of health hazards due to prolonged standing at work

21. Citing the work nature of security guards as an example, Mr SHIU Ka-chun expressed grave concern about the health hazards arising from prolonged standing at work. Mr SHIU was gravely concerned that the Guidance Notes on Standing at Work and Service Counter Design ("GN") recently promulgated by LD was not legally binding and thus ineffective in preventing health hazards due to prolonged standing at work. Mr SHIU was further concerned that to his knowledge, no prosecution had been taken out against prolonged standing at work under OSHO. Mr LEUNG Yiu-chung shared a similar concern and enquired whether the Administration would consider introducing relevant legislative proposal to address the situation.

22. DC for L (OSH) responded that LD had always been very concerned about the occupational health of employees whose work involved prolonged standing and acknowledged that there was room for improvement in respect of the enforcement and prosecution work in this regard. Following the promulgation of GN in December 2018, LD had been stepping up the relevant publicity, inspection and enforcement efforts. DC for L (OSH) further advised that under the general duties provisions in OSHO, an employer was required to provide a safe working environment to his employees. By making reference to GN, LD would take enforcement action and take out prosecution against prolonged standing at work under OSHO subject to sufficient evidence.

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23. The Chairman requested the Administration to provide information on the prosecution figures in respect of violating the general duties provisions of OSHO and FIUO after the meeting.

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Occupational safety and health of professional drivers

24. In the light of the occurrence of several serious and fatal traffic accidents involving franchised and non-franchised buses in 2018, Dr CHIANG Lai-wan expressed grave concern about OSH of professional drivers and their labour rights and benefits.

25. DC for L (OSH) said that LD attached great importance to professional drivers' OSH. It was noted that the Independent Review Committee on Hong Kong's Franchised Bus Service had submitted its Report to the Chief Executive in December 2018 and that THB would follow up on various initiatives to enhance franchised bus safety. In addition, THB was exploring with the industry of non-franchised bus service in respect of drawing up guidelines on working hours and rest times for the drivers in the industry. LD would provide advice for the improvement of the safety of franchised and non-franchised bus service in Hong Kong as necessary.

26. Dr CHIANG Lai-wan held the view that the Labour and Welfare Bureau / LD should play a more proactive role in safeguarding professional drivers' OSH and their labour rights and benefits.

Rehabilitation services for injured employees

27. The Deputy Chairman expressed disappointment that the provision of rehabilitation services to injured employees in Hong Kong was far below the international level. The Deputy Chairman asked whether the Administration would consider adopting case management model for all work injury cases so as to facilitate the injured employees to return to work as early as practicable.

28. DC for L (OSH) responded that as announced in the 2018 Policy Address, the Government was developing new measures to strengthen the protection of the rights and benefits of employees injured at work and suffered from occupational diseases. Consideration was being given to providing timely and coordinated treatment and rehabilitation services to injured employees in need through case management model and private medical services, with a view to speeding up their recovery and facilitating their early return to work.

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Other concerns

29. Mr CHU Hoi-dick expressed concern about the difficulties faced by family members of deceased workers who died in fatal industrial accidents due to the prolonged processing time for application for a certified copy of a death entry (commonly known as "death certificate"), such as handling of the deceased's estate.

30. DC for L (OSH) explained that LD would conduct investigation into each fatal case at work and submit a report to the Coroner within the time bar (i.e. six months). In the event that an inquest was required, the Coroner would, upon completion of the inquest, inform the Registrar of Deaths to register the death and the Immigration Department would thereafter issue the death certificate. DC for L (OSH) added that while awaiting issuance of the death certificate, LD's staff of the Employees' Compensation Division would assist family members of deceased workers concerned to obtain compensation under ECO.

31. Mr CHU Hoi-dick enquired as to whether the Administration would consider making available the investigation reports on occupational fatalities to parties concerned for the purpose of preventing recurrence of similar industrial accidents. DC for L (OSH) said that currently, investigation reports on work accidents were provided to family members of the deceased workers so as to facilitate their lodging of civil claims, if any. LD was considering the feasibility of making available the findings of the investigation reports without prejudice to the relevant proceedings or disclosing sensitive commercial information.

32. Mr CHU Hoi-dick asked whether the Government would reconsider the request of the Association for the Rights of Industrial Accident Victims to erect a monument in the vicinity of HZMB in memory of some 20 deceased workers who died during the construction of HZMB works projects, which had been rejected by THB.

33. DC for L (OSH) said that in recognition of the contribution made by the local workers who were injured or died in different industrial accidents, a monument had been placed in OSHC's training centre in Tsing Yi to replace the one in Hong Kong Science Museum. The Chairman was of the view that the monument should be placed at a more accessible public location.

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34. In concluding the discussion, the Chairman requested the Administration to take heed of members' concerns, in particular the request for expediting the legislative work for imposing heavier penalties on duty holders for non-compliance with the OSH legislation and formulation of specific measures to address work-at-height safety.

IV. Enhancing the protection of non-skilled employees engaged by government service contractors

(LC Paper Nos. CB(2)563/18-19(05) to (06) and CB(2)611/18-19(01))

35. At the invitation of the Chairman, Secretary for Labour & Welfare ("SLW") briefed members on Government's improvement measures to be implemented from April 2019 for enhancing the protection of the employment terms and conditions as well as labour benefits of non-skilled employees engaged by government service contractors ("GSCs"), details of which were set out in the Administration's paper.

36. Members noted a background brief entitled "Protection of non-skilled workers of government service contractors" prepared by the LegCo Secretariat.

The improvement measures

Marking scheme for tender assessment

37. Mr POON Siu-ping welcomed the improvement measures. He said that the labour sector had all along been criticizing the deficiency of the government outsourcing system ("GOS") and the inadequate protection of the employment rights and benefits of non-skilled employees of GSCs. He expressed regret that standard working hours and overtime pay rate were not covered under the improvement measures. He also sought to know the considerations in determining the weighting for wage level as an assessment criterion to at least 25% in the technical assessment.

38. While welcoming the improvement measures, Mr Andrew WAN held the view that there was still room for improvement. He said that the labour unions were of the view that as a result of the combined effect of increasing the technical weighting and the weighting of wage level in the marking scheme for tender assessment, the wage level of at least 12.5% in the overall assessment was still too low.

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39. Mr SHIU Ka-chun drew members' attention to the fact that up to January 2018, close to 30% of the non-skilled employees of GSCs engaged under the government service contracts of the four major procuring departments, namely, the Food and Environmental Hygiene Department ("FEHD"), Leisure and Cultural Services Department, Housing Department ("HD") and Government Property Agency, were remunerated just at the Statutory Minimum Wage ("SMW") rate. Mr SHIU asked whether the Administration would consider according no technical mark at all to those tenders offering the SMW rate.

40. Responding to members' views and concerns, SLW advised that in addition to wage level, other consideration factors such as management plans, experience requirements and innovation would also be taken into account in the tender assessment. Hence, he did not see much room for further increasing the weighting of wage level as an assessment criterion in the technical assessment of government service contracts. SLW further advised that while the weighting of wage level would account for at least 25% in the technical assessment, procuring departments were at liberty to adopt their own methodology for calculating the score for wage level. As a common practice among most of the procuring departments, no score would be accorded to wage level in the technical assessment if the wage rate was just equivalent to the SMW rate. On the other hand, a tender would obtain full score for wage level if the wage level was the highest amongst all tenders.

41. Mr LUK Chung-hung called on the Administration to adopt the median monthly wages of the relevant trades and industries as released by the Census and Statistics Department or the wage level offered by the outgoing GSC, instead of the SMW rate, in the methodology for calculating the score for wage level in the marking scheme for the tender assessment. He further called on the Government to apply the improvement measures to statutory and public organizations as well as subvented schools.

42. SLW advised that individual procuring bureaux/government departments were free to devise their own methodology for calculating the score for wage level in accordance with their operational needs, with the ultimate aim of making the best use of the weighting for wage level to serve its purpose. SLW added that the Government would encourage publicly-funded organizations to adopt the improvement measures, as far as practicable, when outsourcing their services.

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43. Mr SHIU Ka-chun enquired whether the Administration would consider increasing the weighting of working hours in the tender assessment so as to improve the long working hours situation of non-skilled employees of GSCs. Mr LEUNG Yiu-chung and Mr POON Siu-ping shared similar views. SLW pointed out that working hours was one of the mandatory assessment criteria in the tender assessment for government service contracts though its weighting was not specified.

44. Mr SHIU Ka-chun said that to his understanding, some of the non-skilled employees of GSCs, in particular those engaged under FEHD's service contracts, were not provided with appropriate protective clothing and gears when carrying out their jobs. Mr SHIU enquired whether consideration had been given to increasing the weighting for provision of safety training and protective equipment by GSCs to their employees as an assessment criterion in the technical aspect of tender evaluation for government service contracts.

45. SLW advised that the inter-bureaux/departmental Working Group ("the Working Group"), which was set up to review GOS, had met with different stakeholders. The concerns over occupational safety of non-skilled employees of GSCs were noted but should better be dealt with by individual procuring bureaux/departments. Assistant Director (Grade Management and Development) of FEHD added that a new provision was included in the service contracts from 2018, which specified that cleansing service contractors had to provide their employees with uniform and special protective clothing/items and to submit the relevant list to FEHD within two weeks after the commencement date of the service contract. Thereafter, service contractors needed to keep records detailing the provision of equipment/clothing and acknowledgment receipt by the employees. Such record should be produced for inspection upon request by the Government representative.

Wage issues

46. While welcoming non-skilled employees of GSCs' entitlement to additional remuneration for working when Typhoon Warning Signal No. 8 or above was hoisted, Mr Andrew WAN was gravely concerned about the absence of a standard practice in different procuring departments for leave arrangements and wage calculation for non-skilled employees of GSCs in times of typhoons. Mr WAN held the view that if

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a non-skilled employee was unable to report duty when Typhoon Warning Signal No. 8 or above was in force, the day should not be counted as the employee's annual leave or statutory holiday and that the employee should be given full wage payment on that day.

47. SLW said that the Employment Ordinance (Cap. 57) ("EO") did not prescribe the leave arrangement in times of typhoons. It would be subject to the agreement of non-skilled employees of GSCs and GSCs provided that such agreement should not contravene the provisions under EO.

48. The Deputy Chairman and Mr LUK Chung-hung were gravely concerned that some non-skilled employees of GSCs would receive lower wage in new employment contracts for the same jobs than that in the previous contracts. Citing cases of HD's service contracts as examples, the Deputy Chairman asked whether consideration would be given to according no mark to the tenders for new service contracts if the wage level for the same jobs was lower than that offered by existing GSCs.

49. SLW advised that it was a complicated issue to mandate an incoming GSC to adopt a "no worse off" principle for the wage level of non-skilled employees of GSCs when taking over these workers from an outgoing GSC at the end of the contract period.

50. Referring to the submission from Environmental Services Contractors Alliance (Hong Kong), Mr SHIU Ka-fai shared the view that following the increase in the weighting of wage level in the marking scheme for tender evaluation, GSCs would need to substantially increase the wage level of the non-skilled employees of GSCs, say, by 5% to 10%. It would also lead to an increase in the wage level of non-skilled employees of the service contracts in the private sector and the wage bill across the board. The additional wage cost would eventually be transferred to the service users at large.

51. SLW advised that the Government had conducted the relevant cost impact assessment on public expenditure for implementing the improvement measures.

52. Noting that procuring departments would be encouraged to adopt a tenure of not less than three years and that the SMW rate would be reviewed every two years, Mr Andrew WAN asked whether the Administration would require GSCs bidding for the service contracts to

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incorporate a wage adjustment mechanism so as to ensure the wage level of the non-skilled employees of GSCs would not seriously lag behind the prevailing wage level in the labour market.

53. In response, SLW said that there would be technical difficulties to mandate a wage adjustment mechanism in the tender specifications in every single tender of all procuring departments. As a matter of fact, all contractors undertaking government outsourced services had to comply with the Minimum Wage Ordinance (Cap. 608) ("MWO") and pay the employees concerned with no less than the SMW rate. GSCs should take into consideration the anticipated adjustment of the SMW rate in their contract prices when offering tender bids.

Entitlement to contractual gratuity

54. Noting that under the improvement measures, contractual gratuity would be payable to non-skilled employees of GSCs with no less than one year's service of a continuous contract who completed a Standard Employment Contract ("SEC") or whose SEC was terminated, Mr LUK Chung-hung was concerned that some unscrupulous GSCs might dismiss their employees prior to their completion of one year's service so as to evade their statutory obligation of paying contractual gratuity. SLW responded that the Government would need to consider how to address the issue from contractor management perspective.

55. In response to Mr SHIU Ka-fai's enquiry, SLW said that while the contractual gratuity, i.e. 6% of the total wages earned by their employees during the relevant employment period, was to be borne by the Government, GSCs had to take into account the additional wage cost in preparing the tender price.

56. Mr SHIU Ka-fai cautioned that the knock-on effect of provision of contractual gratuity to non-skilled employees of GSCs would incur an increase in the overall cost of the service contracts in the private sector, e.g. estate management fees.

Tenure of government service contracts

57. Mr POON Siu-ping was concerned that procuring departments would only be encouraged, instead of mandatorily required, to adopt a tenure of not less than three years in the relevant government service contracts.

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58. SLW responded that the Working Group had discussed the tenure of government service contracts at length and come up with the proposal that procuring departments would be encouraged to adopt a tenure of not less than three years where operational situations permitted, such that sufficient flexibility would be provided for procuring departments to meet evolving service needs.

Protection of non-skilled employees under existing government service contracts

59. While noting that the improvement measures would be implemented from 1 April 2019, Mr POON Siu-ping expressed concern about the protection of those non-skilled employees of GSCs engaged under existing government service contracts. He asked whether the Government would consider extending the improvement measures to non-skilled employees being engaged by existing service contracts and the estimated additional cost.

60. Mr LUK Chung-hung was concerned that there would be different pay among government employees, non-skilled employees of GSCs of existing service contracts and those engaged under service contracts from April 2019 when undertaking the same types of job. Mr LUK asked whether the Government would consider providing non-skilled employees of existing GSCs with subsidy to make up the difference in pay.

61. Mr Andrew WAN enquired whether consideration would be given to applying the improvement measures with retrospective effect to the existing government service contracts, say, one year before the commencement date of the improvement measures.

62. SLW advised that it was a matter of fair competition among GSCs, bearing in mind Hong Kong was a signatory of the Government Procurement Agreement under the World Trade Organization. Along the principle of open and fair competition, variation to contracts and subsidy to contractors should be avoided. The Government would also need to uphold the contract spirit. While individual procuring departments might negotiate with the contractors in respect of extension of the existing government service contracts as appropriate, it was difficult for the Government to mandate contractors of the relevant contracts tendered before 1 April 2019 to comply with the improvement measures.

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Motions proposed by members

63. The Chairman said that three members had indicated their respective intention to propose four motions under this agenda item. He ruled that the four motions were directly related to the agenda item, and the motions would be voted in the order they were presented. Members agreed that the motions should be proceeded with.

Motions moved by Mr Andrew WAN

64. Mr Andrew WAN moved the following motion:

"政府外判合約新措施規定工資水平在綜合評分中所佔的比重將不少於 12.5%，本事務委員會認為有關比重過低，長遠而言，政府須加強照顧非技術工人的權益，制定公平合理的評分標準，包括：(一)進一步增加工資水平在評審時所佔的比重；(二)服務承辦商每年調整工資的機制及幅度；(三)列明承辦商若違反標書承諾及條件，將會面對不同程度的懲處，如情況嚴重至反映其提供服務的能力不足，政府應取消有關服務合約。"

(Translation)

"Under the new measures for government outsourcing contracts, the wage level will account for at least 12.5% weighting in the overall assessment, which is considered by this Panel to be too low. In the long run, the Government should enhance the protection of non-skilled workers' rights and benefits, and formulate fair and reasonable assessment criteria, including: (1) further increasing the weighting of wage level as an assessment criterion; (2) the mechanism of annual wage adjustment by service contractors as well as the rate of adjustment; (3) stipulating that contractors will be imposed different levels of penalties for reneging on their pledges in the tender and non-compliance with tender specifications; in serious cases such that the contractor is found to be incapable of providing the service, the Government should cancel the service contract concerned."

65. The Chairman put Mr Andrew WAN's motion to vote. The Chairman said that six members voted for the motion, no member voted against it, and one member did not vote. The Chairman declared that Mr WAN's motion was carried.

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66. Mr Andrew WAN further moved the following motion:

"本事務委員會促請政府參考公務員及資助機構的安排，劃一所有外判服務承辦商的僱員颱風日休假安排，如非技術員工在八號或以上颱風警告信號懸掛時未能上班，不能被視為僱員的年假或勞工假期，及須發放當天全數工資。"

(Translation)

"This Panel urges the Government to make reference to civil service and subvented organizations in respect of standardizing the leave arrangements in times of typhoons for all employees engaged by outsourced service contractors. If a non-skilled employee is unable to report duty when Typhoon Warning Signal No. 8 or above is in force, the day should not be counted as the employee's annual leave or statutory holiday and that the employee should be given full wage payment."

67. The Chairman put Mr Andrew WAN's motion to vote. The Chairman said that six members voted for the motion, no member voted against it, and one member did not vote. The Chairman declared that Mr WAN's motion was carried.

Motion moved by Mr LUK Chung-hung

68. Mr LUK Chung-hung moved the following motion, which was seconded by Mr HO Kai-ming:

"新措施為外判員工提供合約酬金，提升薪酬佔招標評分比例等。本事務委員會要求政府預留撥備，對舊合約作出補貼，減少出現新舊合約同工不同酬的問題。"

(Translation)

"While there are new measures which include, among others, providing non-skilled employees of government service contractors with contractual gratuity and increasing the weighting for wage level in tender assessment, this Panel urges the Government to set aside provisions for subsidizing the old contracts so as to minimize

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the situation of different pay for the same job under the new and old contracts."

69. The Chairman put Mr LUK Chung-hung's motion to vote. The Chairman said that six members voted for the motion, no member voted against it, and one member did not vote. The Chairman declared that Mr LUK's motion was carried.

Motion moved by Mr Jeremy TAM

70. Mr Jeremy TAM moved the following motion:

"就有關工作時間的規定，本事務委員會認為「飯鐘錢」(僱員用膳的時間)應被納入至政府外判服務承辦商投標條款之內。本事務委員會同時要求立法會應由自己做起，規定外判承辦商應將「飯鐘錢」納入至僱員工作時間之中。"

(Translation)

"Regarding the requirement of working hours, this Panel is of the view that payment for employees' meal breaks should be included in the terms of tender for government outsourced service contractors, and at the same time requests the Legislative Council to start by itself by requiring its outsourced service contractors to include paid meal breaks in employees' working hours."

71. The Chairman put Mr Jeremy TAM's motion to vote. The Chairman said that six members voted for the motion, no member voted against it, and one member did not vote. The Chairman declared that Mr TAM's motion was carried.

72. The Chairman advised that Mr Jeremy TAM's motion should also be referred to the LegCo Commission for consideration. Mr TAM pointed out that the same motion which was passed at the Panel's meeting on 26 February 2018 had been referred to the LegCo Commission, and its response was awaited. The Chairman instructed the Clerk to relay members' concern about the deliberations of the LegCo Commission on the matter.

Clerk

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

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Provision of paid meal breaks

73. Mr Jeremy TAM considered that non-provision of paid meal breaks for non-skilled employees of GSCs was attributed to the adoption of the "lowest bid wins" principle in tender evaluation for government outsourced services. He held the view that the Government should take the lead in stipulating paid meal breaks in the employment terms for non-skilled employees of GSCs.

74. Deputy Commissioner for Labour (Labour Administration) pointed out that neither MWO nor EO prescribed that meal breaks should be with pay or otherwise. It had all along been subject to the agreement between employers and employees having regard to the circumstances and needs of individual enterprises and employees. Under SEC, provision of paid meal breaks that were counted as hours worked would be reflected by a higher wage level. Notably, with the combined effect of increasing the technical weighting and the weighting of wage level in the marking scheme for tender assessment, the wage level would account for at least 12.5% in the overall assessment. As such, GSCs bidding the contracts that were offering higher wage to non-skilled employees would get higher scores, hence standing a better chance of being awarded the contract.

Demerit Point System and Debarment Mechanism

75. Expressing concern about the Administration's efforts in monitoring GSCs, Mr LEUNG Yiu-chung suggested that the scope of Demerit Point System ("DPS") be expanded to cover wage shortfall and failure to settle statutory severance payment ("SP").

76. Mr Andrew WAN was of the view that a review of DPS should be conducted.

77. Principal Assistant Secretary for Financial Services & the Treasury (Treasury) (E) advised that during the review of GOS by the Working Group, a review of DPS was conducted in tandem with a view to enhancing the regulatory efforts on GSCs. With the implementation of the improvement measures, the scope of DPS would be expanded accordingly. As regards Mr LEUNG Yiu-chung's question, wage payment was already covered by DPS. If a GSC failed to pay SP under EO, it would be an offence under EO. The contractor, once convicted, would be debarred from participating in government procurement under the Debarment Mechanism for a period of five years from the date of conviction.

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78. The Chairman requested and the Administration agreed to provide supplementary information on the revised DPS after the review was concluded.

79. The Deputy Chairman suggested and members agreed that the Panel should hold a meeting to receive public views on the improvement measures. The Chairman said that members would be informed of the meeting arrangements in due course.

80. There being no other business, the meeting ended at 6:48 pm.

Council Business Division 2
Legislative Council Secretariat
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