

立法會

Legislative Council

LC Paper No. CB(2)914/20-21

(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

**Minutes of policy briefing-cum-meeting
held on Thursday, 7 January 2021, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon LUK Chung-hung, JP (Chairman)
Hon CHAN Chun-ying, JP (Deputy Chairman)
Hon YIU Si-wing, BBS
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Hon CHUNG Kwok-pan
Hon SHIU Ka-fai, JP
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan, JP
Dr Hon Pierre CHAN
Hon Vincent CHENG Wing-shun, MH, JP

Members attending : Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Holden CHOW Ho-ding

Members absent : Hon WONG Kwok-kin, SBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP

Public Officers attending : Items III to V
Dr LAW Chi-kwong, GBS, JP
Secretary for Labour and Welfare

Ms CHANG King-yiu, JP
Permanent Secretary for Labour and Welfare

Mr HO Kai-ming, JP
Under Secretary for Labour and Welfare

Mr Chris SUN Yuk-han, JP
Commissioner for Labour

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

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

Item VI

Mr HO Kai-ming, JP
Under Secretary for Labour and Welfare

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

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

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

Item VII

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)

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

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

Ms Kiwi NG
Legislative Assistant (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)377/20-21(01), CB(2)565/20-21(01) and CB(2)584/20-21(01))

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

- (a) letter dated 20 November 2020 from Ms Elizabeth QUAT suggesting the Panel to discuss issues relating to employment of foreign domestic helpers ("FDHs");
- (b) referral from the Public Complaints Office on policy issues relating to the regulation of employment agencies providing placement services for FDHs; and
- (c) joint submission from six organizations regarding the pilot rehabilitation programme for employees injured at work.

2. Members noted that the subject mentioned in paragraph 1(a) 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)492/20-21(01) and (02))

3. The Chairman informed members that he had discussed the Panel's work plan for the 2020-2021 session with the Administration on 4 December 2020. Members noted that the Panel's list of outstanding items for discussion had been updated accordingly.

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Regular meeting in January 2021

4. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 4:30 pm on 19 January 2021:

- (a) Funding for Developing Designated Savings Accounts ("DSA") functionalities on the eMPF Platform and the DSA Information Technology System;
- (b) Alignment of statutory holidays with general holidays; and
- (c) Review of the jurisdictional limit of the Minor Employment Claims Adjudication Board.

III. Update on the proposal to abolish the offsetting arrangement under the Mandatory Provident Fund System

5. At the invitation of the Chairman, the Secretary for Labour and Welfare ("SLW") provided members with an update on the preparatory work for abolishing the "offsetting" arrangement under the Mandatory Provident Fund System, as detailed in his speaking note. Members noted that the subject would be discussed by the Panel in the second quarter of 2021.

(Post-meeting note: The speaking note of SLW tabled at the meeting was issued to members vide LC Paper No. CB(2)618/20-21 on 7 January 2021.)

IV. Update on the proposal to increase progressively the number of statutory holidays under the Employment Ordinance

6. At the invitation of the Chairman, SLW provided members with an update on the proposal to increase progressively the number of statutory holidays ("SHs") under the Employment Ordinance (Cap. 57) ("EO"), as detailed in his speaking note. Members noted that the subject would be discussed by the Panel on 19 January 2021.

(Post-meeting note: The speaking note of SLW tabled at the meeting was issued to members vide LC Paper No. CB(2)618/20-21 on 7 January 2021.)

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V. Briefing by the Secretary for Labour and Welfare on the Chief Executive's 2020 Policy Address

(LC Paper No. CB(2)492/20-21(03), The Chief Executive's 2020 Policy Address and The Chief Executive's 2020 Policy Address Supplement)

7. At the invitation of the Chairman, SLW briefed members on the major initiatives pertaining to the labour and manpower portfolio undertaken by the Labour and Welfare Bureau ("LWB") and the Labour Department ("LD"), as set out in the Chief Executive's 2020 Policy Address and Policy Address Supplement.

(Post-meeting note: The speaking note of SLW tabled at the meeting was issued to members vide LC Paper No. CB(2)618/20-21 on 7 January 2021.)

Unemployment support at times of a worsening economy

8. Mr Wilson OR was concerned about the lack of specific policy initiatives in the 2020 Policy Address on providing unemployment assistance amid of the COVID-19 epidemic. Ms Alice MAK and Mr KWOK Wai-keung echoed similar concerns. In view of the deteriorating economy and the worsening unemployment and underemployment situation, Mr OR called on the Government to seriously consider setting up an unemployment assistance fund so as to provide timely support for the unemployed people.

9. Pointing out that the Employment Support Scheme ("ESS") had expired from end of November 2020, Mr POON Siu-ping expressed grave concern that the latest number of unemployed persons stood at around some 250 000. Ms Alice MAK was gravely concerned that a considerable number of the unemployed persons encountered difficulties in switching jobs. Envisaging that the high unemployment rate would be pushed up further, Ms MAK and Mr POON enquired about the concrete unemployment support measures to be put in place to alleviate the situation.

10. In response to members' concerns and views, SLW said that the Government noted the community's call for establishment of an unemployment assistance fund. The Administration had implemented various support measures to the unemployed, including unemployment assistance under the Comprehensive Social Security Assistance Scheme

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and vocational training of the Employees Retraining Board ("ERB"), to provide support to individuals for tiding over the challenges posed by the economic downturn and the COVID-19 epidemic since mid-2019. In addition, LWB had been exploring other ways to provide support for the unemployed and underemployed people. Given that a subcommittee was formed under the Panel to study the setting up of an unemployment assistance system in Hong Kong, the Administration was prepared to discuss the related issues in detail with members at the forthcoming Subcommittee meetings.

11. SLW further advised that it was imperative to help unemployed persons secure employment at times of the worsening economic situation due to the COVID-19 epidemic. With respect to the earmarked funding under the Anti-epidemic Fund for creation of 30 000 time-limited jobs in the public and private sectors in the coming two years for people with different skill sets and academic qualifications, it was understood that the recruitment procedures for over 10 000 time-limited jobs had been launched.

12. While acknowledging the effectiveness of the series of relief measures introduced by the Government in 2020, including ESS and creation of 30 000 time-limited jobs in the public and private sectors in providing support for the unemployed and underemployed people to a certain extent, Mr Vincent CHENG held the view that there was still a pressing need for the Government to continue providing unemployment support. Mr CHENG strongly urged the Government to seriously explore the feasibility of setting up a short-term unemployment assistance fund, say, for six months.

13. Expressing concern about the aggravation of the unemployment situation upon expiry of ESS from end of November 2020, Mr SHIU Ka-fai called on the Government to introduce timely measures to address the imminent financial needs of the unemployed people.

14. SLW drew members' attention to the concern about moral hazard in association with abuse of an unemployment assistance fund, if so established. Also, it was difficult to verify the employment status of individuals.

Employees retraining

15. Mr YIU Si-wing sought information on the participation rate of the second tranche of the "Love Upgrading Special Scheme" ("the Special

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Scheme") following the increase in the maximum amount of monthly allowance from \$4,000 to \$5,800 per trainee. Mr YIU asked whether the Government would consider further increasing the monthly allowance to \$10,000 per trainee under the third tranche of the Special Scheme so as to provide more support for those employees affected by economic downturn. Mr POON Siu-ping echoed a similar view.

16. Ms Alice MAK and Mr POON Siu-ping asked whether the Government would consider increasing the number of the training places for the new tranche of the Special Scheme.

17. SLW responded that the first and second tranches of the Special Scheme were well received. ERB had launched the third tranche of the Special Scheme in January 2021 for six months until mid-2021. The new tranche would double the 10 000 training places under the second tranche, enabling 20 000 trainees to undergo retraining and receive an allowance during the training period. The maximum amount of monthly allowance payable to each trainee during the training period had been increased from \$4,000 to \$5,800 from 25 May 2020. The Government had no plan to further increase the amount. SLW further advised that as a matter of fact, each eligible trainee could apply up to four training courses of ERB with no more than two full-time vocational skills courses, including courses offered through enterprise-based training under the Special Scheme.

18. Expressing disappointment at the Government's refusal to further adjust upward the maximum amount of allowance payable monthly to a trainee under the Special Scheme, Ms Alice MAK appealed to the Government to reconsider the suggestion.

19. Mr KWOK Wai-keung pointed out that a large proportion of trainees had attended the training courses for security guards under the first and second tranches of the Special Scheme, but some of the them could not secure employment as security guards upon completion of these courses. He was concerned whether employment prospects had been taken into account in the provision of training courses under the Special Scheme as well as ERB's placement-tied training courses. Mr KWOK further asked whether consideration would be given to expanding the scope of the training courses under the Special Scheme.

20. SLW responded that ERB was aware of change of manpower needs in the labour market, including that of security guards in the property

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management industry, and had been liaising with the training bodies and employers in this respect. In addition, in reviewing the number of places for various training courses, ERB had all along taken into account the views of relevant technical advisors and industry consultative networks in relation to the manpower needs of different job types. SLW further advised that while the unemployment rate remained high, some sectors were facing manpower shortage, including the caring sector with some 4 000 to 5 000 vacancies. The Government would step up its efforts to encourage employers of sectors facing persistent manpower shortage (including the caring sector) to participate in ERB's "First-Hire-Then-Train" Scheme, and consider adjusting the training and working hour arrangements under the scheme to attract more employees to join the sectors and address the manpower needs of the sectors.

21. The Chairman was concerned about the low wage level and the long working hours situation in private residential care homes. With respect to the implementation of the "First-Hire-Then-Train" Scheme in the caring sector, the Chairman asked how the Administration would improve the working terms and conditions so as to attract new entrants to the sector.

22. SLW responded that the Government had been purchasing places from private residential care homes under the bought place schemes, and this had improved service standard of these homes, strengthened their manpower supply and enhanced the working conditions for staff. The issue could be further followed-up by the Panel on Welfare Services, if so warranted.

Greater Bay Area Youth Employment Scheme

23. Mr YIU Si-wing and Mr SHIU Ka-fai welcomed the launch of the Greater Bay Area ("GBA") Youth Employment Scheme ("the Scheme"). Mr YIU and Dr CHIANG Lai-wan sought information and clarification about the Scheme, including the participating Mainland cities, details of participating enterprises and monthly salary of the posts under the Scheme as well as the timeline for the launch of the Scheme.

24. The Deputy Chairman queried whether the Scheme would be attractive to enterprises in the Mainland cities of GBA, given that they would need to offer higher monthly salary to engage target graduates from Hong Kong under the Scheme, as compared to the average monthly salary of \$5,300 for fresh graduates in GBA according to a recent survey

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conducted by the Hong Kong Baptist University. The Deputy Chairman also sought information on the work types of posts to be offered under the Scheme. In the light of the latest situation of COVID-19 epidemic and the necessary epidemic prevention measures, the Deputy Chairman further expressed concern when the participants of the Scheme could start to work in GBA.

25. Mr POON Siu-ping asked whether the Government would consider increasing the quota if positive response to the Scheme was received.

26. Responding to members' concerns and enquiries, SLW said that the nine municipalities in GBA covered most of the areas for commercial and trading activities in the Guangdong Province. It was expected that most of the posts under the Scheme would be stationed in Guangzhou and Shenzhen. The Government would launch the Scheme on 8 January 2021, which would offer 2 000 places to graduates who obtained their bachelor's degrees or above in 2019 to 2021. Under the Scheme, enterprises with operations in Hong Kong and GBA Mainland cities could join the Scheme. Participating enterprises should engage the target graduates in Hong Kong in accordance with the Hong Kong law, offer a monthly salary of not less than \$18,000, and should station the graduates in GBA Mainland cities to work and receive on-the-job training. The Scheme provided 2 000 places, around 700 of which were designated for innovation and technology ("I&T") posts. The Government would grant a monthly allowance of \$10,000 to enterprises for each graduate employed for up to 18 months. Enterprises could register with the Scheme through its dedicated website. Notably, other than those designated as I&T posts, there was no limitation on the work types offered by enterprises.

27. SLW further advised that the Government had contacted a number of enterprises when working out the preliminary framework of the Scheme and received general support. While it was not known at the moment whether and when the 2 000 places would be used up, the Government maintained an open stance and would not rule out the possibility of increasing the quota if response to the Scheme was favourable.

28. Mr SHIU Ka-fai called on the Government to consider expanding the scope of target participants to graduates who obtained their bachelor's degrees or above from 2016 and also consider providing 2 000 places to youngsters who were not degree holders.

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29. SLW explained that as fresh university graduates with no or limited work experience would have greater difficulties in entering the labour market, the Scheme targetted graduates of 2019 to 2021. The Scheme would help these graduates obtain the necessary on-the-job training and work experience.

30. In response to the Deputy Chairman's enquiry about maintaining information on the youth engaged under the Scheme, SLW replied in the affirmative and advised that such information would provide useful reference if similar schemes were to be launched in future.

31. The Chairman called on the Government to consider according priority to Hong Kong-based enterprises when assessing applications from participating enterprises under the Scheme.

Increasing progressively the number of statutory holidays under the Employment Ordinance

32. Dr CHIANG Lai-wan sought clarification as to whether FDHs who were engaged under employment contracts with their employers would be entitled to the proposed increase in the number of SHs.

33. SLW advised that EO was applicable to all eligible employees regardless of whether they were local or imported workers, including FDHs. They were accorded the same statutory rights and benefits, including SHs, under EO.

34. Dr CHIANG Lai-wan was concerned that the increase in the number of SHs might have adverse impact on the employers of FDHs and appealed to the Government to reconsider the matter.

VI. Review of the levels of compensation/payment under employees' compensation-related ordinances and extension of employees' compensation protection to employees commuting to or from work under "extreme conditions"
(LC Paper Nos. CB(2)492/20-21(04) and (05))

35. At the invitation of the Chairman, Under Secretary for Labour and Welfare ("USLW") briefed members on the Administration's proposal of reviewing the levels of compensation/payment under employees' compensation ("EC")-related ordinances, with the adjustment of the

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amounts of a total of 21 compensation/payment items under the Employees' Compensation Ordinance (Cap. 282) ("ECO"), the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360), the Occupational Deafness (Compensation) Ordinance (Cap. 469), and the Employees Compensation Assistance Ordinance (Cap. 365) ("ECAO"); and extending the EC protection to employees commuting to or from work under "extreme conditions" (hereinafter referred to as "the Administration's proposals"), as detailed in the Administration's paper.

36. Members noted an updated background brief entitled "Levels of compensation/payment under employees' compensation-related ordinances and extension of employees' compensation protection to employees commuting to or from work under "extreme conditions"" prepared by the Legislative Council ("LegCo") Secretariat.

Review mechanism

37. Mr POON Siu-ping expressed support for the Administration's proposals. Mr POON asked when the last revision to the review mechanism of the EC-related ordinances ("the review mechanism") was made and whether the Administration would consider improving the review mechanism, such as conducting the review exercise on an annual basis.

38. USLW said that member's concern was noted and advised that the review mechanism had been put in place since 1999. The Government would consider whether there was room for making further improvement to the review mechanism.

Levels of compensation

39. Mr SHIU Ka-fai was concerned that the levels of prescribed relief payment, prescribed monthly amount and prescribed monthly amount (extra) under ECAO were proposed to be adjusted upwards by 300% on a one-off basis to \$6,000,000, \$40,000 and \$40,000 respectively. Expressing the view that it was necessary to strike a balance between employers' affordability and enhancing protection of employees who sustained injuries or died as a result of accidents arising out of and in the course of employment, Mr SHIU sought information on the financial position of the Employees Compensation Assistance Fund ("the Fund") under ECAO. Mr SHIU further asked whether there was a need to raise

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the levy payable by employers under the Employees' Compensation Insurance Levies Ordinance (Cap. 411) ("ECILO").

40. Deputy Commissioner for Labour (Labour Administration) ("DC for L (LA)") responded that the current financial position of the Fund was healthy with stable income. For the year 2019-2020, the total income and expenditure of the Fund was \$248 million and \$70 million respectively, with an accumulative surplus of over \$100 million. The proposed increase in the amounts of the three relief payment items would not incur additional expenditure for the Fund because the total amount of payments to the applicants would still be made in accordance with the sum of common law damages awarded by the court.

41. USLW and DC for L (LA) further advised that the Government had made reference to the applications of relief payment under the Employees Compensation Assistance Scheme ("the Scheme") for the period of 1 July 2015 to 30 June 2020 and carefully considered various factors as well as consulted the Employees Compensation Assistance Fund Board ("the Board") in respect of the proposed upward adjustments in the levels of prescribed relief payment, prescribed monthly amount and prescribed monthly amount (extra) under ECAO. The Board considered that the proposal would have minimal impact on the financial viability and long-term sustainability of the Fund in the foreseeable future. There was no need to increase the levy payable by employers under ECILO. As a matter of fact, the number of applications for relief payment under the Scheme was relatively small each year.

42. With respect to the compensation payable under ECO for permanent total incapacity resulting from a work injury which was calculated with reference to the percentage of loss of earning capacity, age and monthly earnings of the injured employee, the Chairman was concerned that the amounts in many cases were limited. The Chairman sought information on the average amount of relevant employees' compensation claims in the past several years as well as the timeline for review of the calculation formula for the compensation payable to employees who were injured in the course of their employment. Expressing concern about employers' failure in taking out employees' compensation insurance ("ECI") (commonly known as labour insurance), the Chairman further sought information on the enforcement work in this regard.

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43. USLW clarified that the Administration's proposals relating to ECAO targeted employees who had sustained injuries caused by accidents arising out of and in the course of employment, given that the court awarded an amount of common law damages to be payable by the employer but the latter could not pay the amount and did not have a valid EC insurance policy to cover his liability, hence rendering the injured employees and eligible persons unable to make recovery against the employer or any insurer. The employees and eligible persons might apply for relief payment from the Fund under ECAO for the unrecovered sum.

44. Assistant Commissioner for Labour (Employees' Rights & Benefits) added that the Administration attached importance to requiring employers to take out insurance policies to cover their liabilities under ECO and would conduct inspections and take out prosecution against non-compliant cases. In 2020, a total of 988 summonses in relation to employers' failure in taking out ECI were heard. Among them, 971 summonses were convicted with the maximum fine of \$12,000.

Extension of employees' compensation protection to employees commuting to or from work under "extreme conditions"

45. Mr POON Siu-ping welcomed the Administration's proposal to amend ECO to extend its coverage to employees commuting to or from work under "extreme conditions", allowing the relevant employees to have EC protection on par with that under Typhoon Warning Signal No. 8 ("T8") or above or when the Red or Black Rainstorm Warning was in force ("proposed amendment to ECO"). In this connection, Mr POON sought information on the number of compensation claims in the past years in respect of employees commuting to or from work when T8 or above or Red or Black Rainstorm Warning was in force. USLW responded that the relevant compensation claims were handled by individual insurance companies. The Administration did not maintain the relevant statistics.

46. While acknowledging the benefit to employees brought about by the proposed amendment to ECO, Mr SHIU Ka-fai was concerned that it might have adverse financial impact on the employers as they would need to pay higher premium when taking out ECI policies. Mr SHIU asked about the estimated increase in premium in this regard.

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47. USLW responded that the Administration did not have the requisite information. That said, making reference to the experience of extending the EC protection to employees commuting to or from work under T8 or above or the Red or Black Rainstorm Warning, and considering the rare nature of "extreme conditions", it was expected that the resultant increase in the premium for ECI should not be significant.

48. The Chairman was concerned that measures specified in the revised "Code of Practice in Times of Typhoons and Rainstorms" to address work arrangements under "extreme conditions" were not legal binding and there might still be cases of wage deduction, being withheld good attendance bonuses and leave deduction regardless of the LD's appeal to the employers to give due consideration and handle flexibly if employees could not resume work in time due to road and traffic conditions. The Chairman asked whether the Administration would further consider conducting a review of protection of employees' rights and benefits under such circumstances after the coming into force of the proposed amendment to ECO.

49. USLW responded that following the experience in handling Super Typhoon Mangkhut in 2018, the Government had conducted a review of the handling mechanism for future super typhoons (or other natural disasters of a substantial scale), and formulated measures to address work arrangements under "extreme conditions". Having considered that employees commuting to or from work during "extreme conditions" could be subject to more dangerous circumstances, the Government therefore put forth the proposed amendment to ECO. The Government would continue to consider how to further improve protection of employees' rights and benefits as appropriate.

Consultation with the Labour Advisory Board

50. Noting that when the Labour Advisory Board ("LAB") was consulted, members present agreed in general to the Administration's proposals, Mr POON Siu-ping sought clarification as to whether the employer side had raised concern about the possible increase in the EC insurance premium to be borne by the small- and medium-sized enterprises ("SMEs").

51. USLW advised that it was understood that LAB members from the employer and employee sides had frankly exchanged their views on the Administration's proposals during the LAB meeting on 25 November 2020 while all members present agreed in general to the proposals.

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VII. Raising penalties of occupational safety and health legislation
(LC Paper Nos. CB(2)492/20-21(06) and (07))

52. At the invitation of the Chairman, Deputy Commissioner for Labour (Occupational Safety and Health) ("DC for L (OSH)") briefed members on the revised amendment proposal of LD to raise the penalties of the occupational safety and health ("OSH") legislation ("the revised amendment proposal"), as detailed in the Administration's paper.

53. Members noted an updated background brief entitled "Penalties of occupational safety and health legislation" prepared by the LegCo Secretariat.

54. Members further noted that a total of 20 written submissions on the revised amendment proposal had been received.

Revised amendment proposal

55. Ir Dr LO Wai-kwok acknowledged that improvement had been made to occupational safety performance over the years as a result of concerted efforts of various stakeholders. Mr SHIU Ka-fai echoed a similar view. Dr LO said that the Business and Professionals Alliance for Hong Kong and the industries considered it imperative to improve occupational safety and called on the Government to be prudent in taking forward the legislative amendment exercise in raising the penalties of the OSH legislation and listen to the views of the industries.

56. DC for L (OSH) responded that while there was a decreasing trend of accident rate per thousand workers over the years, the number of fatal cases in the past two decades remained on the high side and showed no sign of declining.

57. Mr POON Siu-ping considered it unsatisfactory that the Government had revised the preliminary proposal on raising the penalties of the OSH legislation simply because of opposition views from the business sector and employer groups and thus put forth the revised amendment proposal. Mr POON appealed to the Government to be determined in implementing the revised amendment proposal to raise OSH penalties without further delay. Ms Alice MAK echoed a similar view.

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58. The Chairman said that the labour sector welcomed the revised amendment proposal so as to increase the deterrent effect for non-compliance with OSH legislation and that the employers/duty-holders could not evade their legal liabilities in industrial fatalities and accidents. Citing the imposition of fines of \$30,000 only on each of the two convicted companies involved in a fatal accident that occurred in March 2017 at a construction site of the Hong Kong Link Road of the Hong Kong-Zhuhai-Macao Bridge project, the Chairman held the view that the current penalty failed to reflect the seriousness of the contraventions and failed to impose sufficient deterrent effect on duty holders violating the OSH legislation.

59. Mr KWOK Wai-keung expressed concern that there were 1 102 industrial accidents, including seven fatal cases, in the construction industry in the first half of 2020 and that the average fine for each summons for fatal industrial accidents in the construction industry was only about \$27,000 in 2018. Given that the penalties of the Factories and Industrial Undertakings Ordinance (Cap. 59) ("FIUO") and Occupational Safety and Health Ordinance (Cap. 509) ("OSHO") had not been revised for over 20 years, Mr KWOK called on the Administration to expedite the legislative amendment exercise so as to increase the deterrent effect of the penalties and prevent the recurrence of industrial accidents. In his view, it would have positive impact on improving the occupational safety performance.

60. While affirming the benefits of safeguarding work safety of employees, Mr Holden CHOW was of the view that it might not be an opportune time to raise the penalties of the OSH legislation in view of the deteriorating economy amid the COVID-19 epidemic. Ms Alice MAK and the Chairman, however, did not subscribe to Mr CHOW's view.

Maximum fines for extremely serious offences

61. Ir Dr LO Wai-kwok said that the stakeholders in various trades and industries, including the construction sector, were in support of raising the penalties of FIUO and OSHO which had not been revised for over 20 years. However, referring to the maximum fine level of comparable general duty ("GD") provisions for employers of OSH legislation in Australia and the United States ("US") which were about \$22 million and \$1 million respectively, Dr LO expressed a strong view that the corresponding amount of \$50 million under the revised amendment proposal was too high. Dr LO sought explanation in this regard.

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Mr SHIU Ka-fai said that to his knowledge, most of the trade associations objected to pitching the maximum fine of contravening GD provisions for employers in OSH legislation at \$50 million under the revised amendment proposal. Mr SHIU was gravely concerned that the revised proposed penalty would adversely affect the operation of SMEs and the business environment.

62. As regards the proposal of adding new provisions in relation to turnover-pegged fine for extremely serious offences, Ir Dr LO Wai-kwok considered it not logical. The Chairman, on the other hand, held the view that it was reasonable and called on the Administration to explain to parties concerned in detail.

63. Mr KWOK Wai-keung was of the view that the increase in the maximum fines for extremely serious offences could propel the principal contractors under the subcontracting practice in the construction industry to allocate more resources for safeguarding work safety of construction workers.

64. In response to members' views and concerns, DC for L (OSH) said that LD proposed to amend the employer GD provisions so that they could be invoked as indictable offences for extremely serious cases involving extremely high culpability or serious negligence and leading to serious consequences, and be tried in courts of higher levels. In view of the grave concern expressed by employers over the preliminary amendment direction of pitching the maximum fine at 10% of the turnover of the convicted entity without a cap, the Government now proposed to revise the original turnover-pegged maximum fine to a maximum fine capped at \$50 million. As a matter of fact, the sentences for severe cases of OSH contravention in other advanced countries/regions could be more than \$10 million. There were such severe cases in US and the United Kingdom ("UK") with the imposition of fine of \$12 million and \$20 million respectively. Notably, the maximum fine for violation of employer GD provisions in UK was \$100 million. In addition, to ensure that the fines handed down for the indictable offences were commensurate with convicted entities of different scales in order to achieve sufficient deterrent effect, the Administration proposed to add new provisions to require the courts to take the convicted entity's turnover into account in determining the fine level. The proposal of turnover-pegged maximum fine had made reference to overseas legislation, including those of UK and New Zealand, that pegged fine levels to turnover. As such, the

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Administration considered the proposed maximum fines for extremely serious offences appropriate.

65. DC for L (OSH) stressed that the maximum fines would only be applicable to extremely serious cases of extremely high culpability or serious negligence which led to serious consequences and the number of such extremely serious cases involving duty holders' blatant disregard for safety was small. According to LD's assessment, there were only seven such cases in the past 10 years. DC for L (OSH) further advised that currently, the contraventions of FIUO and OSHO were summary offences. LD had re-aligned the seriousness categories of the relevant provisions in accordance with the categorization criteria as detailed in paragraphs 10 to 14 of the Administration's paper, and the proposed maximum fines were mostly around \$30,000, \$150,000 or \$600,000 as set out in Annex 4 to the Administration's paper.

66. Mr SHIU Ka-fai raised query about the saying that a fine of around \$12 million was imposed on a US case, given that the maximum fine level of comparable employer GD provisions of OSH legislation was \$1 million only in US as set out in Annex 1 to the Administration's paper. Mr SHIU sought clarification in this regard.

67. DC for L (OSH) explained that the fine was the sum of fines handed down on more than one summons issued to the duty-holder for contravention of different OSH provisions in one case. Consequently, the total fine was more than the maximum fine of individual offence provisions.

68. The Chairman advised that the Administration should include information on overseas relevant legislation and examples of sentences in taking forward the revised amendment proposal so as to illustrate that it was appropriate to cap the maximum fine at \$50 million for extremely serious offences under the proposal.

69. Mr KWOK Wai-keung was concerned whether employees' compensation receivable by an employee in the relevant OSH offence would be adversely affected under the proposal of the turnover-pegged maximum fine, especially when the turnover of employer's company was not good in that particular year. DC for L (OSH) advised that they were separate issues. While the period of the turnover to which the courts should refer for sentencing was the financial year within which the date of the offence committed by the convicted entity fell, the amount of EC was calculated under a separate mechanism.

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70. Pointing out that there were cases of industrial accidents in which injured employees failed to take care of their own safety and health at work, Mr SHIU Ka-fai said that a number of SMEs had worries over their legal liabilities in the event of occurrence of industrial accidents which might be categorized as extremely serious offences.

71. DC for L (OSH) and Assistant Commissioner for Labour (Occupational Safety) responded that the GD provisions in the OSH legislation for employers usually required employers/ proprietors/ occupiers of premises to ensure the safety and health at work of all the employees, including providing a safe working environment and such information, instruction, training and supervision that were necessary to serve the purpose. Should the employers/contractors have reasonably and practicably complied with such requirements, it would provide defence for employers against prosecution.

72. Pointing out that there were serious industrial accidents involving duty-holders' blatant disregard for work safety, Ms Alice MAK was of the view that it was an employer's responsibility to safeguard his employees' work safety. Ms MAK and the Chairman held the view that an increase in maximum fines for extremely serious OSH offences would achieve greater deterrent effect and raise awareness of employers/ duty-holders to safeguard employees' OSH as well as propel the improvement of OSH performance. DC for L (OSH) shared members' view and advised that the Administration would strive to convey the positive message to the stakeholders during the consultation meetings to encourage the stakeholders to seriously address work safety issues.

Consultation and legislative timetable

73. Mr POON Siu-ping sought information on the consultation on the revised amendment proposal and was concerned how divergent views from the employer and employee sides would be handled.

74. Ms Alice MAK and the Chairman called on the Administration to fully consult the stakeholders, listen to their views and explain to them the revised amendment proposal in detail so as to allay their worries in taking forward the revised amendment proposal.

75. Pointing out that the enacted legislative amendments would be applicable to all trades and industries, Ir Dr LO Wai-kwok and Mr SHIU Ka-fai were concerned whether the Administration had fully

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consulted the stakeholders of various industries, in particular SMEs, in taking forward the revised amendment proposal.

76. Responding to members' concerns and views, DC for L (OSH) advised that LD was launching a new round of consultation exercise to consult relevant stakeholders, including major chambers of commerce and various trade associations (such as Hong Kong Small and Medium Enterprises Association) and relevant labour unions, on the revised amendment proposal. Noting the construction sector's concerns about the proposal, LD would also consult a number of trade associations, labour organizations and professional bodies from the construction industry. The Administration would, taking into account the policy intent of raising the penalties of the OSH legislation, carefully analyze and consider the views received for further refining the legislative amendment proposal, if necessary. Subject to stakeholders' views and progress of law drafting, the Government would submit the Amendment Bill to LegCo as soon as possible and was working towards completing the legislative exercise within the current term of Government for immediate commencement. As a matter of fact, the preparatory work for law drafting had already commenced.

Legal liabilities issue

77. The Chairman was concerned about the shared responsibilities among relevant personnel, including consultancy firms, duty-holders, principal contractors and sub-contractors in the event of occurrence of industrial accidents.

78. DC for L (OSH) advised that the Administration had received views suggesting to legislate on Construction (Design and Management) ("CDM") to hold upstream players like project clients, designers and architects legally liable to workers' OSH. LD noted that most of the developed overseas jurisdictions had not made CDM into laws. As for the few countries (i.e. UK and Singapore) that had recently put such legislation in place, their effectiveness was yet to be assessed. The Development Bureau had issued guidelines on implementation of the concept of safe design in design and planning stage with a view to preventing occurrence of industrial accidents when carrying out constructions projects and conducting building maintenance. AC for L (OS) added that in accordance with the GD provisions for employers and the Factories and Industrial Undertakings (Safety Management) Regulation (Cap. 59AF), employers/contractors should

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assess the potential risks and conduct risk management before commencement of the relevant works.

79. In concluding the discussion, the Chairman called on the Administration to take heed of the views of the employers' side and the labour sector in refining and taking forward the revised amendment proposal as early as practicable.

80. There being no other business, the meeting ended at 5:34 pm.

Council Business Division 2
Legislative Council Secretariat
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