

立法會

Legislative Council

LC Paper No. CB(2)1555/20-21

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by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

**Minutes of meeting
held on Tuesday, 15 June 2021, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon LUK Chung-hung, JP (Chairman)
Hon CHAN Chun-ying, JP (Deputy Chairman)
Hon WONG Kwok-kin, SBS, JP
Hon YIU Si-wing, BBS
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
Dr Hon Pierre CHAN
Hon Vincent CHENG Wing-shun, MH, JP

Member absent : Hon Alice MAK Mei-kuen, BBS, JP

Public Officers attending : Item III
Mr HO Kai-ming, JP
Under Secretary for Labour and Welfare

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

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

Mr Raymond LIANG Lok-man
Assistant Commissioner for Labour (Labour Relations)

Item V

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

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

Dr Eddy NG Kwok-po
Occupational Health Consultant (2)
Labour Department

Dr KONG Hing-kei
Senior Occupational Health Officer (Clinical Services)
Labour Department

Miss Ruby CHU Hoi-shan
Senior Labour Officer (Compensation) (Operations 2)
Labour Department

Mr Kath CHAN Kwok-keung
Senior Labour Officer (Working Hours Policy) 1
Labour Department

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

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

Miss Karena LUK
Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Information paper issued since the last meeting

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

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1166/20-21(01) and (02))

Schedule of regular meetings between July and October 2021

2. Members agreed that regular meetings of the Panel would be held between July and October 2021 as follows:

20 July 2021 at 4:30 pm
24 August 2021 at 4:30 pm
21 September 2021 at 10:45 am
19 October 2021 at 4:30 pm

(*Post-meeting note:* The meeting schedule between July and October 2021 was issued to members vide LC Paper No. CB(2)1193/20-21 on 17 June 2021.)

Regular meeting in July 2021

3. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting on 20 July 2021 at 4:30 pm:

- (a) Greater Bay Area Youth Employment Scheme; and
- (b) Liability to pay wages of employees of subcontractors in building and construction works under the Employment Ordinance.

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

4. At the invitation of the Chairman, the Under Secretary for Labour and Welfare ("USLW") 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.

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(*Post-meeting note*: The speaking note of USLW was issued to members vide LC Paper No. CB(2)1187/20-21 on 16 June 2021.)

IV. Employees' right, benefits and welfare of digital platform workers and casual workers

(LC Paper Nos. CB(2)1166/20-21(03) and (04) and CB(2)1174/20-21(01))

5. At the invitation of the Chairman, USLW briefed members on the rights, benefits and welfare of digital platform workers ("platform workers") and casual workers as well as the measures adopted by the Labour Department ("LD") in assisting relevant persons to clarify their relationship with the service companies, as detailed in the Administration's paper.

6. Members noted an information note entitled "Employee's right, benefits and welfare of digital platform workers and casual workers" prepared by the Legislative Council ("LegCo") Secretariat.

Employees' rights, benefits and welfare of digital platform workers and casual workers

7. In the light of the growing popularity of "gig economy" in recent years and the fact that more and more people had switched to working as gig workers/digital platform workers and taken up jobs through digital platforms or applications, Mr POON Siu-ping expressed disappointment at the lack of corresponding government policies in safeguarding the employees' rights and benefits of these workers. Mr POON asked whether the Administration would make reference to overseas practice and commence relevant study with a view to drawing up policies or guidelines on the protection of digital platform workers as appropriate.

8. Pointing out that more than 10 work accidents involving digital platform workers engaged in food delivery had been reported in 2020, Mr KWOK Wai-keung and Mr Vincent CHENG expressed concern about the protection of rights and benefits of digital platform workers. Referring to paragraph 6 of the Administration's paper, Mr CHENG sought clarification as to the obligations in respect of the statutory employment entitlements of those workers when there existed in essence an employment relationship between the contractual parties, even if they were labelled as self-employed persons ("SEPs") under the contract or agreement. Mr KWOK held the view that there existed in essence an employer-employee

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relationship between the platform companies and the platform workers, although the latter were very often labelled as SEPs. Mr KWOK highlighted that some overseas jurisdictions, including Spain and the United Kingdom, had introduced legislative amendments to give effect to the employment status of digital platform workers. The Deputy Chairman enquired whether LD would handle employees' claims lodged by digital platform workers who sustained injuries from work accidents. Having regard to the significant increase in the number of digital platform workers, Mr CHENG asked whether the Administration would consider drawing up guidelines for the protection of digital platform workers.

9. In response to members' views and concerns, USLW advised that the Employment Ordinance (Cap. 57) ("EO") covered a comprehensive range of employment protection and benefits for every employee engaged under a contract of employment. There was no one single conclusive test to distinguish an "employee" from a "contractor or SEP". In differentiating these two identities, all relevant factors of the case should be taken into account, such as whether a person had control over work procedures, working time and method, and/or was free to hire helpers to assist in the work, ownership and provision of work equipment, tools and materials, and whether a person had to bear financial risk over business. There was no hard and fast rule as to the weight of a particular factor, which would be subject to the facts and circumstances of each case. In case of dispute, the final decision would rest with the court. Any persons who had entered into a contract of self-employment with the employer involuntarily and wished to file employment claims could approach the branch offices of the Labour Relations Division ("LRD") of LD for enquiries. LD would assist them to clarify their status with the other contractual party by taking into account relevant factors and provide conciliation service for those involved in disputes of false self-employment. If no settlement could be reached between both parties after conciliation, the case would be referred to the Labour Tribunal ("LT") for adjudication at the request of the claimant.

10. Regarding employees' compensation, USLW advised that if the contractual parties were in dispute over the existence of employment relationship, the Employees' Compensation Division of LD would endeavour to assist by clarifying with the injured employee his/her status as an employee and explaining to both parties the requirements under the Employees' Compensation Ordinance (Cap. 282) ("ECO"). If the dispute could not be resolved with LD's assistance, the injured employee would be referred to seek legal aid and the case would be determined by the court.

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11. USLW further advised that from 2018 to 2020, LD received two complaints involving platform workers who suspected that they were deprived of labour rights and benefits by means of false self-employment. Upon investigation, no concrete evidence was found to establish the employment relationship between both parties. USLW added that although the status of individual platform workers was clarified through litigation in some overseas countries, whether the court's judgment would be applicable to all the platform workers remained to be seen. Nevertheless, the Government would keep in view overseas development in this respect.

12. The Chairman expressed grave concern about the lack of employment protection for digital platform workers, including the applicability of statutory minimum wage and coverage of labour insurance. Citing the work arrangements of platform workers who took orders on digital platforms to engage in food delivery as an example, the Chairman cast doubt about whether these workers who were very often labelled as SEPs had genuine control over the work procedures, location of workplaces and hours of work. He considered that these workers were to a large extent under the control or supervision of the platform companies to assign job orders. As such, there existed in essence an employer-employee relationship between the platform companies and the platform workers. The Deputy Chairman pointed out that platform workers, however, did have some flexibility in the choice and hours of work. The employment relationship between platform workers and platform companies was thus ambiguous. He enquired whether consideration would be given to formulating more express criteria to assist platform workers in clarifying their employment status i.e. whether they were employees or SEPs.

13. Mr YIU Si-wing sought clarification as to the difference between an SEP and a freelance worker. In his view, the Administration should provide clear criteria for defining an SEP and guidelines for contractual parties in drawing up the contract terms and conditions so as to avoid misunderstanding and disputes.

14. In response, USLW reiterated that there was no hard and fast rule as to the factors for distinguishing an "employee" from a "contractor or SEP". It should be noted that court judgments remained the sole authority for the interpretation of provisions of the law. The existing guidelines were based on court judgments, which had taken into consideration a series of factors in determining whether a worker was an "employee" or a "contractor" based on facts and individual circumstances.

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15. In the light of the increasing number of casual workers taking up fragmented work, the Deputy Chairman asked whether the Government would, similar to the practice in some overseas countries, consider expanding the scope of protection under EO to cover these workers as well.

16. USLW responded that the Government noted that different jurisdictions had shown concerns on the development of digital platform work. A number of countries or economies had commenced their study on the protection for workers (including freelancers and platform workers) and obligation of platform companies under this emerging mode of work arrangements while in the meantime drawing up relevant policies or proposals. Yet, there were divergent policies and directions in dealing with the protection for platform workers by different jurisdictions where litigations on their employment status were not uncommon. The Government would keep in view the development in this respect.

Insurance coverage

17. Given that digital platform workers were currently not covered by employees' compensation insurance ("ECI"), Mr YIU Si-wing expressed concern about work safety of these workers and their liabilities arising from work accidents. Drawing reference to the practice of the tourism trade where tourist guides / tour escorts were subsidized by travel agencies to take out employment insurance policies, Mr YIU asked whether the Administration would consider liaising with platform companies and taking out employment and indemnity insurance collectively on behalf of platform workers. Mr SHIU Ka-fai pointed out that platform workers might take up multiple jobs at a time, it would be more appropriate for the Government to spearhead taking out work-related insurance policies for platform workers.

18. The Chairman said that he did not subscribe to the view that platform workers should take out work-related insurance on their own accord. The Chairman drew members' attention to the affirmation of employment relationship between platform companies and platform workers in some overseas countries, including Spain, and the trend of regulating digital platform work. In his view, the Government should consider regulating platform companies, including making it mandatory for platform companies to take out work-related insurance policies for platform workers.

19. In response to members' concerns and views, USLW said that the Government welcomed individual industries to work out the arrangement for taking out work-related insurance policies for their service contractors.

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While the Government was committed to ensuring that statutory rights and benefits of employees were duly protected, it was at the discretion of platform companies to take out relevant insurance for their service contractors. USLW appealed to the platform workers to approach LD for assistance if they were involved in disputes of false self-employment with platform companies in relation to compensation issues of work injury.

20. Pointing out that platform workers, such as those taking orders for food delivery, might sometimes need to use their own vehicles, such as motorcycles, when performing the jobs, Mr SHIU Ka-fai expressed concern that it might give rise to problem of insurance coverage and liability in the event of traffic accidents if the vehicles concerned had not been registered for commercial use. Mr SHIU called on the Government to step up its publicity effort in this regard. USLW advised that vehicle owners would need to bear the legal consequences for fraudulent applications and misrepresentation of facts when making application for motor vehicle registration and renewal.

Consultation services and assistance

21. Mr POON Siu-ping sought information on the provision of consultation and conciliation services by LD's LRD for persons involved in disputes of false self-employment in the past years, including the respective numbers of cases that were settled through conciliation and referred to LT for adjudication.

22. Assistant Commissioner for Labour (Labour Relations) responded that among some 43 000 employment claims received by LD's LRD during the period from January 2018 to May 2021, 428 claims (i.e. around 1%) involved allegation of false self-employment. Of the 428 claims, 192 cases (i.e. around 45%) were settled after conciliation service of LD's LRD and 229 cases had been referred to either LT or the Minor Employment Claims Adjudication Board for adjudication. On the whole, 328 cases (i.e. around 77%) were concluded with settlement or sum awarded, 42 cases (i.e. around 10%) were being processed, and 58 cases (i.e. around 14%) could not be pursued further or had been withdrawn. In response to the Chairman's follow-up enquiry, USLW advised that the Government did not maintain the relevant statistics on employment claims in relation to online platform work. The Chairman called on LD to proactively assist the digital platform workers involved in labour disputes.

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Enforcement action

23. Mr Wilson OR sought information on the enforcement action taken by LD to safeguard the statutory rights and benefits of eligible employees in the past years, including the number of workplace inspections and whether prosecutions had been initiated.

24. Assistant Commissioner for Labour (Employees' Rights and Benefits) responded that LD's Labour Inspectors actively conducted inspection of workplaces of various industries to check employers' compliance with relevant labour laws. The respective numbers of establishments, including platform companies, covered in special enforcement operations targeting false self-employment conducted by Labour Inspectors from 2018 to 2020 were 449, 423 and 366, and these enforcement actions had not led to prosecution in relation to false self-employment.

Survey on platform workers and review of labour legislation

25. Mr Wilson OR and Mr Vincent CHENG expressed grave concern about the lack of statistical data of digital platform workers and corresponding policies in safeguarding the rights and benefits of platform workers. Mr CHENG asked whether the Government would consider conducting a survey on platform workers.

26. USLW advised that LD would explore with the Census and Statistics Department on the feasibility of conducting a Thematic Household Survey on the working conditions of platform workers in Hong Kong. In response to Mr POON Siu-ping's follow-up enquiries about the timeframe of the survey and relevant roadmap, USLW said that the Government would revert to the Panel on the subject when more details were available.

27. Expressing grave concern about the protection for platform workers, Mr Wilson OR strongly requested the Administration to conduct a review of the labour legislation in relation to SEPs in the light of the development of digital platform work and revert to the Panel on the review timeframe and roadmap as early as practicable.

28. Echoing a similar request, Mr KWOK Wai-keung considered it imperative to strengthen the regulation of digital platform work and combat false self-employment of platform workers so as to keep abreast of the development of digitalization in Hong Kong. Mr KWOK called on the Labour and Welfare Bureau/LD to work collaboratively with relevant policy bureaux and government departments in conducting a study in this respect.

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29. USLW responded that the Government noted members' concerns and views and would keep in view the development of digital platform work. LD was committed to protecting the rights and benefits of employees under EO and ECO and strengthening the inspection efforts against false self-employment.

Member's motion

30. The Chairman said that Mr KWOK Wai-keung had indicated his intention to propose a motion under this agenda item. He ruled that the motion was directly related to the agenda item. Members agreed that the motion should be proceeded with.

Motion moved by Mr KWOK Wai-keung

31. Mr KWOK Wai-keung moved the following motion:

"隨住數碼化的加深，數碼平台(Digital Platform)在全球急速興起，人們借助各類型的平台購買服務及接單工作的生活成為常態，形成零工經濟(Gig economy)。在疫情下，食物外送平台更是在全球層面上急速增長。然而，香港作為全球最發達地區之一，政府更是聲稱要大力推動創科發展，政府卻對以上變化帶來的勞動關係改變、新形態經濟的發展、新形態工作者的保障等問題「無認識、無研究、無方向」，落後於全球大部分的先進地區，情況極不理想。因此，事務委員會要求政府就為數碼平台工作的零工的勞動身份及權益保障作研究，儘早制定政策應對因零工經濟發展對現行勞動關係及勞工保障的衝擊。"

(Translation)

"With the further development of digitalization, digital platforms have sprung up across the globe. It has become a norm for people to use various types of platforms to purchase services and take orders for work in their lives, thus giving rise to the gig economy. Amid the epidemic, food delivery platforms have even grown rapidly at the global level. However, notwithstanding the fact that Hong Kong is one of the most developed regions in the world and the Government has also claimed that it would vigorously promote the development of innovation and technology, the Government has 'no understanding, no study and no direction' in respect of the issues brought about by the above changes, such as the changes in labour relations, development

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of new forms of economy and protection for workers with new patterns. This lags behind most of the advanced regions in the world and the situation is highly undesirable. As such, this Panel requests the Government to conduct studies on the employment status of casual workers on digital platforms and protection for their rights and benefits, with a view to formulating policies as early as practicable for addressing the impact on the existing labour relations and labour protection arising from the development of the gig economy."

32. The Chairman put Mr KWOK Wai-keung's motion to vote. The Chairman said that all members present unanimously voted for the motion and declared that the motion was carried.

V. Report on the Consultancy Study on Relationship between Notified Workplace Deaths and Work Condition
(LC Paper Nos. CB(2)1166/20-21(05) and (06))

33. At the invitation of the Chairman, USLW briefed members on the key findings of the Study on Relationship between Workplace Deaths and Work Condition ("the Study") undertaken by the Occupational Safety and Health Council ("OSHC"), and LD's observations on the matter, as detailed in the Administration's paper.

34. Members noted an information note entitled "Relationship between notified workplace deaths and work condition" prepared by the LegCo Secretariat.

Study findings

35. The Deputy Chairman noted with concern that of the 200 workplace cardiovascular and cerebrovascular diseases ("CCVDs") death cases studied by OSHC, the majority of the cases with the relevant information provided showed that the deceased workers lacked physical activities. The Deputy Chairman asked whether the Administration would strongly encourage employers to make arrangement for their employees to do some exercises during working hours as a preventive measure for sudden death at work which might be related to CCVDs, and also consider requiring employers to arrange health check-up for their employees. Citing the Colorectal Cancer Screening Programme which subsidized Hong Kong residents aged 50 to 75 to undergo screening tests for the prevention of colorectal cancer in the private healthcare sector, the Deputy Chairman further enquired whether the Government would likewise consider subsidizing Hong Kong residents for

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undergoing medical check-up to identify the existence of certain common chronic diseases.

36. Deputy Commissioner (Occupational Safety and Health) ("DC(OSH)") responded that in the light of the Study findings, LD considered it imperative to strengthen, in the workplace setting, the awareness of employers and employees on the risk factors associated with CCVDs and the importance of their proper management and intervention. In effect, LD, OSHC and the Department of Health ("DH") would jointly promote the importance of physical and mental well-being at workplace and the importance of early identification of risks associated with developing CCVDs so that timely intervention could be taken. The enhanced initiative would initially target security guards and construction workers, as these two occupations contributed about 40% of the cases under the Study. A high-level Working Group was planned to be set up under OSHC with participation of LD, DH and major employer and employee stakeholder organizations (e.g. Hong Kong Association of Property Management and Hong Kong Construction Association) to take forward the initiative. In relation to proper CCVD management, the initiative targeting employees would focus on the following aspects: (a) to be made aware of risk factors relevant to CCVD prevention; (b) to practise a healthy lifestyle to prevent or manage CCVDs; and (c) to undergo regular medical check-up in order to identify the existence of any chronic cardiovascular conditions, so that early diagnosis and timely treatment could be arranged. Through the initiative, identified cases would be referred to District Health Centres or the Hospital Authority's General Outpatient Clinics for follow up.

Working hours

37. Mr POON Siu-ping expressed concern about the majority of workplace sudden death cases were reportedly caused by long working hours. Pointing out that Japan had drawn up the definition of "death from overexertion" for handling cases of sudden deaths of employees suspected to be caused by overexertion at work, Mr POON asked about the Government's work progress on regulating working hours.

38. Mr KWOK Wai-keung held the view that workplace CCVD deaths were related to long working hours. Drawing reference to the promulgation of guidelines to assess "work-relatedness" of workplace CCVD deaths for compensation purpose in Japan and Korea on the basis of working long hours, Mr KWOK asked whether the Government would consider adopting a similar approach to regulate working hours.

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39. USLW advised that the Government sought to improve employees' working hour arrangements by formulating sector-specific working hour guidelines, including those for sectors with relatively long working hours, through LD's industry-based tripartite committees. LD had been following up on the work and making its best endeavour to narrow down differences between the employee and employer sides on the guidelines.

40. Highlighting that the long working hours situation and uncompensated overtime work arrangements were common in various trades and industries, including some professions such as accountants and information technology practitioners, the Chairman said that there was a strong community call for squarely addressing "death from overexertion" over the years. The Chairman expressed disappointment at the conclusion of the Study that work-related risk factors were not prevalently identifiable among the cases studied. Referencing the working hour levels in the guidelines adopted by Japan and Korea, the Chairman pointed out that the Study identified a total of 44 cases (i.e. 22%) that would have been regarded as long working hours in Japan, Korea and Taiwan, which in his view was of significant proportion. The Chairman held a strong view that one should not rule out the importance of the work-related risk factor of long working hours in triggering the workplace CCVD deaths. It was incumbent upon the Government to change the culture of working long hours. To this end, the Government should on the basis of the Study findings conduct further study and identify the relationship between working long hours and deaths from overexertion as well as consider formulating guidelines and include such workplace death cases as compensable as appropriate.

41. In response, USLW said that the Study findings pointed to the direction that multiple risk factors were in play in the development of CCVDs of the studied cases. As such, it would be a complicated matter that certain workplace death cases be attributed to specific work-related factors, such as long working hours, for which employers were liable to pay employees' compensation. That said, the Government would closely monitor the situation and conduct reviews as necessary.

42. DC(OSH) explained that the design of the Study aimed to better understand the characteristics and circumstances of sudden deaths at workplace in Hong Kong. LD subscribed to OSHC's observation supported by international researches that causes of CCVDs were multi-factorial with risk factors related to both work-related and non-work circumstances. As regards the abovementioned 44 cases, the Study revealed that 43 cases were reported to also present personal CCVD risk factors, including known

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history of chronic medical illness and severe atherosclerotic change with 70% to 100% occlusion of major coronary arteries. As such, while not ruling out the possibilities of long working hours being one of the work-related risk factors for developing CCVDs, the great majority of the cases presented non-work and personal factors, such as unhealthy lifestyle, contributing to the chronic pathological change over the years that could have caused the workplace CCVD deaths.

43. DC(OSH) further advised that a high-level Working Group would be set up to promote the importance of physical and mental well-being at workplace and the importance of early identification of risks associated with developing CCVDs so that timely intervention could be taken. On the other hand, under ECO, an employer had to notify the Commissioner for Labour of any fatal case arising from work accident in seven days' time. LD would continue to keep watch on the nature and profile of these cases, and undertake appropriate studies as necessary.

44. While acknowledging the labour sector's efforts in improving the long working hours situation in Hong Kong, Mr SHIU Ka-fai stressed that it was equally important to maintain the competitiveness edge of Hong Kong. In his view, the tremendous livelihood pressure was due to the high rental in Hong Kong. It was inappropriate to pinpoint working long hours as the sole factor for the workplace CCVD deaths and to regulate the working hours by legislative means.

45. USLW responded that of all the 200 workplace CCVD death cases studied, it was observed that the majority of the cases had multiple risk factors which could lead to an increased chance of developing CCVDs. While both work-related factors (such as long working hours) and non-work related risk factors were identified in one-third of the cases, the remaining two-thirds (135 in total) did not present/were not reported with any work-related factors, including 116 cases which only presented personal CCVD risk factors like personal medical history, old age, weight problem, smoking, etc. The Government would set up the above-mentioned high-level Working Group to take forward the initiative of promoting the importance of physical and mental well-being at workplace and the importance of early identification of risks associated with developing CCVDs so that timely intervention could be taken.

Insurance coverage

46. Mr POON Siu-ping expressed concern that in many cases of sudden death of employees who were suspected to be caused by overexertion at

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work, family members of these deceased employees were not entitled to employees' compensation under the existing labour laws because the death was not caused by work accidents. Mr POON enquired whether the Government would consider requiring employers to take out third-party insurance for liability compensation for sudden death of employees at workplaces not caused by work accidents or expanding the coverage of the existing ECI to cover such cases.

47. Senior Labour Officer (Compensation) (Operations 2)/LD said that all employers were required to take out ECI policies to cover their liabilities under ECO and common law. As stipulated in ECO, if an employee sustained an injury or died (including the case of sudden death) as a result of an accident arising out of and in the course of the employment, the employer was liable to pay compensation in accordance with ECO. Subject to the circumstances of individual cases, employers might also take out other insurance policies, including medical or accident insurance policies, as appropriate to protect the interest of the employees and their families. DC(OSH) advised that to further expand the scope of ECO to cover all fatal cases that happened during the period of work irrespective of whether they were caused by work accidents would involve a significant change in the basic principle of employees' compensation. The Government had no plan to make such a change.

48. There being no other business, the meeting ended at 6:24 pm.