

立法會
Legislative Council

LC Paper No. CB(2)1567/20-21
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 20 July 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 Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Hon POON Siu-ping, BBS, MH
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

Members absent : Hon WONG Kwok-kin, GBS, JP
Hon YIU Si-wing, SBS
Dr Hon CHIANG Lai-wan, SBS, 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

Ms Sandy CHEUNG Pui-shan
Principal Assistant Secretary for Innovation & Technology (1)

Mr Charles HUI Pak-kwan, JP
Assistant Commissioner for Labour (Employment Services)

Mr YEUNG Chi-kit
Senior Labour Officer (Employment Information and Promotion)
Labour Department

Item V

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

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

Ms Jade WONG Sin-yee
Chief Labour Officer (Labour Relations)
Labour Department

Mr Sam SUM Kai-wah
Senior Labour Officer (Labour Inspection)
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 Lulu YEUNG
Clerical Assistant (2) 1

Action

I. Information paper issued since the last meeting
(LC Paper No. CB(2)1245/20-21(01))

Members noted that an information paper on "Debarment mechanism applicable to government service contracts engaging non-skilled workers" provided by the Administration had been issued since the last meeting.

Action

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1289/20-21(01) and (02))

2. The Chairman informed members that he and the Deputy Chairman had discussed the Panel's work plan for the period from August to October 2021 with the Administration on 16 July 2021. Members noted that the Panel's list of outstanding items for discussion would be updated accordingly.

Regular meeting in August 2021

3. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 4:30 pm on 24 August 2021:

- (a) Prevention of health hazards associated with standing at work;
- (b) Occupational disease and occupational health situation in the first half of 2021; and
- (c) Review of the coverage of ex gratia payment items under the Protection of Wages on Insolvency Fund.

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 tabled at the meeting.

(Post-meeting note: The speaking note of USLW was issued to members vide LC Paper No. CB(2)1322/20-21 on 21 July 2021.)

IV. Greater Bay Area Youth Employment Scheme
(LC Paper Nos. CB(2)1289/20-21(03) and (04))

5. At the invitation of the Chairman, USLW briefed members on the Greater Bay Area ("GBA") Youth Employment Scheme ("the Scheme") and its latest development, as detailed in the Administration's paper.

Action

6. Members noted an information note entitled "Greater Bay Area Youth Employment Scheme" prepared by the Legislative Council ("LegCo") Secretariat.

Progress of the Scheme

7. Ms Alice MAK sought information on the work types of job vacancies offered by the participating enterprises under the Scheme. The Chairman sought information on the breakdown of job vacancies for the general posts by industries.

8. In response, USLW said that as at 15 July 2021, participating enterprises had offered 2 960 job vacancies, including 1 434 general posts and 1 526 innovation and technology ("I&T") posts. As analyzed by occupational groups, there were 1 559, 678 and 575 job vacancies belonging to the professional, associate professional and manager groups respectively. Job seekers had submitted a total of 9 460 online applications for job vacancies through the Scheme's dedicated website, including 7 554 applications for general posts and 1 906 applications for I&T posts. In classifying these online applications by industry, there were 2 790 applications in the sector of commercial services (29.49%), 953 applications in financial services (10.07%), 638 applications in import/export trade (6.74%), 466 applications in electronic manufacturing (4.93%), 463 applications in other manufacturing (4.89%), 462 applications in real estate (4.88%) and 453 applications in education services (4.79%). That said, the Scheme allowed enterprises to recruit via various channels, and graduates might apply directly to participating enterprises without going through the dedicated website.

9. Mr POON Siu-ping and Mr SHIU Ka-fai expressed support for the Scheme. Mr SHIU welcomed the launch of the Scheme to encourage and support young people to work in the GBA Mainland cities and considered that the provision of monthly allowance to enterprises would provide them with incentive to participate in the Scheme. Both members asked about the number of eligible graduates who had been recruited successfully and the approved amount of the allowance in respect of the 350 preliminary applications for allowance received by the Scheme Secretariat as at 30 June 2021. Mr POON further sought information on the duration of employment period.

10. USLW advised that enterprises were still recruiting graduates to fill job vacancies under the Scheme. Enterprises having successfully recruited eligible graduates might submit preliminary applications for allowance after

Action

the graduates had reported for duty. As at 15 July 2021, the Scheme Secretariat had received 440 preliminary applications for allowance. It was expected that more applications would be received.

11. Assistant Commissioner for Labour (Employment Services) ("AC for L (ES)") added that while the Government would grant a monthly allowance of \$10,000 to the participating enterprises for each graduate engaged under the Scheme for up to 18 months, the employment of the graduates was not limited by the 18-month period. Enterprises could submit preliminary applications for allowance after the graduates had reported for duty. After obtaining approval of their preliminary applications, enterprises could claim the allowance once every three months. Given that most of the graduates had reported duty for less than three months, the amount of allowance approved was not that much.

12. With respect to the 440 preliminary applications for allowance received by the Scheme Secretariat as at 15 July 2021, Mr SHIU Ka-fai sought information on the number of applications approved. AC for L (ES) responded that enterprises should submit the preliminary applications for allowance to the Scheme Secretariat for vetting within seven working days upon commencement of the employment of graduates. So far 227 applications for general posts and 119 applications for I&T posts had been approved.

13. Having regard to the launch of the Scheme from January 2021 and the fact that there were some 2 900 job vacancies offered by enterprises and 18 000 job applications as at 15 July 2021, Mr SHIU Ka-fai considered the 440 preliminary successful applications (i.e. around 20%) too low. Mr SHIU sought explanation in this regard. Pointing out that an applicant might have made several applications, the Chairman sought information on the estimated number of applicants in respect of the 18 000 job applications.

14. USLW responded that successful recruitment of target graduates under the Scheme was subject to a number of factors, including the desire of young people to work in the Mainland cities of GBA, the remuneration package and whether the qualifications of job seekers met the requirements of the job vacancies offered by the participating enterprises. That said, the Government had launched a series of publicity activities to promote the Scheme to target graduates and would continue its work. In response to Mr SHIU Ka-fai's call for conducting a study on the effectiveness of the Scheme, USLW advised that the Research Unit of the Labour and Welfare Bureau ("LWB") would cover this in its study on the Scheme.

Action

15. USLW added that as graduates might apply directly to participating enterprises without going through the Scheme's dedicated website, the total number of some 18 000 job applications under the Scheme was estimated based on the findings of a survey on the participating enterprises conducted earlier. The Labour Department ("LD") did not maintain relevant statistics on the number of applicants.

Response and way forward of the Scheme

16. The Deputy Chairman said that the banking sector had called for increasing the number of quota under the Scheme, having regard to the positive response from the target graduates. It was understood that of some 100 job vacancies offered by the Chinese banks, around 60% of the job vacancies would be filled and the graduates concerned were preparing for their employment in GBA.

17. The Chairman asked whether the Government would adjust the implementation details of the Scheme if the total number of eligible graduates recruited by participating enterprises exceeded the quota of 2 000 places.

18. USLW advised that participating enterprises would be given a monthly allowance for employing eligible graduates if their applications were approved. The Government would consider seeking additional resources if so warranted. AC for L (ES) advised that based on the current progress of recruitment of target graduates under the Scheme, the funding should be sufficient for disbursement of monthly allowance to eligible enterprises.

19. Ms Alice MAK pointed out that participating enterprises had to arrange for the recruited graduates to report for duty on or before 31 August 2021 in order to be eligible for the allowance provided by the Government. She asked whether the Government was confident that all the 2 000 places would be used up. The Chairman enquired whether the Government would consider giving discretion to extend the deadline to cater for the late applications if there were unused places by the deadline.

20. USLW advised that the provision of 2 000 places under the Scheme was an estimate only. The Government would continue stepping up its publicity efforts to promote the Scheme through various channels in order to reach out to more young people and encourage eligible graduates to participate in the Scheme and grasp the career development opportunities in GBA. The Government would monitor the progress of recruitment of graduates under the Scheme.

Action

21. Ms Alice MAK was of the view that should the response of the Scheme be encouraging, the Government should consider continuing and expanding the Scheme in order to benefit more young people. However, in the event that the quota of 2 000 places could not be used up, the Administration should conduct a review of the Scheme so as to understand the reason and the career aspiration of the young people.

22. The Chairman called on the Administration to conduct a qualitative analysis of the Scheme, such as organizing focus group discussion with participants of the Scheme, so as to provide the young people with relevant information and appropriate assistance when working on the Mainland.

23. USLW advised that members' suggestions were noted. LWB would conduct a study on the Scheme. Should similar schemes be launched in the future, this study could serve as a basis for reference.

Supportive measures for eligible graduates

24. The Deputy Chairman was concerned about the provision of support for recruited eligible graduates under the Scheme to work in GBA. He also sought detailed information in respect of the provision of living allowances not exceeding \$1,190 per month to each participating graduate as announced by the Guangdong Provincial Government. USLW clarified that the provision of living allowances to participating graduates would be subject to arrangements of individual Mainland cities in GBA.

25. Regarding the support measures for eligible graduates, AC for L (ES) said that the Government had set up a dedicated website for the Scheme. LD had uploaded details of the Scheme, as well as practical information about working and living in GBA to the dedicated website for reference by the graduates so as to help them prepare for working and living in GBA. In addition, LD's Youth Employment Start had organized three talks since March 2021 by inviting guest speakers to share their experience of working and living on the Mainland (including GBA) with young people who were interested in the Scheme or were preparing for their employment in GBA.

26. AC for L (ES) added that participating graduates stationed in GBA Mainland cities could seek assistance through the Guangdong 12355 Hong Kong and Macao Youths hotline to obtain various information and support on working and living on the Mainland. Hotline staff would refer the graduates to obtain offline follow-up services from youth organizations as the situation warranted. Furthermore, LD would maintain contact with the participants of

Action

the Scheme and would follow up with them to protect their employment rights and benefits under Hong Kong Law as necessary.

27. Mr POON Siu-ping sought information on the number of the first batch of graduates who had departed for Shenzhen as a group and undergone the 14-day centralized quarantine under the arrangement of the Hong Kong Special Administrative Region ("HKSAR") Government. He enquired whether similar arrangement would be made for other eligible graduates participating in the Scheme. Ms Alice MAK was concerned whether the recruited eligible graduates needed to bear the relevant expenses for the quarantine.

28. AC for L (ES) advised that there were 35 graduates in the first batch undergoing the group quarantine arrangement in Shenzhen. With a view to assisting these graduates in understanding the culture, legislation and daily living issues when working on the Mainland so as to better integrate and work in the Mainland cities of GBA, arrangement had been made to engage a training organization to provide the graduates with online training courses during the quarantine period at a hotel in Shenzhen. The HKSAR Government would subsidize the cost for transportation, accommodation and food related to the quarantine. That said, individual participating enterprises might make their own quarantine arrangements for their respective recruited graduates before they started working in GBA.

V. Liability to pay wages of employees of subcontractors in building and construction works under the Employment Ordinance
(LC Paper No. CB(2)1289/20-21(05))

29. At the invitation of the Chairman, USLW briefed members on wage protection afforded to employees engaged in the building and construction works industry ("construction industry") under the Employment Ordinance (Cap. 57) ("EO"), including vicarious liability of the principal contractors ("PCs") and superior subcontractors ("SSCs") to pay wages, and related matters, as detailed in the Administration's paper.

Relevant requirements of the Employment Ordinance

30. Pointing out that multi-level subcontracting was involved in some wage default cases in the construction industry, Mr SHIU Ka-fai sought clarification as to the respective vicarious liability of PCs and SSCs to pay wages of employees of subcontractors ("SCs") in construction industry under EO.

Action

31. USLW stressed that the Government attached great importance to wage protection for employees under EO. Assistant Commissioner for Labour (Labour Relations) ("AC for L (LR)") advised that section 43C of EO stipulated that a PC and SSC(s) engaged in the construction industry were liable to pay the arrears of wages of an employee who was employed by a SC under their supervision. If an employee of the construction industry was owed wages by SC, his employment related wholly to the work of PC and his place of employment was wholly on the site of the building works, PC and every SSC (if applicable) should jointly and severally pay the wages owed to the employee. Such vicarious liability was confined to wages only and was limited to the first two months of the period in respect of which the wages were due. The wages paid by PC and SSCs under their vicarious liability would be a debt due by the direct employer to them, as it remained the ultimate responsibility of the direct employer to effect wages and other employment benefits to his employees. USLW advised that the Government stood ready to explain the relevant provisions to the stakeholders in the industry in detail when necessary.

32. The Chairman considered it imperative to safeguard employees' statutory entitlement to wage payment. To his understanding from the Hong Kong Construction Industry Employees General Union, the problem of wage default in the construction industry was largely attributable to the adoption of the "lowest bid wins" principle in tender evaluation of the public works projects as well as the subcontracting practice. To address such deficiencies in the construction industry, the Chairman called on the Government to consider setting up a mechanism for making direct wage payment to construction workers of public works projects.

33. USLW said that the adoption of the principle of "lowest bid wins" in tender evaluation for works projects in the construction industry was market driven. The different skills involved at various stages of the construction process necessitated the subcontracting of various parts of the works. That said, members' concerns and suggestions would be relayed to the relevant bureau and government departments responsible for public works.

34. The Chairman was concerned about the calculation of the first two months of the period in respect of the wages due to be paid to an employee concerned under section 43C of EO. AC for L (LR) said that according to LD's operational experience, where PCs and SSCs after conciliation agreed to discharge the vicarious liability under EO to pay wages on their SCs' behalf, the amount paid usually covered the first two full months' wages due to the employees.

Action

35. AC for L (LR) further advised that while section 43C of EO came into operation in 1977 to render wage protection to construction workers, the Protection of Wages on Insolvency Fund ("PWIF") was further set up in 1985 to provide a better safety net for employees in general when they were owed wages and other statutory entitlements by their insolvent employers. Moreover, under section 10A of EO, an employee might deem his contract of employment to be terminated by the employer if any wages were not paid within one month from the day on which they became due to him. AC for L (LR) appealed to employees, irrespective of their industries, to approach LD's Labour Relations Division ("LRD") for assistance as soon as possible if they were owed wages by their employers.

36. The Chairman expressed concern that the vicarious liability of PCs and SSCs under section 43C of EO was confined to wages only and would not cover employees' other entitlements, such as leave pay, severance payment and payment in lieu of notice. Echoing a similar concern, Ms Alice MAK remarked that it usually took a long span of time for employees concerned to recover such entitlements by making application to PWIF for ex gratia payment. Ms MAK was gravely concerned that in the light of the prevailing high unemployment rate, the construction workers were very vulnerable and had little bargaining power in the labour market. As such, these grassroots employees tended to continue to work for their employers for a prolonged period of time regardless of being owed wages for more than two months. Ms MAK called on the Government to review the relevant labour legislation, including the Protection of Wages on Insolvency Ordinance (Cap. 380), and make enhancement as appropriate so as to strengthen the protection for employees' rights and benefits.

37. USLW said that the Government would take into account members' views when conducting a review of PWIF. USLW reiterated that EO and PWIF aimed to provide protection to employees who were owed wages. He appealed to those employees who considered that their statutory employment rights and entitlements had been infringed to approach LD for assistance as appropriate.

Scope of application of section 43C of the Employment Ordinance

38. Mr POON Siu-ping expressed disappointment at the Administration's refusal to expand the scope of application of section 43C of EO concerning the liability of a PC and SSCs to pay wages of employees of SCs to other industries, such as the transportation industry.

Action

39. The Chairman said that the Hong Kong Federation of Trade Unions had been calling for expanding the scope of application of section 43C of EO concerning the liability of a PC and SSCs to pay wages of employees of SCs to other industries over a decade. The Chairman expressed disappointment at the lack of progress on the matter over the years.

40. USLW responded that the status of a person engaged in the construction industry as an employee or a contractor was relatively clear and easier to distinguish. Thus, the scope of application of section 43C of EO was confined to the construction industry. That said, he appealed to employees to seek assistance from LD's LRD in resolving labour disputes and employment claims with their employers. If no settlement could be reached between both parties after conciliation, the case would be referred to, depending on the number of claimants and claim amount, the Labour Tribunal or the Minor Employment Claims Adjudication Board for adjudication.

Enforcement work

41. The Deputy Chairman sought information on the number of complaints received by LD's complaint hotline in relation to wage default in the construction industry in the past years as well as average processing time taken for issuing a summons for a wage default case upon receipt of complaint. The Deputy Chairman further asked whether the Administration had compiled a list of unscrupulous employers/contractors who repeatedly failed to pay wages to their employees so as to raise the awareness of construction workers.

42. USLW advised that the time required for investigation and prosecution of a wage default case was determined by a number of factors, such as the complexity of individual cases, and thus the exact time required for investigation and prosecution varied from case to case. Senior Labour Officer (Labour Inspection)/LD ("SLO(LI)") said that in 2020 and 2021 (up to June), the numbers of complaints related to the construction industry handled by LD were 56 and 41 respectively. Labour inspectors would commence investigation within seven days upon receipt of complaints on wage default. Press releases in relation to conviction records on failure to pay wages with the names of defendants disclosed, including those in the construction industry, would be issued, and the conviction records would be uploaded to LD's website for public information for two years. AC for L (LR) further said that while LD did not have a list of unscrupulous employers/contractors, its LRD maintained close contact with individual PCs to share experience on good human resource management practices, such as keeping attendance and wage records, and worksite management practices.

Action

43. Expressing disappointment that no employer who failed to pay wages to his employees had ever been imposed the maximum fine of \$350,000 or sentenced with immediate imprisonment under EO, Mr POON Siu-ping considered that the penalties imposed by the courts for wage offences were on the low side and could not disseminate a clear message on the seriousness of wage default. The Chairman and the Deputy Chairman shared similar concerns. The Chairman raised query as to the effectiveness of the enforcement work against wage offences. Noting that there was a total of 315 convicted summonses against employers in the construction industry for wage offences from 2018 to 2020, Mr POON asked whether such cases were mainly detected during inspections of workplaces or reported by employees concerned. Mr POON further sought information on the inspection work against wage offences.

44. In response to members' views and concerns, USLW advised that while LD would continue to take stringent enforcement actions to tackle the problem of non-payment of wages and initiate prosecution against law-defying employers when there was sufficient evidence, the sentence to be imposed on employers upon conviction would rest with the court.

45. SLO(LI) added that in 2020, labour inspectors carried out 4 851 inspections to construction worksites to check employers' compliance with relevant labour laws. While labour inspectors would actively conduct inspections of workplaces of various industries (including construction sites) to detect wage offences and breaches of other relevant labour legislation, the Government appealed to employees who were owed wages by their employers to lodge complaints with LD.

Protection of Wages on Insolvency Fund

46. Mr POON Siu-ping sought information on the number of applications to PWIF for ex gratia payment from employees engaged in the construction industry in the past few years.

47. AC for L (LR) responded that the numbers of applications to PWIF for ex gratia payment from employees engaged in the construction industry in 2019, 2020 and 2021 (up to June) were 1 154 (i.e. 36.4% of the total number of applications received), 497 (i.e. 16.5%) and 224 (i.e. 12.7%) respectively. The relatively higher number of applications in 2019 was mainly attributable to the insolvency of a large construction company.

Action

48. There being no other business, the meeting ended at 5:55 pm.

Council Business Division 2
Legislative Council Secretariat
21 October 2021