

# 立法會

## *Legislative Council*

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### **Report of the Panel on Manpower for submission to the Legislative Council**

#### **Purpose**

This report gives an account of the work of the Panel on Manpower ("the Panel") during the 2020-2021 session of the Legislative Council ("LegCo"). It will be tabled at the Council meeting of 20 October 2021 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

#### **The Panel**

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining Government policies and issues of public concern relating to labour and manpower planning matters. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 13 members in the 2020-2021 session. Hon LUK Chung-hung and Hon CHAN Chun-ying were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

#### **Major Work**

##### Safeguarding employees' rights and benefits

##### *Alignment of statutory holidays with general holidays*

4. Improving and safeguarding employees' rights and benefits in an equitable manner has always been one of the major areas of concern of the Panel. Since the announcement of the Chief Executive ("CE") in January 2020 that the number of statutory holidays ("SHs") would be increased progressively from the existing 12 days to 17 days to align with the number of general holidays ("GHs"), most

members urged the Administration to expedite the relevant legislative work. At the request of the Panel, the Administration had since November 2020 provided members with an update at each regular meeting on the progress of the proposal to take forward the initiative of increasing progressively the number of SHs.

5. In January 2021, the Panel was briefed on the legislative proposal to increase an SH by one day in every two years such that in eight years' time the total number of SHs would be on a par with that of GHs. Some members criticized that the proposed pace was unduly long. They considered that it was incumbent upon the Government to eliminate the disparity in the number of days between SHs and GHs, which was unfair to those employees currently being granted SHs only. These members strongly called on the Administration to advance the legislative timetable for aligning the number of SHs with GHs. Some other members, however, stressed that the Administration should strike a proper balance between employers' affordability and employees' rights and benefits in taking forward the legislative proposal. These members cautioned that further enhancement of employees' rights and benefits amid the COVID-19 epidemic would put undue pressure on the business operation of employers. Some members also pointed out that some employers of foreign domestic helpers ("FDHs") were gravely concerned about the need to take up household chores themselves or rearrange activities while their FDHs were on additional SHs.

6. The Administration advised that it noted the divergent views in the community over the legislative proposal. Taking into consideration the concerns of the employers, particularly those medium, small and micro enterprises and also households employing FDHs, the Administration considered it appropriate to increase progressively the number of SHs, i.e. increase one day of SH every two years in a progressive manner.

7. The Administration subsequently introduced the Employment (Amendment) Bill 2021 into LegCo on 17 March 2021. The Bill sought to amend the Employment Ordinance (Cap. 57) ("EO") to add five GHs that were currently not SHs, progressively from 2022 to 2030, to the list of SHs. Upon completion of scrutiny by the Bills Committee formed to study the Bill, the Bill was passed at the Council meeting of 7 July 2021. The first additional SH would be the Birthday of the Buddha which would fall in May 2022.

#### *Extension of statutory maternity leave*

8. The Employment (Amendment) Ordinance 2020 which increased the statutory maternity leave ("ML") by four weeks came into operation on 11 December 2020. Employers could apply to the Labour Department ("LD") under the new the Reimbursement of Maternity Leave Pay ("RMLP") Scheme for full reimbursement of the additional four-week ML pay ("additional MLP") that

was required to be paid and had been paid under the Amendment Ordinance. To ensure the effective implementation of the RMLP Scheme, the Administration proposed to create a supernumerary post of Chief Labour Officer ("CLO") (D1) in LD for three years to lead and plan the work of the RMLP Division.

9. Most members expressed reservation about the need for the proposed CLO post, given that the administration of the RMLP Scheme had already been outsourced to a private sector processing agent. These members took the view that the Administration should review the organization and staffing of the RMLP Division and examine critically the viability of absorbing the duties of the proposed CLO post by internal redeployment of staffing resources. Some members also urged the Administration to consider taking up the relevant tasks of the outsourced processing agent on its own in the long run.

10. The Administration advised that while it would not rule out the possibility of implementing the RMLP Scheme on its own, the appointment of the processing agent helped speed up the launch of the RMLP Scheme. Given the scale and new implementation mode of the RMLP Scheme as well as the complexity of the relevant legislative provisions, the proposed CLO post could provide high-level supervision and coordination to ensure effective implementation of the RMLP Scheme. Having regard to members' views and concerns, the Administration subsequently shelved its proposal to create the supernumerary CLO post.

11. The Panel also discussed the implementation of the RMLP Scheme. Members considered that timely processing of applications for reimbursement of the additional MLP was part and parcel of the enhancement of ML benefits. Members were assured that LD would closely supervise and monitor the implementation of the RMLP Scheme to ensure that the processing agent could timely and effectively handle and process applications, and take forward refinement measures for the RMLP Scheme in the light of the operational experience.

#### *Abolition of the "offsetting" arrangements*

12. CE announced in the 2018 Policy Address the enhanced arrangements for abolishing the "offsetting" arrangements under the Mandatory Provident Fund ("MPF") System. Following up its work concerning the abolition of the "offsetting" arrangements, the Panel had since November 2020 requested the Administration to provide members with an update on the work progress at each regular meeting. Members were advised that to give effect to the proposed abolition, the Administration needed to amend a number of ordinances with provisions relating to the "offsetting" arrangements. Besides, to assist employers to meet the potential severance payment and long service payment liabilities after the abolition of "offsetting" arrangements, the Administration

would have to implement the employers' Designated Savings Account ("DSA") Scheme<sup>1</sup> and Government subsidy scheme to provide a 25-year subsidy to employers.

13. In January 2021, the Panel was briefed on the funding proposal for building the functionalities on the eMPF Platform to support the DSA Scheme, and the development and management of the DSA Information Technology System ("DSA System") in LD. Noting that the eMPF Platform would be fully implemented only until around 2025 at the earliest, some members expressed grave concern about the extended period of time to be taken for the development of the DSA System and its interfacing with the eMPF Platform for implementing the DSA Scheme. Members urged the Administration to compress the lead time for the development of the DSA Scheme for early implementation of abolishing the "offsetting" arrangements.

14. The Administration advised that implementation of the proposed abolition of the "offsetting" arrangements would necessitate highly complicated and controversial amendments of various pieces of legislation as well as formulation of meticulous implementation arrangements, including launching the employers' DSA Scheme on the eMPF Platform as well as formulating the operational details of the Government subsidy scheme. While it was expected that the eMPF Platform could be activated in 2023, it would only come into full operation around 2025 subject to the orderly transition by MPF trustees in batches starting from 2023. As the process of transition would take about two years, the Government planned to implement the abolition of the "offsetting" arrangements upon full implementation of the eMPF Platform in 2025. That said, the Administration was working at full steam in the drafting work with the aim to introduce the relevant bills into LegCo in the 2021-2022 legislative year as early as possible. The target was to implement the proposed abolition of the "offsetting" arrangements two years after the passage of the enabling legislation.

#### *Employment protection for digital platform workers*

15. Having regard to the growing popularity of "gig economy" 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, members were concerned about the employees' rights and benefits of digital platform workers. Although platform workers were very often labelled as self-employment persons ("SEPs"), most members considered that there existed in

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<sup>1</sup> Under the DSA Scheme, unless exempted, each employer would be required to make contribution equivalent to 1% of the monthly relevance income of his/her employees to his/her DSA after the abolition of the "offsetting" arrangement. The mandatory contributions in DSA could only be withdrawn for the purpose paying SP/LSP.

essence an employment relationship between the platform companies and the workers, and thus the latter should be entitled to certain employment benefits and employees' compensation protection. There was a view that the Administration should provide guidelines for the parties concerned to draw up the contractual arrangements so as to avoid misunderstanding and disputes over their employment relationship.

16. The Administration advised that EO covered a comprehensive range of employment protection and benefits for every employee engaged under a contract of employment. There was, however, 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. In case of disputes, the final decision would rest with the court. Having said that, LD would provide conciliation service for those involved in disputes of false self-employment.

17. The Panel passed a motion urging the Administration to conduct studies as early as practicable on the employment status of casual workers taking up jobs through digital platforms and protection for their rights and benefits, with a view to formulating policies on labour relations and labour protection arising from the development of the gig economy. The Administration advised that a number of countries or economies had commenced their respective studies 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 Administration would keep in view the development in this respect.

*Employment protection for employees engaged under employment contracts with short duration or working hours*

18. Members noted that as revealed from the latest findings of the Thematic Household Survey on employees engaged under employment contracts with short duration or working hours ("SDWH") conducted by the Census and Statistics Department ("C&SD") between October 2019 and January 2020, there were some 203 500 SDWH employees, representing 6.9% of the employees in the non-government sector. Most members expressed concern that SDWH employees were not entitled to full protection and benefits under EO if they did not meet the continuous contract requirement of working for 18 hours per week continuously

for the same employer for four weeks (the so-called "4-18 requirement"). These members also expressed concern about the trend of employers scheduling the pattern of working hours of their part-time employees in such an odd way that the latter would not be entitled to protection and benefits that were accorded to continuous contract employees. The Panel passed a motion urging the Administration to review the definition of "continuous contract" under EO as soon as possible, and proposing that employees who had worked for a specified number of hours within four weeks (e.g. 72 hours) for the same employer should be entitled to full employment benefits under EO; whereas those who had worked for less than the specified hours within four weeks should be provided with employment benefits on a pro-rata basis.

19. As advised by the Administration, the Labour Advisory Board ("LAB") had since May 2013 deliberated in detail the pros and cons as well as practicability of various approaches to deal with the continuous contract requirement under EO at its several meetings but no consensus had been reached on the subject. LAB then decided that the discussion on the subject be suspended and be brought up at an appropriate juncture. The Administration would take into account members' views and C&SD's latest survey findings on SDWH employees, and continue to study the subject which was targeted for discussion at LAB meetings in 2022.

#### Resolution of labour disputes

20. The Minor Employment Claims Adjudication Board ("MECAB") was established within LD under the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) to adjudicate employment claims with a claim amount not exceeding \$8,000 per claimant and made by not more than 10 claimants. Any employment claims with claim amount or number of claimants higher than the jurisdictional limit of MECAB would be adjudicated by the Labour Tribunal ("LT"). In January 2021, the Panel was consulted on the proposal to increase the jurisdictional limit of MECAB from \$8,000 per claimant to \$15,000 per claimant so as to adjust the caseloads of MECAB and LT. Members were pleased to note that the Administration had taken into account members' views on further increasing the jurisdictional limit of MECAB when the Panel was last consulted in June 2019 on the proposal to increase the limit from \$8,000 per claimant to \$12,000 per claimant. While welcoming the revised proposal, some members called on the Administration to conduct regular review of the jurisdictional limit given that the current limit of \$8,000 per claimant had not been revised since 1997. The Administration agreed to consider whether there was room for making further improvement to the review mechanism. The Administration tabled the Minor Employment Claims Adjudication Board Ordinance (Amendment of Schedule) Notice 2021 at the Council meeting of 14 July 2021, which came into operation on 17 September 2021.

21. In light of the worsening employment market, members considered that LD should provide timely conciliation service to assist employers and employees to resolve labour disputes and claims arising from EO and the employment contracts. The Administration advised that employees' rights and benefits were protected under EO. LD had been proactive in providing conciliation service to both employers and employees to help resolve labour disputes. If no settlement could be reached between both parties after conciliation, either party could, depending on the number of claimants and claim amount, lodge a claim with LT or MECAB for adjudication.

### Regulation of employment agencies

22. Following the coming into operation of the Employment (Amendment) Ordinance 2018 to strengthen the regulation of employment agencies ("EAs"), members discussed the implementation of the Amendment Ordinance to, among others, tackle the public concerns over unscrupulous EAs arranging FDHs to take out loans from financial institutions and inducing FDHs to change employers frequently within a contract period (commonly known as "job-hopping"). Having regard to the persistence of the COVID-19 epidemic and the fact that the supply of FDHs had been greatly affected, members called on the Administration to strengthen its efforts in combating suspected inducement of FDH job-hopping by EAs. Besides, the Administration should provide more information on the regulation of EAs to the public and job seekers, especially FDHs, and remind them of the matters to be noted when choosing an EA.

23. As advised by the Administration, apart from instituting prosecutions against EAs involving offences of unlicensed operation, the Commissioner for Labour might revoke or refuse to issue/renew an EA's licence, or issue warnings for the irregularities detected if an EA breached the relevant Code of Practice. LD had published information on EAs' malpractice track records (including records of conviction of overcharging and unlicensed operation, revocation/refusal of renewal of licence, and issue of written warnings, etc.) on its website to help job seekers and employers make informed decision when engaging EA services. If FDHs were suspected of job-hopping, the Immigration Department would refuse their employment visa applications and require them to leave Hong Kong.

### Legislative proposals to enhance employees' compensation protection

#### *Levels of compensation and payment under employees' compensation-related ordinances*

24. According to the established mechanism, the levels of compensation under the Employees' Compensation Ordinance (Cap. 282) ("ECO"), the

Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) and the Occupational Deafness (Compensation) Ordinance (Cap. 469) ("the three Ordinances") were adjusted every two years where appropriate. In January 2021, the Panel was consulted on the Administration's proposal to increase the amounts of a total of 18 compensation items under the three Ordinances. Some members were concerned that the biennial adjustment of the levels of compensation under the three Ordinances lagged behind the actual economic situation and hence caused financial hardship to the eligible claimants. They urged the Administration to review the levels of compensation on an annual basis so as to ensure that the payments of statutory compensation and other benefits to eligible claimants could catch up with the inflation.

25. The Administration advised that apart from making upward adjustments to the amounts of most compensation items with reference to the established economic indicators, special adjustments had also been proposed to the amounts of certain compensation items having regard to the actual needs of the eligible claimants and the latest figures available in the current proposals. The three proposed resolutions which sought to increase the amounts of a total of 18 compensation items under the three Ordinances were approved by LegCo at the Council meeting of 17 March 2021 and took effect from 15 April 2021.

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

26. Following the experience with Super Typhoon Mangkhut in 2018, the Administration conducted a review of the handling mechanism for future super typhoons (or other natural disasters of a substantial scale). Having considered that employees commuting to or from work during "extreme conditions" could be subject to very dangerous circumstances, the Administration put forward its proposal to amend ECO to extend its coverage to employees commuting to or from work under "extreme conditions", allowing the relevant employees to have employees' compensation 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.

27. Members were supportive of the legislative proposal. Given that the work arrangements under "extreme conditions" stipulated in the revised "Code of Practice in Times of Typhoons and Rainstorms" were not mandatory, members took the view that the Administration should formulate specific measures to further improve the work arrangements under "extreme conditions" so as to better protect employees' rights and benefits. Some members were concerned about the possible impact on the premium level of employees' compensation insurance that might result from the legislative proposal.



28. The Administration advised that making reference to the experience of extending the employees' compensation 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 premium for employees' compensation insurance should not be significant. The Administration further advised that employers should formulate prior work arrangements under adverse weather conditions in consultation with their employees.

29. The Administration introduced the Employees' Compensation (Amendment) Bill 2021 into LegCo on 17 March 2021 to give effect to the above proposal, which was passed at the Council meeting of 28 April 2021.

### Employment services

#### *Employment support programmes*

30. The local labour market deteriorated sharply in 2020 as the COVID-19 epidemic dealt a heavy blow to the Hong Kong economy. Members were gravely concerned about the notable pressure of unemployment and underemployment faced by employees in various sectors. Members considered that the Administration should provide timely and specific employment support which catered for various needs of job seekers, particularly those with special employment difficulties. According to the Administration, LD raised the ceiling of the on-the-job training allowance payable to employers under three employment programmes for the elderly and middle-aged, young people, and persons with disabilities respectively, so as to further encourage employers to hire these job seekers. Besides, LD also introduced retention allowance for eligible employees participating in the programmes.

31. Members urged the Administration to step up the publicity in respect of the three employment programmes to encourage more employers to participate in the programmes and adopt measures to prevent employers from dismissing employees after drawing down the allowances. Members also called on the Administration to evaluate the effectiveness of the provision of a retention allowance to eligible employees of the three employment programmes. The Administration advised that participating employers should undertake not to displace existing staff of the same position with an employee newly placed under any of the three programmes. As the programmes aimed to encourage employers to hire and train up the target employees through the provision of an allowance, provision of on-the-job training was an integral part of the programmes. The Administration had also been closely monitoring the retention status of those placed into employment under the employment programmes to forestall abuse of the on-the-job training allowance, and an

evaluation of the provision of a retention allowance would be conducted in due course.

32. Members were concerned that LD had cancelled a number of physical job fairs and recruitment interviews because of the need for practising social distancing measures amid the COVID-19 epidemic. Members called on LD to make endeavours to assist job seekers in finding employment through other channels to provide employment and recruitment services. The Administration advised that apart from providing employment support services via the Interactive Employment Service website and Telephone Employment Service Centre, LD introduced online job fairs and strived to resume the organization of smaller-scale district-based recruitment activities in job centres and recruitment centres when each waves of the epidemic became stabilized.

#### *Greater Bay Area Youth Employment Scheme*

33. The Greater Bay Area Youth Employment Scheme ("the Scheme") was one of the initiatives announced by CE in the 2020 Policy Address to encourage and support university graduates to work in the Greater Bay Area ("GBA") Mainland cities. Some members expressed concern about the attractiveness of the Scheme to the enterprises in GBA as they would need to offer participants from Hong Kong a monthly salary of not less than \$18,000, which was higher than that of similar posts for fresh graduates in GBA. Some members suggested that consideration be given to expanding the scope of target participants to graduates who had obtained their bachelor degrees a few years ago and to young people who were not degree holders, as well as increasing the quota of 2 000 places if the response to the Scheme was positive. Members also called on the Administration to provide adequate support measures for participating graduates to live on the Mainland.

34. The Administration advised that participating enterprises should engage the target graduates in Hong Kong (i.e. holding bachelor's degrees or above awarded in 2019 to 2021) under Hong Kong law, offer them a monthly salary of not less than \$18,000 and station them in the Mainland cities of GBA to work and receive on-the-job training. The Scheme targeted fresh university graduates as they would face greater difficulties in entering the labour market due to their limited or non-existent work experience. To encourage enterprises to participate in the Scheme and to subsidize their extra expenses for employing and training the graduates, participating enterprises would be given a monthly allowance of \$10,000 for each graduate engaged for up to 18 months. As for the participating graduates, LD had uploaded details of the Scheme onto a dedicated website for the Scheme, as well as practical information about working and living in GBA Mainland cities to help the graduates prepare for their employment therein. Members were further advised that it was premature to

determine whether to launch another round of the Scheme. The Administration would monitor closely the implementation of the Scheme, review it in a timely manner, and adjust the implementation details when necessary.

### Wage issues

#### *Impact of COVID on the wage level and the statutory minimum wage*

35. The Panel was briefed on the major findings in the 2020 the Annual Earnings and Hours Survey, which was conducted by C&SD to collect wage, employment and demographic information of employees. Members were much concerned about the impact of the COVID-19 epidemic on the wage levels of employees from industries that were severely affected. The Administration advised that as revealed from the survey findings, the epidemic did have an adverse impact on the wages and working hours of employees, particularly if no-pay leave arrangement had been agreed between employers and employees during the survey period. Specifically, industries employing a large number of low-skilled employees, such as food and beverage services, were much affected adversely.

36. Some members expressed dissatisfaction that the Government had accepted the recommendation of the Minimum Wage Commission ("MWC") on maintaining the prevailing Statutory Minimum Wage ("SMW") rate at \$37.5 per hour. These members were concerned that the frozen SMW rate would make it difficult for the vulnerable employees to make ends meet, especially at times of the deteriorating economy. There was a call for the Administration to review the SMW rate annually such that the wage level of low-income workers could catch up with inflation and enable them to meet their living expenses.

37. Separately, the Panel was briefed by Hon LUK Chung-hung on his proposed Member's Bill to amend the Minimum Wage Ordinance (Cap. 608) ("MWO") such that a review of the SMW rate should be conducted on an annual basis. Some members shared Mr LUK Chung-hung's concern that the existing biennial review of the SMW rate had caused considerable financial hardship to the grassroots workers because of the time lag in wage adjustment. Some other members, however, considered that it might not be an opportune time to make change to the existing review cycle of the SMW rate in view of the deteriorating economy amid the COVID-19 epidemic.

38. The Administration advised that in making its recommendation about the next SMW rate, MWC would consider a host of socio-economic factors, the labour market conditions and price forecasts, as well as other relevant factors that were pertinent to the review but might not be quantifiable. MWC would also undertake extensive and intensive consultations to take full account of the views

of various sectors on the review of the SMW rate. As a whole, the process would last about two years, and MWC would submit the next recommendation report about the SMW rate by 31 October 2022 the latest according to MWO.

*Ex gratia payment under the Protection of Wages on Insolvency Fund*

39. At the request of the Panel, the Administration briefed members on the review progress of the coverage of the Protection of Wages on Insolvency Fund ("PWIF"). Noting that the PWIF Board had kick-started a review of PWIF since 2013, members were gravely concerned about the slow progress of the review. Members also expressed concern that the current scope of PWIF was inadequate to fully protect the interests of employees, for example, the ex gratia payment from PWIF did not cover the outstanding employers' contribution to MPF for their employees. They considered that the review of PWIF should include the scope of and the ex gratia payment items under PWIF, so as to accord the employees concerned with better coverage. Besides, in view of the stable and sound financial position of PWIF, members urged the Administration to consider raising the payment ceilings of various ex gratia items under the Fund.

40. The Administration advised that given the proposal to abolish the "offsetting" arrangements under the MPF System would have far-reaching impact on the amount of ex gratia payment on severance payment payable by the Fund and its financial position, the PWIF Board came to a view in December 2017 that the review should be suspended and that further discussion of the review should resume when there was a concrete progress on the proposed abolition arrangements in order to have more informed assessment of the relevant impact on the Fund. The Administration further advised that the PWIF Board was recently briefed on the latest development of the proposal to abolish the "offsetting" arrangements. Having considered the details of the proposed abolition arrangements, the PWIF Board decided to resume the review of the coverage of ex gratia payment items under the Fund. Upon completion of the review by the PWIF Board, the Administration would consult LAB on the outcome of the review and the proposals by early 2022. It would then report to the Panel within the first half of 2022 with a view to introducing the proposed amendments to the Protection of Wages on Insolvency Ordinance (Cap. 380) into LegCo within the same year.

*Liability of contractors to pay wages*

41. Section 43C of EO stipulated that a principal contractor and superior subcontractor(s) engaged in the construction industry were liable to pay the arrears of wages of an employee who was employed by a subcontractor under their supervision. To address the problem of wage default cases involving vicarious liability to pay wages, most members called on the Administration to

expand the scope of application of section 43C of EO to other industries with subcontracting arrangements, such as the transportation industry. According to the Administration, 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 section 43C of EO was confined to the construction industry.

### Occupational safety at workplaces

#### *Legislative proposals to enhance work safety*

42. The Panel continued to follow up with the Administration on the progress of the legislative amendment exercise to raise the penalties of occupational safety and health ("OSH") legislation. As the last revision to the penalties under the OSH legislation was made over 20 years ago, members were in support of the proposal to increase the penalties of the general duty ("GD") provisions in OSH legislation so as to increase the deterrent effect for non-compliance with the relevant legislation and enhance occupational safety of workers.

43. As advised by the Administration, in view of the grave concern expressed by employers about the original proposal to pitch the maximum fine at 10% of the turnover of the convicted entity without a cap, it had revised the proposal to impose a fine capped at \$50 million. Some members, however, held a strong view that the proposed maximum fine amount of \$50 million for violation of employer GD provisions under the revised proposal remained too high. It was pointed out that the business sector had grave concern that the proposed penalty level would adversely affect the operation of the small- and medium-sized enterprises and the business environment. The Administration stressed that the maximum fine 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.

44. Pointing out that no employer who was convicted of violating the OSH legislation had so far been sentenced with immediate imprisonment term, most members supported the revised legislative proposals and urged the Administration to expedite the relevant legislative work so as to increase the deterrent effect. The Administration advised that to strengthen the deterrent effect of the penalties, LD had been making efforts to assist the court to determine appropriate sentences, in particular to impose higher penalties on duty holders for serious cases. Although the amount of fines imposed by the court had on the whole increased slightly in recent years, the actual penalties were still on the low side and did not have sufficient deterrent effect to propel the improvement of OSH performance. The Administration believed that the Judiciary would accordingly impose heavier penalties on OSH offences following the enactment

of the relevant bills. Subject to the progress of law drafting, it aimed to complete the legislative amendment exercise within the term of the current Government.

45. Another initiative being put forward by the Administration to enhance the construction workers' OSH was to refine the statutory notification mechanism for construction works. Pursuant to the Construction Sites (Safety) Regulations (Cap. 59I), contractors responsible for construction works lasting for six weeks or more and engaging more than 10 workers should notify LD of the relevant information within seven days after commencement of the works. The Panel was consulted on the Administration's legislative proposal to expand the scope of notification to four types of relatively higher risk construction works involving work duration of less than six weeks or employment of not more than 10 workers. According to the Administration, the proposal would enable LD to identify higher-risk workplaces for early inspection.

46. Members were generally in support of the legislative proposal, though some members raised concern about the effectiveness of the proposal in preventing the occurrence of construction fatal accidents. Some members were concerned whether LD had sufficient manpower to cope with the additional inspection and enforcement work arising from the revised notification mechanism. The Administration advised that under the proposed revised statutory notification mechanism, LD would be able to obtain the necessary information for risk assessment of the construction works and make arrangement for early inspection to construction sites carrying relatively higher risk. This would help prevent the occurrence of construction accidents. As contractors concerned would be required to notify LD of the construction works, irrespective of whether inspection would be conducted to these worksites, it was believed that the occupational safety performance of the small-scale construction works would be enhanced. Subject to the progress of law drafting, the Administration would introduce the relevant subsidiary legislation into LegCo as soon as practicable.

#### *Occupational safety in construction industry*

47. Noting that the construction industry recorded the highest number of fatalities and accident rate among all industries, members took a strong view that the Administration should investigate thoroughly into the causes of the fatal accidents as well as draw up preventive measures and take specific enforcement actions against unsafe work practice to ensure the occupational safety of construction workers. Members were also concerned about the work safety of workers undertaking maintenance works on external walls of some buildings which were not conducive to the adoption of common work methods for maintenance work at external walls of these buildings. They urged the Administration to adopt specific measures to reduce risks associated with working at height.

48. The Administration advised that enhancing the OSH performance of the construction industry had always been LD's top priority. The Administration advised that LD had been adopting a risk-based strategy in stepping up inspection and enforcement targeting at the construction industry. LD had also been working closely with the Buildings Department in revising its Practice Notes to require developers when constructing new buildings to provide air-conditioner platforms with suitable guard-rails to facilitate air-conditioner maintenance, and devices to facilitate cleaning and repair at buildings with curtain walls. In addition, the Special Duties Office formed by LD in April 2019 was studying the external wall designs of some existing residential buildings, which might not be conducive to the adoption of common work methods for maintenance work at external walls of these buildings, and identify possible problems so encountered. Given the considerable number of buildings involved, it was expected to take three years to complete the exercise. It would report to the Panel on the study findings and recommendations in due course.

#### Occupational disease and occupational health situation

49. Following up its work concerning the prevention of health hazards at workplaces by the Administration, the Panel received regular updates on the latest occupational disease and occupational health situation.

#### *List of compensable occupational diseases*

50. There were currently a total of 52 compensable occupational diseases prescribed under the relevant labour legislation. Members had time and again urged the Administration to review and update the list of compensable occupational diseases to enhance the protection of employees' occupational health. In view of the COVID-19 outbreak, most members strongly called on the Administration to amend ECO to prescribe COVID-19 as an occupational disease such that employees contracted COVID-19 at work would be entitled to receive employees' compensation.

51. The Administration advised that in considering whether a particular disease should be prescribed as a statutory occupational disease, it adopted an evidence-based approach to assess whether a definite causal relationship existed between the disease and certain types of work, and whether the risk of the disease occurring among the exposed workers was significantly higher than that of the general public. Although COVID-19 was currently not a compensable occupational disease prescribed under ECO, section 36 of ECO stipulated that an employee having contracted a disease not prescribed as an occupational disease could still claim compensation from the employer under the Ordinance if it was an injury or death by accident arising out of and in the course of employment, and

the employer was in general liable to pay compensation under ECO. The Administration was keeping a close watch on the relevant medical and epidemiological data, especially the number of cases originated from work and their industry distribution, as well as the extent of community infection, and would take appropriate actions once there was sufficient relevant information for determining whether to prescribe COVID-19 as a new occupational disease.

#### *Prevention of health hazards at work*

52. Members were concerned that many employees were often required to stand at work with restricted movement. These employees were more prone to contracting various kinds of lower limb musculoskeletal disorders resulting from frequent stress on legs. Members were pleased to note that in response to members' repeated call for further safeguarding employees against the health risks of prolonged standing at work, LD had issued the Guidance Notes on Standing at Work and Service Counter Design ("GN"). Members noted that apart from promotional visits, LD also conducted surprise inspections of workplaces that involved standing work. Enforcement actions would be taken if employers were found to have failed to take appropriate measures in accordance with GN, including taking out prosecution against non-compliant employers where there was sufficient evidence.

53. Given that Hong Kong was getting increasingly hot during summer, members were concerned about the health hazards of heat stroke which employees might be exposed to while working under very hot weather. Members called on LD to step up workplace inspections to ensure that employers had taken appropriate preventive measures against heat stroke to safeguard their employees' occupational health. The Administration advised that in addition to the publicity and promotion to enhance the awareness of employers and employees on the prevention of heat stroke at work, LD issued guidelines on rest breaks to employers and urged them to make rest break arrangements in consultation with their employees. LD also conducted inspections targeting at outdoor workplaces with a higher risk of heat stroke. If employers were found to have failed to adopt appropriate measures to safeguard employees' OSH such as provision of suitable rest breaks, LD would take appropriate enforcement actions.

#### *Sudden death cases at workplaces*

54. Members expressed grave concern about incidents of sudden death of employees suspected to be caused by overexertion at work. Members were particularly concerned that in many such cases of sudden death, family members of the deceased employees were not entitled to employees' compensation under the existing labour laws because the death was not caused by work accidents.



They took the view that the Administration should address squarely issues relating to death from overexertion at work and consider legislating for standard working hours.

55. According to the Administration, overexertion at work was not a medical diagnosis. Nor had the International Labour Organisation drawn up any definition or guidelines on workplace deaths caused by overexertion at work. In the light of members' concern, LD commissioned the Occupational Safety and Health Council ("OSHC") to conduct a study on notified workplace deaths not arising from work-related accidents and caused by cardiovascular and cerebrovascular diseases ("workplace CCVD deaths"). In June 2021, the Panel was briefed on the key study findings and LD's observations on the matter. The Administration advised that the study findings pointed to the direction that multiple risk factors, including personal factors, were in play in the development of CCVDs of the studied cases. Some members expressed disappointment at the conclusion of the study that work-related risk factors were not prevalently identifiable among the cases studied. These members stressed that one should not rule out the work-related risk factor of long working hours in triggering the workplace CCVD deaths. Some other members, however, considered that it was inappropriate to perceive long working hours as the sole factor attributed to the workplace CCVD deaths, and to regulate working hours by legislative means.

56. The Administration advised that 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, LD would step up its efforts in strengthening, 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. As an employer was required under ECO to notify the Commissioner for Labour of any fatal case arising from work accident in seven days' time, LD would keep watch on the nature and profile of such notifiable cases, and undertake appropriate studies and reviews as necessary.

#### Rehabilitation services for injured employees

57. It was announced in the 2019 Policy Address that the Administration would introduce a three-year pilot rehabilitation programme for employees injured at work ("Pilot Programme") targeting at injured employees from the construction industry who had not returned to work six weeks after sustaining a physical injury at work. The Panel followed up with the Administration on the progress of the preparatory work for the launch of the Pilot Programme.

58. While welcoming the launch of the Pilot Programme, some members requested the Administration to consider expanding the scope of the Pilot

Programme to cover employees of industries which also recorded high injury rates at work. Some members urged the Administration to ensure that participating injured employees would not be asked to return to work prematurely. They were also concerned about the follow-up arrangements for those participating injured employees who had not yet fully recovered and still needed to receive rehabilitation treatment services upon the expiry of the three three-year Pilot Programme, given that injured employees had to cease to receive rehabilitation treatment services provided by hospitals and clinics under the management of the Hospital Authority if they joined the Pilot Programme.

59. The Administration advised that under the proposed design of the Pilot Programme, LD would identify appropriate work injury cases and initiate contacts with target injured employees and invite them to join the Pilot Programme which was to be administered by OSHC. Injured employees admitted to the Pilot Programme would be provided with rehabilitation treatment services till recovery or reaching the point where further treatment would not improve the medical condition. The Administration further advised that there was a general shortage of occupational therapists and physiotherapists in the short to medium term, it was therefore considered pragmatic to introduce a work injury rehabilitation programme for injured construction employees on a pilot basis. Subject to the effectiveness of the Pilot Programme, the Administration would take heed of members' views and explore extending the Pilot Programme to cover injured employees in other industries.

#### Subcommittee formed under the Panel

60. In view of the unprecedented challenges brought about by the COVID-19 epidemic to the overall economy of Hong Kong and the labour market, members had advocated persistently to set up a system to offer temporary or emergency financial assistance to the unemployed persons to help them tide over their imminent financial hardship. To enable more focused discussion, the Panel appointed at its meeting on 17 November 2020 a subcommittee to study the setting up of an unemployment assistance system in Hong Kong and related issues and, to make recommendations where necessary. Under the chairmanship of Hon LUK Chung-hung, the Subcommittee to Study the Setting Up of an Unemployment Assistance System in Hong Kong commenced work in January 2021. The Subcommittee had concluded its work and submitted a report (LC Paper No. CB(2)1388/20-21) to the Panel in August 2021.

#### Meetings held

61. During the period between October 2020 and September 2021, the Panel held a total of 13 meetings, including one joint meeting with the Panel on Economic Development. The Panel has scheduled another meeting in October

2021 to receive a briefing by the Secretary for Labour and Welfare on the CE's 2021 Policy Address.

Council Business Division 2  
Legislative Council Secretariat  
11 October 2021

**Legislative Council**

**Panel on Manpower**

**Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to labour, manpower planning, vocational training and education, and qualifications framework.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Panel on Manpower**

**Membership list for the 2020-2021 session\***

**Chairman** Hon LUK Chung-hung, JP

**Deputy Chairman** Hon CHAN Chun-ying, JP

**Members** Hon WONG Kwok-kin, GBS, JP  
Hon YIU Si-wing, SBS  
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  
Dr Hon Pierre CHAN  
Hon Vincent CHENG Wing-shun, MH, JP

(Total : 13 members)

**Clerk** Miss Betty MA

**Legal adviser** Mr Alvin CHUI

\* Changes in membership are shown in Annex.

**Panel on Manpower**

**Changes in membership**

<b>Member</b>	<b>Relevant date</b>
Hon IP Kin-yuen	Up to 20 October 2020
Prof Hon Joseph LEE Kok-long, SBS, JP	Up to 10 November 2020
Hon Charles Peter MOK, JP	Up to 10 November 2020
Hon SHIU Ka-chun	Up to 11 November 2020
Hon HUI Chi-fung	Up to 11 November 2020
Hon Jeremy TAM Man-ho	Up to 11 November 2020
Hon James TO Kun-sun	Up to 12 November 2020
Hon Claudia MO	Up to 12 November 2020
Hon WU Chi-wai, MH	Up to 12 November 2020
Dr Hon Helena WONG Pik-wan	Up to 12 November 2020
Hon Andrew WAN Siu-kin	Up to 12 November 2020
Hon LAM Cheuk-ting	Up to 12 November 2020
Hon KWONG Chun-yu	Up to 12 November 2020
Hon LEUNG Yiu-chung	Up to 15 November 2020
Dr Hon Fernando CHEUNG Chiu-hung	Up to 18 November 2020
Hon Frankie YICK Chi-ming, SBS, JP	Up to 19 November 2020
Hon CHAN Kin-por, GBS, JP	Up to 1 December 2020
Hon Michael TIEN Puk-sun, BBS, JP	Up to 1 December 2020
Hon Kenneth LAU Ip-keung, BBS, MH, JP	Up to 1 December 2020
Hon Jimmy NG Wing-ka, BBS, JP	Up to 2 December 2020
Hon Elizabeth QUAT, BBS, JP	Up to 3 December 2020
Hon LAU Kwok-fan, MH, JP	Up to 3 December 2020
Hon CHAN Han-pan, BBS, JP	Up to 6 December 2020
Hon WONG Ting-kwong, GBS, JP	Up to 8 December 2020
Hon Steven HO Chun-yin, BBS, JP	Up to 8 December 2020
Hon Starry LEE Wai-king, SBS, JP	Up to 23 December 2020
Hon LEUNG Che-cheung, SBS, MH, JP	Up to 14 March 2021
Hon YUNG Hoi-yan, JP	Up to 14 June 2021

For **changes in LegCo Membership**, please refer to the link below:

(<https://www.legco.gov.hk/general/english/members/yr16-20/notes.htm>)