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Panel on Manpower

Paper for the meeting on 17 March 2011

Proposed overseas duty visit to the Republic of Korea

Purpose

This paper invites members to consider a proposal for the Panel on Manpower ("the Panel") to conduct an overseas duty visit to the Republic of Korea to study the experience in the implementation of standard working hours.

Background

2. The issue of standard working hours is a complex one. According to the Administration, employers, employees and various sectors of the community have divergent views on whether standard working hours should be introduced in Hong Kong.

3. On 13 October 2010, the Chief Executive announced in his Policy Address that with the enactment of the Minimum Wage Ordinance (Cap. 608), it was time to embark on a policy study on standard working hours. At the Panel meeting on 21 October 2010, the Secretary for Labour and Welfare advised in connection with his briefing on relevant policy initiatives in the Chief Executive's 2010-2011 Policy Address that the Administration would conduct an in-depth study on the issue.

4. At the Panel meeting on 20 January 2011, a suggestion was made for the Panel to conduct a duty visit to obtain first-hand information on the implementation of standard working hours in other places. After studying information on standard working hours in 10 selected places, the Panel agreed at the meeting on 17 February 2011 that consideration would be given to undertaking an overseas duty visit in the last week of July 2011 to study the experience of the Republic of Korea and/or the United Kingdom in the implementation of standard working hours.

Scope and objectives of the proposed visit

5. It is noted that the Republic of Korea first introduced a standard working hour requirement of 48 hours per week in 1953. The requirement was revised to 46 hours in 1989 and 44 hours in 1991. Thereafter, the requirement was further revised to 40 hours per week, which was to be implemented in six stages. The first stage was implemented on 1 July 2004 and the last stage was to be implemented on 1 July 2011. A fact sheet on the standard working hours in the Republic of Korea prepared by the Research Division of the Legislative Council Secretariat is in the **Appendix**.

6. It is proposed that an overseas duty visit to the Republic of Korea be conducted to study the following areas in respect of standard working hours -

- (a) government policy on standard working hours;
- (b) the enforcement and monitoring of the implementation of standard working hours;
- (c) the impact of standard working hours on the business environment and the labour market; and
- (d) measures adopted by the Government to address issues of concern or problems arising from the implementation of standard working hours.

7. The activities to be undertaken during the visit will include meetings with the relevant committee of the National Assembly, relevant government officials, academics, as well as major labour unions and employers' associations.

Proposed timing of the visit

8. It is proposed that the visit be conducted tentatively from 24 to 29 July 2011, subject to confirmation with the receiving organizations.

Composition

9. The broad guidelines are that members of the Panel should have priority in participating in the visit. Non-Panel members may join a duty visit outside Hong Kong with the consent of the Panel. It is proposed that the membership of the delegation be open to non-Panel members.

Proposed budget of the visit

10. As approved by The Legislative Council Commission, each Member is provided with an overseas duty visit account of \$55,000 for the purpose of duty visits outside Hong Kong organized by committees of the Council. The fund in the account is for use by the Member in a four-year term. Any expenditure incurred in excess of the available balance in a four-year term has to be paid by the Member personally.

11. On the assumption that the Panel will visit the Republic of Korea in late July 2011, a preliminary estimate of the expenditure (including airfare, hotel accommodation, meals, in-town travelling and miscellaneous expenses etc.) to be incurred by each participating member for the proposed duty visit is about \$20,217 (for economy class air passage) or \$31,117 (for business class air passage).

Advice sought

12. Subject to members' support for the Panel to conduct the proposed duty visit as set out in paragraphs 6 to 11 above, the Secretariat will work out the details of the proposed duty visit. Members are invited to note that the endorsement of the House Committee will have to be sought on the proposed duty visit.

FACT SHEET

Standard Working Hours in the Republic of Korea

1. Introduction

1.1 This fact sheet provides the Panel on Manpower with information on the development and implementation of the standard working hour policies and related issues in the Republic of Korea.

1.2 In recent years, workers in the Republic of Korea have had, on average, the longest working hours among the Organization for Economic Cooperation and Development ("OECD") countries. For instance, in 2008, a typical Korean worked 2 256 hours per annum as compared to the OECD average of 1 765 hours. With an average of 2 255 working hours per annum, the Republic of Korea remained the OECD country with the longest working hours in 2010.

2. Development of standard working hours

2.1 The standard working hours adopted in the Republic of Korea are defined in the *Labour Standards Act ("LSA")*. Enacted in 1953, the *Act* initially specified an eight-hour workday and a 48-hour workweek for Korean workers. This weekly working hour standard was subsequently reduced to 46 hours in 1989, and further to 44 hours in 1991. Amidst the massive unemployment condition as a result of the 1997 economic crisis, the public demanded the government to secure more jobs by lowering the statutory working hour standard in 1998.

2.2 In May 2000, the Korea Tripartite Commission¹ ("KTC") established the Special Committee on Reduction of Working Hours to study the issue of shorter workweek among representatives of employees, employers and the government². In October 2000, the Committee arrived at a consensus on the general principles of gradual reduction of working hours without deteriorating the quality of working life.

2.3 The Committee proposed 40 working hours per week to be the new standard, which was in line with the international standards. In addition, the Committee's proposal covered other issues related to the reduction in the standard working hours, such as the wage compensation, length of paid leaves, date of implementation, flexible working hour scheme, upper limit of overtime hours, overtime premium, weekly holiday and menstruation leave.

2.4 In the course of negotiation, the employee representatives insisted on a shorter workweek without any deterioration in wage and other working conditions, while the Korea Employers Federation, one of the employer representatives of the Committee, demanded to reduce the number of paid holidays and overtime payments so as to tackle the problem of increasing labour cost. Both parties stood firm on their own interests and could not reach an agreement over the issues. When negotiations fell apart in July 2002, the government decided to draft a revision bill to *LSA* by referring to what had been discussed in the Committee.

¹ KTC was established in 1998. The purpose of KTC is to discuss labour policies and related matters on the basis of the spirit of mutual trust and cooperation among labours, employers and the government. It also provides advice to the President when necessary. KTC is composed of the Plenary Committee, one Standing Committee, three Subcommittees, five Special Committees and the Secretariat. The 19 members of the Plenary Committee comprise the Chairman of the Federation of Korean Trade Unions, the Chairman of the Federation of Korean Industries, the Chairman of the Korean Employers' Federation, the Minister of Finance and Economy, the Minister of Employment and Labour, the Minister of Commerce, Industry and Energy, the Minister of Planning and Budget, the Chairman of the Financial Supervisory Commission, and experts from the public.

² The Ministry of Labour, renamed as the Ministry of Employment and Labour in 2010, was one of the government representatives in the Committee. The Ministry is responsible for labour standards, adjustment of industrial relations and guidance for trade unions, occupational safety and health, employee welfare, employment polices, equal employment, employment insurance, vocational skills development training and other labour affairs.

2.5 The revision bill to *LSA* proposed reducing workweek from 44 hours to 40 hours while cutting annual leave by seven days to 25 days and trimming overtime pay³. Workers considered such measures as a reduction in holiday and income. Thousands of workers organized by the Federation of Korean Trade Unions ("FKTU") and the Korean Confederation of Trade Unions⁴ ("KCTU") went on strike to protest against the government's proposal and demand a 40-hour workweek with no cutback in pay.

2.6 By late 2002, the government submitted the revision bill to *LSA* without major alterations from its original proposal to the National Assembly, the unicameral legislature of the Republic of Korea, despite fierce opposition from the labour sector. The Environment and Labour Committee of the National Assembly approved the bill in August 2003 and the policy was deployed in stages starting from 1 July 2004.

3. Major features of the 40-hour workweek policy

3.1 A number of areas have been changed in the revised *LSA* including the statutory working hours, overtime, leave and pay loss compensation. Employers are required to modify the rules of employment, and the new policy does not apply to some kinds of job. Details of the modifications are illustrated in the following paragraphs.

Statutory working hours

3.2 The statutory working hours per week are 40 hours. The 40-hour maximum is flexible over a period of up to three months. In other words, an employee may work longer than 40 hours in a particular week without getting overtime pay so long as the average hours of work for any given three months does not exceed 40 hours.

³ The original *LSA* contains the following features: 44-hour workweek; one-day monthly leave per month; ten-day annual leave for employees with consecutive service of one year or longer, plus eight days for those with 90% attendance or higher, and one additional day for each following year; monetary compensation paid in lieu for unused annual leave longer than 20 days; one-day paid menstruation leave per month; and overtime pay premium of 50% or more.

⁴ FKTU and KCTU are the labour representatives of KTC. The Republic of Korea had 4 689 trade unions as at the end of 2009, including 4 645 enterprise level trade unions, 42 federations of trade unions and two nationwide federations of trade unions: FKTU and KCTU.

Overtime

3.3 Any work done beyond the statutory working hours should be compensated as overtime work with extra pay. The maximum hours of overtime work are 12 hours per week, which can be extended to 16 hours for the first three years when the 40-hour workweek is implemented.

3.4 The overtime premium rate should be 50% of the normal pay rate. As a transitional measure, the rate will be reduced to 25% for the first four hours of overtime work during the first three years when the 40-hour workweek is implemented.

3.5 Employers can pay leave in lieu of overtime pay under a written agreement with employees. The exchange rate for one hour of overtime work is one-and-half hour of time-off.

Leave

3.6 Employees who have worked a full year, with at least 80% attendance, will be entitled to 15 days of annual paid leave. Those who have not worked a full year, with full attendance, will get one day of annual paid leave per month. Those who have worked for more than three years will get an additional day of paid leave for every two years of employment after the first year. The maximum number of annual leave is 25 days.

3.7 The original arrangement of monthly paid leave has been abolished and the paid one-day menstrual leave has been changed to unpaid one. In addition, employers are relieved from the obligation to compensate unused leave with money in case employees do not use leaves despite employers give notices to the employees three months before the expiry of their annual leave. In this event, the unused leave will be forfeited without any compensation under the new policy.

Pay loss compensation

3.8 In order to have working hours reduced without lowering the living standards, employers must make compensations to maintain workers' existing pay level. Accordingly, the hourly normal wage should not be lower than the one before implementing the 40-hour workweek.

Modification of collective agreements/rules of employment

3.9 Employers have the obligation to modify the existing collective agreements and rules of employment in line with the changes in the new policy.

Exemption

3.10 The provision of working hours shall not be applicable to workers who are engaged in any of the following jobs:

- (a) cultivation of arable land, reclamation work, seeding and planting, gathering or picking-up or other agricultural and forestry work;
- (b) livestock breeding, catch of marine animals and plants, cultivation of marine products or other cattle-breeding, sericulture and fishery business;
- (c) surveillance or intermittent work, for which the employer has obtained the approval of the Minister of Employment and Labour ("MOEL"); and
- (d) any other work prescribed in the President Decree.

4. Implementation and penalty

Implementation

4.1 The 40-hour workweek has been brought into force by stages as indicated in the following **Table**:

Table – Implementation schedule of the 40-hour workweek

| Stage | Implementation date | Size of workplaces |
|--------------|---------------------|-------------------------|
| First stage | 1 July 2004 | 1 000 or more employees |
| Second stage | 1 July 2005 | 300 to 1 000 employees |
| Third stage | 1 July 2006 | 100 to 300 employees |
| Fourth stage | 1 July 2007 | 50 to 100 employees |
| Fifth stage | 1 July 2008 | 20 to 50 employees |
| Last stage | 1 July 2011 | five to 20 employees |

4.2 The 40-hour workweek was first introduced in public corporations, large private companies and the financial sector. While the small and labour-intensive businesses were foreseen to be hardest hit by the implementation of a shorter workweek, they have been given the longest time to adjust to the new arrangement. Moreover, the 40-hour workweek will not apply to workplaces with less than five employees as work hour and leave related regulations of *LSA* are not applicable to them.

4.3 To ensure smooth implementation of the 40-hour workweek, the government launched a pilot program in 2002 which permitted public officials to take one Saturday off every month so as to boost public expectations on an additional weekly holiday⁵.

⁵ Korean workers were used to a six-day workweek before implementing the new policy.

4.4 Since small enterprises of five to 20 employees are usually unfamiliar with labour law but the 40-hour workweek is going to apply to them in 2011, MOEL has carried out the following measures to facilitate a smooth implementation:

- (a) organizing education programmes including online education;
- (b) arranging information sessions across the country;
- (c) organizing consulting programmes in cooperation with employers' organizations;
- (d) establishing counselling centres which provide telephone, Internet and face-to-face services to answer relevant questions; and
- (e) providing work hour reduction subsidy to small and medium-sized enterprises ("SMEs") which have launched the new work hour system six months earlier than the legally regulated time schedule⁶.

Penalty

4.5 In order to ensure adherence to *LSA*, a total of 1 606 labour inspectors, who are responsible for enforcing the law, are working in MOEL and its subordinate regional offices. Labour inspectors visit workplaces regularly or occasionally to check whether there is any violation of labour standards and investigate alleged violations of the law upon receipt of reports from victims.

4.6 A person who violates the provisions of the *Act* shall be punished by imprisonment or fines⁷.

⁶ SMEs were encouraged to implement the 40-hour workweek earlier as they may be reluctant to do so due to the potentially higher labour cost involved. The subsidy provided was to offset the higher labour cost resulting from the changes. The subsidy had been terminated by the end of 2010.

⁷ A person who violates the provisions of extended work, night work and holiday work shall be punished by imprisonment of up to three years or by a fine not exceeding 20 million won (HK\$139,330.7). Furthermore, a person who violates the provisions of working hours, restriction on extended work, recess hours, holidays and annual paid leave shall be punished by imprisonment of up to two years, or by a fine not exceeding 10 million won (HK\$69,677.8).

5. Social and economical impacts

5.1 According to MOEL and the LG Economic Research Institute⁸, the implementation of the 40-hour workweek is expected to have, in economical and social terms, both positive and negative impacts on the society. The positive economical impacts include: higher productivity, growth in employment, upturn of the retail sector, development of the leisure industry including increased consumption on cultural activities, entertainment and eating-out. The increased demand for service industries may alleviate the unemployment problems of both women and the youth. On the other hand, the downside of shorter workweek includes increased labour cost, lower productivity⁹, a decline in corporate competitiveness and labour shortages in SMEs.

5.2 From the social perspective, the implementation of a shorter workweek has encouraged job sharing, part-time jobs and more flexible working hours. Employees can enjoy better quality of life and attain family-work balance. In the long run, the Republic of Korea is expected to transform from a labour-intensive industrial centre into a high value-added knowledge-based society, albeit social harmony may be affected due to increased labour-management conflicts¹⁰.

6. Future development

6.1 Although so far the Republic of Korea has remained the country with the longest working hours among OECD countries even after the implementation of the 40-hour workweek, it is expected that the average working hours may decrease substantially when the policy applies to workplaces with five to 20 employees in July 2011.

⁸ LG Economic Research Institute is a private think-tank established by the global company LG in 1986. It aims to enhance business competitiveness and foster the sustainable development of the national economy by providing knowledge and information.

⁹ The implementation of the 40-hour workweek may result in both higher and lower productivity. MOEL believes that workers will have better health with a shorter workweek and thus may improve their productivities. On the other hand, some employers opine that workers working for a shorter period will result in lower productivity.

¹⁰ The labour-management conflicts may increase as some employers and employees are unsatisfied with the new policy of the 40-hour workweek.

6.2 Meanwhile, MOEL has planned to reduce the average annual working hours to 1 950 hours in 2011, down 13.5% from 2 255 hours in 2010, by narrowing the list of job sectors officially permitted to enforce overtime work. In due course, the average annual work hours is expected to fall to 1 800 hours by 2020.

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