

For discussion on
18 November 2010

Legislative Council Panel on Manpower

Rationalisation and Strengthening of the Directorate Establishment for Labour Administration in the Labour Department

PURPOSE

The existing directorate establishment in the Labour Administration (LA) Branch of the Labour Department (LD) needs to be rationalised and strengthened to enhance its capability in planning and implementing expanded and new portfolios and initiatives in labour administration and to spearhead the implementation of the statutory minimum wage (SMW) regime. This paper seeks Members' views on the proposal to create in the LA Branch one permanent post of Assistant Commissioner for Labour (ACL) (D2) and one permanent post of Chief Labour Officer (CLO) (D1) (to be offset by the deletion of one supernumerary CLO post created in the LA Branch for a period of three years from 12 January 2009 to 11 January 2012).

JUSTIFICATION

Proposed creation of a permanent ACL post and rationalisation of duties among ACLs in labour administration

2. LD is responsible for both the formulation and implementation of labour policies, and comprises the LA Branch and the Occupational Safety and Health Branch. The LA Branch is currently organised into four programme areas including Employment Services, Employee Rights and Benefits, Labour Relations as well as Policy Support and Strategic Planning, each headed by an ACL.

3. During the past few years, the four ACLs in the LA Branch have been stretched beyond their limits in handling day-to-day operation as well as new initiatives introduced in the light of growing community demand for employment, labour relations and other related services. For the past three years, LD has been introducing new employment initiatives every year. We have devised and embarked on new employment programmes to provide training and employment opportunities for the vulnerable groups, adopted multi-pronged and proactive measures to promote labour market efficiency and disseminate

employment and vacancy information, and also set up resource centres for youths and dedicated centres for employers and job-seekers in the catering and retail industries to meet their recruitment and employment needs in a user-friendly, effective and efficient manner. To help widen the horizon of our young people and provide an opportunity for them to gain first-hand international exposure, and to enable youths from signatory countries to experience the vibrancy and culture of Hong Kong as a cosmopolitan metropolis, we expanded the Working Holiday Schemes in 2009 and 2010 to four new countries, namely, Germany, Japan, Canada, and the latest, South Korea, on 12 November 2010.

4. In the coming months, LD will continue to roll out new employment initiatives. We will launch a special employment project to help those vulnerable youths with special employment difficulties, and implement the pilot Employment Navigator Programme to provide job-seekers with intensive employment counselling and financial incentives so as to address the problem of manpower mismatch. We will set up a pioneer one-stop employment and training centre in Tin Shui Wai in 2011 to provide employment and training support to needy job-seekers (including unemployed Comprehensive Social Security Assistance recipients) in a holistic manner with streamlined, integrated and enhanced employment and training/retraining services of LD, the Social Welfare Department and the Employees Retraining Board. To facilitate the successful operation of these new programmes, there must be close and dedicated involvement at the ACL level to steer and monitor the brand new model of employment service delivery with constant review and coordination with relevant bureaux/departments upon implementation.

5. LD's labour administration portfolios are also expanding in volume and complexity on other fronts. In 2010 alone, the Legislative Council (LegCo) has so far passed three Bills¹ for which the ACLs have to formulate and execute strategies for the implementation of the new provisions. In particular, the two milestone Ordinances, namely the Minimum Wage Ordinance (MWO) and the Employment (Amendment) Ordinance (E(A)O) 2010, will envisage a sea-change in the enforcement of employee rights and benefits, resolution of labour disputes and claims, and promotion of harmonious labour relations. The unprecedented implications of implementing the MWO will be explained in the paragraphs below. As for the E(A)O 2010 which is a legal breakthrough in creating a new criminal offence², we must strengthen our proactive preventive

¹ viz. the Minimum Wage Bill, the Employment (Amendment) Bill 2009 and the Occupational Deafness (Compensation) (Amendment) Bill 2009.

² The E(A)O 2010 introduces a new criminal offence against employers who wilfully fail to pay any sum under a Labour Tribunal/Minor Employment Claims Adjudication Board award comprising wages and entitlements under the Employment Ordinance.

work to promote awareness and understanding among employers and employees of the nature and content of the new provisions; provide speedy and efficacious consultation, conciliation and support services for the aggrieved workers; enforce the law rigorously as well as monitoring and evaluating the efficacy of the legislative amendment in combating the problem of wilful non-enforcement of certain Labour Tribunal (LT) awards.

6. In addition to the implementation of the employment initiatives and legislative amendments introduced in the past few years, the ACLs also need to take up upcoming new initiatives and duties. LD will commence an in-depth policy study on standard working hours which would have far-reaching implications for Hong Kong's society, economy, competitiveness and employment. We must consult stakeholders and handle this complex and controversial issue with care to strike a balance between the interests of various sectors. To relieve the burden of transport expenses for home-work commuting for low-income earners and encourage them to stay in employment, LD will launch a territory-wide Work Incentive Transport Subsidy (WITS) Scheme. We are also undertaking preparatory work for the legislative amendment to extend the Protection of Wages on Insolvency (PWI) Fund to cover pay for untaken annual leave and statutory holidays under the Employment Ordinance (EO). There are other items in the pipeline as well. To name a few, we are, in consultation with the Labour Advisory Board, working on a draft bill under the EO to empower the LT to impose orders for compulsory reinstatement or re-engagement in cases of unreasonable and unlawful dismissal, an in-depth study of the definition of continuous employment under the EO based on the latest statistical data collected on employees not engaged under a continuous contract, and a detailed study of the existing arrangement for replacement holiday in the event a Lunar New Year holiday falls on a Sunday. LD must strengthen the ACL establishment to enhance its capacity to undertake these initiatives with far-reaching implications.

7. We propose to create one permanent ACL post in the LA Branch to cope with the expanded portfolios of work and upcoming new initiatives by rationalising the division of duties among the ACLs such that coordination and alignment in policy formulation and strategic planning in different policy areas of labour administration can be enhanced. Key duties of the new ACL post would include SMW, the operation of WITS, the Labour Advisory Board and International Labour Organisation and its Conventions. The proposed major responsibility areas of the new ACL post and other ACLs upon the rationalisation of duties are at **Annex I**.

Proposed creation of a permanent CLO post for SMW implementation

8. The MWO was passed by LegCo on 17 July 2010 and gazetted on 23 July 2010. Subject to LegCo's approval of the subsidiary legislation, including those on the initial SMW rate and the commencement of the MWO, SMW will come into force on 1 May 2011.

9. The MWO aims to establish an SMW regime which seeks to strike a reasonable balance between, on the one hand, forestalling excessively low wages, and on the other hand, safeguarding job opportunities for the disadvantaged as well as Hong Kong's labour market flexibility, economic growth and competitiveness. SMW is applicable across-the-board to all trades and industries which have different operational characteristics. Despite the intensive and extensive consultations during the deliberations on the MWO, there is still a considerable portion of employees and employers (most notably the less well-resourced small and medium sized enterprises (SMEs)) with inadequate understanding of the MWO. Promoting awareness and avoiding inadvertent non-compliance within a matter of months as well as providing consultation/conciliation services to employers and employees who are at loggerheads, and with little understanding of the legal requirements, would pose a great challenge to LD.

10. In addition, the forthcoming implementation of the SMW regime will also have a fundamental impact on almost all aspects of LD's work, including publicity, consultation and conciliation, workplace inspection and investigation into suspected cases, prosecution, employees' compensation etc. Apart from a thorough comb-through of the operational implications (e.g. refinements of various operational guidelines), internal education and change management is a must. The MWO, despite its complexity, has been processed with great efficiency. This requires a high-level and centralised process to steer through the deliberations. We would now need to disseminate to staff in all LD Divisions an in-depth understanding of MWO provisions so that frontline colleagues involved in the provision of, say, conciliation and promotion services, can effectively handle disputes and address concerns with an SMW angle. Given the multifarious characteristics of various trades and industries, we also anticipate the need for intensive and iterative consultations with stakeholders to ensure the smooth implementation of the MWO. This process needs to be sensitively managed to avoid erosion of the generally harmonious labour relations in Hong Kong.

11. Added to this would be the need to execute the special arrangement for persons with disabilities (PWDs) under which employees with productivity impaired by their disabilities are given the right to opt to have their productivity assessed by an assessor of their own choice in order to help determine whether

they should be remunerated at not lower than the SMW level or at a rate commensurate with their productivity. Eligible assessors with the requisite experience in providing vocational rehabilitation or other employment services for PWDs will be approved and provided with training and guidelines in conducting the productivity assessment at the PWDs' authentic workplace. The team would also need to undertake, as promised during the Bills Committee process of the MWO, a holistic review of this PWD arrangement within two years after the commencement of the SMW.

12. In parallel, strong secretariat support is also needed to underpin the statutory Minimum Wage Commission (MWC). The MWC is required to adopt an evidence-based approach to review and recommend the appropriate level of the SMW rate. In practical terms, such an approach will necessitate a thorough analysis of a massive amount of quantitative data relevant to the basket of indicators and extensive and intensive consultations with the general public as well as employers and employees in various trades, especially the low-paying sectors. Given the significant socio-economic implications of SMW, we need to critically assess the impact of SMW on the economy as a whole as well as on individual low-paying sectors and SMEs after the implementation of SMW, by conducting new and enhanced statistical surveys on a longitudinal basis.

13. Since Hong Kong has no experience in implementing SMW, the exact impact is difficult to gauge precisely before its implementation. The economy and the labour market are constantly evolving and there are many interactive factors involved in the impact assessment. Experience in other places suggests that it will take a couple of years before the impact of SMW, which permeates the economy in a series of chain reactions, will become apparent. It is therefore of utmost importance to gauge, through a myriad of surveys and studies, the impact of SMW on Hong Kong's economy, business costs and labour market in the short and long term through longitudinal studies.

14. The proposed permanent CLO will take charge of and coordinate the implementation of SMW, including the preparation for the commencement of the MWO, publicity and education campaign and handling operational issues actively with trade unions and employers' associations in order to gather intelligence and help map out effective enforcement strategies targeting in particular low-paying sectors prone to MWO breaches. The CLO will also be responsible for leading the team in providing secretariat support to the MWC in reviewing the SMW rate and in particular, in consultation with the Economic Analysis and Business Facilitation Unit and the Census and Statistics Department, map out and coordinate these efforts to monitor and evaluate the impact of SMW both generally and on vulnerable workers as well as enterprises in the low-paying sectors and SMEs specifically. The CLO will also maintain connection with various stakeholders, such as Labour Advisory Board, District

Councils, Panels / Committees of the Legislative Council etc. and explain relevant policy in their meetings where necessary.

15. Given the significant and far-reaching effects of SMW on employers and employees as well as the regular thorough reviews of the SMW rate, accomplishing the above tasks would require the dedicated leadership of a sufficiently senior officer in the Labour Officer Grade with sufficient depth and breadth of experience in labour and related issues and the requisite competence to handle politically sensitive and complex issues. We have set up a dedicated team in LD since late 2008 to take forward the SMW legislative exercise and a supernumerary post of CLO has been created for a period of three years from 12 January 2009 to lead the team. With the passage of the MWO, SMW requirements will become a permanent feature of our employment policy. From the policy and enforcement perspectives, we see a need to provide on a permanent basis the directorate resources necessary to ensure the proper implementation of the MWO. Provision of the permanent CLO post will also facilitate training within LD referred to in paragraph 10 above. We therefore propose to convert the supernumerary CLO post into a permanent post for the implementation of SMW.

Other Manpower Resources

16. At present, the supernumerary CLO post is supported by a team of 13 non-directorate staff in LD, comprising two Senior Labour Officers, four Labour Officers, one Assistant Labour Officer I, two Assistant Labour Officers II and four supporting staff (including two non-civil service contract staff). Among the non-directorate staff, one post of Senior Labour Officer is time-limited, and one permanent post of Assistant Labour Officer II and four supporting staff are on loan from other divisions. The Administration would strengthen the staffing of the team to support the permanent CLO post for the implementation of SMW.

17. The job descriptions of the proposed ACL and CLO posts are respectively at **Annexes II** and **III**. The existing and proposed organisation charts of the LA Branch of LD are respectively at **Enclosures 1 and 2 to Annex I**.

ALTERNATIVES CONSIDERED

18. We have critically examined the possibility of redeployment to absorb the duties of the proposed permanent posts. However, all the four existing ACLs in the LA Branch have already been fully over-stretched in their schedule of work and are in dire need of reinforcement. There is only one permanent

CLO post in the Branch, namely CLO(Labour Relations), who needs to be closely and personally involved in the resolution of labour disputes and claims, maintaining industrial peace and performing the statutory functions as Registrar of Trade Unions. It is also operationally not possible for the directorate staff in the Occupational Safety and Health Branch to share the duties, given that they are already fully engaged in their own schedule of work and that the two Branches have distinctly different professional specialisations.

FINANCIAL IMPLICATIONS

19. The proposed creation of the permanent ACL post will bring about an additional notional annual salary cost at mid-point of \$1,503,000. The full annual average staff cost, including salaries and on-cost, is \$1,905,576. As for the proposed permanent CLO post, it will bring about an additional notional annual salary cost at mid-point of \$1,265,400, with the full annual average staff cost, including salaries and on-cost, at \$1,540,152. However, this will be offset by the deletion of the supernumerary CLO post. We will include the necessary provision in the 2011-12 draft Estimates to meet the cost of this proposal.

WAY FORWARD

20. Members are invited to note and offer views on the proposed creation of posts. We plan to submit the proposal to the Establishment Subcommittee on 5 January 2011 for recommendation to the Finance Committee for approval on 28 January 2011.

Labour and Welfare Bureau
Labour Department
November 2010

**Proposed major responsibility areas of the Assistant Commissioners
for Labour (ACL) upon the rationalisation of duties**

ACL(Employment Services) will formulate, implement and review policies and strategies on employment services generally and for particular groups. These include overseeing the operation of employment services for able-bodied and disabled job-seekers, career advisory service for youths, pre-employment and on-the-job training programme for youths, employment programmes for middle-aged job-seekers, Work Orientation and Placement Scheme for disabled job-seekers, Work Trial Scheme for job-seekers with difficulties in finding employment and Transport Support Scheme (which will continue to operate for two more years after the implementation of the WITS Scheme); oversee enforcement on the regulation of employment agencies; launch the pioneer one-stop employment and training centre, the pilot Employment Navigator Programme and the special employment project for vulnerable youths; take up the overall responsibilities of the management of the inter-departmental electronic portal on employment- and vocational training related matters; and design and implement other employment initiatives to assist vulnerable job-seekers upon implementation of SMW and change in the economy.

2. ACL(Employee Rights and Benefits) will formulate, implement and review policies and strategies on five employees' compensation-related ordinances; monitor and ensure effective and efficient processing of employees' compensation cases; and oversee the work of four related statutory boards; formulate and review inspection policies and strategies and supervise labour inspection work for labour and immigration laws; formulate and review complaint investigation and offence detection policies and strategies for suspected breaches against labour laws; formulate and review prosecution policies and strategies and supervise prosecution work in labour legislation; oversee the working group of the study on recognition of sick leave certificates issued by registered chiropractors as valid sick leave certificates under labour legislation; formulate policies on, review and administer the PWI Ordinance; oversee the provision of secretariat support to the PWI Fund Board for administration of the PWI Fund, processing and approval of applications for ex gratia payments under the PWI Fund; and prepare for the legislative amendment to expand the scope of the PWI Fund to cover pay for untaken statutory annual leave and holidays.

3. ACL(Labour Relations) will formulate, implement and review policies and strategies on the EO, Trade Unions Ordinance and Labour Relations Ordinance; monitor and ensure the harmonious labour relations scene; oversee the consultation and conciliation services to resolve employment disputes, referral of unsettled disputes and claims to LT and the Minor Employment Claims Adjudication Board (MECAB), and adjudication of minor employment claims by MECAB; oversee the registration of trade unions; promote effective communication and voluntary negotiation between employers and employees, enhance public awareness of the EO and encourage adoption of good people management and family-friendly employment practices; work on a draft bill to amend the EO provisions relating to compulsory reinstatement or re-engagement orders in unreasonable and unlawful dismissals; conduct the studies of the definition of continuous employment under the EO and the existing arrangement for replacement holiday upon a Lunar New Year holiday falling on Sunday; and oversee the measures against false self-employment.

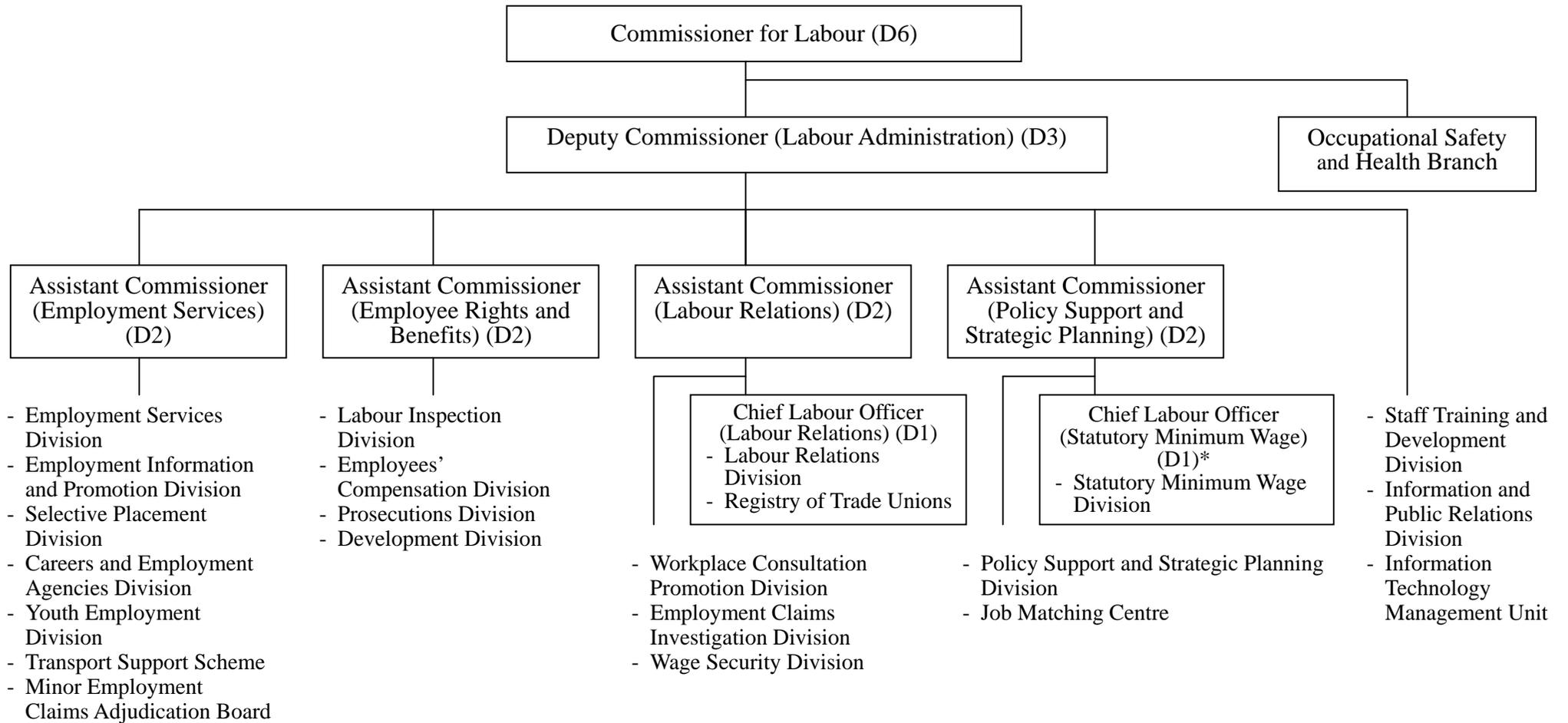
4. ACL(Policy Support and Strategic Planning) will formulate, implement and review policies and strategies on the importation of foreign domestic helpers (including the Minimum Allowable Wage and food allowance); oversee the importation of lower-skilled workers under the Supplementary Labour Scheme; provide inputs and support to the Quality Migrants Admission Scheme; coordinate LD's inputs to LegCo and undertake related liaisons (in particular the Panel on Manpower) and District Councils; oversee the information technology management of LD; formulate and coordinate LD's inputs on international conventions (e.g. the Convention on the Elimination of All Forms of Discrimination Against Women, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights etc.); formulate and coordinate LD's policy inputs in respect of various policy matters (e.g. employment-related trade and discrimination issues); oversee the elimination of age discrimination in employment; formulate policies on the Working Holiday Scheme and explore the possibility of new schemes with advanced economies; oversee the General Holidays Ordinance; and study the subject of standard working hours.

5. The newly created ACL post will plan, launch, monitor and review the implementation of the territory-wide WITS Scheme. The tasks involved will include, among others, steering publicity and promotional plans, overseeing the development of management information system, designing and reviewing the vetting, monitoring and investigating mechanisms to prevent and detect abuses. On the SMW front, the new ACL will be responsible for policy formulation on SMW; and overseeing the implementation and review the MWO as well as the design and operation of the special arrangement for persons with disabilities (PWDs) within two years after implementation. In addition, the ACL will oversee the secretariat support provided to the tripartite Labour Advisory Board;

monitor observance of international labour conventions applied to Hong Kong, and formulate and coordinate inputs to reports on compliance with international labour standards; oversee Hong Kong's participation in International Labour Organisation activities; oversee negotiations on free trade agreements where provisions and/or side agreements on labour issues are involved; and liaise with labour administration counterparts in the Mainland and other jurisdictions through visits and participation in relevant activities.

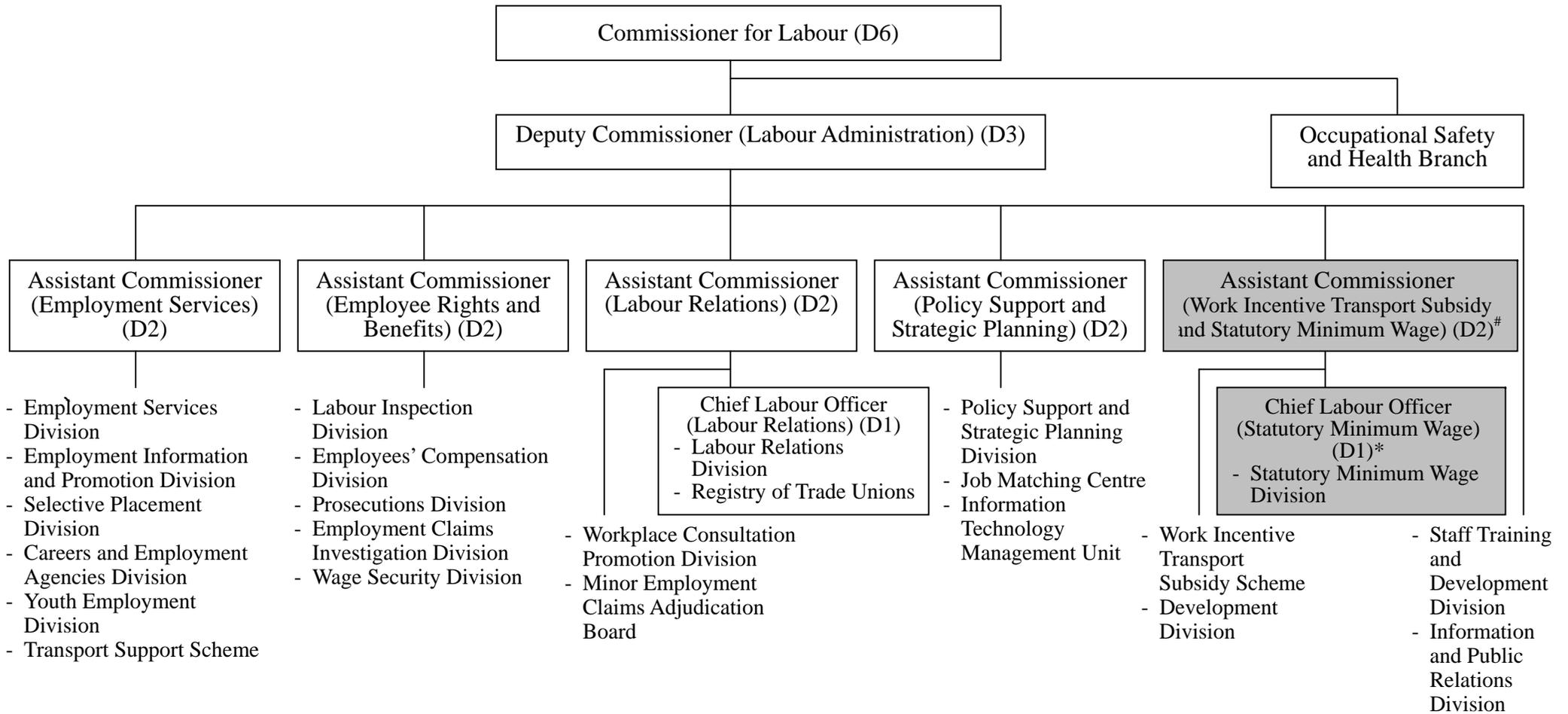
6. The existing and proposed organisation charts of the LA Branch of LD showing the ACL posts are respectively at Enclosure 1 and Enclosure 2.

Existing Organisation Chart of the Labour Administration Branch of the Labour Department



* One supernumerary post of Chief Labour Officer

Proposed Organisation Chart of the Labour Administration Branch of the Labour Department



Proposed one permanent post of Assistant Commissioner [ranked at Assistant Commissioner for Labour (D2)]

* The current supernumerary post of Chief Labour Officer [designated as CLO(SMW)] (D1) is proposed to be converted into a permanent post

**Proposed Job Description for
Assistant Commissioner for Labour
(Work Incentive Transport Subsidy and Statutory Minimum Wage)**

Rank : Assistant Commissioner for Labour (D2)

Responsible to : Deputy Commissioner for Labour (Labour Administration)

Main Duties and Responsibilities :

1. To plan, launch, monitor and review the implementation of the territory-wide Work Incentive Transport Subsidy Scheme. The tasks include steering publicity and promotional plans, overseeing the development of management information system, designing and reviewing the vetting, monitoring and investigating mechanisms to prevent and detect abuses;
2. To formulate the policy on statutory minimum wage, oversee the implementation and review the Minimum Wage Ordinance as well as the design and operation of the special arrangement for persons with disabilities within two years after implementation of the special arrangement;
3. To oversee the secretariat support provided to the tripartite Labour Advisory Board;
4. To monitor observance of obligations under international labour conventions applied to Hong Kong, and formulate and coordinate inputs to reports on compliance with international labour standards, and oversee Hong Kong's participation in International Labour Organisation activities;
5. To attend to negotiations on free trade agreements where provisions and/or side agreements on labour issues are involved; and
6. To liaise with labour administration counterparts in the Mainland and other jurisdictions through visits and participation in relevant activities.

**Proposed Job Description for
Chief Labour Officer (Statutory Minimum Wage)**

Rank : Chief Labour Officer (D1)

Responsible to : Assistant Commissioner for Labour (Work Incentive
Transport Subsidy and Statutory Minimum Wage)

Main Duties and Responsibilities :

1. To spearhead and coordinate the implementation of the statutory minimum wage (SMW) regime involving operations and services on various fronts of the Labour Department, public education-cum-promotion campaigns, and operation and review of the special arrangement for persons with disabilities;
2. To support the statutory Minimum Wage Commission responsible for the SMW rate reviews on the basis of the evidence-based approach and extensive consultations with stakeholders;
3. To map out and coordinate critical and longitudinal assessments of the implications of the SMW implementation on the overall economy and labour market as well as low-paying sectors and small and medium sized enterprises which are more susceptible to wage fluctuations;
4. To assist in the formulation of policies and strategies on the implementation of SMW to safeguard employees' entitlements and forestall breaches including keeping in close touch with relevant stakeholders in different trades and sectors; and
5. To attend meetings of the Labour Advisory Board, District Councils, relevant Panels/Committees of the Legislative Council and with stakeholder groups, and to prepare relevant papers and documents.