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Paper for the House Committee meeting on 13 January 2012

**Report of the delegation of the Panel on Manpower
on its duty visit to study the experience in the implementation of
standard working hours in the Republic of Korea
and priority allocation of a debate slot
to the Chairman of the Panel on Manpower**

Purpose

This paper invites Members to -

- (a) note the Report of the delegation of the Panel on Manpower ("the Panel") on its duty visit to study the experience in the implementation of standard working hours in the Republic of Korea ("Korea");
- (b) note the recommendation in the Report that, where appropriate, consideration be given to inviting representatives of the Administration to accompany committees of the Legislative Council ("LegCo") in future overseas duty visits; and
- (c) consider the Panel's request for the priority allocation of a debate slot under Rule 14A(h) of the House Rules ("HR") to Hon LEE Cheuk-yan, Chairman of the Panel, for moving a motion for debate on the Report at the Council meeting of 8 February 2012.

Report on the duty visit

2. The subject of standard working hours has been of concern to the Panel. There have been calls over the years from some LegCo Members and some sectors of the community, in particular the labour unions, for introduction of standard working hours in Hong Kong to better protect the

health of workers and improve their family and social life. There are however concerns that the introduction of standard working hours would undermine the flexibility of the labour market and business environment, and the competitiveness of Hong Kong. At the request of the Panel, the Research Division of the LegCo Secretariat gathered information on the implementation of standard working hours in a number of countries. Having regard to the research findings and the similarity between Korea and Hong Kong in respect of traditionally long working hours, the Panel decided on 17 March 2011 to conduct a duty visit to Korea in late July 2011 to obtain first-hand information on its practical experience and implementation details in respect of standing working hours. The conduct of the duty visit was approved by the House Committee at its meeting on 24 June 2011.

3. The delegation of the Panel visited Seoul, the capital of Korea, from 24 to 28 July 2011. The delegation met with Members of the National Assembly of Korea, government officials, research experts, relevant organizations, trade unions and employers' federations. The visit programme, the experience of Korea in the implementation of standard working hours, the observations and conclusions of the delegation are set out in the Report in **Appendix I**. The delegation submitted its Report to the Panel at its meeting on 15 December 2011.

Recommendation of the Panel in respect of overseas duty visits

4. In the course of its discussion on the delegation's Report, the Panel noted the recommendation of the delegation that, where appropriate, consideration be given to inviting representatives of the Administration to accompany committees in future overseas duty visits (paragraph 4.17 of the Report). The delegation notes that in principle, representatives of the Administration are not invited to take part in overseas duty visits conducted by committees of LegCo in order not to compromise the independence of the studies undertaken by the committees concerned. The delegation considers that as overseas duty visits enable members to gain an insight into overseas experience in the subject areas under study which are invariably of concern to both the Administration and the community, it will be helpful if officials from the relevant Government departments could accompany members to provide information relevant to Hong Kong and share their views on the relevant issues during the visit.

5. Members of the Panel expressed different views on the recommendation. Nevertheless, with five members voting for the recommendation, two against and one in abstention, the Panel endorsed the recommendation. Notwithstanding, it is up to the committee concerned to

decide whether to invite representatives of the Administration to accompany it in an overseas duty visit.

Recommendation to apply for priority allocation of a debate slot

6. The Panel also discussed the delegation's recommendation to seek the support of the Panel for applying to the House Committee for the priority allocation of a debate slot to Hon LEE Cheuk-yan, Chairman of the Panel and leader of the delegation, for moving a motion for debate on the Report at a Council meeting to provide an opportunity for Members to express views on the subject and for the Administration to respond (paragraph 4.18 of the Report).

7. Under HR 14A(h), committees and subcommittees of the Council may make a request for priority allocation of debate slots and such request shall be put forward to the House Committee for consideration on a case-by-case basis. Should the House Committee accede to such a request, the debate slot shall not be counted as the mover's own slot.

8. Members of the Panel expressed different views on the recommendation. Some members supported the recommendation on the ground that as the Administration was conducting a study on the subject of standard working hours which was of wide public concern, it was an appropriate time for Members to express views on the subject and for the Administration to respond. Some other members, however, objected to the recommendation, pointing out that any Member could make an application for a debate slot in his individual capacity. The Panel subsequently endorsed the recommendation, with five members voting for, two members voting against it and one in abstention.

9. Pursuant to HR 14A(h), the Panel proposes to seek the agreement of the House Committee for priority allocation of a debate slot to its Chairman for moving a motion for debate on the Report at the Council meeting of 8 February 2012. The wording of the motion as agreed by the Panel is in **Appendix II**. The Panel also proposes that should the House Committee accede to its request, there should only be one other motion debate without legislative effect at that Council meeting.

Advice sought

10. Members are invited to -

- (a) note the Report in **Appendix I**;

- (b) note the recommendation in the Report that, where appropriate, consideration be given to inviting representatives of the Administration to accompany committees in future overseas duty visits; and
- (c) consider the Panel's request for priority allocation of a debate slot to its Chairman for moving a motion for debate on the Report at the Council meeting of 8 February 2012, and its proposal that should the House Committee accede to the request, there should only be one other motion debate without legislative effect at that Council meeting.

Council Business Division 2
Legislative Council Secretariat
12 January 2012

**Legislative Council
of the
Hong Kong Special Administrative Region**

**Delegation of the
Panel on Manpower**

**Report on the duty visit to study
the experience in the implementation of
standard working hours
in the Republic of Korea**

24 to 28 July 2011

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Acknowledgement

The delegation wishes to thank all the distinguished individuals, including Members of the National Assembly, government officials, research experts, members of tripartite organizations, trade unions, employers federation and other institutes with whom the delegation had met during its visit to the Republic of Korea ("Korea") from 24 to 28 July 2011. The delegation is most grateful to them for their detailed briefings for and useful exchanges of views and information with the delegation.

The delegation is grateful to the National Assembly of Korea, the Ministry of Employment and Labor and the Korea Labour Foundation for their kind assistance in drawing up a comprehensive visit programme and providing logistical support. The delegation also wishes to thank the Consulate General of the Republic of Korea in Hong Kong and the Hong Kong Economic and Trade Office in Tokyo for their support and advice on the logistical arrangements.

Chapter 1 – Introduction

Purpose of report

1.1 A delegation of the Panel on Manpower ("the Panel") of the Legislative Council visited Korea from 24 to 28 July 2011 to study the experience in the implementation of standard working hours in the country. This report presents the main findings and observations of the delegation.

Background and objective of the visit

1.2 The Panel is tasked to monitor and examine government policies and issues of public concern relating to labour, manpower planning, vocational training and education, and qualifications framework.

1.3 There have been calls over the years from Legislative Council Members and the community, in particular the labour unions, to introduce standard working hours in Hong Kong. Grave concern has been raised over the adverse effect of long working hours on the physical and mental health of employees as well as their family and social life. Following the implementation of statutory minimum wage in Hong Kong, many Members call on the Administration to introduce standard working hours to better protect the health of workers and improve their family and social life. On the other hand, some Members are concerned that the introduction of standard working hours would undermine the flexibility of the labour market and business environment, and the competitiveness of Hong Kong. These Members have pointed out that the business sector has been badly battered in complying with the requirements on minimum wage and their budget had been upset by rest day pay and meal break pay. In their view, the Administration should step up communication with the business sector, especially the small and medium enterprises ("SMEs"), and understand their operational difficulties. A decision should be made only after extensive consultation and due consideration of the interests of various stakeholders.

1.4 According to the Administration, the subject is complex and would have far-reaching implications on the society and the economy of Hong Kong. Employers, employees and various sectors of the community have divergent views on whether standard working hours should be introduced in Hong Kong. The Chief Executive announced in his Policy

Address on 13 October 2010 that with the enactment of the Minimum Wage Ordinance (Cap. 608), some people suggested that it was the time to embark on a policy study on standard working hours. In this connection, he had asked the Secretary for Labour and Welfare to conduct the study. The Administration advised in December 2010 that the study would proceed with multiple fronts, including the experience of other places, gathering of information and analysis of the hours of work of the working population and different industries, and communicating with various stakeholders including the relevant Panel of the Legislative Council, the Labour Advisory Board, chambers of commerce, trade unions, employers' associations, labour groups and community members.

1.5 To enable members to grasp the latest development on the subject and facilitate their deliberations on the issues concerned, the Panel considers it worthwhile to make reference to overseas experience in respect of the implementation of standard working hours. The Panel asked the Research Division of the Legislative Council Secretariat to gather information on the implementation of standard working hours in Finland, France, Ireland, Japan, Malaysia, Singapore, Korea, Taiwan, the United Kingdom and the United States. Having regard to the research findings, the similarity between Korea and Hong Kong in respect of traditionally long working hours and the successful reduction of standard working hours in Korea from 48 hours per week in 1953 to 44 hours per week in 1991 and further to 40 hours per week by stages between 2004 and 2011, the Panel decided to conduct a duty visit to Korea in late July 2011 to obtain first-hand information on its practical experience and implementation details in respect of standing working hours. The Panel also decided that the study should focus on the following areas -

- (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 Korean Government to address the issues of concern or problems arising from the implementation of standard working hours.

Membership of the delegation

1.6 The delegation comprised the following Members -

Panel members

Hon LEE Cheuk-yan (Chairman of Panel and leader of the delegation)

Hon LI Fung-ying (Deputy Chairman of Panel)

Hon LEUNG Yiu-chung

Hon CHEUNG Kwok-che

Hon WONG Kwok-kin

Hon IP Wai-ming

Dr Hon PAN Pey-chyou

Hon LEUNG Kwok-hung

Non-Panel Members

Hon Emily LAU Wai-hing

Dr Hon LEUNG Ka-lau

Hon WONG Yuk-man

1.7 Mr Raymond LAM, Clerk to the Panel and Mr Ringo LEE, Senior Legislative Assistant, accompanied the delegation on the visit.

Visit programme

1.8 The delegation visited Seoul, the capital of Korea, from 24 to 28 July 2011. The delegation met with Members of the National Assembly, government officials, research experts, members of tripartite organizations, trade unions and employers federation. The details of the visit programme are in **Annex I**. A list of the organizations and persons met by the delegation is in **Annex II**.

Chapter 2 – Involvement of the Korean legislature, government authority, statutory body and organizations in standard working hours

2.1 The standard working hours in Korea is provided in legislation. To gain an insight into the enactment and experience of implementing standard working hours in Korea, the delegation met with Members of the National Assembly and received a briefing by the Ministry of Employment and Labor ("MOEL") on the government policy on standard working hours, the monitoring mechanism, impacts of standard working hours on the labour market and business environment. The delegation also exchanged views with the Federation of Korean Trade Unions ("FKTU"), the Korean Confederation of Trade Unions ("KCTU"), the Korea Employers Federation, the Economic and Social Development Commission ("ESDC"), the Korea Labor Institute ("KLI") and the Korea Labor Foundation ("KLF").

Overview of the political structure in Korea

2.2 In Korea, the Government performs its administrative functions through the State Council which comprises the President, the Prime Minister and 16 cabinet-level ministers. Cabinet ministers are appointed by the President upon the recommendation of the Prime Minister. The legislature of Korea is the National Assembly. It is a unicameral legislature comprising 299 Members, among whom 245 are elected from single-member constituencies and 54 are elected through proportional representation. A majority of the Members belong to the Grand National Party, which is the government party, while the Democratic Party is the major opposition party. A bill is drafted by ministries of the relevant policy area and examined by the Ministry of Government Legislation, which examines the drafting aspects of the bill and its consistency with other legislation, before its submission to the State Council for consideration. After approval by the State Council, the bill is presented by the Ministry of Government Legislation to the National Assembly and referred at the Plenary Session of the National Assembly to the relevant Standing Committee for examination. Thereafter, the bill is referred to the Legislation and Judiciary Committee for examination of the drafting aspects before general debate and voting at the Plenary Session of the National Assembly. A bill passed by the National Assembly is forwarded by the Speaker of the National Assembly to the Korean Government and promulgated by the President.

Involvement of different parties in the legislation on standard working hours and its implementation

Ministry of Employment and Labour

2.3 MOEL is the ministry responsible for drafting employment and labour-related bills, monitoring its implementation and studying its impact. It is responsible for formulating and implementing government policy on employment and labour matters, including labour standards, employment matters, job training, industrial relations, guidance for trade unions, occupational safety and health, employee welfare, employment policies, equal employment, industrial compensation insurance and other labour affairs.

2.4 During the visit, the delegation exchanged views with MOEL on the government policy on standard working hours, the implementation experience, impact of implementation of standard working hours on the labour market and the business environment, and measures adopted by the Korean Government to address issues or problems arising from the implementation of standard working hours.



The delegation met with representatives of the Ministry of Employment and Labor

Environment and Labor Committee of the National Assembly

2.5 The Environment and Labor Committee examines bills and petitions on environmental and labour issues. It is one of the 16 Standing Committees of the National Assembly. The Committee comprises 14 members, including the Chairman and two Secretaries, all of whom are Members of the National Assembly. The Chairman is elected from among members of the Committee.

2.6 The delegation exchanged views with the Committee on the process of amendment of legislation to reduce standard working hours, the concerns of different sectors of the community on the amendment proposals and the impact of reduction of working hours on the wages of employees.



The delegation met with the Environment and Labor Committee of the National Assembly

Economic and Social Development Commission

2.7 ESDC is a presidential statutory body which plays a key role in tripartite dialogue and agreement before and after the enactment of legislation on labour-related issues. It provides advice on labour-related issues to the President. It is the official communication channel among the government, employers, labour unions and public interest groups. Its plenary committee comprises 11 members, including the chairman and vice-chairman, three government ministers, two representatives from the labour sector, two representatives from the management sector and two representatives from public interest groups. It was formerly known as the Korean Tripartite Commission ("KTC"), which was established in 1998 and renamed as ESDC in 2007.

2.8 The delegation exchanged views with ESDC on how the reduction of working hours was taken forward in Korea, the prevention of wage reduction after the reduction of working hours and the industries allowed to require employees to undertake overtime work exceeding the statutory limit.



The delegation met with representatives of the Economic and Social Development Commission

Labour unions and employers associations

2.9 Labour unions and employers associations play an important role in representing the interests of employees and employers in the legislative process. During the visit, views were exchanged with labour unions and employers association on the concerns of employees and employers on standard working hours and the impact of implementation of standard working hours on employees and employers.

Federation of Korean Trade Unions

2.10 Founded as the General Council of Korean Trade Unions in 1919, FKTU underwent reorganization and adopted its present name in 1961. It is the largest national federation of labour unions in Korea. As of May 2011, KFTU had a membership of 1 005 783 workers from 3 260 affiliated unions.



The delegation met with representatives of the Federation of Korean Trade Unions

Korean Confederation of Trade Unions

2.11 Established on 11 November 1995, KCTU is the second largest national federation of labour unions in Korea. In 2011, it has 677 790 members from 1 768 affiliated unions.



The delegation met with representatives of the Korean Confederation of Trade Unions

Korea Employers Federation

2.12 KEF is an independent employers association established on 15 July 1970. KEF provides member companies with information on labour issues and offer recommendations and opinions to the government.



The delegation met with representatives of the Korea Employers Federation

Research institute and other organization

Korea Labor Institute

2.13 KLI plays an important role in the analysis of labour market situation before and after the reduction of standard working hours. It is a leading national think tank specializing in labour issues and labour policy in Korea. It is one of 23 government-funded research institutes and conducts research on topics related to employment, wages, human resource management, industrial relations and employment insurance. The delegation exchanged views with KLI on the impact of implementation of standard working hours on the economy of Korea, employers and employees.



The delegation met with representatives of Korea Labor Institute

Korea Labor Foundation

2.14 KLF is a non-profit organization specialized in promoting labour-management relations and the understanding of foreign investors and the international community about the labour market situation in Korea. It is jointly established by the Korean Government, labour unions and employers. The delegation exchanged views with KLI on the background to the introduction of a 40-hour working week, the detailed statutory requirements as well as the concerns of employers and employees on standard working hours.



The delegation met with representatives of the Korea Labor Foundation

Chapter 3 – Statutory standard working hours in Korea

3.1 Noting the reduction of standard working hours in Korea from 48 hours per week in 1953 to 44 hours per week in 1991 and further to 40 hours per week in phases between 2004 and 2011 while maintaining economic growth during the same period, the delegation had sought to understand how different stakeholders in Korea came to an agreement on a 40-hour working week, the legislative process, the statutory requirements on standard working hours and the implementation details. The delegation noted the commencement in 2000 of tripartite discussion among the Korean Government, trade unions and employers on the reduction of working hours. After the reaching of a basic agreement on the reduction of working hours, tripartite deliberations on the detailed arrangements followed and a report was submitted to the Government in 2002. The Korean Government subsequently introduced a bill into the National Assembly to amend the relevant legislation to reduce standard working hours. After examination by the Environment and Labor Committee of the National Assembly, the bill was eventually passed by the National Assembly and the reduction of standard working hours was implemented by six stages from 2004 to 2011. The findings of the delegation are set out in the following paragraphs.

How a 40-hour working week was taken forward in Korea

3.2 In Korea, standard working hours are stipulated in the Labor Standards Act ("LSA"). Enacted in 1953, LSA initially specified an eight-hour working day and a 48-hour working week for Korean workers. The 44-hour working week was introduced in stages according to the size of companies from 1990 to 1991. Financial and insurance institutions and companies with 300 workers or more were required to introduce a 44-hour working week from October 1990 onwards. Other enterprises were required to implement a 46-hour working week from October 1990 onwards, followed by a 44-hour working week from October 1991 onwards.

3.3 As a result of the Asian financial crisis in 1997, there was massive unemployment in Korea. Statistics released by the Organisation for Economic Cooperation and Development¹ ("OECD") indicated that the

¹ Established in 1961, OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems. The mission of OECD is to promote policies that will improve the economic and social well-being of people around the world. OECD has 34

average working hours of employees in Korea was 2 582 hours per annum in 1997, while the OECD average during the same period was 1 841 hours. There was strong demand from labour unions and the public for the Korean Government to reduce statutory working hours to create more jobs and improve the health of employees.

3.4 KTC (renamed as ESDC in 2007), the presidential advisory body established as the official social communication channel among the government, employers, labour and public interest groups, set up a Special Committee on Reduction of Working Hours ("the Special Committee") in May 2000 to discuss the subject of introducing a shorter working week.

3.5 In October 2000, the Special Committee announced that a basic agreement was reached on the reduction of working hours. It proposed 40 working hours per week, which was in line with the international standard. The Basic Agreement on Reduction of Working Hours published by the Special Committee on 23 October 2000 is in **Annex III**. Tripartite deliberations within KTC then continued on the detailed arrangements. According to Mr KIM Yang-soo of ESDC, agreement could not be reached on the issue of maintaining the wage levels of employees after reduction of standard working hours, although agreement was reached on most other issues. KTC submitted its report to the Government in mid-2002.

3.6 The Korean Government announced in September 2002 that it would introduce a bill to amend LSA to reduce standard working hours. The bill was submitted to the National Assembly in October 2002.

3.7 The bill proposed a reduction of weekly working hours from 44 hours to 40 hours while setting the upper limit of annual leave at 25 days. Under the bill, along with the reduction in working hours, a one-day leave with pay per month was abolished and a one-day menstruation leave with pay for female employees was changed to leave without pay. Employers were relieved from the obligation to compensate untaken leave with money, if employees did not take their leave after employers had given them notice three months before the expiry of their annual leave. Untaken leave would be forfeited without any compensation.

member countries, including, among others, Australia, Canada, France, Germany, Japan, Korea, the United Kingdom and the United States.

3.8 The overtime wage rate was maintained at 150% of the normal wage rate. As a transitional measure, the overtime wage rate was reduced to 125% of the normal wage rate for the first four hours of overtime work during the first three years of implementation of a 40-hour working week.

3.9 A comparison of the original requirements under LSA and the proposals in the bill is set out below -

| | Original requirements under LSA | Proposals in the bill |
|---|---|---|
| Standard working hours | 44 hours a week/ eight hours a day | 40 hours a week/ eight hours a day |
| Upper limit of overtime per week | Up to 12 hours a week | Up to 12 hours a week (can be extended to 16 hours a week in the first three years after implementation of the 40-hour working week) |
| Overtime wage rate | 150% of the normal wage rate | 150% of the normal wage rate (reduced to 125% for the first four hours of overtime work in the first three years after implementation of the 40-hour working week) |
| One day's leave per month | With pay | Abolished |
| Menstruation leave | One day with pay per month | One day without pay per month on request by female workers |
| Annual leave with pay | 10 days for employees with consecutive service of at least one year, or eight days for those with at least 90% attendance | 15 days for those with at least 80% attendance and consecutive service of at least one year An additional day for every two years of service that follows One day per month for those |

| | Original requirements under LSA | Proposals in the bill |
|--|--|--|
| | An additional day for each year of service that follows | with service shorter than one year The upper limit of annual leave is 25 days |
| Monetary compensation for unused annual leave | Monetary compensation for unused annual leave in excess of 20 days | Unused annual leave will be forfeited without any compensation |

3.10 After the bill was introduced, employees were concerned about possible reduction in their leave and income. The trade unions insisted on a shorter working week without any reduction of wages. On the other hand, SMEs were concerned that their global competitiveness would be weakened. They considered that standard working hours could be reduced on the condition of improvement in labour productivity. Representatives of employers demanded reducing paid leave and overtime payment to tackle the problem of increasing labour cost.

3.11 After deliberations by the Environment and Labor Committee of the National Assembly, which initiated further tripartite discussions, the bill was passed in its original form by the National Assembly in August 2003 and implemented in stages from 1 July 2004 onwards.

Current statutory requirements on standard working hours

3.12 After the passage of the bill, employers have the obligation to modify the existing collective agreements and rules of employment² to bring them in line with the new requirements under the provisions in the amended LSA. The articles in the amended LSA relevant to standard working hours are in **Annex IV**.

² An employer who hires 10 workers or more is required to draw up rules of employment and submit them to MOEL. The rules of employment set out matters such as starting and finishing time of work, recess hours, holidays, leaves and shifts, determination of wages, calculation of wages, means of payment, wage period, time of payment, wage increase, severance pay, bonuses and minimum wages etc.

3.13 Under Article 50 of LSA as amended by the bill, working hours per week shall not exceed eight hours per day and 40 hours per week, excluding recess hours. The detailed statutory requirements on working hours for different types of employees are as follows -

| Type of employees | Standard working hours | Overtime |
|---|--|--|
| General | eight hours per day / 40 hours per week | up to 12 hours per week |
| Pregnant employees | | not allowed |
| Working mothers with a child of one year of age or less | | up to two hours per day / six hours per week |
| Youth aged 15 to 18 | seven hours per day / 40 hours per week | up to one hour per day / six hours per week |

3.14 LSA does not apply to businesses and workplaces in which less than five workers are ordinarily employed. It is also not applicable to any business or workplace which employs live-in relatives or persons performing domestic work.

3.15 According to Mr KWEON Tae-seung of MOEL, the provisions on working hours and leave in LSA are not applicable to self-employed persons or workers engaged in -

- (a) cultivation of arable land, reclamation work, seeding and planting, gathering or picking-up or other agricultural and forestry work;
- (b) livestock breeding, cultivation of marine products or other cattle-breeding, sericulture and fishing;
- (c) surveillance or intermittent work, for which the employer has obtained approval from the Minister of Employment and Labor; and
- (d) any other work prescribed in the Presidential Decree.

Flexible working hours

3.16 Employers in Korea are allowed to adopt a flexible working hours system to meet seasonal, monthly or daily fluctuations in workload.

3.17 An employer may adopt a flexible working hours system by -

- (a) modifying the rules of employment to allow an employee to work up to 48 hours per week on the condition that the average working hours per week do not exceed 40 hours per week within a two-week period; or
- (b) reaching a written agreement with employees' representative to allow an employee to work up to 12 hours per day or 52 hours per week on the condition that the average working hours per week do not exceed 40 hours per week within a three-month period.

3.18 The delegation was advised by Dr HOANG Seon-ja of FKTU that the three-month period referred to in paragraph 3.17(b) above has provided too much flexibility for employers and resulted in long working hours for many employees.

Overtime work and pay

3.19 Any work done beyond the statutory working hours is regarded as overtime work. The upper limit of overtime work is 12 hours per week. As a transitional measure, the upper limit of overtime work could be raised to 16 hours in the first three years after the 40-hour working week is implemented in a business.

3.20 An employer engaged in the following businesses, which are related to the daily life of the general public, may require his employees to undertake more than 12 hours of overtime work per week, and adjust the recess time, so long as the employer has entered into a written agreement with the employees' representative -

- (a) transportation;
- (b) goods sales and storage;
- (c) finance and insurance;

- (d) movie production and entertainment;
- (e) communication;
- (f) educational study and research;
- (g) advertising;
- (h) medical and sanitation;
- (i) hotel and restaurant;
- (j) incineration and cleaning;
- (k) barber and beauty parlour; and
- (l) social welfare.

3.21 The delegation was advised by Mr KIM Yang-soo of ESDC that the above industries employ around 37% of the working population. Discussions have commenced on the issue of reducing the types of industries which may require employees to undertake overtime work exceeding 12 hours per week.

3.22 A pregnant employee may not undertake overtime work. A mother with a child of one year of age or less may not undertake overtime exceeding two hours per day, six hours per week or 150 hours per year.

3.23 The overtime wage rate is 150% of a worker's normal wage rate under LSA. As a transitional measure, the overtime wage rate is reduced to 125% of a worker's normal wage rate for the first four hours of overtime work in the first three years after the 40-hour working week is implemented in a business.

3.24 An employer who has entered into a written agreement with an employee can grant leave in lieu of overtime pay to the employee.

3.25 The requirement in the amended LSA is that the wage level of an employee should not be lower than that before the implementation of a 40-hour working week.

Penalty

3.26 An employer who violates the provisions in LSA on working hours, holidays and paid annual leave is liable on conviction to a maximum imprisonment term of two years or a maximum fine of KRW 10 million (about HK\$68,376). An employer who violates the provisions in LSA on payment for overtime work is liable on conviction to a maximum imprisonment term of three years or a maximum fine of KRW 20 million (about HK\$136,752). The delegation was advised by Dr KIM Sung-teak of KLI that some employers have been fined but no person has so far been imprisoned for breach of the law on standard working hours.

Implementation timetable

3.27 The 40-hour working week was implemented in Korea by six stages. It was first applied to businesses with 1 000 employees or more, financial and insurance businesses and government-invested institutions. The 40-hour working week was then gradually extended to businesses with fewer employees. The implementation timetable is as follows -

| Stage | Implementation date | Size of business |
|--------------|---------------------|--|
| First stage | 1 July 2004 | Businesses with 1 000 employees or more; financial/insurance businesses and government-invested institutions |
| Second stage | 1 July 2005 | Businesses with 300 employees or more |
| Third stage | 1 July 2006 | Businesses with 100 employees or more |
| Fourth stage | 1 July 2007 | Businesses with 50 employees or more |
| Fifth stage | 1 July 2008 | Businesses with 20 employees or more |
| Last stage | 1 July 2011 | Businesses with five employees or more |

Chapter 4 – Observations and conclusions

Trend of working hours in Korea

4.1 The delegation notes a general trend of decreasing average working hours per annum in Korea in the past decade. According to the statistics compiled by OECD, the average annual working hours of employees in Korea were 2 495 hours in 1999. These had been reduced to 2 392 hours in 2004 and further to 2 193 hours in 2010. The trend is in line with that in OECD countries. The average annual working hours in OECD countries in the corresponding period are 1 827, 1 783 and 1 749 respectively. Statistics on the average working hours per annum in Korea and the OECD countries are in **Annex V**.

4.2 The delegation observes that among various industries in Korea, the manufacturing, transportation, real estate and leasing industries have consistently been the three industries with the highest average working hours in 2009 and 2010. Their average weekly working hours range from 41.1 hours to 42.6 hours in 2009 and 41.1 hours to 42.7 hours in 2010. The average working hours per week in different industries in Korea are in **Annex VI**. According to Dr KIM Sung-teak of KLI, employees of SMEs generally work longer hours. In the first three quarters of 2010, the average weekly working hours of employees of businesses with 300 employees or more are 37.9 hours, while those for businesses with less than 300 employees range from 40.8 hours to 41.2 hours. The distribution of employees by working hours per week as at July 2011 is in **Annex VII** and the average weekly working hours of employees by size of businesses from 2007 to 2010 are in **Annex VIII**.

4.3 According to Mr KWEON Tae-seung of MOEL, the decrease in working hours per annum is attributed to the reduced statutory working hours. However, Mr LEE Dong-eung of KEF takes the view that there has already been a trend of decreasing average working hours per annum in the country since 2000 and no significant change is evident in this trend after the introduction of a 40-hour working week.

Monitoring of the implementation of standard working hours

4.4 According to Mr KWEON Tae-seung of MOEL, the implementation of standard working hours is monitored through various measures. Labour inspectors carry out annual inspections at workplaces

to monitor the compliance of individual businesses with the statutory requirements on working hours. Labour inspectors also conduct surprise visits to identify contravention of labour laws and investigate into alleged breach of the law upon receipt of reports from victims. These apart, MOEL conducts surveys on working hours through a monthly labour force survey and an annual working conditions survey.

Impact on the labour market and the business environment

Impact on the labour market

4.5 The delegation notes that the implementation of standard working hours has encouraged job sharing, creation of more part-time jobs and the adoption of more flexible working hours. According to Hon KIM Sung-soon, Chairman of the Environment and Labor Committee of the National Assembly, surveys conducted on enterprises indicate no significant change in the income of employees after the reduction of standard working hours. The delegation was advised by Mr KWEON Tae-seung of MOEL that as most businesses have introduced a five-day working week after the reduction of working hours, those requiring employees to work six days per week have difficulties in recruitment. The delegation was also advised by Mr LEE Dong-eung of KEF that many companies in Korea have chosen to increase the overtime work of employees instead of recruiting additional staff.

Impact on the business environment

4.6 The delegation notes the observation of MOEL that the reduction of standard working hours has not generated heavy burden on enterprises. It also notes the observation of KLI that there is no evidence suggesting any significant impact of the introduction of a 40-hour working week on the Gross Domestic Product ("GDP") per capita of the country. The GDP per capita of Korea has been increasing before the implementation of the 40-hour working week in 2004 and has remained so after the implementation. The GDP per capita of Korea in the past 10 years is in **Annex IX**.

Impact on labour productivity

4.7 The delegation notes different views expressed by the Korean Government and employers on the impact of standard working hours on labour productivity. According to MOEL, labour productivity is

expected to improve with the full implementation of a 40-hour working week. On the other hand, KEF takes the view that there is no evidence suggesting improved labour productivity after the introduction of a 40-hour working week. As the full implementation has only been effected in July 2011, the impact on labour productivity has yet to be seen.

Measures adopted by the government to address concerns and problems arising from the reduction of standard working hours

4.8 During the discussions on the reduction of standard working hours to 40 hours per week, the labour sector was concerned that it might result in reduction of wages. The delegation is impressed that in order to prevent a reduction in an employee's wages, an article was incorporated in the Addenda to LSA (Annex IV) requiring employers to keep the existing wage level of employees after the implementation of the 40-hour working week.

4.9 The delegation notes that most businesses in Korea are SMEs. When the Korean Government introduced the bill in 2002 to reduce standard working hours to 40 hours per week, the business sector was concerned that it would lead to an increase in labor costs.

4.10 To address the concern about financial burdens on employers, the Korean Government has introduced the 40-hour working week in six stages over a period of seven years, starting with large companies. As small and labour-intensive businesses are expected to be most affected by the implementation of a shorter working week, they have been given the longest transitional period to adjust to the new arrangement. The overtime wage rate is reduced from 150% to 125% for the first four hours of overtime work and the upper limit of overtime work is increased from 12 hours to 16 hours per week for a period of three years after the implementation of the 40-hour working week.

4.11 The delegation notes that other measures have been introduced by the Korean Government to relieve employers' financial burdens. These include abolishing the one-day monthly paid leave, making menstruation leave unpaid, allowing employers to compensate overtime work with leave, and expanding the flexible working hours system.

4.12 As businesses with five to 20 employees are usually not familiar

with labour laws, the delegation notes the adoption by MOEL of the following measures to facilitate smooth implementation of the 40-hour working week -

- (a) organizing education programmes, including online education series;
- (b) arranging briefing sessions across the country;
- (c) organizing consultation service in collaboration with employers' organizations;
- (d) establishing counselling centres to answer relevant questions; and
- (e) providing subsidy to SMEs which launch the new working hour system at least six months earlier than the scheduled timetable under the law. A subsidy in the amount of KRW 1.8 million (about HK\$12,308) per person is paid per quarter to the SME concerned until the statutory requirement of 40 working hours per week has become effective for the relevant businesses. The subsidy is subject to an upper limit of 10% of the number of employees of the business before the reduction in working hours. The limit has been increased to 30% from January 2009 onwards.

Changes brought about by the implementation of standard working hours to the life of employees and their families

4.13 The delegation notes that the implementation of standard working hours has enabled employees to enjoy better quality of life and achieve a better balance between family life and work. It provides workers with more leisure time and more time to spend with their families. According to Mr LEE Dong-eung of KEF, it has brought about increased demand in the sports and entertainment industries in Korea.

Conclusions

4.14 The delegation finds the duty visit very useful as it has provided insight into the development and implementation of standard working hours in Korea.

4.15 The delegation is impressed that notwithstanding the reduction of standard working hours to the current level of 40 hours per week, there is tripartite commitment among the government, employers and employees in Korea to further reduce the working hours of employees in the longer term. It notes that besides the calls from trade unions for further reduction of statutory working hours, a Committee on Improvement of Working Hours and Wage Systems formed under ESDC has reached a tripartite agreement in June 2010 to further improve working hours. The agreement includes, among others, the reduction of annual working hours from the current level of more than 2 000 hours to about 1 800 hours by 2020 and the setting up of a comprehensive national body comprising various stakeholders, including representatives from the labour sector, management and the government, to improve the practice on working hours.

4.16 The delegation finds that the experience of Korea has provided very useful reference to Hong Kong in considering the subject of introduction of standard working hours in the following areas -

- (a) the general recognition by the government and the community of the importance of a balance between family life and work towards a healthier society;
- (b) the importance of initiating early tripartite discussion among the government, employers and employees on the subject, with a view to reaching an agreement on the basic framework;
- (c) the need for phased implementation of standard working hours, starting with certain industries and large organizations;
- (d) the need for providing financial incentives to SMEs to implement standard working hours in particular during the initial period;
- (e) the importance of addressing the problem of possible wage reduction of employees after the reduction of working hours; and
- (f) the need for establishing a high-level body comprising various stakeholders, including representatives from the government, employers and the labour sector, to take forward proposals for introducing standard working hours.

4.17 The delegation notes that in principle, representatives of the Administration are not invited to take part in overseas duty visits conducted by committees of the Legislative Council in order not to compromise the independence of the studies undertaken by the committees concerned. As overseas duty visits enable members to gain insight into overseas experience in the subject areas under study which are invariably of concern to both the Administration and the community, the delegation considers that it will be helpful if officials from the relevant Government departments could accompany members to provide information relevant to Hong Kong and share their views on the relevant issues during the visit. The delegation recommends that where appropriate, representatives of the Administration be invited to accompany the committee concerned in future overseas duty visits.

4.18 In view of the wide public concern in Hong Kong over the subject of standard working hours, the delegation further recommends that the support of the Panel be sought for applying to the House Committee for the priority allocation of a debate slot to the Chairman of the Panel and leader of the delegation under Rule 14A(h) of the House Rules for moving a motion to take note of this report at a Council meeting to provide an opportunity for Members to express views on the subject and the Administration to respond.

Council Business Division 2
Legislative Council Secretariat
12 January 2012

Panel on Manpower

**Programme of the duty visit to Korea
from 24 to 28 July 2011**

| | |
|-------------------------------------|---|
| 24 July 2011 (Sunday) | Arrive at Seoul |
| 25 July 2011 (Monday) | Meeting with Ministry of Employment and Labor |
| | Meeting with the Environment and Labor Committee of the National Assembly |
| 26 July 2011 (Tuesday) | Meeting with Korea Labor Foundation |
| | Meeting with Korea Labor Institute |
| | Meeting with Federation of Korean Trade Unions |
| 27 July 2011 (Wednesday) | Meeting with Economic and Social Development Commission |
| | Meeting with Korean Confederation of Trade Unions |
| 28 July 2011 (Thursday) | Meeting with Korea Employers Federation |
| | Depart for Hong Kong |

Annex II

**List of Members of the National Assembly, government officials
and representatives of tripartite organizations,
research institute, trade unions and employers federation
with whom the delegation had met**

| <i>Organization</i> | <i>Name</i> | <i>Position (as at July 2011)</i> |
|--|-----------------------|--|
| Environment and Labor Committee of the National Assembly | Hon KIM Sung-soon, MP | Committee Chairman |
| | Hon LEE Mi-kyung | Committee Member |
| Ministry of Employment and Labor | Mr SHIM Kyung-woo | Director General, International Cooperation Bureau, Ministry of Employment and Labor, Korea |
| | Mr KWEON Tae-seung | Director, Working Conditions Improvement Division, Ministry of Employment and Labor, Korea |
| | Ms LEE Ji-yun | Deputy Director, Labor Management Cooperation Policy Division, Ministry of Employment and Labor, Korea |
| | Mr NAM Sang-in | Assistant Director, International Labor Affairs Division, Ministry of Employment and Labor, Korea |

| <i>Organization</i> | <i>Name</i> | <i>Position (as at July 2011)</i> |
|--|--------------------|--|
| Economic and Social Development Commission | Mr EOM Hyun-taeg | Vice-Chairman |
| | Mr PARK Yeon-jeong | Director-General for External Cooperation |
| | Mr KIM Yang-soo | Director for Public Relations |
| | Mr KIM Hoon-sik | Specialist |
| Korea Labor Foundation | Mr MOON Hyung-nam | General Secretary |
| | Mr KIM Sung-jin | Managing Director, International Centre |
| | Mr BAE Su-nam | Team Leader, Exchange & Cooperation Team |
| | Ms JUNG Sook-hee | Team Leader, Workplace Innovation Team |
| | Mr PARK Woo-jai | Deputy Section Chief, Exchange & Cooperation Team |
| | Ms KWON Soo-hyun | Deputy Section Chief, Exchange & Cooperation Team |
| Korea Labor Institute | Dr KIM Sung-teak | Acting President |
| | Dr JEONG Jin-ho | Director-General, Employment Policy Research Division |
| | Dr KIM Jeong-han | Director-General, Labor Relations Policy Research Division & Social Policy Research Division |
| | Dr BAE Kiu-sik | Director, International Cooperation & Information Office |

| <i>Organization</i> | <i>Name</i> | <i>Position (as at July 2011)</i> |
|--------------------------------------|-------------------|---|
| | Dr PARK Je-seong | Research Fellow |
| | Ms KIM Min-jeong | Coordinator, International Cooperation & Information Office |
| Federation of Korean Trade Unions | Mr KIM Dong-man | Vice President |
| | Dr HOANG Seon-ja | Senior Researcher |
| | Mr LEE In-duk | International Director |
| Korean Confederation of Trade Unions | Mr LIM Dong-soo | Executive Director, Policy Department |
| | Ms KIM Mi-jeoung | Policy Director on Employment |
| | Ms RYU Mi-kyung | International Director |
| Korea Employers Federation | Mr LEE Dong-eung | Senior Managing Director |
| | Mr KIM Dong-wook | Director of Economic Research Bureau |
| | Ms CHOI Sun-kyung | Chief, International Affairs Team |
| | Mr JEON Young-gi | International Affairs Team |

Basic Agreement on Reduction of Working Hours published by the Special Committee on Reduction of Working Hours on 23 October 2000

The 21st century requires the formation of a new series of orders for all sectors including the economy, society and culture.

As regards the labor situation, a national consensus has been formed about the need to reduce working hours (currently about 2,500 hours per year) in order to enhance the quality of life of workers as well as the creativity to boost overall national competitiveness. In addition, the existing systems for wages, leaves and holidays in this knowledge and information society need to be improved.

On May 17, 2000, the Korea Tripartite Commission launched the Special Committee on Reduction of Working Hours to come to terms with the changing working environment and lay a new basis for positive growth both for labor and management through reduction of working hours as well as improvement in the systems of wages, leaves and holidays.

The members of the Special Committee on the Reduction of Working Hours agreed to the idea on the basis of the agreement on October 21, 2000 with the aim to enhance the quality of life for all the people, help the nation's businesses secure sufficient competitiveness in the new era, and adapt to international standards.

The basic goal is to reduce working hours to less than 2,000 hours per year as soon as possible, taking various kinds of businesses and employment sizes into account.

For that goal, we at the Commission have agreed to make efforts to realize the five-day working week system by reducing the statutory working hours to 40 hours under a new Labor Standards Act, as well as to make improvement in, and readjustment to, the systems of holidays and leaves in accordance with international standards, by increasing the actual number of days workers spend off work.

We have also agreed to seek ways not to cause a drop in the workers' living standards and industrial productivity in the course of reducing

working hours and help the workers spend their holidays and leaves in an efficient way.

Together with the efforts toward improving the systems, our endeavors will be directed toward affecting changes in the consciousness and practice as well, aiming for a creative and active production system in lieu of the quantity-oriented management of the past.

The parties share the opinion that related systems and practices in our society should also be improved on the occasion of reducing work hours, which will impact people's lives in general. The class operation system at school shall also be changed. Changes in the ways leisure time is spent should be made and chances for one's self-development and enlightenment should also be enhanced.

The three parties hereby agree as follows, believing that innovating the systems related to working hours will be the fundamental basis for better conditions for workers and for industrial competitiveness:

1. The working hours for the nation's workers, currently reaching the level of 2,497 hours per year, shall be reduced to less than 2,000 hours at the soonest possible date through the improvement of the wage, holiday and leave systems.
2. The issue of reducing work hours shall be promoted in such a way as to ensure mutual prosperity for both workers and employers by enhancing the quality of life and creativity and giving broader chances for employment and education/training for workers, and enhancing industrial competitiveness through higher productivity.
3. Reducing work hours shall be promoted on the basis of national consensus in consideration of its significant influence on the systems of management, employment and the people's way of life in general. It shall also be promoted in line with international standards and ultimately aim at improving the people's quality of life.
4. The government shall submit the bill for amending the Labor Standards Act to the National Assembly in this year to reduce the statutory working hours to 40 hours per week, establishing the basis for the five-day working week system.
5. Measures to more effectively use working hours and to voluntarily reduce overtime or work on holidays shall be studied to achieve the

goal of improved productivity.

6. The government shall consider taking various measures related to the reduction of working hours and prepare a social environment (such as adoption of the five-day school week system and provision of more opportunities for education and training of workers) to go with the five-day working week system.
7. All possible efforts shall be made to improve the consciousness as well as practices to achieve beneficial effects of the reduction in work hours.

Source : Economic and Social Development Commission, Korea

**Articles in the Labor Standards Act relevant to
standard working hours**

Labor Standards Act

Article 50 (Working Hours)

- (1) Working hours per week shall not exceed forty hours excluding recess hours.
- (2) Working hours per day shall not exceed eight hours excluding recess hours.

Article 51 (Flexible Working Hour System)

- (1) An employer may have a worker work in accordance with rules of employment (or in accordance with rules or regulations equivalent thereto) for a specific week in excess of working hours prescribed in Article 50 (1), or for a specific day in excess of working hours prescribed in Article 50 (2), on condition that average working hours per week in a certain unit period of not more than two weeks do not exceed the working hours under Article 50 (1), provided that working hours in any particular week shall not exceed forty-eight hours.
- (2) Where an employer reaches an agreement in writing with a workers' representative on the following enumerated items, the employer is allowed to have a worker work for a specific week in excess of the working hours under Article 50 (1), or for a specific day in excess of the working hours under Article 50 (2), on the condition that average working hours per week in a certain unit period of not more than three months do not exceed the working hours under Article 50 (1). However, working hours for a specific week, and for a specific day shall not exceed fifty-two hours and twelve hours respectively:
 1. Scope of workers subject to this paragraph;

2. Unit period (a unit period not exceeding three months);
 3. Working days in a unit period and working hours for each working day; and
 4. Other matters prescribed by the Presidential Decree.
- (3) The provisions of paragraphs (1) and (2) shall not apply to workers aged between fifteen or older and less than eighteen, and pregnant female workers.
- (4) If an employer needs to have a worker work in accordance with the provisions of paragraphs (1) and (2), the employer shall prepare measures to ensure that the existing wage level is not lowered.

Article 52 (Selective Working Hour System)

Where an employer has reached a written agreement on each of the following subparagraphs with of workers' representative regarding a worker who is entrusted with the decision as to when to begin and finish work in accordance with rules of employment (including those equivalent to rules of employment), the employer may have workers work in excess of the working hours per week set by paragraph (1) of Article 50, or the working hours per day set by paragraph (2) of Article 50 on the condition that average working hours per week computed on the basis of adjustment period not more than one month do not exceed the working hours prescribed in paragraph (1) of Article 50:

1. Scope of workers subject to this paragraph (excluding workers between the age of fifteen and of eighteen);
2. Adjustment period (a finite period not more than one month);
3. Total working hours within an adjustment period;
4. Starting and finishing time of working hours, if a mandatory work period is in force;
5. Starting and finishing time of working hours which are allowed to be selected by workers; and

6. Other matters prescribed by the Presidential Decree.

Article 53 (Restriction on Extended Work)

- (1) If the parties concerned reach agreement, the working hours stipulated in Article 50 may be extended up to twelve hours per week.
- (2) If the parties concerned reach agreement, the working hours stipulated in Article 51 may be extended up to twelve hours per week, and the working hours under Article 52 may be extended up to twelve hours per week averaged during a adjustment period pursuant to subparagraph 2 of Article 52.
- (3) Under special circumstances, an employer may extend working hours as provided for in paragraphs (1) and (2) with the approval of the Minister of Employment and Labor and consent of workers; however, the employer shall immediately obtain the approval of the Minister of Employment and Labor ex post facto, if a situation is so urgent that time is not available to obtain such approval.
<Amended by Act No. 10339, Jun. 4, 2010>
- (4) If the Minister of Employment and Labor finds that the extension of working hours in accordance with paragraph (3) is not appropriate, he/she may order the employer to grant recess hours or days-off equivalent to the extended working hours in later time.
<Amended by Act No. 10339, Jun. 4, 2010>

Article 54 (Recess Hours)

- (1) An employer shall allow a recess period of more than 30 minutes for every 4 working hours and more than 1 hour for every 8 working hours during the working hours.
- (2) A recess period may be freely used by workers.

Article 55 (Holidays)

An employer shall allow a worker on the average one or more paid holiday per week.

Article 56 (Extended Work, Night Work and Holiday Work)

An employer shall additionally pay fifty percent or more of the ordinary wages for extended work (extended work as set forth in the provisions of Articles 53 and 59, and the proviso of Article 69), night work (work provided from 10 p.m. to 6 a.m.) or holiday work.

Article 57 (System of Using Leave as Compensation)

An employer may, in lieu of paying additional wages, grant the leave to worker to compensate for the extended, night and holiday work prescribed in Article 56, pursuant to a written agreement with the workers' representative.

Article 58 (Special Provisions for Computation of Working Hours)

- (1) If it is difficult to compute working hours because a worker carries out his duty in whole or in part outside the workplace for business travel or for other reasons, it shall be deemed that the worker concerned has worked the contractual working hours. However, in cases where a completion of a work requires a worker to work in excess of contractual working hours, the worker is deemed to have worked for hours ordinarily required to complete the work concerned.
- (2) Notwithstanding the proviso of paragraph (1), if an employer and the representative of workers have agreed, in writing, on the works concerned, the working hours set by the agreement shall be deemed to be the working hours necessary for the performance of the works concerned.
- (3) In the case of works designated by the Presidential Decree as those works which need, in the light of their characteristics, worker's discretion with regard to the ways to perform the works concerned, the worker shall be deemed to have worked such working hours as determined by a written agreement between the employer and the workers' representative. Such written agreement shall contain each of the items described in the following subparagraphs:
 1. Provisions as to works to be provided;

2. Provisions in which the employer would not give directions to the worker regarding how to perform, and how to allocate working hours; and
 3. Provisions in which the computation of working hours shall be determined by the written agreement concerned.
- (4) Other matters which are required to implement the provisions of paragraphs (1) and (3) shall be determined by the Presidential Decree.

Article 59 (Special Provisions as to Working and Recess Hours)

- (1) With regard to a business which falls under the purview of any of the following subparagraphs, the employer who has agreed in writing with the workers' representative may have the workers work in excess of the twelve hours per week prescribed in Article 53 (1) or may change the recess hours under Article 54:
1. Transportation business, goods sales and storage business, finance and insurance business;
 2. Movie production and entertainment business, communication business, educational study and research business, advertising business;
 3. Medical and sanitation business, hotel and restaurant business, incineration and cleaning business, barber and beauty parlor business; and
 4. Other businesses prescribed by the Presidential Decree in consideration of the character of a business and public conveniences

Article 60 (Annual Paid Leave)

- (1) An employer shall grant 15 days' paid leave to a worker who has registered not less than 80 percent of attendance during one year.
- (2) An employer shall grant one day's paid leave per month to a

worker whose consecutive service period is shorter than one year, if the worker has offered work without an absence throughout a month.

- (3) In case an employer grants a worker paid leave for the first one year of his/her service, the number of leave days shall be 15 including the leave prescribed in paragraph (2), and if the worker has already used the leave prescribed in paragraph (2), the number of used leave days shall be deducted from the 15 days of leave.
- (4) After the first year of service, an employer shall grant one day's paid leave for each two years of consecutive service in addition to the leave prescribed in paragraph (1) to a worker who has worked consecutively for 3 years or more. In this case, the total number of leave days including the additional leave shall not exceed 25.
- (5) An employer shall grant paid leave pursuant to paragraphs (1) through (4) upon request of a worker, and shall pay ordinary wages or average wages prescribed in employment rules or other regulations during the period of leave. However, the leave period concerned may be changed, in case granting the leave as requested by the worker might cause a serious impediment to the operation of the business.
- (6) In applying paragraphs (1) through (3), a period falling under any of the following subparagraphs shall be considered a period of attendance :
 1. A period during which a worker is unable to work due to occupational injuries or diseases; and
 2. A period during which a pregnant woman does not work on maternity leave taken pursuant to paragraphs (1) and (2) of Article 74.
- (7) The leave referred to in paragraphs (1) through (4) shall be forfeited if not used within one year. However, this shall not apply in case where the worker concerned has been prevented from using the leave due to any cause attributable to the employer.

Article 61 (Promoting the Use of Annual Paid Leave)

If a worker's leave has been forfeited for non-use pursuant to Article 60 (7) despite the fact that the employer has taken measures described in any of the following subparagraphs to promote the use of paid leave prescribed in Article 60 (1), (3) and (4), the employer shall have no obligation to compensate the worker for the unused leave, and shall not be deemed to have caused the non-use attributable to the employer's action under the proviso of Article 60 (7):

1. Within the first 10 days of the three months before unused leave is to be forfeited pursuant to Article 60 (7), an employer shall notify each worker of the number of his/her unused leave days and urge them in writing to decide when they would use the leave and to inform the employer of the decided leave period; and
2. If a worker, despite the urging prescribed in subparagraph (1), has failed to decide when he/she would use whole or part of the unused leave and to inform the employer of the decided leave period within 10 days after they were urged, an employer shall decide when the worker uses the unused leave and notify the worker of the decided leave period in writing no later than 2 months before the unused leave is to be forfeited pursuant to Article 60 (7).

Article 62 (Substitution of Paid Leave)

An employer may have workers take paid leave on a particular working day in lieu of the annual paid leave under Article 60, if the employer and the workers' representative agree in writing.

Article 63 (Exceptions to Application)

The provisions of this Chapter and Chapter V as to working hours, recess, and holidays shall not be applicable to workers who are engaged in any work described in the following subparagraphs: <Amended by Act No. 10339, Jun. 4, 2010>

1. Cultivation of arable land, reclamation work, seeding and planting, gathering or picking-up or other agricultural and forestry work;

2. Livestock breeding, catch of marine animals and plants, cultivation of marine products or other cattle-breeding, sericulture and fishery business;
3. Surveillance or intermittent work, for which the employer has obtained the approval of the Minister of Employment and Labor;
4. Any other work prescribed by the Presidential Decree.

Article 69 (Working Hours)

Working hours of a person aged between 15 and 18 shall not exceed seven hours per day and forty hours per week. However, the working hours may be extended up to an hour per day, or six hours per week, by an agreement between the parties concerned.

Article 70 (Restrictions on Night Work and Holiday Work)

- (1) When an employer intends to have a female aged 18 or older work from 10 P.M. to 6 A.M and on holiday, the employer shall obtain the consent of the female concerned.
- (2) An employer shall not have a pregnant female and a person aged less than 18 work from 10 P.M to 6 A.M. and on holiday. However, this shall not apply in the cases described in any of the following subparagraphs and when the employer obtains permission from the Minister of Employment and Labor : <Amended by Act No. 10339, Jun. 4, 2010>
 1. Where there is a consent from the person aged less than 18;
 2. Where there is a consent from a female with less than one year after childbirth; and
 3. Where the female in pregnancy makes a request.
- (3) An employer, before obtaining permission from the Minister of Employment and Labor as stipulated in paragraph (2), shall consult in good faith with a workers' representative of the business or

workplace concerned as to whether there will be night work or holiday work and its implementation methods for workers' health and maternity protection. <Amended by Act No. 10339, Jun. 4, 2010>

Article 71 (Overtime Work)

An employer shall not have, a female with less than one year after childbirth, work overtime exceeding 2 hours per day, 6 hours per week, and 150 hours per year, even if agreed in a collective agreement.

Article 109 (Penal Provisions)

- (1) A person who violates the provisions of Article 36, 43, 44, 44-2, 46, 56, 65 or 72 shall be punished by imprisonment of up to three years or by a fine not exceeding twenty million won. <Amended by Act No. 8561, Jul. 27, 2007>
- (2) A prosecution against a person who violates the provisions of Article 36, 43, 44, 44-2, 46 or 56 shall not be filed against the clearly expressed will of the victim. <Amended by Act No. 8561, Jul. 27, 2007>

Article 110 (Penal Provisions)

Any person falling within the purview of any of the following subparagraphs shall be punished by imprisonment of up to two years, or by a fine not exceeding ten million won: <Amended by Act No. 9699, May 21, 2009>

1. A person who violates Article 10, 22 (1), 26, 50, 53 (1), (2) and (3), 54, 55, 60 (1), (2), (4) and (5), 64 (1), 69, 70(1) and (2), 71, 74 (1) through (4), 75, 78 through 80, 82, 83 or 104 (2); and
2. A person who violates orders issued in accordance with Article 53 (4).

Addenda to Labor Standards Act

Article 4 (Enforcement Date of Labor Standards Act Amended by Act No. 6974)

The enforcement date of the Labor Standards Act amended by Act no. 6974 shall be as follows:

1. Financial and insurance businesses, government-invested institutions under Article 2 of the Framework Act on the Management of Government-Invested Institutions, local public enterprises and local public corporations under Articles 49 and 76 of the Local Public Enterprises Act, institutions and organizations, not less than 1/2 of whose capital or basic assets are invested or contributed by the State, any local government or any government-invested institution, institutions and organizations, not less than 1/2 of whose capital or basic assets are invested or contributed by the said institutions and organizations and businesses or workplaces ordinarily employing 1,000 workers or more : July 1, 2004;
2. Businesses or workplaces ordinarily employing 300 workers or more but fewer than 1,000 : July 1, 2005;
3. Businesses or workplaces ordinarily employing 100 workers or more but fewer than 300 : July 1, 2006;
4. Businesses or workplaces ordinarily employing 50 workers or more but fewer than 100 : July 1, 2007;
5. Businesses or workplaces ordinarily employing 20 workers or more but fewer than 50 : July 1, 2008; and
6. Businesses or workplaces ordinarily employing fewer than 20 workers and any institution of State and local governments : the date prescribed by the Presidential Decree but no later than 2011

Article 6 (Special Cases concerning Extended Work)

- (1) "12 hours" shall be read as "16 hours" for three years from the enforcement date referred to in each subparagraph of Article 4 of the Addenda (referring to the application date if the report is made to the Minister of Labor pursuant to Article 5 of the Addenda; hereinafter the same shall apply) in applying Article 53 (1) and 59 (1).
- (2) In applying paragraph (1), "50/100" in Article 56 shall be read as "25/100" with respect to the first four hours.

Article 7 (Preservation of Wage Level and Changes, etc., in Collective Agreement)

- (1) Employers shall work to keep the existing wage levels and ordinary wages per hour from being lowered due to the enforcement of the Labor Standards Act amended by Act no. 6974.
- (2) In relation to the enforcement of the Labor Standards Act amended by Act no. 6974, workers, trade unions and employers shall work to reflect measures to preserve wage levels and the amended provisions of the same Act in their collective agreements, employment rules, etc., as soon as possible regardless of whether such collective agreements expire or not.
- (3) In applying paragraphs (1) and (2), wage components and the method of adjusting wages shall be autonomously determined by the workers, trade union and employer concerned through collective agreements, employment rules, etc.

Average working hours per annum in Korea

Unit : hours

| Year | Statistics of the Ministry of Employment and Labor (businesses with 5 or more employees) | Statistics of the Organisation for Economic Cooperation and Development ("OECD") | |
|------|--|--|----------------|
| | Korea | Korea | OECD countries |
| 1999 | 2 479 | 2 495 | 1 827 |
| 2000 | 2 458 | 2 512 | 1 818 |
| 2001 | 2 430 | 2 499 | 1 802 |
| 2002 | 2 395 | 2 464 | 1 794 |
| 2003 | 2 378 | 2 424 | 1 785 |
| 2004 | 2 366 | 2 392 | 1 783 |
| 2005 | 2 341 | 2 351 | 1 782 |
| 2006 | 2 294 | 2 346 | 1 779 |
| 2007 | 2 261 | 2 306 | 1 773 |
| 2008 | 2 218 | 2 246 | 1 767 |
| 2009 | 2 213 | 2 232 | 1 741 |
| 2010 | 2 216 | 2 193 | 1 749 |

Source : Korea Labor Institute

Annex VI

Average working hours per week of different industries in Korea

| Industry | 1st to 3rd quarters of 2009 (hours) | 1st to 3rd quarters of 2010 (hours) |
|----------------------------|--|--|
| Mining | 41.2 | 40.1 |
| Manufacturing | 42.1 | 42.7 |
| Electricity, Gas and Water | 40.3 | 39.4 |
| Construction | 36.4 | 35.3 |
| Wholesale and Retail | 39.3 | 39.5 |
| Lodging and Restaurants | 39.3 | 38.1 |
| Transportation | 41.1 | 41.1 |
| Telecommunications | 37.7 | 37.1 |
| Finance and Insurance | 36.6 | 35.6 |
| Real Estate and Leasing | 42.6 | 42.2 |
| Business Services | 38.4 | 38.3 |
| Education | 34.0 | 31.9 |
| Health and Social Welfare | 38.0 | 38.0 |
| Entertainment and Culture | 35.5 | 37.2 |
| Other Services | 40.5 | 39.7 |

Source : Korea Employers Federation

**Distribution of employees by working hours per week in Korea
as at July 2011**

| Average working hours per week (hours) | Number of employees |
|---|----------------------------|
| Under 40 | 3 140 000 |
| 40 – 44 | 5 473 000 |
| 45 – 48 | 3 069 000 |
| 49 – 52 | 1 721 000 |
| Above 52 | 4 600 000 |

Source : Ministry of Employment and Labor, Korea

Annex VIII

Average working hours of employees per week by size of businesses in Korea from 2007 to 2010

| Size of business | 2007 | 2008 | 2009 | 2010 |
|-------------------------|-------------|-------------|-------------|-------------|
| 5 - 9 employees | 40.2 | 41.7 | 41.4 | 41.0 |
| 10 – 29 employees | 42.0 | 42.2 | 41.4 | 40.8 |
| 30 – 99 employees | 42.3 | 41.3 | 40.8 | 40.8 |
| 100 – 299 employees | 40.4 | 39.9 | 40.0 | 41.2 |
| 300 employees or more | 39.2 | 38.7 | 37.7 | 38.3 |

Source : Korea Labor Foundation

**Gross Domestic Product per capita of Korea
from 2001 to 2010**

| Year | Gross Domestic Product at purchasing power parity per capita (US\$) |
|-------------|--|
| 2001 | 18,150.88 |
| 2002 | 19,655.60 |
| 2003 | 20,180.93 |
| 2004 | 21,630.16 |
| 2005 | 22,783.23 |
| 2006 | 24,286.18 |
| 2007 | 26,190.61 |
| 2008 | 26,876.64 |
| 2009 | 27,133.45 |
| 2010 | 29,003.83 |

Source : Organisation for Economic Cooperation and Development

立法會 CB(2)791/11-12 號文件附錄 II
Appendix II to LC Paper No. CB(2)791/11-12

2012 年 2 月 8 日(星期三)
立法會會議席上

李卓人議員就
"人力事務委員會訪問團研究南韓實施標準工時的經驗的報告"
動議的議案

議案措辭

"本會察悉人力事務委員會訪問團研究南韓實施標準工時的經驗的報告。"

(Translation)

Motion on
"Report of the delegation of the Panel on Manpower
to study the experience in the implementation of
standard working hours in the Republic of Korea"
to be moved by Hon LEE Cheuk-yan
at the Legislative Council meeting
of Wednesday, 8 February 2012

Wording of the Motion

"That this Council notes the Report of the delegation of the Panel on Manpower to study the experience in the implementation of standard working hours in the Republic of Korea."