

**立法會**  
**Legislative Council**

LC Paper No. ESC29/12-13  
(These minutes have been  
seen by the Administration)

Ref : CB1/F/3/2

**Establishment Subcommittee of the Finance Committee**

**Minutes of the 5<sup>th</sup> meeting**  
**held in Conference Room 1 of Legislative Council Complex**  
**on Wednesday, 30 January 2013, at 8:30 am**

**Members present:**

Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon Kenneth LEUNG (Deputy Chairman)  
Hon Starry LEE Wai-king, JP  
Hon Emily LAU Wai-hing, JP  
Hon WONG Kwok-kin, BBS  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon Steven HO Chun-yin  
Hon YIU Si-wing  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung  
Dr Hon Helena WONG Pik-wan  
Hon Martin LIAO Cheung-kwong, JP  
Hon POON Siu-ping, BBS, MH  
Hon TANG Ka-piu  
Hon CHUNG Kwok-pan

**Member absent:**

Hon IP Kin-yuen

**Public Officers attending:**

Ms Esther LEUNG, JP

Deputy Secretary for Financial Services  
and the Treasury (Treasury)1

Mr Eddie MAK Tak-wai, JP Ms Carol YUEN, JP	Deputy Secretary for the Civil Service (1) Deputy Secretary for Commerce and Economic Development (Commerce and Industry)
Mr Raymond WU	Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry)
Mr NG Sek-hon, JP	Deputy Judiciary Administrator (Operations)
Ms Wendy CHEUNG	Assistant Judiciary Administrator (Development)
Mr D W PESCOD, JP	Permanent Secretary for Transport and Housing (Housing)
Mr Eugene FUNG	Deputy Secretary for Transport and Housing (Housing) (Special Duties)
Mrs Hedy CHU POON Kit-man	Principal Assistant Secretary for Transport and Housing (Housing) (Special Duties)
Mr Arthur HO, JP	Director of Administration and Development, Department of Justice
Mr Benedict LAI, SBS, JP	Law Officer (Civil), Department of Justice
Mr Simon LEE	Deputy Law Officer (Civil), Department of Justice
Mr CHEUK Wing-hing, JP Mr Nicholas CHAN	Commissioner for Labour Assistant Commissioner for Labour (Policy Support)

**Clerk in attendance:**

Ms Connie SZETO	Chief Council Secretary (1)4
-----------------	------------------------------

**Staff in attendance:**

Mr Andy LAU	Assistant Secretary General 1
Mr Hugo CHIU	Council Secretary (1)4
Ms Alice CHEUNG	Senior Legislative Assistant (1)1
Ms Clara LO	Legislative Assistant (1)9

---

Action

*(The Chairman left the meeting at 9:05 am, and the Deputy Chairman took up the chairmanship for the rest of the meeting. At 10:23 am, the Deputy Chairman announced that the meeting be extended to 10:45 am. Members agreed.)*

The Chairman drew members' attention to the information paper ECI(2012-13)11, which set out the latest changes in the directorate establishment approved since 2002.

**EC(2012-13)16      Proposed creation of two permanent posts of one Judge of the Court of First Instance of the High Court (JSPS 16) and one Deputy Registrar, High Court (JSPS 13) in the High Court of the Judiciary with effect from 1 April 2013 for the establishment of a Competition Tribunal**

2.      The Chairman said that the Administration's proposal was to create two permanent posts of one Judge of the Court of First Instance (CFI) of the High Court and one Deputy Registrar, High Court in the High Court of the Judiciary with effect from 1 April 2013 for the establishment of a Competition Tribunal (the Tribunal).

3.      The Chairman advised that the Panel on Economic Development was consulted on the proposal at its meeting on 11 December 2012. Panel members supported the proposal. Some Panel members considered that in view of the complexities of competition-related cases to be heard by the Tribunal and the lack of relevant court precedents, in order to protect the interests of both consumers and the business sector, the President of the Tribunal should have adequate experience and expertise in handling commercial litigation cases. There were enquiries about when the procedures to be followed by the Tribunal, which was subsidiary legislation, would be submitted to the Legislative Council (LegCo) for scrutiny. The Administration took note of members' views and undertook to relay them to the Judiciary.

Judicial resources in the Judiciary

4.      Ms Emily LAU supported the proposal. She noted from paragraphs 10 and 11(c) of EC(2012-13)16 that other CFI Judges might be involved in the hearing of Tribunal cases and it was envisaged that competition-related cases to be heard by the Tribunal could be lengthy and complicated. Ms LAU enquired why the Administration considered cases before the Tribunal would be lengthy and complicated. She expressed concern that as the existing manpower of CFI Judges was already very tight,

Action

the above arrangement would aggravate the situation and lengthen the waiting time for hearing of cases by CFI.

5. Deputy Secretary for Commerce and Economic Development (Commerce and Industry) said that upon the establishment of the Competition Commission, publicity work would be stepped up to enhance the understanding of the business sector and enterprises on the Competition Ordinance. As competition law was only newly introduced in Hong Kong, it would be difficult to estimate accurately the actual caseload. However, the competition-related cases would likely involve complex issues and the Tribunal would need to develop expertise in handling such cases. The workload of the Tribunal was expected to be heavy and the Judiciary assessed that two additional judicial posts would be required to support the Tribunal. Assistant Judiciary Administrator (Development) (AJA) added that overseas experience showed that competition-related litigation cases usually involved a large number of parties. Moreover, given that the Competition Ordinance was relatively new in Hong Kong and hence few relevant court precedents were available, it was anticipated that the Tribunal would require more time in the deliberation of legal issues. Hence, a longer time would be expected for hearing of the cases. Deputy Judiciary Administrator (Operations) (DJA) pointed out that the President of the Tribunal would be involved in, among others, the preparatory work for setting up the Tribunal, including preparation of the operating rules for the Tribunal, which would be subsidiary legislation. The Judiciary would keep in view the manpower situation of CFI and the Tribunal, and submit new staffing proposals if necessary.

6. Ms Emily LAU remained concerned about inadequate judicial resources in the Judiciary and enquired about the recruitment of new judges. Ms LAU also urged the Administration to step up publicity on the new enforcement regime under the Competition Ordinance, including how enterprises could avoid from engaging in acts prohibited by the Ordinance so that there would be less disputes and fewer litigation cases requiring adjudication by the Tribunal. DJA advised that a recruitment exercise of Judges had been conducted in 2012 and new appointees were gradually filling up the vacant posts. He added that the two proposed new posts would be created shortly after the approval of the Finance Committee (FC). The Chairman urged the Administration to take note Ms Emily LAU's concern about inadequate judicial manpower in the Judiciary and to follow up the matter with the relevant parties.

Recruitment of the new CFI Judge

7. In response to Mr Kenneth LEUNG's enquiry on whether the proposed CFI Judge post would be filled by existing Judges of CFI or through

Action

external recruitment, AJA advised that after the approval of the proposal by FC, the Judicial Officers Recommendation Commission would be invited to make recommendations to the Chief Executive (CE) for the appointment of two eligible CFI Judges to be the President and Deputy President of the Tribunal. Given that the existing CFI Judges might not have the relevant expertise and experience in adjudicating competition-related cases and filling the two judicial officer posts through internal deployment might add further strain to the already stringent manpower situation in the Judiciary, Mr LEUNG was of the view that the Judiciary should consider filling the President and Deputy President posts by external recruitment.

8. The item was voted on. Members agreed that the Subcommittee should recommend the item to FC for approval.

**EC(2012-13)17            Proposed creation of two permanent posts of one Administrative Officer Staff Grade B (D3) and one Principal Executive Officer (D1) in the Housing Department with effect from 1 April 2013 to cope with the workload arising from the implementation of the Residential Properties (First-hand Sales) Ordinance**

9. The Chairman said that the Administration's proposal was to create two permanent posts of one Administrative Officer Staff Grade B and one Principal Executive Officer in the Housing Department with effect from 1 April 2013 to cope with the workload arising from the implementation of the Residential Properties (First-hand Sales) Ordinance (the Ordinance).

10. The Chairman advised that the Panel on Housing was consulted on the proposal at its meeting on 3 December 2012. Panel members supported the proposal in general. Some Panel members expressed concern about whether the manpower of the Sales of First-hand Residential Properties Authority (SRPA) to be established for the implementation of the Ordinance could cope with the anticipated heavy workload. The Administration advised that SRPA would perform a wide range of functions including examination of sales brochures, price lists, sales arrangements and register of transactions, conducting inspections on flats, handling complaints, and organizing publicity and public education work. The Administration would closely monitor the staffing situation of SRPA and conduct review as necessary. On members' enquiry as whether the Administration would consider replacing SRPA by an independent statutory body in future, the Administration responded that it held an open attitude on the matter and would consider the issue at an appropriate time. Panel members suggested that the Administration should establish a

Action

working group to assess the effectiveness and impartiality of SRPA, and the Administration should ensure the decisions made by senior officers of SRPA would not involve deferred rewards.

Staffing and enforcement work of the Sales of First-hand Residential Properties Authority

11. Dr KWOK Ka-ki said that he did not oppose the proposal. He was concerned whether SRPA would have sufficient manpower to handle the anticipated heavy workload. He considered the estimated 400 complaint cases to be received by SRPA per year (i.e. an annual complaint rate of 2%) was on the low side, and enquired about the basis for working out the figure. In order to enhance protection for flat buyers' interest, he sought information on the proportion of first-hand residential properties to be subject to inspection by SRPA, and whether SRPA would make public the names of vendors/developers which had breached the requirements of the Ordinance. Ms Emily LAU indicated support for the proposal. Sharing the concern about the estimated low annual complaint rate, she stressed the need for SPRA to have adequate manpower for handling complaints promptly and asked whether additional resources would be available for SRPA to handle complaints if the actual number far exceeded the estimated figure.

12. Deputy Secretary for Transport and Housing (Housing) (Special Duties) (DS(H)) responded that the Ordinance stipulated a number of measures to enhance the transparency of the sale of first-hand residential properties in order to protect the interests of buyers. For instance, the vendor of a first-hand residential property was required to make public the bilingual sales brochure and the price list at least seven days and three days before the date of sale respectively, and to provide the register of transactions. The sales brochure must specify information prescribed under the Ordinance (e.g. saleable area which had to match with that set out in the latest approved building plans as at the date of print of the sales brochure). Non-compliance with the requirements of the Ordinance would be an offence punishable by fine or imprisonment. DS(H) added that apart from handling complaints, SRPA would proactively examine the sales brochures, price lists, sales arrangements and register of transactions made available to the general public by the vendors/developers to ensure their compliance with the requirements of the Ordinance. For uncompleted first-hand residential property, SRPA would conduct on-site inspections of show flats set up by the vendors/developers for the pre-sale to ensure they comply with the requirements of the Ordinance. As regards the estimated complaint figure, DS(H) advised that it had been worked out with reference to the number of complaints received by the Private Housing Division of the Transport and Housing Bureau (THB) and the Estate Agents Authority in recent years. DS(H) said that internal deployment of the

Action

staff within SRPA could be made to absorb the workload if the actual number of complaints exceeded the estimated figure.

13. Dr KWOK Ka-ki considered that SRPA should inspect the actual residential flats instead of the show flats to curb vendors/developers from misleading buyers. Dr KWOK also enquired whether SRPA would inspect residential flats which had been completed for sometime but not yet sold. Permanent Secretary for Transport and Housing (Housing) (PS(H)) responded that under the Ordinance, the vendors/developers were required to allow prospective buyers to conduct on-site inspections of the actual residential flats. For pre-sale flats of which the actual residential flats were unavailable, the Inspection and Monitoring Unit and the Investigation and Compliance Assurance Unit of SRPA (the two Units) would conduct on-site inspections of the show flats to ensure their compliance with the requirements of the Ordinance.

14. Pointing out that the two Units consisted of 13 staff only while the number of private first-hand residential properties put to sale in the market was around 20,000 annually, Dr KWOK Ka-ki was concerned whether SRPA had adequate manpower to conduct proper inspection on flats. Dr KWOK enquired how the Administration would check against misrepresentations from vendors/developers in the sale of residential flats.

15. PS(H) explained that under the Ordinance, if a show flat was to be provided in the sale of a residential property, its set-up must comply with the requirements as prescribed in the Ordinance. In particular, vendors/developers were required to make available an unmodified show flat of a property if a modified show flat was provided during the pre-sale. Visitors would be allowed to take measurements in all show flats, and to take photos and make videos in the unmodified show flat. PS(H) said that the enforcement team of SRPA would have sufficient manpower to discharge their duties as it was anticipated that there would be about 70 to 80 first-hand residential developments put up for sale per year, and not every flat in the developments would require inspection. DS(H) added that first-hand completed flats were also subject to regulation under the Ordinance and compliance check would be conducted by SRPA when they were offered for sale. It was envisaged that SRPA, with a D3 officer as the Head and a D1 officer as the Deputy Head and comprised of 30 non-directorate staff from grades including Building Surveyor, Estate Surveyor, Executive Officer, Housing Manager, Information Officer and other technical and administrative supporting staff, would be sufficient to discharge the various duties. The Administration would monitor the staffing situation of SRPA closely and strengthen its manpower if necessary.

Action

16. Dr KWOK Ka-ki enquired whether the Administration would provide an undertaking that SRPA would conduct inspection on every first-hand residential development put up for sale. PS(H) responded that the Buildings Department (BD) was responsible for inspection of residential properties. While SRPA would work together with BD on the task, the primary duty of SRPA was to enforce the Ordinance in ensuring the provision of accurate information in sales brochures, price lists, sales arrangements and register of transactions, that show flats being set up by vendors/developers comply with the requirements of the Ordinance, and vendors/developers' compliance with the requirements under the Ordinance.

17. Ms Emily LAU queried whether the Head of SRPA would have sufficient capacity and backing in discharging the many duties mentioned in paragraph 12 of EC(2012-13)17. PS(H) stressed that it would be important that the post would be filled by a right person. The Head of SRPA would be supported by a multi-disciplinary team with various expertise. The functions of SRPA would be wide ranging, including issuance of guidelines, conduct regular inspections to flats and checks on sales brochures, price lists, sales arrangements, register of transactions and advertisements, handling complaints and carrying out investigations. The current proposed set up for the SRPA was appropriate having regard to the flat production levels and experience in the past five to ten years.

18. Ms Emily LAU considered it important for the Administration to ensure the public that SRPA had the ability and sufficient resources to discharge its functions. PS(H) responded that the Administration was committed to the proper enforcement of the Ordinance. The Administration had also liaised with the relevant stakeholders, such as the Real Estate Developers Association of Hong Kong and the Law Society of Hong Kong and other relevant stakeholders, not just to ensure they understood the Ordinance but also the determination of the Administration to take enforcement actions on contravention of the Ordinance.

Publicity and public education work on the Ordinance

19. Ms Emily LAU remarked that the Administration should inform the public about its initiatives to implement the Ordinance and details of the new regulatory regime. The Deputy Chairman enquired about the publicity and public education programmes to be organized by the Administration in this respect. DS(H) responded that pamphlets and Announcement of Public Interests (APIs) would be produced and other kinds of publicity would be arranged to promote public awareness on the protection offered to flat buyers under the Ordinance, and workshops would be organized to enhance the industry's understanding of compliance issues. Ms LAU opined that the APIs



Action

should contain concrete information like the requirements on vendors/developers as well as the channel for lodging complaints to SRPA instead of giving superficial slogans.

20. Pointing out that the Administration and Public Education Unit of SRPA would have one Senior Information Officer only, Dr KWOK Ka-ki considered the manpower grossly inadequate to cope with the publicity work. DS(H) responded that apart from the Senior Information Officer, there would be other staff members in the Unit to share the workload.

Establishment of an independent statutory body

21. In response to Ms Emily LAU's enquiry on whether the Administration had assessed the benefits of replacing the SRPA with an independent statutory body, PS(H) remarked that the Administration had decided to establish SRPA under the Housing Branch of THB as this would be the quickest way to bring the Ordinance and SRPA into operation by end of April 2013. Nonetheless, the Administration was aware of suggestion from the public and some stakeholders that SRPA should be set up as an independent statutory body. The Administration was open to this option and would consider the issue at an appropriate time in the light of experience in implementing the Ordinance and the operation of SRPA.

22. The item was voted on. Members agreed that the Subcommittee should recommend the item to FC for approval.

**EC(2012-13)18      Proposed creation of one supernumerary post of Deputy Principal Government Counsel (DL2) in the Civil Division of the Department of Justice for two years with effect from 1 April 2013 to take forward the work required in the promotion and development of mediation in Hong Kong**

23. The Deputy Chairman said that the Administration's proposal was to create one supernumerary post of Deputy Principal Government Counsel in the Civil Division of the Department of Justice for two years with effect from 1 April 2013 to take forward the work required in the promotion and development of mediation in Hong Kong.

24. The Deputy Chairman advised that the Panel on Administration of Justice and Legal Services (AJLS Panel) was consulted on the proposal at its meeting on 22 January 2013. Panel members supported submission of the proposal for consideration by the Establishment Subcommittee (ESC). Panel

Action

members were mainly concerned about the working relationship between the incumbent of the proposed post and the Hong Kong Mediation Accreditation Association Limited (HKMAAL) and his role in monitoring the work of HKMAAL.

Collection of empirical data on mediation

25. Referring to paragraph 9(c) of EC(2012-13)18, Mr TANG Ka-piu enquired about the sources from which the Department of Justice (DoJ) would collect empirical data in considering necessary or desirable amendments to the Mediation Ordinance (Cap. 620) (MO).

26. Deputy Law Officer (Civil), Department of Justice (DLO(C)) responded that owing to the need to observe the rules of confidentiality, it was currently difficult for DoJ to collect empirical data on mediation cases for the enhancement of mediation services and MO. The incumbent would provide research support to the Steering Committee on Mediation (Steering Committee) including studying possible measures to facilitate the use of mediation communications for research purpose. Law Officer (Civil), Department of Justice (LO(C)) supplemented that the incumbent would be involved in working out proposed guidelines on the exemption for disclosure of mediation communications for research, evaluation or educational purposes under section 8(2)(e) of MO and to prevent the abuse of such exemptions, as well as and monitoring the actual working of the exemptions.

27. Dr Helena WONG enquired about the statistics on various kinds of disputes which had used mediation for resolution in recent years. DLO(C) responded that DoJ had been making reports on the development of mediation in Hong Kong to AJLS Panel on a regular basis, including the number of mediation cases and their nature. However, such information was not compiled from official sources. The Administration would devise measures to enhance collection of relevant statistics on mediation. LO(C) re-iterated that due to the need to observe the rules of confidentiality in mediation communications, the Administration had encountered difficulties in collecting relevant information. Based on information gathered from various sources, LO(C) provided the following information for members' reference: (a) a total of 48 cases were conducted under the New Insurance Mediation Pilot Scheme with a settlement rate at 81%; (b) 500 building management dispute cases processed under a pilot scheme introduced by the Lands Tribunal had resorted to mediation with a settlement rate at 43%; and (c) a total of 116 cases were conducted by the Joint Mediation Helpline with a 47% settlement rate.

28. Dr Helena WONG remarked that statistics on various kinds of mediation cases could assist the Administration in understanding the trends

Action

and assessing the needs in the development of mediation services in Hong Kong. LO(C) said that it was among the responsibilities of the incumbent to consider ways to enhance the collection of information relating to mediation cases. HKMAAL would also assist in the matter.

Accreditation and training of mediators in Hong Kong

29. Mr TANG Ka-piu pointed out that there were currently some thirty academic, professional or social service organizations providing mediation training. Four such training courses were recognized under the Qualification Framework while some ten others were in the list of reimbursable courses of the Continuing Education Fund. A number of trainees of these courses had already engaged in mediation services. Mr TANG conveyed the concerns of some practicing mediators that with the operation of MO and the establishment of HKMAAL, experienced practicing mediators who did not possess professional qualifications could not continue their practice if very stringent accreditation criteria were set by HKMAAL. There were also concerns that practicing mediators might not continue their practice if HKMAAL became a statutory accreditation body. In this regard, Mr TANG stressed the need to take into account the views of the practicing mediators and relevant training organizations in formulating the training and accreditation standards for mediators. Ms Emily LAU shared the views that the Administration should consult relevant stakeholders on the training and accreditation criteria of mediators.

30. LO(C) responded that HKMAAL was established on the recommendation of the Working Group on Mediation to become the premier accreditation body for mediators in Hong Kong in order to ensure the quality of mediators and consistency of their standards, proper regulation of mediation services, as well as provision of suitable training. To enable prompt operation of HKMAAL, it was set up in August 2012 as a non-profit-making company limited by guarantee. The company operated independently as a non-statutory industry-led body in discharging accreditation and disciplinary functions for mediators. HKMAAL would propose details and training requirements on accreditation of mediators and liaise with the industry and stakeholders during the process. It would not provide mediation training courses but would monitor the development of mediation services and amend the accreditation requirements as when necessary. It was expected that HKMAAL would commence work in April 2013 and would release the accreditation criteria in due course. LO(C) added that the accreditation and training of mediators in Hong Kong was one of the major work focuses of the Steering Committee, which was established by the Secretary for Justice in November 2012 to take forward the work on the promotion and development of mediation in Hong Kong. The Steering Committee would work with

Action

HKMAAL on matters relating to the accreditation and training of mediators in Hong Kong, and keep in view future developments. The Steering Committee would also consider whether and how a statutory accreditation body should be set up to replace HKMAAL in the long run, and if so, the relevant timeframe and necessary changes to be made to MO.

31. Ms Emily LAU expressed support for the proposal. She noted with concern that a number of accreditation assessments for mediators were conducted by the candidates themselves and queried how this could ensure the quality of mediators. DLO(C) clarified that the accreditation assessment for mediators might involve role-play undertaken by other candidates as such role-play had to be conducted by people knowledgeable in mediation. Ms LAU stressed that HKMAAL and the Steering Committee should promulgate the standards of training and accreditation to promote public understanding and ensure transparency in the process.

Family mediation

32. Mr TANG Ka-piu enquired whether mediators who were not accredited by HKMAAL could provide mediation services, in particular whether they could practice in cases before the family courts. DLO(C) explained that a mediator was an impartial individual engaged by the parties involved in a dispute by consent of the parties and there was no statutory requirement that the mediator engaged had to be accredited by HKMAAL. As regards mediation on family matters, currently there was also no statutory requirement for engagement of qualified mediators for cases before the family courts. Given that special training was required for such mediators for looking after the interests of the children concerned, the Administration would review the need of additional and separate accreditation requirement in this area.

33. Dr Helena WONG considered that the Administration should promote mediation service for disputes relating to building management matters, family matters including divorce and maintenance issues, and family violence. She further suggested that the training for family mediators should cover elements of gender consciousness so that mediation service could include the gender perspective.

34. LO(C) re-iterated that both HKMAAL and the Steering Committee would not take up the training function for mediators and HKMAAL would issue accreditation criteria. Regarding Dr Helena WONG's views on the training of family mediation, LO(C) undertook to convey them to relevant parties for consideration.

Action

Language for mediation

35. Pointing out that most users of mediation service spoke or used Cantonese or Chinese but most members of HKMAAL spoke or used English, Ms Emily LAU expressed concern about how the Administration could promote mediation in Hong Kong. Ms LAU stressed that the Administration should cater for the language need of the public at large. Furthermore, noting that the majority of members of the Council of HKMAAL were lawyers as the two lawyers associations in Hong Kong were among the founder members of HKMAAL, Ms LAU enquired if the membership of HKMAAL could be diversified.

36. LO(C) responded that DoJ recognized the equal importance of using English and Chinese in mediation services and pointed out that promotional activities on mediation were conducted bilingually. For instance, a seminar conducted in May 2012 for the industry consisted of both English and Chinese sessions, and a number of conferences and seminar to promote public awareness of mediation services were conducted in Cantonese. LO(C) also pointed out that both HKMAAL and the Steering Committee consisted of, apart from lawyers, members from various sectors of the community including doctors and social workers. While two of the founder members of HKMAAL, Hong Kong Bar Association and The Law Society of Hong Kong, were from the legal sector, others from diversified background would participate in the work of HKMAAL. LO(C) added that the further promotion of mediation would cater for the need of users of the Chinese language.

Duration of the proposed post

37. While indicating support on the proposal, Mr POON Siu-ping was concerned that the proposed two-year duration for the supernumerary post might not be adequate to complete the required work. He enquired about the considerations in determining the duration of the post. Director of Administration and Development, Department of Justice said that the Administration was aware that work on promotion and development of mediation in Hong Kong was an ongoing task. The two-year duration for the post was proposed having regard to the need to take forward the more urgent tasks first. The Administration had to be prudent in resource allocation but would closely monitor the manpower situation and review the need to extend the post if necessary.

38. Ms Emily LAU welcomed the Administration's practice to report the work on promotion and development of mediation in Hong Kong to AJLS Panel on a regular basis. She said that the concerns and views raised by

Action

members at this meeting should be reflected to AJLS Panel to facilitate the Panel in monitoring the work of the Administration in this respect.

39. The item was voted on. Members agreed that the Subcommittee should recommend the item to FC for approval.

**EC(2012-13)19 Proposed creation of one supernumerary post of Chief Labour Officer (D1) in the Labour Department for three years with effect from 1 April 2013 to head the new dedicated Working Hours Policy Division and to support the Special Committee on Standard Working Hours**

40. The Deputy Chairman said that the Administration's proposal was to create one supernumerary post of Chief Labour Officer (CLO) in the Labour Department (LD) for three years with effect from 1 April 2013 to head the new dedicated Working Hours Policy Division (WHPD) and to support the Special Committee on Standard Working Hours (Special Committee).

41. The Deputy Chairman advised that the Panel on Manpower was consulted on the proposal at its meeting on 18 December 2012. Panel members supported submission of the proposal to provide support for the work of the Special Committee for consideration by ESC. Some Panel members were of the view that the work of the Special Committee should focus on preparatory work for introducing statutory standard working hours (SWH) instead of following up the study on SWH. Some Panel members also expressed concerns about the work plan and timeframe of the Special Committee.

42. Mr TANG Ka-piu and Dr KWOK Ka-ki supported the proposal and the implementation of SWH by legislation. Ms Emily LAU and Dr Helena WONG conveyed the Democratic Party's support for the proposal and legislating for SWH.

Implementation of standard working hours by legislation

43. Mr TANG Ka-piu considered that introducing SWH by legislation was the only way to ensure effective implementation of the policy and to tackle the problem of uncompensated overtime work. He remarked that it would be a waste of public resources if the duties of the proposed CLO post did not include undertaking preparatory work for implementing SWH by legislation. In this regard, Mr TANG was concerned that none of the duties of the post mentioned in Enclosure 1 to EC(2012-13)19 covered the work in

Action

this respect.

44. Commissioner for Labour (C for L) clarified that the CE had mentioned in his election manifesto that a Special Committee would be set up to follow up on the study on SWH, and the Committee would examine issues relating to employees' overtime work conditions and arrangements, as well as legislating for SWH. C for L said that the Special Committee would undertake further studies on SWH and related subjects like the definition of working hours, e.g. whether SWH should mean standard or maximum working hours. He said that while there had been a lot of public discussions on the subject of SWH, there appeared to be confusion about the concepts involved.

Admin

45. Mr TANG Ka-piu regarded C for L's response as an indication of the possibility to implement SWH by legislation. He considered that the Administration should provide assurance to members on this. He asked if the record of discussion by ESC on this item would be attached to the paper on the proposal to be submitted to FC. The Clerk advised that to facilitate FC's understanding of the deliberations of ESC on individual proposals, the minutes of the ESC meetings would be issued to FC members before the relevant proposals were considered by FC. Upon members' request, the Administration would also provide supplementary information to address their concerns after the meeting. Mr TANG requested the Administration to provide supplementary information to address his concern on the duties of the proposed CLO post.

46. Dr KWOK Ka-ki considered that there was consensus in the community to implement SWH by legislation. He was concerned that there was no mention about the legislative exercise for SWH and the relevant timetable in EC(2012-13)19. Dr KWOK urged the Administration to give an undertaking to introduce legislative proposal on SWH to LegCo within the three-year tenure of the proposed CLO post. Dr Helena WONG and Ms Emily LAU expressed concern that the Administration might delay the legislative exercise for SWH by prolonging the study on SWH. On the other hand, Mr POON Siu-ping considered that incorporating the relevant parts of CE's election manifesto into EC(2012-13)19 might help allay the concern of some members that the Administration might delay legislating for SWH.

47. C for L re-iterated that CE had mentioned in his election manifesto that the Special Committee would examine issues relating to, among other things, legislating for SWH. C for L stressed that there was a need for the Special Committee to conduct further studies on related issues, as implementing SWH would carry wide implications for over three million employers and employees and was highly contentious. C for L pointed out that the report on the policy study on SWH released in November 2012 had set

Action

out a number of key issues which the Administration and the community needed to consider further in taking forward SWH, e.g. whether and what exemptions should be introduced under SWH, and whether breaches of the requirements should be a criminal offence. He added that the proposed CLO post involved a wide range of duties and there was no correlation between the tenure of the post and the time for concluding further study on SWH. As the Special Committee would examine legislating for SWH or otherwise, the Administration was not in a position to provide a timetable on the implementation of SWH. The Administration would review the future need of the proposed post when necessary.

48. Mr KWOK Wai-keung called on the Administration to accord priority to tackle the phenomenon of long working hours and the unfair practice of uncompensated overtime work, which he considered as breaching the requirements under the Employment Ordinance (Cap. 57) (EO). In his views, setting SWH for employees could resolve the problem of uncompensated overtime work. C for L responded that the Administration would protect the rights of employees and stressed that the public could report suspected cases of breaches of EO to LD, which would conduct investigations and make prosecutions as appropriate. He clarified that SWH was different from uncompensated overtime work. The former concept carried wider and more far-reaching implications for the community. It involved the introduction of standardized working hours for most industries with exemptions granted to some. Whereas it was provided under EO that the employers and employees would agree mutually on individual employment terms including the working hours of employees, and the employers were required to pay for employees' overtime work if so provided for in the agreement.

Coverage of the study on standard working hours

49. Pointing out that CE had mentioned in the 2013 Policy Address that that the role of the Family Council should be strengthened and the Administration would formulate policies through a "family friendly" and "family harmony" perspective, Mr TANG Ka-piu considered that the policy research and studies on SWH to be undertaken by the CLO and his team should cover SWH's implications on employees, including the impacts on their physical and psychological health, personal development, work-life balance, and family relation. Mr TANG Ka-piu, Dr Helena WONG and Mr KWOK Wai-keung had the impression that the studies on SWH to be undertaken by the Special Committee had lopsided towards the interests of the business sector, especially the small and medium enterprises (SMEs). They were concerned that as given in Enclosure 1 to EC(2012-13)19, the studies would only cover the implications of SWH on enterprises and there would be no



Action

assessment on the impacts on employees and their families. Dr WONG further opined that the in-depth studies on SWH should cover the impacts of the policy on employees' families and health from the "family angle". She also stressed the need for the Administration to devise measures to minimize the adverse impacts of long working hours on employees.

50. C for L advised that the in-depth study to be undertaken by the Special Committee might cover a wide range of issues like exemption arrangements for SWH, the possible impacts of SWH on employees' health and families, the SMEs, the labour market and the working hours patterns of employees in various industries. C for L emphasised that the policy on SWH involved contentious issues, and required deliberation by the community before implementation. He disagreed that the Administration was inclined towards the interests of the business sector in considering the policy on SWH. He said that society had divergent views on SWH as the policy would affect various sectors of the community and have different impacts on different industries. Further study was thus warranted to balance the interests of various stakeholders. On the concern about long working hours, C for L pointed out that the Administration was aware of the impacts of long working hours on employees, including their health and families, and would propose to examine the impacts of SWH on families. C for L agreed to relay members' views on the issues to be covered by the studies to the Special Committee for consideration.

Admin

51. While appreciating C for L's response, Mr TANG Ka-piu requested LD to provide written response to his concern that the policy research and studies on SWH needed to cover the implications on employees, including the impacts on their physical and psychological health, personal development, work-life balance, and family relation. C for L noted the request.

52. Ms Emily LAU said that while she agreed that the policy on SWH involved controversial issues, she expressed concern that the Administration had been keeping the issues under review for a long time without making any progress. On the implementation of SWH overseas, Ms LAU pointed out that the Panel on Manpower had conducted a duty visit to Korea in 2011 on its SWH regime which covered various industries but also allowed exemptions to some. She enquired whether there were jurisdictions with similar socio-economic conditions as Hong Kong which had successfully implemented SWH by legislation, and whether Hong Kong could make reference to such experience in introducing a statutory regime on SWH.

53. C for L said that due to language barriers in some cases and the unique circumstances in the socio-economic conditions of individual jurisdictions, it was a complex task making reference to overseas experience.

Action

Taking the SWH regime in Korea as an example, while the SMEs are exempted from the regime, they had become less competitive than large companies in staff recruitment as the remuneration packages of large companies included conditions for SWH and overtime pay and were more attractive.

54. In response to Ms Emily LAU's suggestion that the Administration should put more resources on studying overseas experiences, C for L cautioned that while the policy study on SWH released in November 2012 covered the implementation regimes and experience of 12 economies including the Republic of Korea, Japan and Taiwan etc., it might not be appropriate to draw direct comparison between them and Hong Kong as each economy had its own set of socio-economic circumstances.

Staffing of the Working House Policy Division of the Labour Department

55. Mr POON Siu-ping enquired about the staffing of the new WHPD to be led by the proposed CLO, and whether the Division would be set up on a temporary basis. C for L responded that the Administration's policy study on SWH was conducted by a temporary team of six officers re-deployed from other divisions in LD on a short-term basis. The team had completed the study and published the report in November last year. The dedicated WHPD to be set up would comprise the proposed post of CLO and seven non-directorate posts (including one Senior Labour Officer, two Labour Officers, three Assistant Labour Officers and one Assistant Clerical Officer) to be created on a time-limited basis. WHPD would initially consist of two teams with one secretariat team providing support to the Special Committee and the other team responsible for research and consultation work. Together with other supporting manpower, there would be some ten staff following up on the policy study on SWH. LD expected that the staffing should be adequate to cope with the anticipated workload initially.

56. The item was voted on. Members agreed that the Subcommittee should recommend the item to FC for approval.

57. The Deputy Chairman enquired whether it was necessary for the four proposals considered at this meeting to be voted on separately at the FC meeting to be held on 15 March 2013. Dr KWOK Ka-ki requested separate voting for the second item (i.e. EC(2012-13)17) at the FC meeting on 15 March 2013.

Action

58. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1  
Legislative Council Secretariat  
14 March 2013