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Panel on Manpower

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 20 May 2014**

Standard working hours

Purpose

This paper gives an account of the past discussions by the Panel on Manpower ("the Panel") on standard working hours ("SWH") in the Fifth Legislative Council ("LegCo").

Background

2. The Chief Executive ("CE") announced in his 2010-2011 and 2011-2012 Policy Addresses that the Government would embark on a policy study on SWH so as to lay a solid and objective foundation for the public discussion on the issue. The Labour Department ("LD") was assigned the task and released the Report of the Policy Study on Standard Working Hours ("the Report") in late November 2012.

3. The Government announced in April 2013 the formation of the Standard Working Hours Committee ("SWHC"), which was tasked to follow up on the Government's policy study on SWH, promote understanding of this subject and related issues, and advise CE on the working hours situation in Hong Kong including whether a statutory SWH regime or any other alternatives should be introduced. SWHC comprises the Chairperson and 23 members, including 12 serving members (employer and employee representatives) of the Labour Advisory Board. Of the remaining 11 members, one each comes from the labour sector and the business field, and three each from academia, the community and the Government. SWHC has formed two working groups on "Working Hours Consultation" and "Working Hours Study" to specifically take charge of wide public consultation and comprehensive working hours surveys.

Deliberations of the Panel

Legislation for SWH

Policy objective and direction

4. On whether the issue of long working hours would be addressed by legislative means, members were advised that SWHC had not yet come to a view on the policy direction on SWH, including whether legislative means was the way forward. SWHC would deliberate thoroughly on SWH which was highly complex and involved a myriad of interrelated and controversial social and economic issues, and identify the way forward. The Administration kept an open mind on the matter which would be further studied by SWHC.

5. Expressing disappointment with the Administration's lack of stance on legislating for SWH, some members took a strong view that SWHC should focus its work on addressing the phenomenon of long working hours by legislative means instead of merely studying whether a statutory SWH regime should be established. Concern was also raised as to whether and how the Administration and SWHC would work towards reaching a consensus in the community in respect of the meaning of working hours and the need for establishing an SWH regime by legislative means.

6. Members were advised that the Administration was mindful of the possible impact of legislating for SWH on the labour market structure, for example, fragmentation of jobs and an increase in part-time or casual jobs. The findings of the policy study on SWH would shed light on the future policy direction and facilitate the Administration in identifying the way forward. SWHC would follow up on the study of SWH based on the evidence collected. The Administration was of the view that while the experience in other places provided useful reference in the discussion of Hong Kong's working hours policy, the best way forward for Hong Kong should be decided with full regard to its own unique social and economic circumstances.

7. There was a view that SWHC should first work out the definition of SWH and set out the problems to be resolved before taking forward its study on the subject. To address concerns over work-life balance more appropriately, it was considered that the maximum working hours instead of SWH should be specified, and that the problem of overtime work without due compensation could be resolved by stipulating expressly the components of working hours and the overtime pay rates in the employment contracts. There was, however, another view that employers could easily circumvent the requirement of making compensation for overtime work by specifying longer contractual working

hours in the employment contracts. Therefore, a mandated regime should be introduced on SWH beyond which employers would be obliged to pay for the overtime work.

8. The Administration advised that the Employment Ordinance (Cap. 57) did not prescribe the working hours limits, nor the compensation for overtime work. It had been the practice for employers and employees to agree mutually on individual employment terms, and employers were obliged to comply with the agreement.

9. Some members pointed out that employers expressed stronger reservations towards the introduction of SWH in Hong Kong than the introduction of statutory minimum wage. Apart from the potential increase in the wage bill, employers were particularly concerned about the need and flexibility to maintain adequate manpower to accomplish urgent and important tasks if working hours limits were set. These members considered that the Administration should fully address the concerns of the employers and deliberate relevant issues thoroughly before taking forward the matter.

10. Members were assured that the Administration recognized fully the need to examine the subject of SWH in-depth by the Government, employees, employers and the community at large before deciding on the way forward. The SWHC would study and discuss the various issues of concern thoroughly and objectively in the deliberation of the policy direction.

Legislative timetable

11. Members expressed grave concern about the timeframe for legislating for SWH and cast doubt as to whether the Administration could complete the legislative exercise within the term of the Fifth LegCo and the tenure of the current Government, which would expire in September 2016 and June 2017 respectively.

12. According to the Administration, upon receipt of the reports from its two working groups by end of 2014, SWHC would further deliberate and formulate proposals on the direction of a working hours policy suitable for the circumstances and future development of Hong Kong, and submit an endorsed report to the Government by the first quarter of 2016. Should a consensus on establishing a statutory SWH regime be reached in the community, the Administration would proceed with the legislative process and strive to introduce a bill on SWH within the tenure of the current Government.

13. Members were of the view that the setting up of SWHC to follow up on the study on SWH would delay the legislation for SWH. The Administration

was urged to expedite the introduction of the legislative proposal on SWH by streamlining and compressing the work schedule of SWHC. It was suggested to speed up SWHC's study on the impact of working hours regulation on various trades by rolling out a pilot SWH regime with due compensation for overtime work in a few selected trades, say, the media or trades governed under the Trade Boards Ordinance (Cap. 63). To facilitate the early deliberations on the subject, SWHC should consider holding more frequent meetings and LD could expedite its work on data collection, compilation and analysis.

14. The Administration advised that in drawing up the workplan, SWHC had thorough discussion at its first two meetings on whether the timetable could be further compressed. Members were assured that during its three-year term from April 2013, SWHC would follow the work schedule closely and submit a report to the Government by the first quarter of 2016. The Administration would revert to the Panel on the work progress of SWHC in due course.

15. Some members were concerned that SWHC's plan of conducting two rounds of consultation and study missions to formulate and implement a working hours regime might further delay the study progress of SWHC. The Administration explained that SWHC planned to conduct a two-stage public engagement and consultation. While a first-round consultation would collect public views on a working hours policy without pre-conceived views on the way forward, a second-round consultation would collect public views on the identified options. As regards the study missions, SWHC might consider selecting some suitable economies, for instance, those having relative similarities to Hong Kong in terms of economic development, or social and cultural background, for conducting study missions to tap their experience in formulating and implementing working hours regimes with focus on areas such as definition of SWH or exemption arrangements, as well as exchange views with related organisations and bodies as necessary.

Study on working hours

16. When briefed on the findings of the Report, members noted that the average and median weekly total working hours for all employees in Hong Kong in 2011 were estimated at 47.0 and 46.6 hours respectively whilst those for full-time employees were slightly longer, at 49.0 and 48.0 respectively. According to the Report, most employees worked more than 40 hours a week, and nearly a quarter had to perform overtime work. Among them, about half had their overtime work compensated.

17. Noting that the Report identified six long-working-hours sectors ("LWHS") with a much higher proportion of employees having long working hours (i.e. average estimated weekly working hours at 54.6 hours for full-time

employees), some members expressed concern about the impact of long working hours on employees in these sectors. The Administration advised that most employees in the six LWHS were lower-skilled workers with lower educational attainment and were engaged in labour-intensive service sectors, and had their overtime work compensated. On the other hand, workers with higher skills such as professionals had shorter contractual working hours, but many of them worked overtime without compensation which considerably prolonged their total working hours. Members were further advised that the phenomenon of relatively long working hours in Hong Kong and overtime work arrangements would be areas to be further studied under the subject of SWH.

18. Some members pointed out that overtime hours not worked under the direction of employers were not recognized and covered in the survey on working hours because such data were not available from the employers. The Administration was urged to improve the methodology in data collection such that raw data on working hours would also be obtained from employees and the actual working hours situation in specific industries could be reflected accurately for conducting an in-depth study to better understand the extent of the problem.

19. The Administration explained that with a view to obtaining a more comprehensive picture of employees' total working hours, statistics on compensated and uncompensated overtime hours were collected from individual employers and employees via the Annual Earnings and Hours Survey ("AEHS") and a supplementary enquiry of the General Household Survey (with the latter collecting information from households) respectively to build up a merged micro-dataset. However, with the limitations of this micro-dataset, working hours data could only be broken down by major economic sectors or broad occupation categories, which were inadequate for revealing the working hours situation of certain individual professions spreading over different industries. Therefore, SWHC would commission a research consultant to conduct a dedicated working hours survey to collect more comprehensive statistical data on working hours and overtime work arrangement for further analysis.

Composition of and support for SWHC

20. Some members considered that SWHC should comprise representatives of different sectors including professionals such that the long working hours situation of individual occupations could be better reflected.

21. The Administration advised that while it was not possible to include representatives from all trades and occupations, SWHC would fully solicit views from the community and different sectors during its deliberation on the subject of SWH. Members were assured that the operation of SWHC would

be highly transparent.

22. On the manpower support for the work of SWHC, members were advised that apart from the creation of one supernumerary post of Chief Labour Officer at D1 level for a period of three years in LD to oversee the support for SWHC, there were two teams, respectively headed by a Senior Labour Officer, responsible for providing secretariat support to SWHC and conducting further studies on the subject. Members noted that all the posts concerned had been filled.

Relevant papers

23. A list of the relevant papers on LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
14 May 2014

Relevant papers on standard working hours

Committee	Date of meeting	Paper
Panel on Manpower	15.12.2011 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	18.12.2012 (Item III)	<u>Agenda</u> <u>Minutes</u>
	31.7.2013 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Council meeting	23.6.2010	<u>Motion on "Legislating for 'standard working hours'"</u>
	1.12.2010	<u>Official Record of Proceedings (Question 3)</u>
	15.2.2012	<u>Motion on "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"</u>
	17.10.2012	<u>Motion on "Legislating for the regulation of working hours"</u>