

## **ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE**

### **HEAD 90 – LABOUR DEPARTMENT Subhead 000 Operational expenses**

Members are invited to recommend to Finance Committee the creation of the following supernumerary post in the Labour Department up to 31 March 2021 with immediate effect upon approval of Finance Committee –

1 Chief Labour Officer  
(D1) (\$130,500 - \$142,750)

### **PROBLEM**

The supernumerary post of Chief Labour Officer (CLO) (D1), which was created for a period of three years to head the Working Hours Policy Division (WHPD) of the Labour Department (LD), lapsed on 1 April 2016. There is a need to strengthen the directorate support in LD to assist the Standard Working Hours Committee (SWHC) in completing its remaining work and follow up on the working hours policy directions and the related work.

### **PROPOSAL**

2. We propose re-creating one supernumerary post of CLO (D1) in LD up to 31 March 2021 with immediate effect upon approval of Finance Committee (FC) to lead WHPD of LD; support SWHC's completion of its remaining work, including the conduct of the second-stage consultation, the formulation of suitable working hours policy directions and preparation of its report to the Government this year; as well as undertake follow-up work on working hours policy directions in connection with SWHC's recommendations and monitor the working hours situation of Hong Kong.

**/JUSTIFICATION .....**

## JUSTIFICATION

### Standard Working Hours Committee

3. The Government set up SWHC on 9 April 2013 to follow up on the Report of the Policy Study on Standard Working Hours released in November 2012. With an original three-year term, SWHC is chaired by Dr Leong Che-hung and comprises members drawn from the labour and business sectors, academia, the community and the Government. The terms of reference and membership of SWHC are at Enclosure 1.

Encl. 1

4. SWHC has adopted the following four strategic areas, namely, enhancing public understanding; collecting working hours statistics and information relevant to a working hours regime; launching public engagement; and adopting an evidence-based approach for discussions on the basis of a range of factors, with a view to promoting informed and in-depth discussions of the community on working hours issues, and jointly exploring and identifying working hours policy directions applicable to Hong Kong.

5. The term of SWHC was originally due on 8 April 2016. As SWHC needs more time to complete its remaining work, the Government extended the term of SWHC and tenure of all SWHC members by some seven months till 30 November 2016.

### Work Progress of SWHC

6. SWHC has since its establishment spared no effort in taking forward and carrying out the work under the above strategic areas, including completing wide public consultation (the first-stage consultation) and a comprehensive working hours survey in 2014. With reference to the findings of these two exercises, SWHC deduced through an evidence-based approach the following principles and suggestions –

- (i) a legislative approach to implement a policy to regulate working hours of employees;
- (ii) owing to the varied circumstances of different trades and occupations, a working hours policy should provide the necessary flexibility, hence an ‘across-the-board’ legislative approach would be inappropriate;

/(iii) .....

- (iii) an in-principle agreement to explore a legislative approach to mandatorily require employers and employees to enter into written employment contracts, which shall include the specified working hours terms, such as overtime compensation arrangement (the ‘big frame’ as referred to by SWHC); and
- (iv) to explore, on the premise of the ‘big frame’, whether there is a need for other suitable measures (e.g. setting a working hours standard and an overtime pay rate) to further protect grassroots employees with lower income, lower skills and less bargaining power (the ‘small frame’ as referred to by SWHC).

7. The ‘big frame’ under SWHC’s exploration entails a proposed legislative approach to mandatorily require employers and employees to enter into written employment contracts specifying clearly terms that are related to working hours (e.g. agreed working hours, overtime situation, overtime compensation arrangement, agreed wages, meal breaks and rest periods, rest days, and records of hours worked). Employers and employees may mutually agree on the details of these terms according to the actual circumstances.

8. The ‘big frame’ under exploration aims to introduce statutory definitions of agreed working hours and overtime work, thereby providing a useful framework for a working hours regime. Specification of terms related to working hours in written employment contracts should help employers and employees clarify working hours arrangements and enhance their awareness of reviewing and agreeing on these arrangements. Moreover, the ‘big frame’ may provide a more solid legal basis for handling labour disputes and claims in relation to the Employment Ordinance (Cap. 57) and employment contracts.

9. On the premise of the ‘big frame’, SWHC is in parallel exploring whether there is a need for other suitable measures to further protect grassroots employees with lower income, lower skills and less bargaining power (i.e. the ‘small frame’). Along the principle that the discussion would be based on an evidence-based approach, SWHC conducted data analyses and assessments of various parameter combinations of employees’ monthly wages, weekly working hours standards under study and overtime pay rates, so as to understand the possible impacts of these parameter combinations on employees, enterprises and Hong Kong’s medium- and long-term macroeconomic situation.

10. To facilitate further discussion of working hours policy directions and collect views for reference in preparing its report, SWHC is conducting the second-stage consultation for a period of three months from 25 April 2016 to 24 July 2016 to consult the public and stakeholders including major trade associations and labour organisations, employers' and employees' associations of the relatively long-working-hours sectors, and other relevant organisations on, among other issues, the following four policy directions, namely –

- (i) only implementing the 'big frame';
- (ii) only implementing the 'small frame';
- (iii) on the premise of implementing the 'big frame', to implement the 'small frame' as well; and
- (iv) not to implement the 'big frame' nor 'small frame' but to implement other policies/measures pertaining to working hours (e.g. formulating voluntary guidelines according to the needs of individual sectors).

11. Under the second-stage consultation, SWHC is now conducting various forms of consultation activities including consultation forums and meetings. Taking into account such public feedback, SWHC will formulate the recommendations/way forward on working hours policy directions with a view to submitting its report to the Government before end of November 2016.

### **Need to Re-create a Supernumerary Directorate Post of Chief Labour Officer**

12. At its meeting on 15 March 2013, FC approved vide EC(2012-13)19 the creation of one supernumerary post of CLO (D1) in LD from 1 April 2013 to 31 March 2016 to head the newly established WHPD, provide the secretariat support to SWHC and its working groups, plan and take forward the various tasks as mentioned above, coordinate the research work and impact assessments relating to the working hours policy, as well as follow up on the discussions of SWHC. Headed by this CLO, WHPD comprises two dedicated sections which are respectively led by two Senior Labour Officers (Working Hours Policy) (SLOs(WHP)) and tasked to –

- (i) provide the secretariat and relevant administrative support to SWHC, communicate and liaise with relevant organisations and advisory and statutory bodies, promote public engagement and discussion, as well as plan and take forward various public educational and promotional activities; and

/(ii) .....

- (ii) plan, oversee and follow up on the working hours survey, conduct in-depth research into working hours regimes and relevant subjects, coordinate the work on data analyses and impact assessments, as well as support SWHC in exploring working hours policy directions.

13. WHPD has all along been providing secretariat service for SWHC. It also needs to provide support to the work of SWHC, including the second-stage consultation now under way and later the preparation of its report. After SWHC's submission of its report to the Government, WHPD will follow up on SWHC's recommendations and the development of the working hours policy.

14. Following the lapse of the supernumerary CLO post on 1 April 2016, one of the two SLOs(WHP) of WHPD has to act as the administrative head of WHPD and serve as the Interim Secretary to SWHC. This arrangement is extremely unsatisfactory as it would inevitably weaken the secretariat support to the Chairperson and members of SWHC. Having regard to the complexity of the work required to be undertaken by WHPD, there is a pressing need to re-create the CLO post to lead WHPD.

15. The supernumerary CLO post proposed to be re-created will continue to be designated as Chief Labour Officer (Working Hours Policy) (CLO(WHP)) and report to Assistant Commissioner for Labour (Policy Support). There will continuously be two dedicated sections in WHPD, comprising 15 time-limited posts which have been retained up to 31 March 2021, including one Senior Labour Officer, four Labour Officers, three Assistant Labour Officers I, four Assistant Labour Officers II, one Clerical Officer, one Assistant Clerical Officer and one Personal Secretary II.

16. The job description of the CLO(WHP) post proposed to be re-created is at Enclosure 2. The existing and proposed organisation chart of LD is at Enclosure 3.

Encl. 2  
Encl. 3

## **ALTERNATIVES CONSIDERED**

17. At present, there are seven permanent directorate officers, comprising five Assistant Commissioners for Labour (ACLs) and two CLOs, supporting the Deputy Commissioner for Labour (Labour Administration) in the Labour Administration (LA) Branch of LD. The Commissioner for Labour has critically examined the possibility of redeploying existing directorate staff in LD to

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absorb the duties of the post proposed to be re-created. As all the existing permanent directorate staff in LD are already fully-stretched in their own schedules of policy and operational duties as well as the new initiatives introduced in the light of growing community demand for employment, labour relations and other labour services, they cannot take up the duties of the CLO post proposed to be re-created without adversely affecting the discharge of their current duties. The areas of work for the existing five ACLs and the other two CLOs in the LA Branch are set out at

Encl. 4

Enclosure 4.

## **FINANCIAL IMPLICATIONS**

18. The proposed re-creation of the CLO post will bring about an additional notional annual salary cost at mid-point of \$1,663,200. The full annual average staff cost, including salaries and on-cost, is projected to be \$2,378,000. For the 15 retained non-directorate posts as mentioned in paragraph 15 above, they involve an additional notional annual salary cost at mid-point of \$9,680,760 and full annual average staff cost of \$13,504,000. The necessary provision has been included in the Estimates of 2016-17 and the resources required will also be reflected in the Estimates of subsequent years.

## **PUBLIC CONSULTATION**

19. We reported to the Legislative Council Panel on Manpower (the Panel) on 15 December 2015 the progress of work of SWHC and consulted the Panel on the proposed retention of the CLO(WHP) post. While noting the staff proposal, some Members expressed that the Government should continue to spearhead the work relating to the working hours policy, irrespective of whether SWHC would eventually recommend legislating for SWH or not. At the same time, some Members were concerned about how the Government would persuade the employee members of Labour Advisory Board who had walked out of the SWHC meeting on 27 November 2015 to re-join the work of SWHC, expressed worries about whether the duration of the post proposed to be retained represented a corresponding extension of SWHC's work and considered retention of the above supernumerary post not necessary, until the Government has agreed to legislate for SWH. The Government representatives explained that SWHC would submit its report as soon as possible, and the post proposed to be retained was essential for undertaking further work on the working hours policy after the submission of SWHC report to the Government. The Chairman of the Panel requested the Government to take note of Members' concern when preparing the proposal to the Establishment Subcommittee for consideration.

**/ESTABLISHMENT .....**

**ESTABLISHMENT CHANGES**

20. The establishment changes in LD for the last two years are as follows –

<b>Establishment (Note)</b>	<b>Number of posts</b>			
	<b>Existing (as at 1 May 2016 )</b>	<b>As at 1 April 2016</b>	<b>As at 1 April 2015</b>	<b>As at 1 April 2014</b>
A	15 <sup>#</sup>	15	15+(1)	15+(1)
B	373	371	370	361
C	1 947	1 944	1 914	1 888
<b>Total</b>	<b>2 335</b>	<b>2 330</b>	<b>2 300</b>	<b>2 265</b>

Note:

- A – ranks in the directorate pay scale or equivalent
- B – non-directorate ranks, the maximum pay point of which is above MPS point 33 or equivalent
- C – non-directorate ranks, the maximum pay point of which is at or below MPS point 33 or equivalent
- ( ) – number of supernumerary directorate posts
- <sup>#</sup> – as at 1 May 2016, there was no unfilled directorate post

**CIVIL SERVICE BUREAU COMMENTS**

21. The Civil Service Bureau supports the proposed re-creation of the supernumerary CLO post up to 31 March 2021 to head the WHPD of LD. The grading and ranking of the post proposed to be re-created are considered appropriate having regard to the level and scope of responsibilities and the professional input required.

**ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE**

22. As the post is proposed on a supernumerary basis, its re-creation, if approved, will be reported to the Standing Committee on Directorate Salaries and Conditions of Service in accordance with the agreed procedure.

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**Terms of Reference of the  
Standard Working Hours Committee (SWHC)**

- (i) To follow up on the Government's policy study on standard working hours (SWH) and conduct further in-depth studies, as necessary, on the key issues identified therein;
- (ii) To promote understanding of SWH and related issues including, among others, employees' overtime work conditions and arrangements; to engage the public in informed discussion on the relevant issues; and to gauge the views of stakeholders; and
- (iii) To report to the Chief Executive and advise on the working hours situation in Hong Kong, including whether a statutory SWH regime or any other alternatives should be considered.

**Membership of the SWHC  
(as at 9 April 2016)**

**Chairperson**

Dr Hon Leong Che-hung, GBM, GBS, JP

**Non-official members**

Dr Jane Lee Ching-yee, JP  
Mr Ma Ho-fai, SBS, JP  
Prof Chong Tai-leung  
Prof Joe Leung Cho-bun, MH, JP  
Ms Susanna Chiu Lai-kuen, MH  
Mr Lau Chin-shek, JP  
Dr Kevin Lau Kin-wah, JP  
Prof Raymond So Wai-man, JP

**Members of the Labour Advisory Board as ex-officio members**

Mr Emil Yu Chen-on  
Ms Wong Siu-han  
Hon Ho Sai-chu, GBM, GBS, JP

/Mr .....



Mr Ng Chau-pei  
Mr Chau Siu-chung  
Mr Irons Sze, BBS, JP  
Mr Cheung Sing-hung, BBS  
Ms Chan So-hing  
Mr Charles Chan Yiu-kwong  
Dr Kim Mak Kin-wah, BBS, JP  
Mr Leung Chau-ting  
Mr Stanley Lau Chin-ho, SBS, MH, JP

**Members who are public officers**

Permanent Secretary for Labour and Welfare  
Commissioner for Labour  
Government Economist

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**Job Description  
Chief Labour Officer (Working Hours Policy)**

**Rank** : Chief Labour Officer (D1)

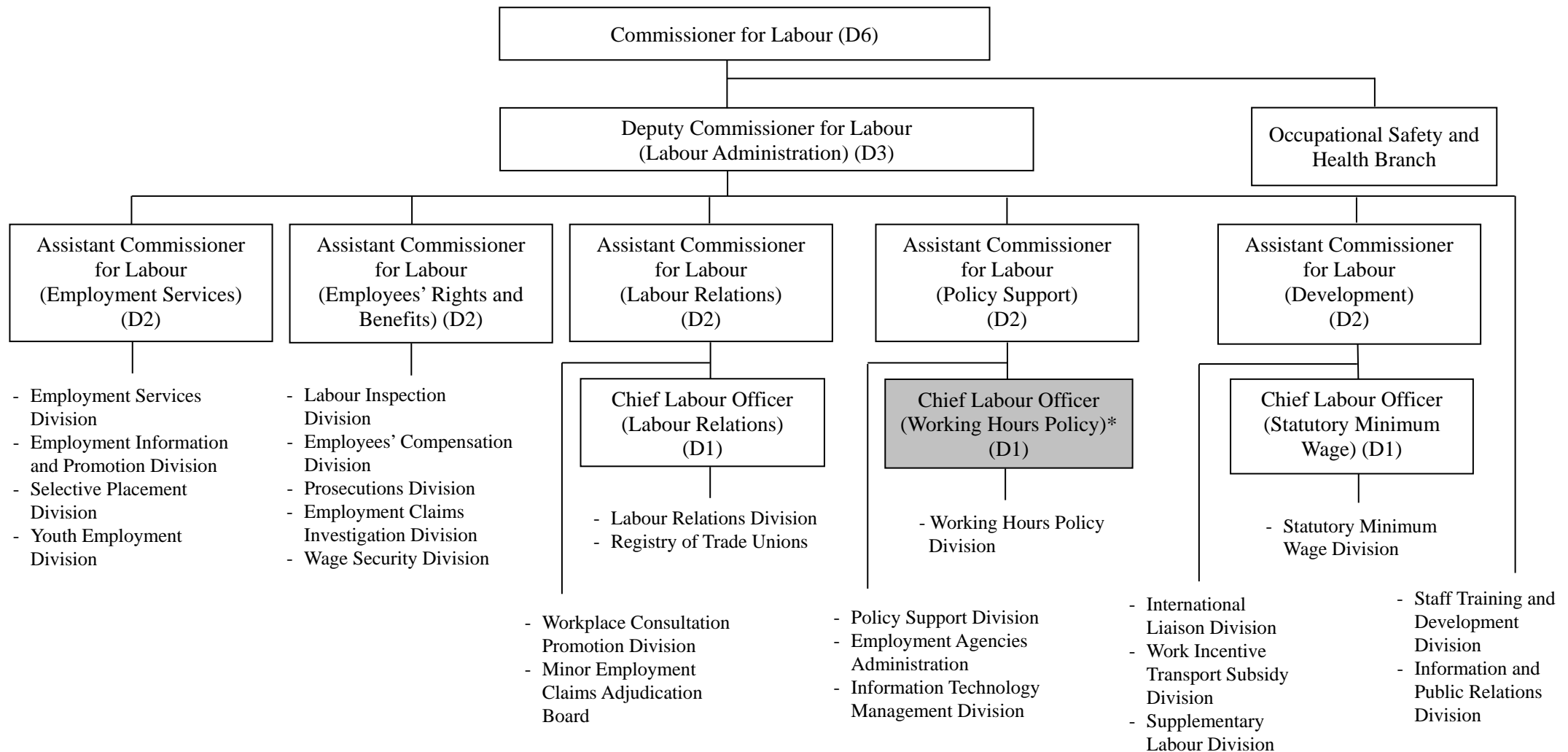
**Responsible to** : Assistant Commissioner for Labour (Policy Support)

**Main Duties and Responsibilities –**

- (i) To head the Working Hours Policy Division of the Labour Department;
- (ii) To serve as the secretary to the Standard Working Hours Committee (SWHC) and supervise the provision of secretariat service for SWHC;
- (iii) To follow up on SWHC's recommendations and the development of the working hours policy;
- (iv) To support SWHC in conducting public engagement activities, and to collect and analyse the views received;
- (v) To support SWHC in preparing its report;
- (vi) To communicate and collaborate with the Labour Advisory Board as well as relevant advisory and statutory bodies on matters relating to the working hours policy; and
- (vii) To follow up on SWHC's report and take forward the work relating to the development of the working hours policy, including enhancing public awareness of the relevant measures, etc.

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# Existing and Proposed Organisation Chart of the Labour Administration Branch of the Labour Department



\* The supernumerary Chief Labour Officer (D1) post lapsed on 1 April 2016 and is proposed to be re-created.

**Areas of work for the existing directorate officers  
in the Labour Administration Branch of Labour Department (LD)**

The Assistant Commissioner for Labour (Employment Services) formulates, implements and reviews policies and strategies on employment services for all job seekers and employment programmes targeting vulnerable groups. These include overseeing the operation of employment services for the able-bodied and persons with disabilities, the dissemination of labour market information to jobs seekers, the recruitment services for employers, the career advisory services and training cum employment programme for young people, the special employment project for the vulnerable youths, the employment programme for the middle-aged, the Work Orientation and Placement Scheme for persons with disabilities, the Work Trial Scheme for job-seekers with difficulties in finding employment, taking up the overall responsibilities of the management of the inter-departmental electronic portal on employment and vocational training related matters; and designing and implementing employment initiatives to assist vulnerable and other target groups of job-seekers to keep up with the economy and needs of the society. Besides, the Assistant Commissioner oversees the work of the Employment Services Division, Employment Information and Promotion Division, Selective Placement Division and Youth Employment Division.

2. The Assistant Commissioner for Labour (Labour Relations) formulates, implements and reviews policies and strategies on the Employment Ordinance (Cap. 57) (EO), Trade Unions Ordinance (TUO) (Cap. 332), Labour Relations Ordinance (Cap. 55) and Minor Employment Claims Adjudication Board Ordinance (Cap. 453); maintains and fosters harmonious labour relations in establishments outside the government sector; oversees the consultation and conciliation services for resolving employment disputes, and the adjudication of minor employment claims by the Minor Employment Claims Adjudication Board (MECAB); maintains a network with stakeholders in labour relations; oversees the regulation of trade unions affairs; promotes effective communication and voluntary negotiation between employers and employees and their respective organisations; enhances public awareness of EO and encourages adoption of good people management and family-friendly employment practices; spearheads studies and reviews on various EO-related labour rights and benefits subjects; and works on legislative amendment exercises on EO. Besides, the Assistant Commissioner oversees the work of the Labour Relations Division and Registry of Trade Unions through Chief Labour Officer (Labour Relations) and oversees directly the Workplace Consultation Promotion Division, as well as MECAB.

3. The Assistant Commissioner for Labour (Employees' Rights and Benefits) formulates, implements and reviews policies and strategies on five employees' compensation-related ordinances; monitors the processing of employees' compensation cases; oversees the work of four related statutory boards; oversees a study on improving work injury protection for employees in high-risk industries; formulates and reviews labour inspection policies and strategies and supervises labour inspection work for labour and immigration laws; formulates and reviews complaint investigation and offence detection policies and strategies for suspected breaches against labour laws; formulates and reviews prosecution policies and strategies and supervises prosecution work in labour legislation; formulates policies on the Protection of Wages on Insolvency (PWI) Ordinance (Cap. 380) and undertakes its reviews and enforcement; oversees the provision of secretariat support to the PWI Fund Board which administers the PWI Fund, and the processing of applications for ex gratia payments from the PWI Fund. Besides, the Assistant Commissioner oversees the work of the Administration and Assessment Section, Central Services Section and Task Force Section of the Employees' Compensation Division, Employment Claims Investigation Division, Wage Security Division, Labour Inspection Division and Prosecutions Division.

4. The Assistant Commissioner for Labour (Policy Support) formulates, implements and reviews policies and strategies on the importation of foreign domestic helpers (including the Minimum Allowable Wage and food allowance), as well as formulates suitable measures for protecting the rights and benefits of these helpers; formulates and reviews policies and strategies relating regulation of employment agencies and supervises the work of the Employment Agencies Administration; provides inputs and support to the Quality Migrants Admission Scheme; coordinates responses of LD to the Legislative Council and undertakes related liaisons (in particular the Panel on Manpower) and District Councils; oversees the information technology management of LD; formulates and coordinates LD's inputs on international conventions; formulates and coordinates LD's policy inputs in respect of various policy matters (e.g. employment-related trade and discrimination issues); formulates policies on the Working Holiday Scheme and explores the possibility of new schemes with other economies or expansion of existing schemes; as well as oversees the work of the General Holidays Ordinance (Cap. 149). Besides, the Assistant Commissioner also oversees the work of the Information Technology Management Division, Policy Support Division, Employment Agencies Administration and Working Hours Policy Division.

5. The Assistant Commissioner for Labour (Development) formulates, implements and reviews policies and strategies on the Statutory Minimum Wage (SMW) and the Minimum Wage Ordinance (Cap. 608) (MWO), and takes forward legislative exercises on the adjustment of the SMW rate; implements and reviews

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policies and strategies on the Work Incentive Transport Subsidy Scheme, and steers and monitors the operations of the Scheme including its publicity and promotion, etc.; oversees the secretariat support provided to the tripartite Labour Advisory Board; monitors observance of international labour conventions applied to Hong Kong, and formulates and coordinates inputs to reports on compliance with international labour standards; coordinates Hong Kong's participation in the International Labour Organization's activities; oversees side agreements on labour issues involved in free trade agreements; liaises with labour administration counterparts in the Mainland and other jurisdictions through visits and participation in relevant activities; and oversees the importation of workers at technician level or below under the Supplementary Labour Scheme. Besides, the Assistant Commissioner oversees the work of the Statutory Minimum Wage Division via Chief Labour Officer (SMW) and oversees directly the International Liaison Division, Supplementary Labour Division and Work Incentive Transport Subsidy Division, and serves as the chairpersons of the Departmental Tender Committee and Departmental Consultants Selection Committee.

6. The Chief Labour Officer (Labour Relations)/Registrar of Trade Unions provides support to the Assistant Commissioner for Labour (Labour Relations) in formulating policies and strategies in respect of the maintenance of sound labour relations in the territory, putting forward proposals in legislative reviews and conducting legislative amendment exercises concerning EO. The Chief Labour Officer steers the operation of the Labour Relations Division for resolving labour disputes and maintaining the industrial peace of Hong Kong. The Chief Labour Officer conciliates in major industrial disputes and also establishes and fosters partnership with various stakeholders of industrial relations for upholding of harmonious labour relations. As the Registrar of Trade Unions, the Chief Labour Officer is responsible for performing the statutory functions as required under TUO with a view to fulfilling at the same time Hong Kong Special Administrative Region Government's international responsibilities, and overseeing the administration of TUO as well as the running of the Registry of Trade Unions.

7. The Chief Labour Officer (SMW) provides support to the Assistant Commissioner for Labour (Development) in formulating policies and strategies in respect of SMW and MWO. The Chief Labour Officer coordinates the implementation of MWO involving other enforcement divisions and spearheads community-wide publicity and promotional activities; supports the statutory Minimum Wage Commission which reviews and recommends the SMW rate on the basis of the evidence-based approach and extensive consultation with various sectors of society; collaborates with the Economic Analysis and Business Facilitation Unit of the Financial Secretary's Office and the Census and Statistics Department in evaluating the impact of SMW; and oversees the research and analysis of local views and experiences on minimum wage in other places.

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