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Panel on Manpower
Subcommittee on Issues Relating to Standard Working Hours

**Background brief prepared by the Legislative Council Secretariat for
the meeting on 1 February 2016**

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 former Chief Executive ("CE") announced in his 2010-2011 Policy Address 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 was assigned the task and released the Report of the Policy Study on Standard Working Hours ("the SWH 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.

Deliberations of the Panel

Policy direction on SWH

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 at 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. Moreover, it was incumbent upon CE to honour his election pledge to establish a statutory regime in Hong Kong. Acknowledging the various complicated and difficult issues to be dealt with by SWHC relating to the introduction of a working hours policy, including the policy design and the parameters involved, some members held the view that consideration should be given to establishing an SWH regime in phases.

6. 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. Some other members called on the Administration to handle the matter prudently, having regard to the complexity of the issue and the divergent views of the labour sector and employers. In the light of an ageing workforce and the problem of labour shortage in some specific trades and industries, these members cautioned that SWHC should take into account the possible impact on the labour market structure in its deliberation on legislating for SWH.

7. Some other members called on the Administration to consider amending the Employment Ordinance (Cap. 57) to the effect that the

number of contractual working hours and overtime pay rates should be spelt out expressly in the employment contracts. These members pointed out that most employers objected to implementation of a uniform working hours standard and considered that different working hours arrangements were already in place in response to the work nature and requirements of different sectors or occupations.

8. Members were assured that the Administration was mindful of the complexity of the working time regime which involved a wide range of complex issues with widespread and far-reaching implications for the overall labour market, manpower demand, employment relations, work culture, family life, employees' health at work, business environment, economic development and business competitiveness. The Administration recognised fully the need to examine the subject of SWH in-depth before deciding on the way forward. SWHC would study and discuss the various issues of concern thoroughly and objectively in the deliberation of the policy direction.

Work progress of SWHC

9. According to the Administration, SWHC was taking forward its work in four areas, including enhancing public understanding; engaging the public and building consensus on various options; collecting comprehensive working hours statistics and relevant information; and adoption of an evidence-based approach for discussion on the basis of a range of relevant factors. SWHC formed two working groups on "Working Hours Consultation" and "Working Hours Study" in July 2013 to specifically take charge of public consultation and working hours surveys respectively.

Study on working hours

10. Noting that the SWH 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.

11. Some members pointed out that overtime hours not worked under the direction of employers were not recognised 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.

12. According to the Administration, SWHC had engaged a consulting firm to conduct the first ever territory-wide household survey between June and August 2014 to collect more comprehensive working hours statistics and relevant information on a working hours regime with a view to facilitating the discussion on a working hours policy. There were limitations of the working hours data in the SWH Report since they 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.

13. On the suggestion of stipulating explicitly the number of contractual working hours and overtime pay rates in the employment contracts, the Administration pointed out that while employers could not unilaterally change the conditions of employment including the working hours, overtime work and its pay rates were subject to mutual agreements between employers and employees on individual employment terms.

Enhancing public understanding and public engagement and consultation

14. According to the Administration, SWHC had launched various education and promotional activities to enhance public understanding of various working hours issues (such as standard versus maximum working hours, and different objectives of working hours regimes) as well as the possible multifarious implications of working time regulation for employees' wage levels and working hours, employees' health at work, labour market flexibility and overall economic competitiveness.

15. Some members held the view that given the difficulty in reaching a consensus on the subject of legislating for SWH between the labour sector and employers, the Administration should take the initiative to address the issue of uncompensated overtime work and take forward the subject as soon as practicable, having regard to the findings of SWHC's public consultation.

Work plan of SWHC

16. Members were concerned about the timeframe for the consulting firms commissioned by two working groups on "Working Hours Consultation" and "Working Hours Study" to submit their respective reports to SWHC and its way forward. Members also enquired whether SWHC's work schedule could be compressed.

17. The Administration advised that SWHC had since its establishment worked at full steam to complete an enormous amount of work. It was expected that the reports on "Working Hours Study" and "Working Hours Consultation" would be submitted by the consulting firms to SWHC for its reference by the second quarter of 2015. SWHC would continue to work expeditiously with a view to completing its work, including the cost impact assessment on the relevant SWH policy options, as soon as possible and submitting its report to the Government in the first quarter of 2016 as scheduled. In addition, SWHC had set up a task force to further explore the future directions of a working hours policy and the further work of SWHC for its in-depth discussion.

18. Members expressed strong dissatisfaction about the unduly long time to be taken for SWHC to study the future directions of a working hour policy. Most members were gravely concerned that given that the tenure of the Fifth LegCo and the current-term Government would expire in 2016 and 2017 respectively, the relevant legislative process for the introduction of a statutory SWH regime would be under a very tight timetable even if the Administration decided to take forward the proposal. The Administration stressed that SWHC would adhere to its work plan closely and carry out informed and in-depth discussion on working hours issues with a view to building consensus and identifying working hours policy options suitable for Hong Kong.

Working hours policy directions being explored by SWHC

19. At its meeting on 15 December 2015, the Panel was briefed on the latest work progress as well as the subsequent work directions of SWHC.

Members were advised that with reference to the findings of the working hours survey and the first-stage consultation, SWHC deduced through an evidence-based approach several principles and suggestions on working hours policy directions, including (a) an in-principle agreement to explore a legislative approach to mandate written employment contracts specifying working hours arrangements of employees in general ("big frame" as referred to by SWHC); and (b) exploring, on the premise of the "big frame", whether there was a need for other suitable measures to further protect grassroots employees with lower income, lower skills and less bargaining power ("small frame" as referred to by SWHC).

20. Members expressed grave concern that the six employee representatives of the Labour Advisory Board ("LAB"), who were SWHC's ex-officio members, had walked out of the SWHC meeting on 27 November 2015. Most members shared the concern of these employee representatives that employer representatives of LAB had backtracked on their promise to conduct future discussion on the basis of legislating for working hours of employees as agreed at the SWHC meeting on 18 March 2015. Instead, SWHC was exploring a proposed legislative approach to mandatorily require employers and employees in general to enter into written employment contracts specifying clearly terms relating to working hours. Some members also expressed concern about how the Administration could take forward the subject of formulating a working hours policy in the absence of the employee representatives on SWHC.

21. Some other members expressed support for exploring the "small frame" on the premise of the "big frame". These members expressed the view that concerns over the long working hours situation which adversely impacted on work-life balance should more appropriately be addressed by specifying the maximum working hours instead of SWH.

22. Members expressed concern about how the Administration could secure the continued participation of the employee representatives in SWHC's work and kick start the second-stage consultation which was expected to commence in early 2016. Some members also asked whether the second-stage consultation would be the final step to be taken by the Administration before making a decision on the way forward for a working hours policy, and how the Administration would take forward the subject upon completion of the second-stage consultation and receipt of the report from SWHC.

23. The Administration advised that SWHC was discussing the draft framework of the second-stage consultation and would at its future meetings discuss the content of the draft consultation document, which would probably include both the "big frame" and the 28 parameter combinations for impact assessment under the "small frame". SWHC planned to launch the second-stage consultation in early 2016, which would be the final round of its consultation, to facilitate further discussion on working hours policy directions and collect views for SWHC's reference in preparing its report. The Administration stressed that in accordance with its terms of reference, SWHC would report to CE and advise on the working hours situation in Hong Kong, including whether a statutory SWH regime or any other alternatives should be considered, upon completion of its term.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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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>
	20.5.2014 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	17.3.2015 (Item V)	<u>Agenda</u> <u>Minutes</u>
	15.12.2015 (Item IV)	Agenda Minutes
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>
	3.6.2015	<u>Motion on "Enacting legislation on standard working hours"</u>