

立法會

Legislative Council

LC Paper No. CB(2)1822/12-13
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Wednesday, 31 July 2013, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

- Members present** : Hon LEE Cheuk-yan (Chairman)
Hon WONG Kwok-kin, BBS (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
Hon LEUNG Kwok-hung
Hon Michael TIEN Puk-sun, BBS, JP
Hon CHAN Chi-chuen
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
- Members attending** : Hon WONG Kwok-hing, BBS, MH
Hon Frankie YICK Chi-ming
Hon CHAN Yuen-han, SBS, JP
- Members absent** : Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Hon SIN Chung-kai, SBS, JP
Hon TANG Ka-piu

Public Officers attending : Item III

Mr Matthew CHEUNG Kin-chung, GBS, JP
Secretary for Labour and Welfare

Mr CHEUK Wing-hing, JP
Commissioner for Labour

Mr Charles HUI Pak-kwan
Assistant Commissioner for Labour
(Labour Relations)

Ms Melody LUK Wai-ling
Chief Labour Officer (Labour Relations)
Labour Department

Ms Esther CHAN Lai-heung
Senior Labour Officer (Labour Relations)
Labour Department

Item IV

Mr Matthew CHEUNG Kin-chung, GBS, JP
Secretary for Labour and Welfare

Miss Annie TAM Kam-lan, JP
Permanent Secretary for Labour and Welfare

Mr CHEUK Wing-hing, JP
Commissioner for Labour

Mr Nicholas CHAN Chun-tak
Assistant Commissioner for Labour
(Policy Support)

Mr Desmond HOU Ka-chun
Principal Economist
Financial Secretary's Office

Mr Raymond HO Kam-biu
Chief Labour Officer
(Working Hours Policy)
Labour Department

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Ms Rita LAI
Senior Council Secretary (2) 1

Ms Mina CHAN
Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

Action

I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1650/12-13)

The minutes of the meeting held on 16 April 2013 were confirmed.

II. Information paper(s) issued since the last meeting

2. Members noted that the following papers had been issued since the last meeting -

(a) letter dated 21 June 2013 from Mr TANG Ka-piu proposing the Panel to discuss issues relating to sudden death of employees at work and payment of employees' compensation; and

(b) joint letter dated 16 July 2013 from Dr KWOK Ka-ki and Mr Dennis KWOK proposing the Panel to discuss the scope of the Employees Compensation Assistance Scheme.

3. The Chairman informed members that he had just received a letter from Mr LEUNG Kwok-hung regarding proposals to address the youth unemployment and related problems, which would be circulated to members for reference.

(Post-meeting note: Mr LEUNG's letter was issued to members vide LC Paper No. CB(2)1678/12-13 on 1 August 2013.)

Action

4. Members agreed that the Administration should first be requested to provide written responses to issues and concerns raised in the three letters referred to in paragraphs 2 and 3 above, and the subject matters would be included in the Panel's "List of outstanding items for discussion".

III. Review of continuous contract requirement under the Employment Ordinance

(LC Paper Nos. CB(2)1654/12-13(01) and (02))

5. At the invitation of the Chairman, the Secretary for Labour and Welfare ("SLW") briefed members on the review of continuous contract requirement (i.e. an employee employed by the same employer for four weeks or more and worked for 18 hours or more each week, commonly referred to as the "4-18" requirement) under the Employment Ordinance (Cap. 57) ("EO"), details of which were set out in the Administration's paper. With the aid of powerpoint presentation, Assistant Commissioner for Labour (Labour Relations) ("AC for L (LR)") highlighted to members the factors to be considered in dealing with the continuous contract requirement, five possible approaches to dealing with the issue and of the pros and cons of each.

6. Members noted the background brief entitled "Continuous contract under the Employment Ordinance" prepared by the Legislative Council ("LegCo") Secretariat.

Possible approaches to dealing with the continuous contract requirement

7. Dr KWOK Ka-ki expressed concern that the "4-18" requirement failed to protect the employees' benefits of those engaged under employment contracts with short duration or working hours (hereinafter referred to as "SDWH employees"). He was particularly concerned that some employers had attempted to evade their statutory responsibilities to provide SDWH employees with employment benefits by setting the employees' working hours below the "4-18" requirement. Lowering the threshold of 18 hours per week to, say, 16 hours under Approach 4 could hardly plug the loophole. Dr KWOK said that the labour sector had all along advocated for the abolition of the "4-18" requirement and provision of employment benefits for some 100 000 SDWH employees on a pro-rata basis. The Administration, however, put forward five possible approaches to deal with the continuous contract requirement. Dr KWOK enquired about the Administration's stance on the matter.

Action

8. SLW said that the Administration attached great importance to the review of the continuous contract requirement. In reviewing the subject, the Labour Department ("LD") had made reference to the major findings of a special topic enquiry on SDWH employees as published by the Census and Statistics Department ("C&SD") in July 2011 and conducted an in-depth study on the subject as well as listened to the views of the stakeholders, including trade associations and labour unions, prior to setting out the different approaches for consideration. SLW added that while the Labour Advisory Board ("LAB") had deliberated the pros and cons of individual approaches at the two meetings held in May and July 2013, LAB had yet to reach a consensus on the matter. LAB would discuss the matter again this year. SLW stressed that the Administration had no pre-conceived position on any of the approaches and did not rule out other possible approaches to deal with the issue.

9. Dr KWOK Ka-ki expressed disappointment about the Administration's lack of policy direction on the continuous contract requirement and enquired about the Administration's views on the suggestion of calculating employees' benefits on pro-rating basis. SLW said that according to the findings of C&SD's survey, there were some 98 000 SDWH employees at the time of enumeration. Among these SDWH employees, 56 300 usually worked less than 18 hours a week, and it was noteworthy that some 42 600 (75.7%) of them did not choose to work longer hours for personal reasons. If pro-rating employees' benefits were to be adopted, it would be critical to address the technical problems involved in the calculation of pro-rata entitlements of these SDWH employees. He stressed that in considering any proposal to amend the continuous contract requirement, it was imperative that the calculation of employee benefits should be simple, easy to understand and practicable.

10. Mr WONG Kwok-hing was concerned about an increasing trend of employers scheduling the pattern of hours of work of their part-time workers in such an odd way that the employees concerned would not be entitled to protection and benefits that were accorded to continuous contract employees. To plug the loophole, the Hong Kong Federation of Trade Unions had all along called for the removal of the "4-18" requirement entirely. As a transitional arrangement, consideration could be given to adopting the "4-0-72" requirement under which an employee was considered to have fulfilled the continuous contract requirement and was entitled to full employment benefits if he had worked 72 hours or more within four weeks, and pro-rating employees' benefits for those not employed under a continuous contract. The Deputy Chairman and Mr KWOK Wai-keung expressed support for changing the "4-18" requirement to the "4-72" requirement.

Action

11. The Deputy Chairman considered that the proposal to lower the threshold of 18 hours per week to 16 hours under Approach 4 made no material change to the qualifying criteria for meeting the continuous contract requirement. Mr KWOK Wai-keung pointed out that under Approach 4, employers could still evade the statutory responsibility of providing employment benefits to employees by requiring the latter to take one week's leave after they had worked continuously for three weeks. In his view, Approach 4 was unacceptable and no better than the "4-18" requirement as most SDWH employees still could not benefit from the reduced working hours requirement. SLW said that there were some 12 900 workers working 16 hours or above per week at the time of enumeration, which meant close to a quarter of the 56 300 part-time workers would benefit if the threshold of 18 hours per week was lowered to 16 hours.

12. SLW further said that the Administration had endeavoured to review the continuous contract requirement. That said, any proposal to amend the requirement should ensure that the definition would provide clear and well-defined delineations in determining whether individual employees were entitled to the relevant benefits. The calculation of employees' benefits should satisfy the test of reasonableness, clarity, simplicity and proportionality. Commissioner for Labour ("C for L") echoed that the approach to be adopted should be simple, clear and easy to administer so as to avoid unnecessary labour disputes arising from the enforcement of relevant provisions.

13. The Deputy Chairman said that the technical problems concerning the pro-rata calculation of employees' benefits could be resolved simply by determining the employment benefits based on the ratio of the part-time worker's working hours to those of a full-time employee. To further simplify the calculation, he suggested that the working hours of part-time employees could be broadly grouped into several tiers, such that an employee under a specific group would be entitled to a specified percentage of full employment benefits.

14. SLW said that the legislative intent of continuous contract was to require employers to provide relevant employment benefits to employees in steady employment relationships with them and were consistently providing a substantial amount of service. It was necessary to maintain a reasonable balance between the interests of employees and the affordability of employers. He would convey the Deputy Chairman's suggestion to LAB for consideration.

Action

15. Mr POON Siu-ping said that the Federation of Hong Kong and Kowloon Labour Unions had advocated for more than a decade for legislative amendments to plug the loophole of "4-18" requirement so as to safeguard SDWH employees' entitlements. Mr POON cited that complaints had been received time and again from some employees over their employers' deliberate arrangement to set their working hours below the "4-18" requirement to bar them from enjoying full employment benefits. While considering pro-rating employees' benefits with reference to working hours was a more reasonable approach, in the light of the operational problems involved in pro-rating employees' benefits as pointed out by the Administration, Mr POON considered that the proposal under Approach 3 could be modified with reference to the eligibility criteria for the Work Incentive Transport Subsidy Scheme so as to plug the "4-18" loophole. He elaborated that under the proposed modified approach, employees having worked for 72 hours or more within four weeks would be considered to have fulfilled the continuous contract requirement and were entitled to full employment benefits, while those working less than 72 hours but at least 36 hours would be entitled to one half of the employment benefits. In his view, the modified proposal was simple and easy to administer.

16. SLW said that the Administration was willing to listen to different views on the subject, and Mr POON Siu-ping's view would be relayed to LAB for consideration.

17. Mr LEUNG Yiu-chung said that the labour sector had strongly urged for the removal of the "4-18" requirement and provision of employment benefits on a pro-rata basis. In the light of the disparity of employment benefits between full-time and SDWH employees, he did not support adopting transitional measures to modify the "4-18" requirement. To address the technical problems involved in pro-rating employees' benefits, Mr LEUNG considered it crucial for the Government to play an active role to facilitate the reconciliation between employees and employers in dealing with the continuous contract requirement. He called on the Administration and LAB to focus the future discussion on the removal of the "4-18" requirement and how to calculate pro-rating employees' benefits. Mr Frederick FUNG and Mr CHEUNG Kwok-che shared similar views.

Action

18. In the light of the strong calls from the labour sector for a review of the continuous contract requirement over the years, Mr CHEUNG Kwok-che considered it unacceptable to adopt the proposal of maintaining the status quo under Approach 5. With reference to the proposal under Approach 3 to change the calculation of working hours from a weekly to four-weekly basis, Mr CHEUNG pointed out that the proposal could not plug the loophole of the "4-18" requirement, as the employers could set the working hours of employees right below the new threshold for continuous contract. In his view, an employee should be eligible for entitlements under EO on pro-rata basis once engaged by an employer. He was confident that the Administration would be able to resolve the technical problems involved in the computation of employees' benefits on a pro-rata basis. Mr Frederick FUNG concurred with Mr CHEUNG's views.

19. Dr CHIANG Lai-wan considered that it was the fundamental responsibility of employers to provide pro-rating employment benefits to employees. To her knowledge, some employers had accorded to their employees more favourable wages and employment benefits than those stipulated in EO. However, some employers might not support the pro-rating approach because of the complicated calculation involved. Hence, Dr CHIANG was of the view that the calculation method of employees' benefits should be clear, simple and easy to administer, irrespective of which approach was to be adopted to enhance the protection of SDWH employees' entitlements. SLW agreed that the principle of clarity and simplicity should be adhered to.

20. Dr LEUNG Ka-lau expressed the view that if the pro-rating approach was to be adopted, the ratio of pro-rata entitlement to employment benefits of an employee would be determined based on his pro-rated wage level, this would result in reduction in total benefits of the part-time and SDWH employees. In his view, removing the continuous contract requirement was the most acceptable approach, given that all employees, irrespective of their working hours, should be entitled to full benefits under EO. In respect of the concern about an increase in employer's cost of providing employment benefits, including paid annual leave, paid statutory holidays and paid sickness days, after removing the continuous contract requirement, Dr LEUNG said that the employer's cost for engaging a full-time employee or a few part-time employees to perform the same kind of job, in theory, should be the same. As a matter of principle, the monthly working hours and wages of full-time employees should be adopted as the benchmark for calculating the

Action

pro-rated employee's benefits. As for the entitlement to paid leave, he cited the Cathay Pacific Airways Limited case as an example to illustrate that the court had ruled that employers could make flexible arrangement for the provision of paid annual leave and paid statutory holidays. The outstanding issue to be resolved would be the calculation of entitlement to pro-rated paid sickness days if the pro-rating approach were to be adopted.

21. The Chairman was of the view that as rightly pointed out by Dr LEUNG Ka-lau, the technical problems involved in the calculation of employment benefits after removing the threshold for continuous contract would be largely resolved if the monthly wage of a full-time employee was adopted as the benchmark for the relative ratio of pro-rata entitlements. This was because the entitlements under EO, including severance payment and long-service payment, were calculated based on the employees' monthly wages. Further discussion on the subject would be confined to how to prorate those entitlements which were computed on the basis of employees' daily wages, notably the entitlement to paid sickness day, maternity leave and annual leave.

22. Mr LEUNG Kwok-hung expressed the view that the intent of labour legislation was to safeguard employment benefits of vulnerable employees, in particular during economic downturn. Instead of reviewing the continuous contract requirement, he took the view that the Administration should model on the Protection of Wages on Insolvency Fund and set up a central fund to enhance the protection of SDWH employees' benefits.

23. In anticipation of a drastic increase in the administration fee for calculating pro-rating employees' benefits, Mr Tommy CHEUNG said that the Liberal Party was not in support of such approach which was detrimental to the business environment. He considered that maintaining the status quo was the most viable approach that was conducive to business operation. To his knowledge, a considerable number of employees in the catering industry had since 1980s chosen to work as part-time or casual workers due to various reasons. Given the prevailing low unemployment rate of around 3% in Hong Kong and the difficulties in staff recruitment, he pointed out to members that the hourly wage or piece rate of part-time or casual workers in the catering industry was in fact higher than that of a full-time employee and the intrinsic value of employment benefits was thus included in the higher wage rates. He appealed to the Administration to conduct an impact assessment of pro-rating employees' benefits on the operation of small and medium

Action

enterprises, as well as make comparison with the neighbouring countries in the engagement of SDWH employees with reference to their relevant legislation and operating cost.

24. Mr Frankie YICK said that a majority of SDWH employees were engaged by the small and medium enterprises which already faced great operation difficulties because of the increase in operating cost. He cautioned that any proposed changes to SDWH employees' entitlements would increase the employers' cost and might eventually result in business closure and shrinkage of the labour market.

25. Mr Frederick FUNG considered that it was incumbent upon the Administration to devise formulae and provide clear guidelines for calculating SDWH employees' entitlements so as to address the concerns about a possible high administration cost for pro-rating employees' benefits.

26. The Chairman said that the Labour Party and the Confederation of Trade Unions considered the proposal of lowering the threshold of 18 hours per week would be the worst approach under consideration. Instead of benefiting some 12 900 part-time workers who worked 16 hours or above per week at the time of enumeration, he cautioned that these employees might be on the contrary subject to reduction of working hours by employers so as to evade from the responsibilities from providing employment benefits.

27. In response, SLW reiterated that the Administration maintained an open mind on the issue and stressed that the practical implementation issues and the pros and cons of individual approaches warranted further examination.

Consultation with LAB

28. Mr POON Siu-ping said that some employee Members of LAB had asked him to convey their strong dissatisfaction about being presented with the proposal of lowering the threshold of 18 hours per week to, say, 16 hours at the end of the July meeting. Hence, no in-depth discussion was held in respect of the proposal. Mr WONG Kwok-hing raised a similar concern.

Action

29. C for L clarified that the Administration had consulted LAB on the subject together with the five possible approaches at the two meetings held in May and July 2013. While LAB members had thorough deliberations on the subject, they had not yet come to a view. Given the complexity of the issues involved, LAB would continue to deliberate on individual approaches in greater detail at the forthcoming meetings.

Way forward

30. Mr KWOK Wai-keung expressed concern that a considerable number of low-skilled and less-educated workers did not fully understand their rights and benefits under EO and might be advertently treated as SDWH employees by the employers in order to evade the statutory responsibilities under EO. Mr KWOK called on the Administration to enhance the publicity efforts in raising the public's awareness in parallel with the review of the continuous contract requirement.

31. Pointing out that no discussion had been held on amendments to the definition of continuous contract under EO since 2009, Mr KWOK Wai-keung considered it high time for the Administration to introduce legislative amendments in the light of the prevailing low unemployment rate in Hong Kong. Mr WONG Kwok-hing and Mr KWOK held the view that the Administration had unduly delayed the review for having no clear stance on the issue. In this connection, they enquired about the Administration's way forward to deal with the issue and the relevant timetable.

32. Mr POON Siu-ping enquired how and when the Administration could enhance the protection of SDWH employees' employment benefits if LAB could not reach a consensus on adopting a specific approach to deal with the continuous contract requirement. Mr LEUNG Yiu-chung and Mr Frederick FUNG also enquired about the Administration's plan of taking forward the matter.

33. In response, SLW acknowledged that there were pros and cons in each of the approaches to deal with the continuous contract requirement. He reiterated that the Administration maintained an open mind on the matter, and the issue was complicated and warranted further examination by LAB. He undertook to convey members' views to LAB for consideration.

Action

34. The Chairman said that having regard to the pros and cons of various approaches as set out in the Administration's paper, he was given the impression that the Administration was inclined to take forward the proposal to change the "4-18" requirement to "4-16" requirement.

35. SLW reiterated that the Administration did not have any pre-conceived position on the matter. Given the complexity of the subject, the Administration's paper sought to set out the pros and cons of various approaches as well as issues warranting further examination. The Administration would consolidate and analyse members' views for consideration by LAB at its next meeting, and would revert to the Panel on the progress by end of 2013.

Motion

36. The Chairman put the following motion proposed by Mr LEUNG Yiu-chung and seconded by Mr CHEUNG Kwok-che to vote -

"為保障所有非「4-1-18僱員」得到《僱傭條例》的權益及福利，本委員會建議取消「4-1-18」，員工每周工作時數滿18小時者可獲全數《僱傭條例》內的權益及福利保障，而不足18小時則按工時比例獲得勞工保障。"

(Translation)

"That, in order to protect the rights and benefits of all non-"4-1-18 employees" under the Employment Ordinance, this Panel proposes to abolish the "4-1-18" requirement, and that staff members who have worked for 18 hours a week should be entitled to the full protection of rights and benefits under the Employment Ordinance, whereas those who have worked for less than 18 hours a week should be entitled to the labour protection on a pro-rata basis."

Mr Tommy CHEUNG requested a division. Mr CHEUNG Kwok-che, Mr KWOK Wai-keung, Mr LEUNG Yiu-chung, Mr POON Siu-ping and the Chairman voted in favour of the motion. Mr Tommy CHEUNG and Mr Michael TIEN voted against the motion. Dr LEUNG Ka-lau abstained from voting. The Chairman declared that five members voted for the motion, two members voted against it and one member abstained. The Chairman declared that Mr LEUNG Yiu-chung's motion was carried.

Action

IV. Progress of the work of the Standard Working Hours Committee

(LC Paper Nos. CB(2)1654/12-13(03) and (04))

37. At the invitation of the Chairman, SLW briefed members on the progress of the work of the Standard Working Hours Committee ("SWHC") and its workplan, details of which were set out in the Administration's paper.

38. Members noted the background brief entitled "Standard working hours" ("SWH") prepared by the LegCo Secretariat.

(Members agreed to extend the meeting by 15 minutes.)

Timetable of SWHC

39. Mr WONG Kwok-hing noted with concern that SWHC would base on the reports to be submitted by its two working groups, namely "Working Hours Consultation Group" and "Working Hours Study Group" by end of 2014, and draft its report for submission to the Government in early 2016 in respect of proposals on the direction of a working hours policy suitable for Hong Kong. Having regard to the workplan, Mr WONG expressed great reservation about whether the current Government could introduce the relevant legislative proposal for SWH within its tenure.

40. SLW advised that the setting up of SWHC was to follow up on the Government's policy study on SWH. It would examine thoroughly all relevant issues and concerns with a view to building consensus and identifying the way forward. Should the community come to a view by then on the need to introduce a statutory SWH regime, the Administration would proceed with the drafting work and strive to introduce the relevant legislation within the tenure of the current Government.

41. Mr WONG Kwok-hing was of the view that to expedite SHWC's study on the impact of working hours regulation on various trades, the Administration should kick start the implementation of 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). SLW undertook to relay the views to SWHC for consideration.

Action

42. The Chairman remained concerned about the timetable for legislating for SWH. Given that the tenure of the Fifth LegCo and the current Government would expire in September 2016 and June 2017 respectively, he cast doubt about SLW's saying that the necessary legislative procedures for introducing a working hours regime could be completed within the tenure of the current Government.

43. SLW said that 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, SLW advised that the Administration would proceed with the legislative process and strive to introduce a bill on SWH within the tenure of the current Government.

44. Mr LEUNG Yiu-chung said that the Neighbourhood and Worker's Service Centre had all along urged for legislating for SWH as soon as practicable to alleviate the problem of long working hours faced by grassroots workers. Mr LEUNG expressed disappointment that the Administration, instead of taking forward a legislative proposal on SWH, set up the SWHC to follow up on the study on SWH with a view to identifying the way forward, including whether a statutory SWH regime should be introduced, by the first quarter of 2016. He considered that it was the Administration's tactic to delay legislating for SWH. Dr KWOK Ka-ki and the Chairman expressed similar concerns. Mr LEUNG enquired whether SWHC's work schedule could be streamlined and compressed so as to expedite the introduction of the relevant legislative proposal for SWH as soon as possible.

45. Dr KWOK Ka-ki said that working hours statistics of employees in various sectors of Hong Kong were already available in the Report of the Policy Study on SWH ("the SWH Report") which was released in November 2012. Specifically, 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. Instead of taking SWHC a few more years to repeat the processes of public consultation, data collection and analysis, Dr KWOK was of the view that the Administration could kick start the relevant legislative procedures for introducing an SWH regime. Noting that SWHC planned to submit an

Action

endorsed report to the Government not until the first quarter of 2016, Dr KWOK was particularly concerned that the relevant legislation on SWH could not be completed within the current term of Government.

46. Mr KWOK Wai-keung expressed disappointment about the Administration's lack of stance on the issue and was concerned that the legislation on SWH would be passed on to the next-term Government for follow-up. To expedite the work progress, SWHC should consider holding more frequent meetings. This apart, LD should also expedite its work on data collection, compilation and analysis, to facilitate early deliberations of SWHC on the subject.

47. Responding to members' concerns, Permanent Secretary for Labour and Welfare said that SWHC, comprising members from the labour sector and the business field, attached great importance to its work direction and workplan. In drawing up the workplan, SWHC had thorough discussion at the first two meetings on whether the timetable could be further compressed. Notwithstanding that the task was challenging, the two working groups would conduct their work proactively and endeavour to submit their respective reports to SWHC by end of 2014. SLW assured members that in its three-year term from April 2013, SWHC would follow the work schedule closely and submit a report to the Government advising on the working hours situation in Hong Kong, including whether a statutory SWH regime or any other alternatives should be considered, by the first quarter of 2016. As stated earlier, should a consensus be reached in the community on establishing a statutory SWH regime, the Administration would proceed with drafting of the relevant bill for introduction into LegCo before the expiry of the tenure of the current Government.

48. Mr LEUNG Kwok-hung and the Chairman remained gravely concerned about the timeframe for legislating for SWH. They considered that even if SWHC was in support of a statutory SWH regime, the Administration would be under a very tight legislative timetable for introducing the relevant bill for scrutiny by the Fifth LegCo. The Chairman expressed strong disappointment that the Administration had departed from the Chief Executive ("CE")'s pledge made in his election manifesto to take forward legislating for SWH upon completion of the policy study on SWH in 2012.

49. SLW clarified that CE had stated in his election manifesto to set up a Special Committee to follow up on the study on SWH, and the committee would examine issues relating to employees' overtime work

Action

conditions and arrangements as well as various proposals on SWH. The Administration would revert to the Panel on the work progress of SWHC in due course.

Objectives of a working hours policy

50. Mr LEUNG Kwok-hung sought information on the policy objective of the legislation on SWH, such as the long title of the relevant bill. SLW said that SWHC had not yet come to a view on the policy direction on SWH, including whether legislative means was the way forward.

51. Mr Michael TIEN expressed the view that SHWC should first work out the definition of SWH and set out the problems to be resolved before taking forward its study on the subject, although it was not an easy task. He recalled that when the subject of SWH was discussed at the Panel meeting on 18 December 2012, he had expressed the view that concerns over work-life balance should more appropriately be addressed by specifying the maximum working hours instead of SWH, and that the problem of overtime work without due compensation could be resolved by improving EO. To this end, the components of working hours and the overtime pay rates should be stipulated expressly in the employment contracts.

52. Acknowledging the different concerns in the community over the working hours situation in Hong Kong, SLW advised that SWHC would deliberate thoroughly on SWH which was a highly complex subject and involved a myriad of interrelated and controversial social and economic issues, and identify the way forward, including whether a statutory SWH regime or any other alternatives should be introduced. He further said that EO 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. SLW would relay Mr TIEN's suggestion to SWHC for consideration.

53. The Chairman, however, held a different view. Pointing out that employers could easily circumvent the requirement of making compensation for overtime work by specifying longer contractual working hours in the employment contracts, he reiterated that a mandated regime should be introduced on SWH beyond which employers would be obliged to pay for the overtime work.

Action

Working hours statistics

54. Pointing out that the Administration had underestimated the impact of the knock-on effect in determining the Statutory Minimum Wage rate, as compared to the findings of a similar survey conducted by him in respect of the impact on the restaurant sector, Mr Tommy CHEUNG raised queries about the reliability of the statistical data on working hours to be collected. He cautioned that policy-making for SWH on the basis of inaccurate statistics would jeopardize the economy of Hong Kong in the long run.

55. SLW assured members that the Administration would carefully examine the statistical data collected with a view to balancing the interests of employers and employees as well as bringing benefits to the long-term economic development. Principal Economist of the Financial Secretary's Office ("Principal Economist") said that a working hours policy involved a wide range of complex and contentious issues with far-reaching implications for employment, the economy and the community as a whole. It was considered necessary to collect more comprehensive and itemised statistical data on working hours to facilitate an objective and impartial discussion of SWHC. The relevant government departments, including C&SD and the Economic Analysis and Business Facilitation Unit of the Financial Secretary's Office would provide technical support to the research consultant to conduct the dedicated working hours survey.

56. Mr KWOK Wai-keung was of the view that the working hours data contained in the SWH Report on the latest working hours situation of employees in various sectors of Hong Kong were incomprehensive. Specifically, the banking and information technology industries, which in fact had longer working hours than the six industries identified in the long-working-hours sectors, were not covered in the report. Mr KWOK noted that overtime hours not worked under the direction of employers were not recognized and covered in C&SD's survey because such data were not available from the employers. He therefore appealed to the Administration 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.

Action

57. Assistant Commissioner for Labour (Policy Support) ("AC for L (PS)") explained that in the SWH Report, compensated and uncompensated overtime hours were collected from individual employers and employees via the Annual Earnings and Hours Survey and a supplementary enquiry of the General Household Survey (with the latter collecting information from households) respectively to build up a merged micro-dataset, with a view to obtaining a more comprehensive picture of employees' total working hours. The Administration, however, was aware of the limitations of the then micro-dataset. Therefore, it was recommended that SWHC should commission a research consultant to conduct a dedicated working hours survey to collect more comprehensive statistical data on working hours and overtime work arrangement. Principal Economist added that owing to the limitations of the micro-dataset specifically created for the policy study on SWH, working hours data could be broken down by major economic sectors or broad occupation categories only, which were therefore not adequate for revealing the working hours situation of certain individual professions spreading over different industries. To this end, SWHC would commission a research consultant to conduct a dedicated working hours survey to collect more comprehensive statistical data for further detailed analysis.

(Members agreed to extend the meeting by 10 minutes.)

Consultation and study missions

58. Mr WONG Kwok-hing noted with concern that SWHC planned to conduct two rounds of consultation and study missions on formulating and implementing a working hours regime. He was concerned that the study progress of SWHC would be further delayed. He also sought information on the estimated expenditure involved. Mr POON Siu-ping shared a similar concern. Mr POON said that the Federation of Hong Kong and Kowloon Labour Unions was given to understand that CE had announced the setting up of a Special Committee for SWH in his election manifesto. The Administration should therefore proceed with the public consultation and further study on the subject based on the findings of the SWH Report, with a view to legislating for SWH within the current term of Government.

59. In response to members' concerns, SLW advised that while the SWH Report had laid a solid and objective basis for an informed and in-depth discussion on the subject; given the complex and controversial nature of the subject, more comprehensive statistical data would need to

Action

be collected through a dedicated working hours survey. He further 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, SLW and AC for L (PS) said that in addition to making reference to information on the Internet and related publications, 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. SLW stressed that the principle of prudent use of public money would be observed closely.

Composition of and support for SWHC

60. With reference to the composition of SWHC, Mr Tommy CHEUNG considered that the business sector was underrepresented in the committee. He also anticipated that it would be difficult for SWHC to come to a view on the way forward.

61. In response to Mr POON Siu-ping's enquiry about the manpower support for the work of SWHC, C for L said 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. All the posts concerned had been filled.

62. There being no other business, the meeting ended at 1:15 pm.