

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 90 – LABOUR DEPARTMENT Subhead 000 Operational expenses

Members are invited to recommend to the Finance Committee the creation of the following permanent post in the Labour Department with immediate effect upon approval by the Finance Committee –

1 Chief Labour Officer
(D1) (\$144,100 - \$157,700)

PROBLEM

We need dedicated support at the directorate level in the Labour Department (LD) to take up various new tasks in relation to the abolition of the “offsetting” of severance payment (SP) and long service payment (LSP) with employers’ mandatory contributions under the Mandatory Provident Fund (MPF) System.

PROPOSAL

2. We propose to create one permanent post of Chief Labour Officer (CLO) (D1) in LD with immediate effect upon approval of the Finance Committee to lead a dedicated team in LD for undertaking the new tasks relating to the abolition of the “offsetting” arrangement.

JUSTIFICATION

Background

3. Launched in 2000, the MPF System is a key pillar of Hong Kong’s retirement protection system. The Mandatory Provident Fund Schemes Ordinance (MPFSO) permits employers to use the accrued benefits of their mandatory

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contributions made to an employee's MPF account to offset against SP/LSP payable to the concerned employee under the Employment Ordinance (EO). In recent years, over \$3 billion accrued benefits of employers' mandatory contributions were used for offsetting SP and LSP each year, thereby reducing substantially the amount of MPF accrued benefits receivable by an employee upon retirement. This greatly undermines the role of the MPF System for retirement purpose.

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4. One of the priority tasks of the current-term Government is to abolish the "offsetting" arrangement. In March this year, the Government sounded out major stakeholders a preliminary idea on abolishing the "offsetting" arrangement. Having carefully considered the feedback of the stakeholders, including the business and labour sectors on the preliminary idea, on 10 October 2018 the Chief Executive announced in her Policy Address the Government's enhanced arrangements, the key features of which are provided at Enclosure 1. In the enhanced arrangements, the Government will assist employers to set up their own designated saving accounts (DSAs) to save up in advance to meet the potential SP/LSP expenses in future. The Government will also extend the second tier of the subsidy scheme significantly to assist the micro, small and medium-sized employers in particular and increase its financial commitments to \$29.3 billion. Furthermore, the Government will make up for the shortfall in some special cases where an employee receives a smaller amount of aggregate benefits (SP/LSP entitlement together with the accrued benefits attributable to the employer's mandatory contributions to his/her MPF account) than what he/she would otherwise receive under the current "offsetting" regime. Given the anticipated complexity of the requisite legislative amendments, the Government will strive to introduce the enabling legislation to give effect to the enhanced arrangements into the Legislative Council (LegCo) by 2020.

Need for a CLO Post

5. It is envisaged that implementation of the enhanced arrangements for abolishing the "offsetting" arrangement would necessitate highly complicated and controversial amendments of different pieces of legislation including but not limited to MPFSO and EO, as well as formulation of meticulous implementation arrangements for taking forward the abolition of the "offsetting" arrangement. All these involve extensive and high level policy and co-ordination work including –

- (a) engaging major stakeholders, including the Labour Advisory Board, the LegCo Panel on Manpower, major employer and employee groups etc., on the enhanced arrangements;

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- (b) liaising with Government bureaux and departments, the Mandatory Provident Fund Schemes Authority, trustees of MPF schemes and occupational retirement schemes and other relevant stakeholders with a view to mapping out the operational details for abolishing the “offsetting” arrangement;
- (c) preparing the relevant draft legislative instruments in conjunction with the Department of Justice to give legal effect to the new regime;
- (d) seeing through the legislative exercise;
- (e) drawing up and finalising details of the implementation arrangements for the supporting measures including the compulsory DSA and the 25-year Government subsidy scheme, and the relevant procedures and rules;
- (f) after the passage of the relevant legislative amendments by the LegCo, overseeing and ensuring the effective implementation of the abolition of the “offsetting” arrangement by the dedicated office, and launching full-scale publicity programmes to promulgate the legislative requirements and the operation arrangement of the new regime to employer and employee groups as well as the public;
- (g) conducting a review of the subsidy scheme five years after the abolition of the “offsetting” arrangement; and
- (h) formulating suitable strategies and overseeing the implementation of the employers’ DSAs, monitoring the operation of the Government subsidy scheme, maintaining close communication with stakeholders on all related matters, and handling the new labour relations trend emerging after the abolition of “offsetting” arrangement with a view to promoting the healthy development of labour relations in the long run, etc.

6. The new areas of work outlined above will have to be undertaken by a sufficiently senior officer with rich experiences in labour issues and political acumen in handling contentious and complex issues. Having considered the above requirements, LD proposes to create one permanent post of CLO to take charge of the above-mentioned work. The CLO will be supported by a preparatory team comprising one Senior Labour Officer and two Labour Officers in discharging his/her responsibilities.

7. The newly created CLO will lead the preparatory team to see through both the preparation and implementation of the abolition of the “offsetting” arrangement. In the preparatory stage, the CLO will undertake extensive preparatory work in respect of legislative amendments and thrashing out the framework for implementation as listed in paragraph 5(a) to (e) above. The Government is committed to completing the legislative process within its term and implementing the abolition of the “offsetting” arrangement two years later. Given the political intricacies and technical complexities in mapping out the operation details of the enhanced arrangements and preparing the legislative amendments, it is essential that the preparatory team be led by a sufficiently senior officer at the directorate level (i.e. the CLO) to see through the entire exercise.

8. Upon passage of the enabling legislation, the CLO will be tasked with ensuring the effective and smooth implementation of the enhanced arrangements through the dedicated office. The major tasks include those listed in paragraph 5(f) and (g) above. This will require extensive monitoring work as well as close and constant communication with stakeholders for thorough and smooth implementation of the supporting measures, in particular the operation of the Government subsidy scheme which will be reviewed five years after the abolition of the “offsetting” arrangement, and that of the DSAs to ensure employers’ compliance and the meeting of its primary purpose. Furthermore, the CLO needs to closely monitor the labour relations situation after the abolition of the “offsetting” arrangement so as to formulate strategy to handle the relevant changes and take appropriate measures to promote the healthy development of labour relations in the long run. There is also a need to launch extensive and continuous publicity to enhance the understanding of the employer and employee groups as well as the public of the new regime. The direction and mode of publicity, particularly in respect of labour relations or operation of the employers’ DSAs etc., will require constant adjustments and enhancement.

9. All of the tasks mentioned in paragraphs 7 and 8 above are crucial to the smooth implementation of the arrangements to abolish the offsetting, and require both long-term and high-level, strategic planning and co-ordination work. We further envisage the manpower of the preparatory team would need to be substantially enhanced for the effective administration of the Government subsidy scheme, monitoring the operation of employers’ DSAs and handling of the anticipated increase in the labour disputes between employers and employees over the SP/LSP entitlement after the abolition of the “offsetting” arrangement. We will seek additional resources in accordance with the established mechanism at suitable juncture.

10. Having regard to the extensive responsibilities of the CLO post both before and after the abolition of the “offsetting” arrangement, it is essential to create

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the CLO post on a permanent basis. The proposed CLO will report to the Assistant Commissioner for Labour (ACL) (Labour Relations) of the Labour Administration (LA) Branch of LD.

11. The job description of the CLO post proposed to be created is at
Encl. 2 Enclosure 2. The proposed organisation chart of the LA Branch of LD is at
Encl. 3 Enclosure 3.

ALTERNATIVES CONSIDERED

12. We have critically examined the possibility of redeployment to absorb the duties of the proposed permanent post. There are currently only three CLOs in LD, each of them supporting an ACL in overseeing the statutory minimum wage regime, the labour relations and trade union matters, and the working hours policy respectively. They have already been fully stretched coping with their own work and it is operationally not possible for them to take up the heavy duties of the proposed CLO. The areas of work for the existing five ACLs and the other three CLOs in the LA Branch are set out at Enclosure 4.
Encl. 4

FINANCIAL IMPLICATIONS

13. The proposed creation of the permanent CLO post will require an additional notional annual salary cost at mid-point of \$1,836,600. The full annual average staff cost, including salaries and on-cost, is \$2,493,000.

14. We will include the necessary provision in the Revised Estimates for 2018-19 and the draft Estimates for 2019-20 to meet the cost of this proposal.

PUBLIC CONSULTATION

15. We briefed the LegCo Panel on Manpower on 21 November 2017 on the proposed creation of the CLO post, during which the work of the proposed post was discussed. Members had no in-principle objection to this proposal for submission to the Establishment Subcommittee.

ESTABLISHMENT CHANGES

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

/Establishment

Establishment (Note)	Number of posts			
	Existing (as at 1 October 2018)	As at 1 April 2018	As at 1 April 2017	As at 1 April 2016
A	15+(1) [#]	15+(1)	15+(1)	15
B	405	386	382	371
C	2 086	1 993	1 990	1 944
Total	2 507	2 395	2 388	2 330

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

– as at 1 October 2018, there was no unfilled directorate post

CIVIL SERVICE BUREAU COMMENTS

17. The Civil Service Bureau supports the creation of the proposed CLO post. The grading and ranking of the proposed post are considered appropriate having regard to the level and scope of responsibilities required.

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

18. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the grading proposed for the permanent CLO post is appropriate.

Labour and Welfare Bureau
October 2018

**Key Features of the Arrangements
for Abolishing the “Offsetting” Arrangement**

- (a) The rate for calculating severance payment (SP) and long service payment (LSP) remains at two-thirds of the monthly wages of the employee for each year of service, and the maximum payment of SP/LSP keeps at \$390,000.
- (b) Each employer sets up a designated saving account (DSA) under his/her own name and contributes an amount equivalent to 1% of his/her employees' monthly income to the DSA until reaching 15% of all employees' annual income for payment of SP/LSP. Employers making voluntary Mandatory Provident Fund (MPF) contributions at 1% or above, in addition to the 5% mandatory contribution stipulated by the Mandatory Provident Fund Schemes Ordinance (MPFSO) may be exempted from setting up their DSAs. Likewise, employers with contributions in excess of 5% under the Occupational Retirement Schemes Ordinance (ORSO) and school provident funds under the Grant/Subsidised Schools Provident Fund Rules of the Education Ordinance would also be exempted.
- (c) Government provides a two-tier subsidy to help share employers' expenses on SP/LSP in respect of the employment period after the effective date of abolition within a 25-year subsidy period –
 - (i) **the first-tier subsidy lasting for 12 years** is available for all incident employers (i.e. those who need to pay SP/LSP to their employees). The maximum rate of subsidy would be pitched at 50% of the SP/LSP payable in the first three years after the abolition of the “offsetting” arrangement and reduced progressively thereafter until it is diminished to 5% in the 12th year;
 - (ii) **the second-tier subsidy lasting for 25 years** would kick in should the incident employer's DSA accrued balance be insufficient to pay SP/LSP after netting the first-tier subsidy. Similar to the first-tier subsidy, the rate of the second-tier subsidy in the first three years would be pitched at 50% of the outstanding amount after netting the first-tier subsidy and the accrued balance in the employer's DSA. Thereafter, the sharing rate would drop by 5% every three years until it reaches 20% in the 21st year, and then by 5% every two years till reaching 10% in the 25th year;
 - (iii) the total financial commitment of the Government under the two-tier subsidy scheme for 25 years is estimated at \$29.3 billion;

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- (iv) the Government subsidy scheme would be reviewed five years after the abolition of the “offsetting” arrangement; and
- (v) the Government’s share of SP/LSP in the 25-year subsidy period is as follows –

Year after the abolition	Government’s share of SP/LSP in respect of the employment period after the abolition of the “offsetting” Arrangement	
	First-tier subsidy (as % of SP/LSP payable)	Second-tier subsidy (as % of outstanding SP/LSP payable after netting first-tier subsidy and accrued balance of DSA)
1	50%	50%
2	50%	50%
3	50%	50%
4	45%	45%
5	40%	45%
6	35%	45%
7	30%	40%
8	25%	40%
9	20%	40%
10	15%	35%
11	10%	35%
12	5%	35%
13	-	30%
14	-	30%
15	-	30%
16	-	25%
17	-	25%
18	-	25%
19	-	20%
20	-	20%
21	-	20%
22	-	15%
23	-	15%
24	-	10%
25	-	10%
26	-	-

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- (d) The “offsetting” arrangement will be abolished as from a future effective date with no retrospective effect (the “grandfathering” arrangement), while the SP/LSP entitlement for an employee’s employment period before the effective date of abolition could continue to be offset by the employer’s contributions under the MPF System made both before and after the effective date.
- (e) Government undertakes to make up for the shortfall in case an employee receives a smaller amount of aggregate benefits (SP/LSP entitlement together with the accrued benefits attributable to the employer’s mandatory contributions to his/her MPF account) than what he/she would otherwise receive under the current “offsetting” regime.
- (f) Other technical features include –
 - (i) the abolition of the “offsetting” would also be applicable to the occupational retirement schemes under the ORSO and the two school provident funds under the Grant/Subsidised Schools Provident Fund Rules governed by the Education Ordinance with the same effective date set for the MPF System;
 - (ii) voluntary contributions under the MPF System in excess of the mandatory 5% and the accrued benefits can continue to be used for offsetting SP/LSP. Likewise, gratuity based on length of service as voluntary payment of employers to employees can also continue to be used to offset SP/LSP;
 - (iii) for employees not covered by the MPF System (currently domestic helpers, whether foreign or local, and employees aged below 18 or aged 65 or above) or other statutory retirement schemes, their employers will not be reimbursed with any subsidy from Government for payment of any SP/LSP; and
 - (iv) any SP/LSP payable for the employment period up to the effective date would be calculated on the basis of the monthly wages as at the effective date, as opposed to the last monthly wages at the time of dismissal (if the dismissal is after the effective date) as presently provided under the Employment Ordinance.

**Job Description
Chief Labour Officer**

Rank : Chief Labour Officer (D1)

Responsible to : Assistant Commissioner for Labour (ACL) (Labour Relations)

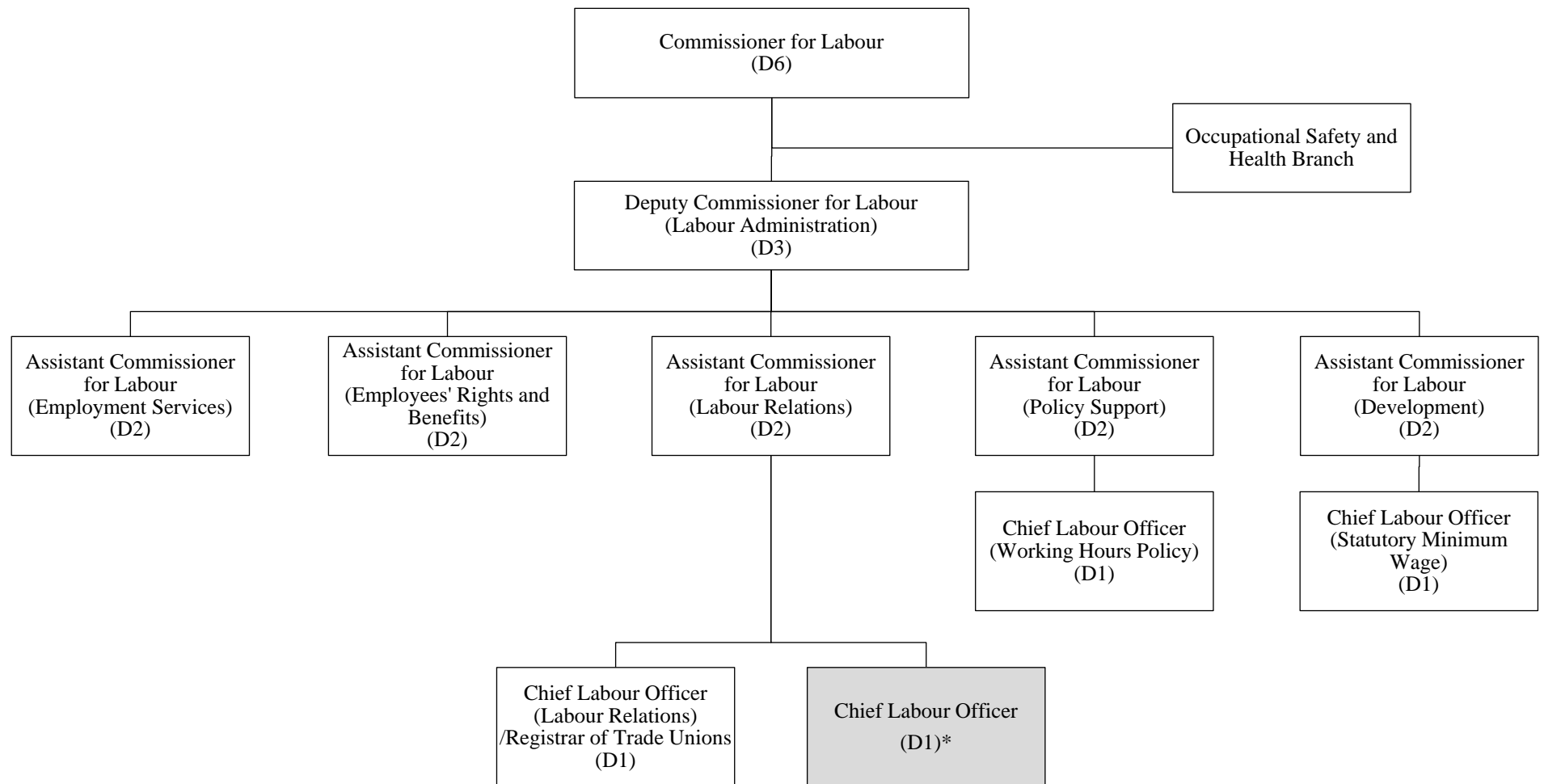
Main Duties and Responsibilities –

- (i) To assist senior officers in engaging labour groups and employer groups on the Government's enhanced arrangements for abolishing the "offsetting"; to attend meetings of the Labour Advisory Board and the Legislative Council (LegCo) on the abolition of "offsetting"; and to prepare papers, reports and presentational materials in connection with the meetings and discussions.
- (ii) To liaise with Government bureaux and departments, the Mandatory Provident Fund Schemes Authority and its relevant trustees, and other stakeholders etc., with a view to working out the implementation details of abolishing the "offsetting" arrangement and the setting up of the designated saving accounts (DSAs) for employers.
- (iii) To take part in preparing the relevant draft legislative instrument by preparing the draft drafting instructions, liaising and meeting with the Department of Justice, and liaising with relevant Government bureaux and departments on details of the bill.
- (iv) To assist the ACL (Labour Relations) in any work relating to the passage of the bill at the LegCo including preparation of papers and attending meetings.
- (v) To draw up and take forward details of the implementation arrangements for the supporting measures, including the Government subsidy scheme and the DSA, and the relevant procedures and rules.
- (vi) After the passage of the relevant legislation by the LegCo, to oversee the operation of a dedicated office tasked with the effective implementation of the abolition of the "offsetting" arrangement, and to launch full-scale publicity programmes to promulgate the legislative requirements and the operation arrangements of the new regime to employer and employee groups as well as the public.

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- (vii) To conduct a review of the subsidy scheme five years after the abolition of the “offsetting” arrangement.
- (viii) To formulate suitable strategies and oversee the implementation of the employers’ DSAs, to monitor the operation of the Government subsidy scheme and to maintain close communication with stakeholders on all related matters; and to deal with the new labour relations trend emerging after the abolition of the “offsetting” arrangement so as to promote the healthy development of labour relations in the long run.

Proposed Organisation Chart of the Labour Administration Branch of the Labour Department



* Proposed permanent post of Chief Labour Officer to be created.

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

Assistant Commissioner for Labour (ACL) (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 and ethnic minorities, the Employment Programme for the Elderly and 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 Employment Cluster under the one-stop e-portal of the HKSAR Government to deliver information and services related to employment; 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. ACL (Labour Relations) formulates, implements and reviews policies and strategies on the Employment Ordinance (EO) (Cap. 57), 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. ACL (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 the work of the Task Force 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. ACL (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 to the regulation of employment agencies; liaise with the Legislative Council (in particular the Panel on Manpower) and District Councils on matters relating to LD; oversees the implementation of the working hours policy framework; coordinates LD-related matters in relation to international conventions; formulates and coordinates policy inputs on LD-related matters; formulates policies on the Working Holiday Scheme and explores the possibility of establishing new schemes with other economies or expansion of existing schemes; oversees matters of the General Holidays Ordinance (Cap. 149); provides inputs to the Quality Migrants Admission Scheme of the Immigration Department; and oversees the information technology management of LD. The Assistant Commissioner also oversees the work of the Employment Agencies Administration, Information Technology Management Division, Policy Support Division, and Working Hours Policy Division.

5. ACL (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 policies and strategies on the Work Incentive Transport Subsidy Scheme, and steers and monitors the operations of the Scheme; oversees the secretariat support provided to the tripartite Labour Advisory Board; coordinates assessments on applicability of specific international

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labour conventions to Hong Kong, 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 Organisation's activities; oversees side agreements on labour issues involved in free trade agreements; liaises with LA 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. Chief Labour Officer (Labour Relations)/Registrar of Trade Unions provides support to the ACL (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 HKSAR Government's international responsibilities, and overseeing the administration of TUO as well as the running of the Registry of Trade Unions.

7. Chief Labour Officer (SMW) provides support to the ACL (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 the community; collaborates with the Office of the Government Economist 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 overseas experiences on reviewing minimum wage rates.

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8. Chief Labour Officer (Working Hours Policy) provides support to the ACL (Policy Support) in following up on the working hours policy framework as endorsed by the Chief Executive in Council in June 2017. The Chief Labour Officer assists in examining the working hours policy by taking account of the views of the community, and steers the formulation of sector-specific working hours guidelines through the industry-based tripartite committees for 11 sectors (namely the catering, cement and concrete, cleaning services, construction, elderly homes, hotel and tourism, logistics, printing, property management, retail and theatre) to provide guidance on suggested working hours arrangements, overtime compensation arrangements and good working hours management measures. The Chief Labour Officer is also responsible for devising supportive and publicity strategies to enhance public understanding of the working hours policy, overseeing implementation of the publicity plans and conducting household surveys on working hours to monitor the working hours situation in Hong Kong.
