

For information
on 18 May 2021

Legislative Council Panel on Manpower Implementation of the Reimbursement of Maternity Leave Pay Scheme

Introduction

This paper briefs Members on the Reimbursement of Maternity Pay Leave Scheme (RMLP Scheme) administered by the Labour Department (LD).

Background

2. The Employment (Amendment) Ordinance 2020 (Amendment Ordinance)¹ for increasing statutory maternity leave (ML) by four weeks took effect on 11 December 2020. Eligible female employees whose confinement occurs on or after the commencement date of the Amendment Ordinance are entitled to 14 weeks' statutory ML. Employers should calculate the maternity leave pay (MLP) in accordance with the Employment Ordinance (EO) (i.e. four-fifths of the employee's average daily wages) and the additional four weeks of MLP is subject to a cap of \$80,000 per employee. Employers may apply to the Government for full reimbursement of the additional MLP that is required to be paid and has been paid to employees pursuant to the Amendment Ordinance.

3. In tandem with the implementation of the Amendment Ordinance, LD needs to launch a new RMLP Scheme. During deliberations of this Panel on the amendment bill of the Amendment Ordinance, Members urged for early implementation of the extension of statutory ML, which was also the general expectation of the community. To this end, we decided to engage a private sector processing agent so as to assist in the administration of the RMLP Scheme and speed up the implementation of the measure. LD set up the Preparatory Office for Reimbursement of Maternity Leave Pay (PORMLP) in the second quarter of 2020 to coordinate and commence the preparatory work for the RMLP Scheme.

¹ The Amendment Ordinance also covers two technical amendments which include updating the definition of "miscarriage" under EO from "before 28 weeks" to "before 24 weeks" of pregnancy to entitle a female employee whose child is incapable of survival after being born at or after 24 weeks of pregnancy to ML if other conditions are met; and accepting a certificate of attendance issued by a medical professional as documentary proof for entitling an eligible employee to sickness allowance for any day on which the employee has attended a medical examination in relation to her pregnancy.

Implementation of the RMLP Scheme

Applying for RMLP

4. PORMLP appointed the processing agent at end-2020. In collaboration with the processing agent, LD launched the RMLP Scheme on 1 April 2021. After paying employees all of the statutory MLP according to EO, employers may submit applications for RMLP through the Reimbursement Easy Portal (REP) at www.rmlps.gov.hk, by email, fax, post, etc. As regards the details of the RMLP Scheme and information needed for submitting an application, employers may visit REP, call the RMLP Scheme's service hotline on 2636 6353 or visit the service centre for the RMLP Scheme.

REP

5. REP is a one-stop online portal for the RMLP Scheme. After completing an account registration, employers will gain access to a wide range of online services, including submission of applications through electronic means, checking application progress and making enquiries. Besides, REP also disseminates information relevant to the RMLP Scheme, including the criteria and procedures for submitting an application.

Handling and Processing of Applications

6. The RMLP Scheme is a new measure using public money to subsidise employers in providing employment benefits to their employees under EO. With reference to the statistics for 2019, it is estimated that some 27 000 female employees would benefit from the Amendment Ordinance each year and relevant employers are entitled to seek reimbursement from the Government for the additional MLP involving public money of around \$498 million per annum.

7. Unlike other subsidy schemes, the vetting and approval of applications

for RMLP involves the eligibility² for and calculation³ of MLP as per the requirements of EO and under different modes of employment⁴. When processing applications, the RMLP Scheme will examine and verify payment proof of the 11th to 14th weeks' ML paid to the employee by the employer, wage data of the employee in the 12-month period preceding the first day of ML and other information and documents provided by the employer for processing applications and determining the amount of reimbursement. The RMLP Scheme will also select a specified percentage of applications processed for audit checks and, in doing so, require further information and documents from the applicants, concerned employees or other relevant parties to ensure that the applications fulfilled the requirements of the RMLP Scheme. As public money is involved, payment of RMLP to employers is coordinated by LD and the Treasury, and the approved payment is disbursed to applicant employers by autopay through banks as arranged by LD upon completion of processing of the applications.

Publicity and Promotion

8. To enhance public understanding of the RMLP Scheme, LD is publicising the RMLP Scheme through various channels, including issuing a government press release; broadcasting a radio Announcement of Public Interest;

² Under EO, an employee is eligible for MLP if: (i) she has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of scheduled ML; (ii) she has given notice of pregnancy and her intention to take ML to her employer after the pregnancy has been confirmed. For example, the presentation of a medical certificate confirming her pregnancy to the employer; and (iii) she has produced a medical certificate specifying the expected date of confinement if so required by her employer.

³ Under EO, the daily rate of MLP is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the first day of ML. If an employee is employed for fewer than 12 months, the calculation shall be based on the shorter period. The four-week MLP for the 11th to 14th week of ML is subject to a cap of \$80,000. In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid her wages or full wages, including rest day, statutory holiday, annual leave, sickness day, ML, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods.

⁴ The terms and conditions of employment in different sectors and occupations, their forms of employment contracts (e.g. oral or written contracts) and modes of remuneration (e.g. monthly-rated, daily-rated, hourly-rated or commission-based) are different. Some employers, having regard to their operational needs and affordability, provide their employees with benefits which are more favourable than the requirements of the law. Therefore, in vetting and approving applications for RMLP under the RMLP Scheme, it is necessary to ensure that the approved reimbursement payment to employers meets the requirements of the Scheme.

advertising on public transport and facilities, newspapers, publications of employer groups and labour organisations; uploading promotional messages to mobile applications, Internet platforms, REP and LD's homepage; publishing feature article on newspaper; distributing promotional posters and leaflets, etc. LD also issues letters to major stakeholders e.g. employers' associations, human resources management practitioners and professional bodies, LD's industry-based tripartite committees, participating organisations of the Good Employer Charter 2020, etc. to inform employers of the details of the RMLP Scheme.

Reimbursement of Maternity Leave Pay Division

9. To tie in with the implementation of the RMLP Scheme, PORMLP has been renamed as the Reimbursement of Maternity Leave Pay Division (RMLP Division). The major functions of the Division include –

- (a) **Scheme Management:** overseeing and reviewing the operational guidelines and procedures for the RMLP Scheme, monitoring the implementation of the RMLP Scheme and drawing up relevant improvement measures;
- (b) **Contract Management and Tendering:** monitoring and checking the performance of the processing agent, handling complaints lodged by applicants and members of the public against the processing agent, and conducting regular tendering exercises for the appointment of the processing agent;
- (c) **Policy Support and Public Engagement:** handling policy matters pertaining to the RMLP Scheme, monitoring and reviewing the cap on the additional four weeks' MLP under EO, planning public engagement activities, handling enquiries and complaints outside the service scope of the processing agent (e.g. on the policy and implementation of the RMLP Scheme and from the Legislative Council (LegCo), the Ombudsman, the media, etc.), and undertaking the general administration of the RMLP Division;
- (d) **Financial Management:** verifying the payment recommendations of the processing agent, arranging payment of reimbursement, and formulating the necessary follow-up actions;

- (e) **Project and System Support:** providing advice on the Disbursement Information System (DIS) developed by the processing agent, monitoring the processing agent's operation and maintenance of DIS, and managing an in-house information system interfacing with DIS of the processing agent to facilitate the RMLP Division to monitor the work of the processing agent and arrange for reimbursement payment; and
- (f) **Internal Audit:** examining the workflow and the operations of the RMLP Scheme, and auditing the applications processed by the processing agent to ensure the prudent use of public funds.

10. The RMLP Division will closely monitor the operations of the RMLP Scheme to ensure that the processing agent can timely and properly handle and process applications for RMLP. The Division will offer advice to the processing agent on processing of applications and approval instructions having regard to the actual circumstances, arrange payment of RMLP to applicant employers, formulate publicity and public engagement activities of the RMLP Scheme, handle enquiries, respond to views of stakeholders, etc. The Division will also conduct a series of quality assurance measures, including performing random checks on vetting records and related information of selected applications handled by the processing agent, conducting regular on-site inspections, convening management meetings, etc. for monitoring the performance of the processing agent and service effectiveness.

11. To ensure the effective implementation of the RMLP Scheme, LD proposes to create a supernumerary post of Chief Labour Officer (D1) for three years to lead and plan the work of the RMLP Division. The proposed post will also assist in the formulation and execution of the operational arrangements for disbursing government subsidies to employers under the abolition of the Mandatory Provident Fund "offsetting" arrangement, and strengthening the regulation of trade unions. Given the scale and new implementation mode of the RMLP Scheme as well as the complexity of the relevant legislative provisions, the proposed post can provide high-level supervision and coordination for ensuring the effective implementation of the RMLP Scheme and proper use of public funds. On regulation of trade unions, the duties of the proposed post will mainly include formulating and implementing targeted enforcement strategies for ensuring trade unions' compliance with the Trade Unions Ordinance (TUO) and relevant laws (including The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region), supervising the investigation and follow-up work on complaints against trade unions, reviewing the relevant provisions of TUO, etc. The proposal for creation of the aforesaid post has been submitted to the Establishment

Subcommittee under the Finance Committee of LegCo for consideration (Annex). We sincerely hope that Members will support this proposal.

Way Forward

12. Effective implementation of the RMLP Scheme facilitates timely processing of applications for RMLP, enhances the ML benefits of female employees and helps foster good labour relations. LD will closely supervise and monitor the implementation of the RMLP Scheme, and take forward refinement measures for the RMLP Scheme in the light of operational experience.

13. Members are invited to note the content of this paper.

Labour and Welfare Bureau
Labour Department
May 2021

For discussion
on 5 May 2021

EC(2021-22)4

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 supernumerary post for three years in the Labour Department with immediate effect upon approval of the Finance Committee –

1 Chief Labour Officer
(D1) (\$150,950 - \$165,200)

PROBLEM

The Labour Department (LD) needs dedicated support at the directorate level to implement and oversee new measures to enhance statutory maternity leave (ML) and strengthen support to LD for the implementation of new strategies and policies.

PROPOSAL

2. We propose to create one supernumerary post of Chief Labour Officer (CLO) (D1) for three years to lead a newly established dedicated division in LD for implementing and overseeing new measures for enhancing statutory ML, assisting in the formulation and execution of the operational arrangements for disbursing government subsidies to employers under the abolition of the Mandatory Provident Fund (MPF) “offsetting” arrangement, and strengthening strategic and policy support to the Assistant Commissioner for Labour (ACL) (Development), including strengthening the regulation of trade unions to ensure trade unions’ compliance with the Trade Unions Ordinance (TUO).

/JUSTIFICATION

JUSTIFICATION

Background

3. The Employment (Amendment) Ordinance 2020 (Amendment Ordinance) ¹ for increasing statutory ML by four weeks took effect on 11 December 2020. Eligible female employees whose confinement occurs on or after the commencement date of the Amendment Ordinance are entitled to 14 weeks' statutory ML. Employers should calculate the maternity leave pay (MLP) in accordance with the Employment Ordinance (EO) (i.e. four-fifths of the employee's average daily wages) and the additional four weeks of MLP is subject to a cap of \$80,000 per employee. Employers may apply to the Government for full reimbursement of the additional MLP that is required to be paid and has been paid to employees pursuant to the Amendment Ordinance.

4. In tandem with the implementation of the Amendment Ordinance, LD needs to launch a new Reimbursement of Maternity Leave Pay (RMLP) Scheme. During deliberations of the Legislative Council (LegCo) Panel on Manpower on the amendment bill of the Amendment Ordinance, Members urged for early implementation of the extension of statutory ML, which was also the general expectation of the community. To this end, we decided to engage a private sector processing agent so as to assist in the administration of the RMLP Scheme and speed up the implementation of the measure. On 3 July 2020, the Finance Committee (FC) of LegCo approved the relevant funding for appointing a processing agent to implement the RMLP Scheme.

5. LD set up the Preparatory Office for Reimbursement of Maternity Leave Pay (PORMLP) in the second quarter of 2020 to coordinate and commence the preparatory work for the RMLP Scheme. Upon appointing the processing agent in end 2020, PORMLP pressed ahead with the preparatory work for the RMLP Scheme together with the processing agent and launched the RMLP Scheme on 1 April 2021.

/Need

¹ The Amendment Ordinance also covers two technical amendments which include updating the definition of "miscarriage" under the EO from "before 28 weeks" to "before 24 weeks" of pregnancy to entitle a female employee whose child is incapable of survival after being born at or after 24 weeks of pregnancy to ML if other conditions are met; and accepting a certificate of attendance issued by a medical professional as documentary proof for entitling an eligible employee to sickness allowance for any day on which the employee has attended a medical examination in relation to her pregnancy.

Need for a CLO post

Leading the newly established dedicated division to implement and oversee new measures to enhance statutory ML

6. The RMLP Scheme is a brand-new measure using public money to subsidise employers in providing employment benefits to their employees as required under EO. With reference to the statistics of 2019, it is estimated that some 27 000 female employees would benefit from the Amendment Ordinance each year and relevant employers are entitled to seek reimbursement from the Government for the additional MLP involving public money of around \$498 million per annum. In view of the complexity of the multi-faceted tasks involved in implementing and overseeing the RMLP Scheme continuously, LD needs a directorate officer of sufficiently senior ranking and with rich experience to carry out extensive and high-level policy coordination. As compared to the original plan of handling the reimbursement-related work by LD direct, apart from continuously supervising the overall operations of the RMLP Scheme, the proposed CLO post is also required to monitor the performance of the processing agent to ensure its compliance with the policy objectives and standards laid down in the service contract under the current outsourcing mode. Besides, the post has to plan and lead regular tendering exercises for ensuring sustainable, stable and effective implementation of the RMLP Scheme.

7. While the administration of the RMLP Scheme is assisted by the processing agent at the operational level, LD is responsible for the planning, management and review of the Scheme, as well as monitoring and review of the performance of the processing agent through a monitoring mechanism including the operational guidelines and requirements for delineating the operations of the processing agent (such as processing and approving applications, conducting quality assurance checks and internal audit checks, and handling enquiries and complaints of the applicants), so as to ensure that the processing agent will handle the applications properly and deliver the services effectively. In addition, appointment of the processing agent requires regular assessments and tendering exercises, and LD also needs to establish and monitor the implementation arrangements to ensure that provision of services of the RMLP Scheme will not be affected by any change of processing agent in the future. Unlike other subsidy schemes, vetting and approval of applications for RMLP involves the eligibility²

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² Under the EO, an employee is eligible for MLP if: (i) she has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of scheduled ML; (ii) she has given notice of pregnancy and her intention to take ML to her employer after the pregnancy has been confirmed. For example, the presentation of a medical certificate confirming her pregnancy to the employer; and (iii) she has produced a medical certificate specifying the expected date of confinement if so required by her employer.

for and calculation³ of MLP as per the requirements of the EO and under different modes of employment⁴. Given the scale and new implementation mode of the RMLP Scheme as well as the complexity of the relevant legislative provisions, the proposed post can provide high-level supervision and coordination for ensuring the effective implementation of the RMLP Scheme, timely processing of applications for RMLP and proper use of public funds.

Encl. 1 8. To tie in with the implementation of the RMLP Scheme, LD needs to set up the RMLP Division in tandem. The proposed organisation chart of the Division is at Enclosure 1⁵. The proposed CLO will lead and plan the operations of the Division, including –

- (a) Scheme Management: overseeing and reviewing the operational guidelines and procedures for the RMLP Scheme, monitoring the implementation of the RMLP Scheme and drawing up relevant improvement measures;

/(b)

³ Under the EO, the daily rate of MLP is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the first day of the ML. If an employee is employed for fewer than 12 months, the calculation shall be based on the shorter period. The four-week MLP for the 11th to 14th week of the ML is subject to a cap of \$80,000. In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid her wages or full wages, including rest day, statutory holiday, annual leave, sickness day, ML, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods.

⁴ The terms and conditions of employment in different sectors and occupations, their forms of employment contracts (e.g. oral or written contracts) and modes of remuneration (e.g. monthly-rated, daily-rated, hourly-rated or commission-based) are different. Some employers, having regard to their operational needs and affordability, provide their employees with benefits which are more favourable than the requirements of the law. Therefore, in vetting and approving applications for RMLP, under the RMLP Scheme, it is necessary to ensure that the approved reimbursement payment to employers meets the requirements of the Scheme.

⁵ The total number of staff of the RMLP Division is estimated to be 44, including the proposed CLO post, 30 approved civil service posts and 13 contract staff planned to be engaged. The staff of the Division are responsible for the six major areas of work as detailed in paragraph 8. These tasks must be discharged by LD, including appointing and monitoring the processing agent, sampling audit checks of applications processed by the processing agent, formulating and reviewing the operations of the RMLP Scheme, formulating improvement measures, handling tasks at the policy level, etc. Besides, as public funds are involved, reimbursement of payment to employers must be coordinated with the Treasury and arranged by LD. During the vetting of applications, if cases of suspected fraud or submission of false information are detected, LD needs to liaise with the Department of Justice and relevant departments on the follow-up actions. As mentioned in paragraph 7, vetting of applications for reimbursement payment involves the eligibility for and calculation of MLP under the EO and different modes of employment, the processing agent will seek LD's advice and guidance on individual applications. To support the relevant work, LD also has to develop and manage an in-house information system to monitor the work of the processing agent and arrange for reimbursement payment.

- (b) Contract Management and Tendering: monitoring and checking the performance of the processing agent, handling complaints lodged by applicants and members of the public against the processing agent, and conducting regular tendering exercises for the appointment of the processing agent;
- (c) Policy Support and Public Engagement: handling policy matters pertaining to the RMLP Scheme, monitoring and reviewing the cap on the additional four weeks' MLP under the EO, planning public engagement activities, handling enquiries and complaints outside the service scope of the processing agent (e.g. on the policy and implementation of the Scheme and from LegCo, the Ombudsman, the media, etc.), and undertaking the general administration of the RMLP Division;
- (d) Financial Management: verifying the payment recommendations of the processing agent, arranging payment of reimbursement, and formulating the necessary follow-up actions;
- (e) Project and System Support: providing advice on the Disbursement Information System (DIS) developed by the processing agent, monitoring the processing agent's operation and maintenance of DIS, and managing an in-house information system interfacing with DIS of the processing agent to facilitate the RMLP Division to monitor the work of the processing agent and arrange for reimbursement payment; and
- (f) Internal Audit: examining the workflow and the operations of the RMLP Scheme, and auditing the applications processed by the processing agent to ensure the prudent use of public funds.

9. Specifically, the proposed CLO has to supervise and closely monitor the implementation of the RMLP Scheme, including analysing the data and information of applications, enhancing the RMLP Scheme in light of operational experience, reviewing the level of the cap on the additional four weeks' MLP under the EO as appropriate, and formulating and implementing improvement measures. The CLO is also required to provide high-level steer on the effective supervision of the processing agent's performance, regular reviews and improvement of the reimbursement arrangements, relevant operational guidelines, DIS and the in-house information system, etc., so as to achieve effective processing of reimbursement applications while ensuring the prudent use of public funds. In discharging the above tasks, the CLO needs to maintain liaison with the stakeholders and discuss with relevant government bureaux, departments and organisations on the review of the reimbursement regime, data matching procedures, etc. The post is also tasked with the formulation of regular territory-wide promotional campaigns and publicity

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activities, so as to promulgate to employers and employees the RMLP Scheme and details of submitting applications as well as to continuously enhance the public awareness of the RMLP Scheme through the dedicated online platform and other channels. In view of the complexities and multi-faceted nature of work, LD needs a designated directorate officer to take forward and oversee the implementation of the relevant work.

10. The RMLP Division is now temporarily led by ACL(Development). As the RMLP Scheme has to process thousands of applications involving reimbursement payment of up to \$498 million per annum, substantial workload has been generated since its implementation. ACL(Development) is already fully stretched with his existing responsibilities and is unable to continue to closely and comprehensively monitor the daily operations of the RMLP Scheme. As the RMLP Scheme is brand-new, we need to make timely follow-up and adjustments in light of applications received and the actual operations of the Scheme. There is a pressing need for creating the proposed CLO post as soon as possible in order not to affect the operations of the Scheme as well as the progress of processing the applications.

Other new strategies and policies

11. Besides, the proposed CLO will, in light of the experience gained in implementing the large-scale RMLP Scheme, assist in the formulation and execution of the detailed operational arrangements for disbursing government subsidies to employers after the abolition of the “offsetting” arrangement of severance payment (SP) and long service payment (LSP) with employers’ mandatory contributions under the MPF System, with a view to achieving synergy in the implementation of these two massive and complex government subsidy schemes for more efficient use of public resources. The tasks mainly include planning and finalising the modus operandi and details of the subsidy disbursement arrangements, formulating the vetting criteria, procedures and calculation methods for disbursing subsidies as well as the major functions of the related information systems, arranging the disbursement of subsidy payment, setting up a mechanism to audit the subsidy disbursement arrangements, supervising and reviewing the subsidy arrangements, etc.

12. The proposed post will also strengthen the strategic and policy support to ACL(Development), including enhancing the regulation of trade unions to ensure trade unions’ compliance with the TUO. The tasks mainly include formulating and implementing targeted enforcement strategies for ensuring trade unions’ compliance with the TUO and relevant laws, supervising the investigation and follow-up work on complaints against trade unions, reviewing the relevant

/provisions

provisions of the TUO, etc. The number of registered trade unions increased from 917 as at end 2019 to 1 410 as at end 2020. The proposed post will assist ACL(Development) in formulating and implementing the corresponding enforcement strategies and measures.

Major responsibilities

13. On the whole, the major responsibilities of the proposed CLO include –

- (a) leading the newly established RMLP Division for effective implementation of the new ML regime and the RMLP Scheme, which includes handling enquiries and complaints outside the service scope of the processing agent and those relating to the policy, collaborating with the Treasury and implementing the arrangements for effecting reimbursement payments, etc.;
- (b) overseeing the reimbursement regime for ensuring its smooth operations, which includes overseeing the arrangements of the processing agent interfacing with the RMLP Division, maintaining liaison with the relevant government bureaux and departments for enhancing various measures, and conducting regular assessments and tendering exercises for appointing the processing agent;
- (c) collaborating with the Treasury, Audit Commission, Independent Commission Against Corruption, Department of Justice, etc. on reviewing and improving the guidelines on case processing to enhance the effective implementation of the user-friendly and flexible reimbursement regime while ensuring prudent and proper use of public funds;
- (d) monitoring and overseeing the performance of the processing agent to ensure that the reimbursement regime meets the policy objectives and operates effectively, and continuously reviewing various operational arrangements;
- (e) launching territory-wide promotional campaigns regularly, including steering and supervising various promotional activities undertaken directly and by the processing agent, so as to promulgate the legislative requirements and operational arrangements of the new ML regime to employer and employee groups as well as the general public, and garner the views of stakeholders during the process;

/(f)

- (f) consulting and liaising with major stakeholders, including the LegCo Panel on Manpower, the Labour Advisory Board, major employer and employee groups, women's groups, etc. in the process of delivering the above-mentioned tasks;
- (g) assisting in the formulation and execution of the operational arrangements for disbursing government subsidies to employers after the abolition of the "offsetting" arrangement of SP and LSP with employers' mandatory contributions under the MPF System; and
- (h) providing strategic and policy support to ACL(Development), including strengthening the regulation of trade unions to ensure trade unions' compliance with the TUO.

14. As mentioned in paragraph 10 above, the comprehensive and effective operations of the RMLP Division require high-level leadership and coordination. Before the creation of the proposed post, LD has prioritised its work and commenced the preparatory work for the RMLP Scheme with dedication so as to implement the RMLP Scheme as soon as practicable. There is a pressing need to create the proposed CLO post so that the substantial workload generated from the implementation of the RMLP Scheme can be handled in a timely and effective manner, including offering advice on processing of applications and approval instructions promptly having regard to the actual circumstances, handling public enquiries and responding to stakeholders' views properly, directing the work of the various sections of the RMLP Division including supervising directly the work of internal audit which should be independent from other sections.

- Encl. 2 15. The job description of the proposed CLO post is at Enclosure 2 and
Encl. 3 the proposed organisation chart of the Labour Administration (LA) Branch of LD is at Enclosure 3.

ALTERNATIVES CONSIDERED

16. We have critically examined the possibility of staff redeployment to absorb the duties of the proposed post. There are currently only three permanent CLO posts in LD. They are respectively responsible for overseeing the Statutory Minimum Wage regime and trade union matters, labour relations, and taking forward the overall preparatory work for the abolition of the "offsetting" arrangement. As they have already been fully stretched by their own work, it is operationally not possible for them to take up the substantial duties of the proposed CLO post.

Encl. 4 17. Currently, the areas of work for the five ACLs and the above-mentioned three CLOs in the LA Branch are set out at Enclosure 4.

FINANCIAL IMPLICATIONS

18. The proposed creation of the supernumerary CLO post will bring about an additional notional annual salary cost at mid-point of \$1,923,600. The full annual average staff cost, including salaries and on-cost, is about \$2,716,000.

19. We have included in the draft Estimates for 2021-22 the necessary provision to meet the cost of this proposal.

PUBLIC CONSULTATION

20. The LegCo Panel on Manpower had no objection in principle to the original proposal of creating one permanent CLO post to take forward various new measures to enhance statutory ML at its meeting on 19 March 2019. The Establishment Subcommittee (ESC) also supported the proposal at its meeting on 28 May 2019. During FC's deliberation of the proposal on 3 July 2020, some Members expressed concerns about the relevant needs of the proposed CLO post under the modus operandi of outsourcing the RMLP Scheme. After discussion, the proposal was not passed by FC.

21. Having taken into account the latest development of the RMLP Scheme and operational needs of other relevant tasks, LD has supplemented and enriched the responsibilities and functions of the proposed post. Moreover, pursuant to the 2020 Policy Address, LD has critically reviewed and revised the proposal to the effect that a supernumerary CLO post, instead of a permanent CLO post, is proposed to be created for three years. LD consulted the LegCo Panel on Manpower on 16 March 2021, during which Members expressed their views on the need for and benefits to be brought by the proposed supernumerary post. Following discussion, Members had no objection to the submission of this proposal to ESC. We have addressed Members' concerns in this paper. LD will review its long-term manpower requirements before the lapse of the supernumerary post having regard to the progress of the RMLP Scheme and other relevant tasks.

ESTABLISHMENT CHANGES

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

/Establishment

Establishment (Note)	Number of posts		
	Existing (as at 1 April 2021)	As at 1 April 2020	As at 1 April 2019
A	16 [#]	16+(1)	16+(1)
B	443	439	431
C	2 094	2 064	2 022
Total	2 553	2 520	2 470

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 April 2021, there was one unfilled directorate post

23. As one supernumerary CLO post which was responsible for the working hours policy expired on 31 March 2021, if the creation of the proposed post is approved, there will be no increase in the directorate establishment of LD for 2021-22 as compared to 2019-20 and 2020-21. Given that the increase offsets by the decrease in the post of the same rank, the establishment of ranks in the directorate pay scale or equivalent of LD will remain unchanged.

CIVIL SERVICE BUREAU COMMENTS

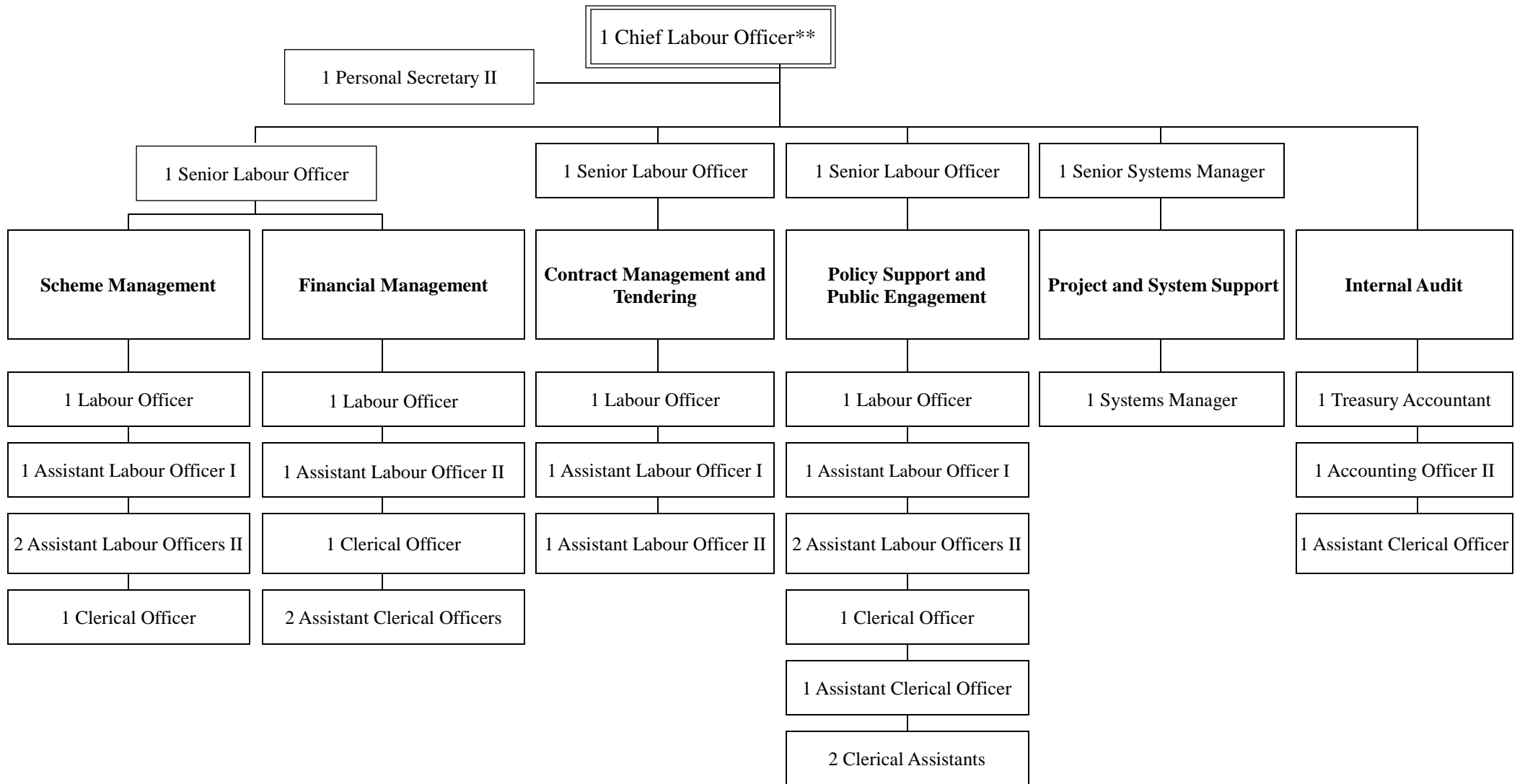
24. The Civil Service Bureau supports the proposed creation of one supernumerary CLO post for three years in LD. The grading and ranking of the proposed post are considered appropriate having regard to the level and scope of responsibilities required.

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

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

Labour and Welfare Bureau
April 2021

Proposed Organisation Chart of the Reimbursement of Maternity Leave Pay (RMLP) Division* of the Labour Department



Note -

* In addition to the above 31 civil service posts, the RMLP Division plans to engage 13 contract staff to support the implementation of the RMLP Scheme.

** The proposed supernumerary post of Chief Labour Officer to be created.

**Job Description
for the Chief Labour Officer (CLO)**

Rank : CLO (D1)

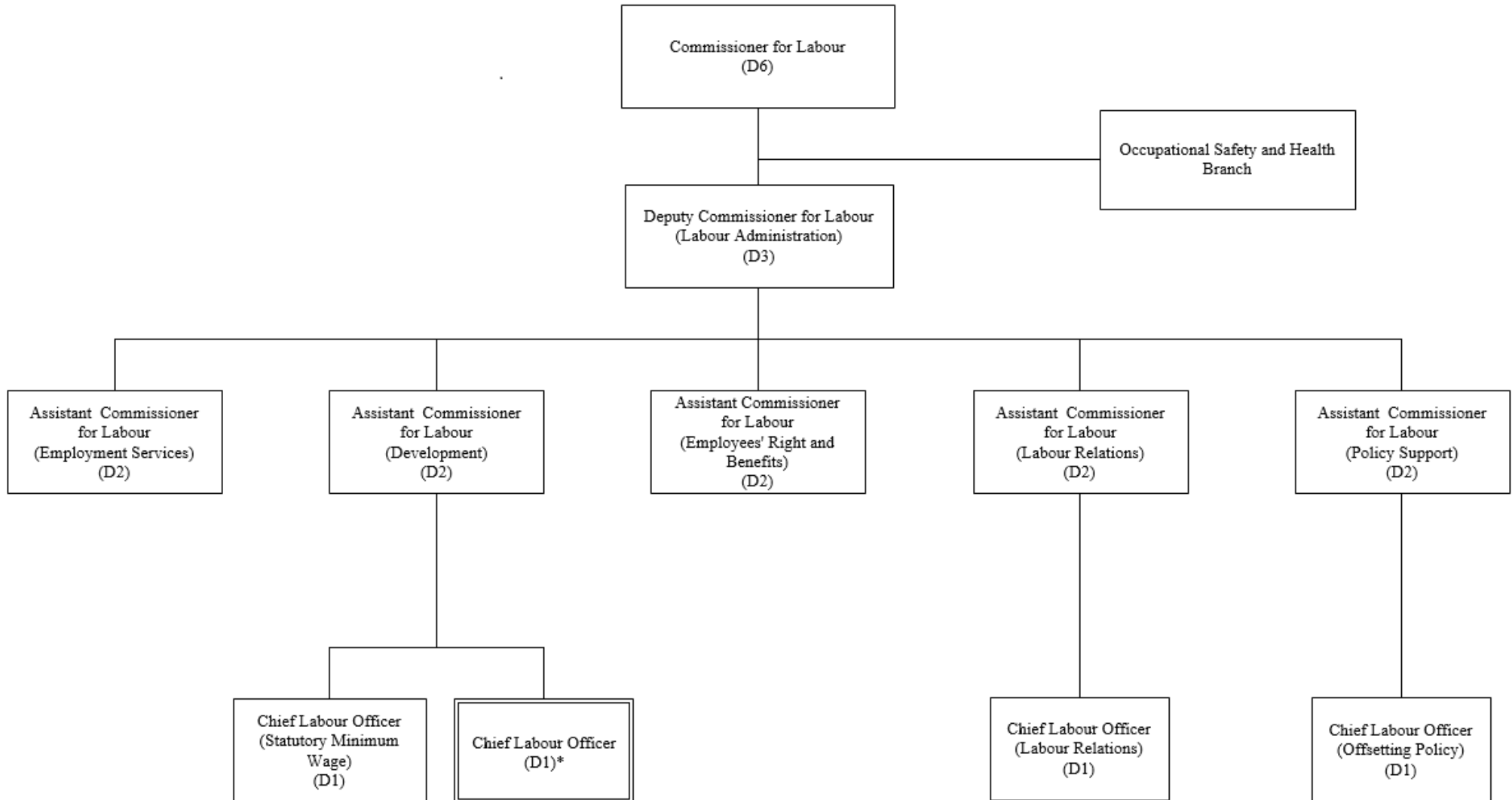
Responsible to : Assistant Commissioner for Labour (ACL) (Development)

Main Duties and Responsibilities –

- (i) Leading the newly established Reimbursement of Maternity Leave Pay (RMLP) Division for effective implementation of the new maternity leave (ML) regime and the RMLP Scheme, which includes handling enquiries and complaints outside the service scope of the processing agent and those relating to the policy, collaborating with the Treasury and implementing the arrangements for effecting reimbursement payments, etc.
- (ii) Overseeing the reimbursement regime for ensuring its smooth operations, which includes overseeing the arrangements of the processing agent interfacing with the RMLP Division, maintaining liaison with the concerned government bureaux and departments for enhancing various measures, and conducting regular assessments and tendering exercises for appointing the processing agent.
- (iii) Collaborating with the Treasury, Audit Commission, Independent Commission Against Corruption, Department of Justice, etc. on reviewing and improving the guidelines on case processing to enhance the effective implementation of the user-friendly and flexible reimbursement regime while ensuring prudent and proper use of public funds.
- (iv) Monitoring and overseeing the performance of the processing agent to ensure that the reimbursement regime meets the policy objectives and operates effectively, and continuously reviewing various operational arrangements.
- (v) Launching territory-wide promotional campaigns regularly, including steering and supervising various promotional activities undertaken directly and by the processing agent, so as to promulgate the legislative requirements and operational arrangements of the new ML regime to employer and employee groups as well as the general public, and garner the views of stakeholders during the process.

- (vi) Consulting and liaising with major stakeholders, including the Legislative Council Panel on Manpower, the Labour Advisory Board, major employer and employee groups, women's groups, etc. in the process of delivering the above-mentioned tasks.
- (vii) Assisting in the formulation and execution of the operational arrangements for disbursing government subsidies to employers after the abolition of the "offsetting" arrangement of severance payment and long service payment with employers' mandatory contributions under the Mandatory Provident Fund System.
- (viii) Providing strategic and policy support to ACL(Development), including strengthening the regulation of trade unions to ensure trade unions' compliance with the Trade Unions Ordinance.

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



Note -

* Proposed supernumerary 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; 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; taking charge of the overall management of the Employment Cluster under the one-stop e-portal of the HKSAR Government to provide employment-related information and services; and overseeing the information technology management of LD. Besides, the Assistant Commissioner oversees the work of the Employment Services Division, Employment Information and Promotion Division, Selective Placement Division, Youth Employment Division and Information Technology Management Division.

2. ACL(Labour Relations) formulates, implements and reviews policies and strategies on the Employment Ordinance (EO) (Cap. 57), 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; 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; oversees the implementation of the working hours policy framework; spearheads studies and reviews on various EO-related labour rights and benefits subjects; and works on legislative amendment exercises on EO and other related legislative instruments within his purview. Besides, the Assistant Commissioner oversees the work of the Labour Relations Division through Chief Labour Officer (CLO) (Labour Relations) and oversees directly the Workplace Consultation Promotion Division, the Working Hours Policy Division and 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; and 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 Operations 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 employment rights and benefits of these helpers; formulates and reviews policies and strategies relating to the regulation of employment agencies; takes forward the work relating to the abolition of the "offsetting" of SP and LSP with employers' mandatory contributions under the Mandatory Provident Fund System; liaises with the Legislative Council (in particular the Panel on Manpower) and District Councils on matters relating to LD; coordinates inputs on 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); and provides inputs to the Quality Migrants Admission Scheme of the Immigration Department. The Assistant Commissioner also oversees the work of the Foreign Domestic Helpers Division, Employment Agencies Administration, Offsetting Policy Division and Policy Support Division.

5. ACL(Development) supervises and reviews policies and strategies on the brand-new Reimbursement of Maternity Leave Pay Scheme, the Statutory Minimum Wage (SMW), the Minimum Wage Ordinance (MWO) (Cap. 608) and the Trade Unions Ordinance (TUO) (Cap. 332), and takes forward legislative exercises on the adjustment of the SMW rate and promotes sound trade union management; oversees the secretariat support respectively provided to the

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Minimum Wage Commission (MWC) (the function of MWC is to make recommendation about the SMW rate to the Chief Executive in Council) and the tripartite Labour Advisory Board; coordinates studies on the applicability of specific international labour conventions to Hong Kong, monitors observance of international labour conventions applied to Hong Kong, and formulates and coordinates reports on the application of international labour conventions; 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; as well as implements and reviews policies and strategies on the Supplementary Labour Scheme for the importation of workers at technician level or below. Besides, the Assistant Commissioner oversees the work of the SMW Division and Registry of Trade Unions (RTU) via CLO(SMW) and oversees directly the International Liaison Division and Supplementary Labour Division, and serves as the chairpersons of the Departmental Tender Committee and Departmental Consultants Selection Committee.

6. CLO(Labour Relations) 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 CLO steers the operations of the Labour Relations Division for resolving labour disputes and maintaining the industrial peace of Hong Kong. The CLO conciliates in major industrial disputes and also establishes and fosters partnership with various stakeholders of industrial relations for upholding of harmonious labour relations.

7. CLO(SMW)/Registrar of Trade Unions provides support to the ACL(Development) in formulating policies and strategies in respect of SMW, MWO and TUO. The CLO coordinates the implementation of MWO involving other enforcement divisions and spearheads community-wide publicity and promotional activities; serves as the secretary to MWC 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. As the Registrar of Trade Unions, the CLO is responsible for performing the statutory functions as required under TUO and overseeing the administration of TUO as well as the running of RTU to assist in achieving sound trade union management, promote responsible trade unionism and protect the interests of trade union members.

8. CLO(Offsetting Policy) provides support to the ACL(Policy Support) in taking forward the work relating to the abolition of the “offsetting” of SP and LSP with employers’ mandatory contributions under the MPF System, which includes working with relevant government bureaux and departments, the MPF Schemes Authority and stakeholders, etc., on the implementation details of the supporting measures for the abolition of the “offsetting”; preparing the relevant bill in conjunction with the Department of Justice to give effect to the new regime and seeing through the legislative exercise. After the passage of the legislation by the Legislative Council, the CLO is responsible for overseeing and ensuring the effective implementation of the abolition of the “offsetting” and the supporting measures, devising and launching full-scale publicity programmes to promulgate the legislative requirements and the operation arrangements of the new regime to employers’ and employees’ groups as well as the public. The CLO is also responsible for formulating suitable strategies for handling the new labour relations trend emerging after the abolition of the “offsetting” with a view to promoting the healthy development of labour relations in the long run.
