

標準工時政策研究報告摘要

Report of the Policy Study on Standard Working Hours - Executive Summary

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摘要

導論

- ES.1 鑑於社會各界對本港工時情況的意見，政府在 2010-11 及 2011-12 的《施政報告》表示，隨着實施《最低工資條例》（第 608 章），會展開標準工時的政策研究，以為社會知情地討論這課題提供穩固的基礎。勞工處獲指派進行有關工作，並已完成該政策研究。本報告的目的是提供一個堅實及客觀的基礎，從而推動各界就此重要及具爭議性的議題作出知情及深入的討論，並鼓勵利益相關者和各界人士交流意見。這些討論會有助政府日後訂定最適合香港實際情況的政策方向。
- ES.2 我們是從三個方面展開政策研究。首先，勞工處研究其他地方在規管工時方面的制度和經驗。其次，政府統計處收集有關香港各行各業僱員最新工時情況的統計數據。第三，財政司司長辦公室轄下的經濟分析及方便營商處分析這些數據，並評估在本港設立標準工時的影響。在報告的最後部分，我們會臚列多個僱員、僱主以及社會大眾須深入討論的重要課題，以便尋找未來路向。

香港的規管架構

- ES.3 為給予僱員假期以作休息，《僱傭條例》（第 57 章）特別訂定有關休息日、法定假日及有薪年假的規定。本港現時並無普遍適用的法定條文規範標準工時、最高工時、超時工作限制或超時工作薪酬。勞資雙方可透過自由協商訂定僱員的聘用條款及條件，惟該等條款及條件須符合《僱傭條例》及其他相關法例的有關要求。如果僱傭合約訂明僱員可獲得超時工作薪酬，則該僱員會受《僱傭條例》保障，其超時工作薪酬不得被非法扣除或拖欠。超時工作薪酬也須在計算各項僱員福利時，包括在內。
- ES.4 雖然香港並無普遍適用的法定條文規範標準工時或最高工時，但《僱傭條例》有特定的規例，規管兒童（15 歲以下人士）和青年（15 歲或以上但未滿 18 歲人士）在工業經營的工作時間，

包括每日工作時數、每日休息時段等。為免僱員工時過長，欠缺休息，政府已發出《休息時段指引》，積極宣傳為僱員提供適當休息時間的重要性。某些工種或職業亦須符合工時規定，其規管形式或透過法定通告（例如就保安人員），或透過由政府當局公布適用於特定職業的指引（例如就專營巴士車長及專營小巴司機）。

全球工時情況概述

- ES.5 規管工時的歷史可追溯到 18 至 19 世紀的工業革命。國際勞工組織(ILO)在 1919 年成立時，制定了首份關於工時的國際文書¹。根據國際勞工組織，在 107 個受訪國家中，101 個國家設有某種形式的法定工時限制，當中 41%採納 40 小時工作周。其餘受訪國家的每周工時多定於 40 至 48 小時之間。在亞太區，48 小時的工作周最為普遍（46%），而歐洲聯盟（簡稱「歐盟」）國家及已發展經濟體系則大多數（67%）採用 40 小時工作周。在亞太區，31%的國家未有規管每周最高工時上限，另約有 31%的國家將每周最高工時定為 60 小時或以上。在超時工作薪酬方面，在受訪國家之中，71%規定超時工資率至少為正常工資率的 1.25 倍，約 14%的超時工資率低於 1.25 倍，另有 14%完全沒有規管超時工作薪酬。
- ES.6 儘管全球工時情況的資料具參考價值，有關當局如國際勞工組織、經濟合作及發展組織(OECD)也特別指出不宜就不同的工時情況作跨國比較。因此我們在討論時必須充分考量本港的實際社會及經濟環境。

其他地方的工時制度研究

- ES.7 我們揀選了 12 個地方進行研究，包括：新加坡、大韓民國（簡稱「韓國」）、日本、內地、澳門、台灣、澳洲、歐盟（指整個歐盟，當中以英國及比利時為主要參考對象）、美國和加拿大。研究顯示，工時制度最少包含下列五大要素：

¹ 1919 年《(工業)工時公約》(第 1 號國際勞工公約)將受僱於工業經營僱員工時限於每天 8 小時和每周 48 小時。

- (a) **標準工時限制或最高工時上限**：標準工時限制是僱員通常在一定時間內（如以每日或每周計算）須工作的時數。很多工時制度都會訂明超時工作的工資率，如僱員工作超出該時數，便須獲得補償。另一方面，為更加保障僱員的安全及健康，有些地方會為最高工時設定一個上限，如僱員工作到達該上限，不論僱員是否獲得超時工作薪酬，工作亦應予停止。
- (b) **超時工作上限及超時工作薪酬**：超時工作上限，一般是參照以一日、一周、一個月或一年的時段作計算，也可綜合計算及／或按任何其他時期計算。超時工作可以用額外工資率／正常工資率計算超時工作薪酬，或以補假或補償休息時間方式作為補償，或兩者並用。
- (c) **豁免安排**：工時制度設有豁免安排的情況相當普遍，豁免可以按不同的分類設立，例如：**(i)**按職業或職責豁免；**(ii)**按薪酬水平豁免；**(iii)**按行業或界別豁免；**(iv)**按公司規模或公司營業額豁免；以及**(v)**按其他特殊情況豁免。
- (d) **彈性安排**：很多工時制度都容許法定工時的限制在一段稱為「參照期」的期間內平均計算（如兩周、一個月或更長的期間等），讓僱員和僱主可以彈性安排每日和每周工時。在參照期內，縱使在個別一日／一周工作超出標準工時限制，只要僱員的每日或每周平均工時沒有超過法定工時限制，僱主也可免支付超時工作薪酬。其他彈性措施還有專為特定行業或職業而設的工時制度，及選擇不受法定工時限制的安排。
- (e) **休息時間**：休息時間用以保障僱員的安全及健康，常見的三種形式包括：**(i)**同一工作日內的休息時段；**(ii)**連續兩個工作日之間的每日休息時間；以及**(iii)**每周休息日。

制度設計的觀察

ES.8 我們整理出以下設計工時制度的五大關鍵課題：

- (a) **「工時」的定義**：在我們研究的 12 個經濟體系中，有六個體系在法例中具體界定了「工時」的定義。這些定義一般包括「僱員受僱主支配的時間」這個元素。有八個體系規定每個工作天須設有休息時段，但大多數法例都沒有規定將休息時段（或就此而言的用膳時段）納入工時。在歐盟，假如僱員於「候召」時間內須留駐工作地點，「候召」時間便被視作工作時間。
- (b) **工時政策的目的**：工時政策可達致不同的政策目的，包括：**(i)**維護職業安全與健康（如歐盟及日本）；**(ii)**創造和共享職位（如韓國）；**(iii)**達致工作與生活平衡（如澳洲）；以及**(iv)**公平地補償超時工作（如美國）。採納不同的目的會帶來截然不同的制度設計。
- (c) **「標準工時」與「最高工時」**：採用每日標準工時限制的制度當中，以每日 8 小時最為普遍（如新加坡、韓國、日本、內地、澳門、台灣及加拿大）。至於每周標準工時限制，則以 40 小時最為普遍（如韓國、日本、內地、加拿大及美國），但在其他地方差異也可以很大，由 38 小時（如澳洲）、44 小時（如新加坡）至 48 小時（如澳門）不等。為免工時過長，歐盟的工時制度以每周最多工作 48 小時為上限。至於其他工時制度，很多都有規定每周超時工作的時數上限（如韓國為 12 小時），及／或每月超時工作的時數上限（如內地為 36 小時、日本為 45 小時、台灣為 46 小時及新加坡為 72 小時）。在這些經濟體系，標準工時限制與超時工作上限的時數相加，便是最終的最高工時上限。
- (d) **豁免安排**：本研究涵蓋的所有制度均設有工時限制的豁免安排。為有效提供必要的公共服務，豁免安排實屬必須。對個別工種或行業來說，豁免安排也是不可或缺。常見的豁免形式是「按職業或職責」豁免。研究所涵蓋的經濟體系，部分職業或職責一般可免受工時制度的限制，這

些職業或職責包括：管理、督導或專業工作、政府僱員、家庭傭工、監視或間歇性工作等。假若香港要設立標準工時制度，不同界別的利益相關者透過深入討論，在所需的豁免範圍上建立共識，實至為重要。

- (e) **彈性安排**：彈性安排的設計，目的在於容許每日及每周工時能有所變動。有些工時制度一概採用簡單的參照期，容許在一段時期內平均計算工時（如新加坡）。有些地方訂定各類工時制度，以切合某些行業或職業的需要（如韓國）。有些制度甚至容許僱員選擇不受工時限制，讓僱員可按個人意願工作較長時間（如英國）。

其他地方推行經驗的觀察

ES.9 我們在研究其他地方的經驗時，發現不少重要問題是在建立共識和推行法規的階段始會浮現，例如：

- (a) **建立共識涉及政治化爭議和漫長的過程**：社會上不同利益相關者對標準工時制度持南轅北轍的意見往往令討論陷入僵局，阻礙法例適時制定和實施。舉例說，歐盟在2004年已開始檢討《工作時間指令》，但問題至今仍未解決。然而，要為工時政策建立穩固的基礎，必須經過建立共識的過程，否則爭論在立法後仍然可能持續不休，並損害法例的推行。
- (b) **主要法律定義的爭議**：不管如何深思熟慮，主要法律定義仍有可能受到挑戰而要在法院解決爭議。歐洲法院就「候召」作出的判決為聘用大量「候召」僱員的公共服務業帶來重大的影響。在美國，僱傭雙方有關工時制度豁免準則的爭議，也導致勞資訴訟激增。因此，我們必須小心研究標準工時制度的幾個重要概念，否則必定問題叢生，窒礙法規的推行。
- (c) **僱員權益與公共服務和營商彈性**：不同經濟體系會因應其獨特情況，在工時制度加入各類豁免和彈性安排，以配合自身的需要。這複雜的議題不會有萬全的良方。若要考慮在本港設立標準工時，我們在研究應採用什麼程度、哪

種形式的豁免和彈性安排時，必須顧及本港的社會經濟狀況；同時不能忽略提供必要服務和營商彈性（不論企業大小）對維持香港競爭力的重要性，亦須考慮僱員方面的想法和權益。

- (d) **縮減工時可能導致減薪的問題**：面對法例規定超時工作須作補薪而致勞工成本上升的問題，一些僱主或不再要求僱員超時工作，而以其他方法替代，例如聘用兼職員工等。在研究工時政策時，我們必須仔細考慮縮減工時可能會導致工資減少，尤以從事基層職位的較低技術工人為甚。
- (e) **執法方面的挑戰**：違法行為主要涉及欠付超時工資、違反超時工作上限，和違反法定每周工時限制規定。工時制度與法定最低工資有所不同。法定最低工資主要保障從事低薪工作的僱員；但任何工時制度的涵蓋面比之更為廣泛、影響更多僱員。其他地方的經驗顯示，工作場所的運作方式瞬息萬變，與法規要求存在落差，以致標準工時的執法工作困難重重。標準工時要能有效執法，工時制度需要設計完善，也要投放所需資源予執法機構，以進行巡查及推廣工作。

對勞工市場及工時情況的影響

ES.10 其他地方的經驗顯示，實施標準工時會對勞工市場及經濟帶來重大影響，包括：

- (a) **對中小型企業（簡稱「中小企」）的影響**：推行標準工時可能會嚴重影響中小企的靈活性、競爭力和營運開支。設立工時限制後，中小企必須增聘員工及／或向現職人員發放超時工作薪酬，以應付周期性的工作需求。為遵行各項標準工時法例的要求，行政工作也可能會增加。從韓國和日本的例子可見，雖然採取不同措施，例如對中小企延遲或分階段實施若干法律規定（例如關於增加超時工資率及減低每周工時的規定），可能有助中小企適應工時政策，但這些措施亦有弊處，例如會為中小企的僱員帶來「不公平」的待遇。所以，我們必須取得適當平衡。

- (b) **對實際工時的影響**：大眾普遍認為，標準工時對僱員的工作時間訂立某些限制，有助縮減工時。但我們必須審慎行事，避免把標準工時制度當作解決所有與長工時有關問題的靈丹妙藥。因為這些問題與個別經濟體系其他眾多的因素息息相關，例如宏觀經濟環境、勞工市場、工種或季節性的市場波動、社會甚或文化方面的因素等。
- (c) **對勞工市場和整體經濟的影響**：一些經濟體系（如韓國、日本及澳洲）在削減工時或實施標準工時之後，兼職就業人數有上升的趨勢。兼職工作增加亦有可能令較多勞工同時受僱於多個僱主／簽訂多份僱傭合約。這情況帶出一個問題，就是每周工時上限應以每名勞工抑或每份合約為依據。至於削減工時與生產力增長之間的關係，多年來一直有相當多的爭論。最近發表的研究亦指出，削減工時對生產力的影響仍未能有明確的定論。
- (d) **標準工時與法定最低工資的關係**：雖然有意見認為推行法定最低工資必會帶來標準工時立法，但我們必須留意，法定最低工資與標準工時各自有不同的政策目的，有其一不一定要有其二。從經濟角度來說，法定最低工資與標準工時的累積作用，可能會嚴重削弱企業在經濟困難時作出調整及反彈的靈活性。此外，法定最低工資水平亦可能影響標準工時制度的有效性。就香港而言，社會人士需要慎重衡量兩個制度可能產生的相互作用對經濟情況的影響。

香港的工時：宏觀經濟角度

- ES.11 從宏觀經濟角度探討為何香港出現工時相對較長的現象，我們看到當中既有結構性因素，也有周期性因素。舉例來說，香港朝向以服務業為主的經濟結構轉型，服務業的就業需求因而增加，尤以技術水平較高的專業服務人員，以及消費相關行業的服務工作及商店銷售人員和非技術工人為然。基於營運需要和為維持香港支柱行業的競爭優勢，這些職業組別的工時往往較長。
- ES.12 與很多其他已發展經濟體系的情況截然不同，香港僱員主要從事全職工作，這或多或少反映香港勞工市場結構的開放和彈

性。富彈性的結構有助勞工市場按周期調整，抵禦經濟衝擊。在經濟衰退時，就業人數減少，延長工時可維持產出增長；反之亦然。長遠來說，由於人口不斷老化，工時對經濟增長可能扮演更重要的角色。

香港工時概況

- ES.13 本研究深入探討香港的工時情況，並按行業和職業的分布以及其他社會經濟特徵（例如性別、年齡和教育程度）詳加分析；另外又按工時的性質（即合約工時、有薪超時工作、補假作償的超時工作和無償超時工作）逐一分析。
- ES.14 在 2011 年，所有僱員每周總工時的平均數和中位數，估計分別為 47.0 和 46.6 小時，而全職僱員的時數則稍長，分別為 49.0 和 48.0 小時。大多數僱員每周工作逾 40 小時，而需超時工作的佔近四分之一。當中，約半數僱員的超時工作獲得薪金補償或以補假作償，其餘一半僱員的超時工作則為無償。
- ES.15 技術與學歷均較低、年齡組別較高，而從事勞工密集服務業的工人，合約工時往往較長，其超時工作多以薪金補償。另一方面，從事高增值服務業的較高技術水平人員，合約工時較短，但他們不少是無償超時工作，總工時也因而顯著延長。
- ES.16 根據微觀層面的分析，我們辨識出一些長工時僱員數目較多或其比例較整體勞工市場為大的行業。按照這個定義，這些「長工時行業」共有六個，分別為：零售、物業管理及保安、飲食、陸路運輸、安老院舍、以及洗滌及乾洗服務。

經濟影響及評估

- ES.17 報告探討標準工時政策對香港的經濟和勞工市場可能造成的影響，並嘗試評估企業在該政策下可能面對的勞工成本增幅。由於香港未有在實施工時政策方面的經驗，加上現階段未有一套明確的政策設定，社會人士必須理解這個成本影響評估的限制和局限。我們只能按照合理假設，以情景研究的方式，作出概括評估。

- ES.18 研究利用三個政策設定（即每周標準工時規定（由 40 小時至 48 小時）、法定最低超時工資率（由 1.0 倍至 1.5 倍），以及僱員獲豁免的準則（例如豁免較高技術員工））作交替互換變數，合共產生及測試了 27 種情景。結果顯示，在不同情景下，受影響僱員的數目和總薪酬開支總值的增幅差別很大。例如，假若未有任何僱員獲豁免，估計受影響（涵蓋）的僱員人數會由 1 320 200 至 2 378 900 不等（即全職僱員人數的 50.6%至 91.1%），向僱員支付的額外薪酬開支將介乎每年 80 億元與 552 億元之間（即 2011 年總薪酬開支的 1.7%至 11.4%），以上的數值差別需視乎政策的設計，以及僱主如何應對當前的經濟及勞工市場情況。
- ES.19 以僱員的角度來看，標準工時的問題亦相當複雜，從報告列出的多個假設例子可見一斑。標準工時實施後，對就業收入究竟有何影響，這些例子目前無法作出定論。由於未有確實政策設定，標準工時政策對經濟和勞工市場可能造成什麼影響，我們現時難作定論。因此，對於標準工時的問題，社會各界宜從長計議，深思熟慮，以便當局再進行更切合實際的影響評估，從而規劃未來路向。

須考慮的主要事項

- ES.20 工時政策是極其複雜而又備受爭議的課題，涉及林林總總的社會和經濟問題。此政策將對本地勞工市場、工作文化，以至香港經濟帶來長遠而廣泛的影響，在有所決定之前，社會人士必須先對這些事項詳加研究及討論。當中，最少有六大事項須予以深入討論。勞資團體當然會參與討論，但社會整體也該參與其中。
- (a) **本港工時政策的目的是：**實施工時政策可達到多項政策目的，包括：(i)維護職業安全與健康；(ii)創造和共享職位；(iii)達致工作與生活平衡；以及(iv)公平地補償超時工作。採用不同的政策目的，會涉及不同的政策考慮，並產生不同的制度設計。沒有單一的制度能夠完全符合所有目的。因此，香港如要實施標準工時，則社會必須就其最終目的達成共識。

- (b) **勞工靈活性與香港競爭力**：香港如要實施標準工時，我們要了解豁免及彈性安排在其他標準工時制度所發揮的必需緩衝作用，然後實事求是地考慮這些安排該如何在香港適用。社會需要認真思考在實施法定最低工資後，實施標準工時會否及如何過度地影響香港的勞工靈活性和營商環境，及會否窒礙商業發展和削弱本港作為全球商業中心的競爭力，以及在現行的聯繫匯率制度下，會否妨礙經濟調整過程。
- (c) **兼職工和散工人數可能激增**：作為自由勞工市場，香港的兼職工和散工的比例顯著偏低。其他地方的經驗顯示，兼職或散工職位或會隨着實施標準工時而增加，僱員因勞工市場結構改變而須非自願地減少工時，最終可能導致工作分散和就業不足（俗稱「零散化」現象）。市民必須考量是否接受出現這種情況，並考慮兼職工和散工可能增加的情況如何進一步影響工時、就業和營商環境。
- (d) **對商界整體和特別對中小企的影響**：自 1968 年制定《僱傭條例》以來，企業為遵從各項相關勞工法例而負擔的累計成本，粗略估計約佔 2011 年總薪酬開支的 6%。雖然有關成本大部分在一段時間後應已經逐漸為企業所消化，但如採納標準工時政策，在評估僱主的整體負擔能力時，必須計及遵守這些法規的整體成本。鑑於中小企對本港經濟至關重要，而各行業中小企的營運需要又各有不同，我們必須進行全面討論和諮詢，以確定中小企在承擔法定最低工資及勞工福利責任之餘，還有遵行法定標準工時的能力。
- (e) **不同行業的運作模式**：要設計一套既簡單而又能切合不同行業和工種所需的標準工時措施，是富挑戰性的任務。如決定引入標準工時，社會便需要考慮這制度應否普遍適用，還是只適用於某些工時特長的行業及／或工種等。此外，我們亦要斟酌需否在這個制度中納入其他通用彈性安排，以及彈性水平如何方為適當。

- (f) **立法是否最佳路向？**：長工時是一個需要正視的議題，然而，我們不能把法定的標準工時制度當作解決所有與長工時有關問題的靈丹妙藥。我們需要考慮什麼形式的工時政策最適切有效，而這政策既要配合香港獨特的社會經濟環境，也要平衡僱主、僱員利益並顧及更宏觀的社會訴求(例如工作與生活平衡)。最終，我們須尋求社會共識，以決定通過立法途徑設立全面的標準工時制度是否最符合香港的利益。

下一步的路向

- ES.21 標準工時是促進勞工權益的重大政策，其影響不僅限於僱主和僱員，也關乎整體社會和經濟。政府致力為勞工謀福祉之際，必須同時顧及經濟發展步伐、其他須推行的勞工保障措施、該等措施的緩急優次、社會的承擔能力，以及在勞資兩方的利益之間求取合理平衡。標準工時殊具爭議，政府發表本報告書，希望能帶動工時政策討論，讓社會各界參與其中。
- ES.22 標準工時對香港經濟和社會大眾皆影響深遠，政策要取得成功，必須建基於社會各界達成共識，勞資雙方之間的共識更是必不可少。再者，從其他地方的經驗可見，鑑於議題本身複雜、專門和具爭議性，我們不應期望標準工時的討論能在短時間內達到共識。因此，公眾更須清楚明白標準工時所涉及的問題及其影響。本報告書務求提供健全及堅實的基礎，讓利益相關者和廣大市民進一步就這課題作深入討論。

註：有關在本港落實標準工時須詳加考慮的一些主要問題，已載於標準工時政策研究報告的附錄 7，現抄錄於本摘要的附件以便讀者參閱。

關於在本港落實標準工時制度須詳加考慮的問題

I. 目的與理據

- (1) 工時政策的目的為何？我們應否從保障僱員職業安全和健康的角度考慮工時政策，因而設立最高工時？或應否集中為超時工作提供合理補償？倘若如此，是否未必需要設立超時工作上限？
- (2) 立法是否達到這些目的之最佳或唯一方法？是否應該同時考慮其他方法如教育、提高意識的運動、為特定行業或職業設立守則或指引等？
- (3) 僱員是否更關注長時間工作而沒有薪酬補償？如有合理的超時工作薪酬，僱員又是否願意長時間工作？
- (4) 僱員應否有權選擇其工時？換句話說，如有工時政策，應為自願或強制性？我們應如何在僱員選擇工時的自由與保障其安全和健康之間取得平衡？
- (5) 我們應如何處理工時規例中工資和工時的關係？如工時減少，是否可以容許僱員的工資隨之而減少？
- (6) 工時規定應否以工人或合約作為單位落實？如採用前者，在有關僱主可能不了解其僱員有多少工作時，可以如何執行工時規定？應如何計算工時？如涉及多個僱主，超出每周工時上限的超時工作薪酬應由哪位僱主支付？

II. 制度的設計

(A) 工時的定義

- (7) 工時的定義為何？
- (8) 「候召」時間應否一律視為工時？抑或應視乎情況而定？為「候召」時間及工作時間訂定法定定義時，應予以什麼考慮？
- (9) 用膳及／或休息時段應否算作工時？

(B) 標準工時或最高工時

- (10) 應實施標準工時抑或最高工時？
- (11) 每周上限為何(國際間常見的上限為每周 40、44 和 48 小時)？又或應否設更高的上限(如 54 小時)？應否全面實施此上限？
- (12) 應否設立每日上限(如每日 8 小時或 9 小時)？
- (13) 可否超過每周及每日上限？如果可以，是在什麼情況下？

(C) 超時工作

- (14) 應否嚴格限制超時工作時數？如設立上限，該上限應為多少？應設立單一上限，抑或按不同時段設立不同上限？超時工作的豁免安排應否只適用於某些行業？如容許超時工作獲豁免，公司是否需要有關當局批准？
- (15) 會否有某些類別的僱員不准超時工作(例如孕婦和青年)？
- (16) 應否設立法定超時工資率？如設立，該工資率應為正常工資率抑或額外工資率？
- (17) 應否為所有超出法定上限的工時設立單一超時工資率？在法定假日及休息日等超時工作，有沒有特別安排(即設立不同的超時工資率)？關於超時工作薪金，有沒有任何準則(超時工作必須按每周計算或容許以參照期計算)？
- (18) 超時工作是否須要勞資雙方達成協議？如要，該協議應否以書面形式訂定？應否訂明僱員有權拒絕超時工作？在特殊情況下，僱主可否要求僱員超時工作，而僱員是否無權拒絕(如在不可抗力的情況、僱主面臨重大損失、面對不可預料的工作量等)？在僱員同意或不同意的情況下超時工作，會否有不同的超時工資率？如僱主訂明不准超時工作，僱員能否按自己的意願超時工作，及後取得超時工作薪酬？
- (19) 超時工作時數可否以休假／休息時間作為補償？如果可以，超時工作時數可否部分以超時工作薪酬作為補償，部分以休假／休息時間作為補償？僱員可否選擇以休假／休息時間或超時工作薪酬作為補償？如果超時工作以休假／休息時間作為補償，是否按相同的超時工資率計算(例如超時工資率為 1.5，如超時工作 1 小時，是否應以 1.5 小時的休息時間作為補償)？

(D) 豁免安排

- (20) 豁免安排的規管應否劃一實施，抑或在某些行業實施？是否應該按不同行業或工作種類的運作設立不同的準則？如是，應以什麼平台和機制決定不同工作和行業的準則？
- (21) 應否在制度加入豁免安排？如加入，有關安排應否按以下準則制定：
- 職業或職責（在我們的研究當中最為普遍的豁免形式）？
 - 薪金水平？
 - 公司規模或公司營業額？
 - 其他特殊情況（如因意外而須處理的緊急工作、自然災害、涉及機器或器材的緊急工作等）？
- (22) 應否考慮只實施一套豁免準則（如以上任何一項準則）抑或多個準則（以上準則的組合）？
- (23) 豁免應適用於整個制度，抑或只適用於制度的某些方面（如只適用於每周工時上限、超時工作上限、或超時工作薪酬等）？

(E) 彈性安排

- (24) 應否容許任何彈性安排？應如何設計這些安排？
- (25) 應否在制度加入特別為某些行業或工作性質設立的工時制度？
- (26) 應以怎樣的機制決定不同工作和行業的準則？
- (27) 應否採用參照期以平均計算每周工時？如採用，參照期的長度為何？應否按不同行業／職業／工作性質等訂定不同參照期？
- (28) 制度應否容許工人選擇不受工時規例的限制？僱員可以在退出選擇不受工時規例的限制後，再次納入制度的適用範圍嗎？

(F) 夜間工作及輪班工作

- (29) 對於夜間和輪班工作的工人，會不會有不同的工時標準？
- (30) 夜間和輪班工作的工人會不會享有不同的超時工作補薪工資

率？

(G) 其他考慮

- (31) 在設計工時政策時，應如何將政策可能為中小型企業（簡稱「中小企」）帶來的影響納入考慮？例如，中小企會否獲豁免遵從某些標準工時措施？對中小企而言，為確保順暢過渡，會否將某些標準工時措施押後實施？為達致以上目的，應如何界定中小企？
- (32) 如為中小企設計特別措施，我們如何解決可能發生的「不公平對待中小企僱員」的兩難局面？這些特別措施以香港的情況來說，在法律上會否站得住腳？
- (33) 應如何設計制度，以免勞工成本大大增加，令僱主無法承擔，最終嚴重影響營商環境以至香港的整體競爭力？
- (34) 我們是否認為兼職或散工增加是良好的趨勢？如否，兼職或散工增加，最終可能導致工作零散化；我們應如何設計制度，以減輕以上情況的負面影響？
- (35) 如何透過減少工時，保障僱員的權益，同時不嚴重影響弱勢僱員的就業機會？

III. 行政要求及罰則

- (36) 僱主要求僱員記錄其工時，該記錄應有多詳細？
- (37) 僱主應將這些記錄備存多久，以供檢查？
- (38) 如違反工時及／或超時工作上限等，僱主是否須負上刑事責任？這些違法行為會否導致入獄和罰款？
- (39) 如未能妥善備存記錄，會否構成違法行為？

IV. 落實

- (40) 在設立法定最低工資後短時間內實施標準工時，會否嚴重影響商界以至整體經濟？如會，應相隔多久落實標準工時才是合理的時間？
- (41) 應否分階段落實標準工時（即在某段時間或之前達到某個每周上限）？
- (42) 應否按公司規模或其他準則分階段落實該法例？

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EXECUTIVE SUMMARY

Introduction

- ES.1 Acknowledging the concerns in the community over the working hours situation in Hong Kong, the Government announced in both the 2010-11 and 2011-12 Policy Addresses that subsequent to the enactment of the Minimum Wage Ordinance (Cap. 608), it would embark on a policy study on standard working hours (SWH) to lay the foundation for an informed public discussion on the matter. The Labour Department (LD) was assigned the task and has now completed the policy study. This report aims to provide a solid and objective basis for an informed and in-depth discussion on this important and controversial subject and stimulate exchange of opinions among stakeholders and people from different sectors. The discussion will in the end shed light on the optimal future policy direction, and facilitate the Government in mapping out the way ahead.
- ES.2 The policy study was undertaken on three fronts. First, LD studied the systems and experience of other places in regulating working hours. Second, the Census and Statistics Department collected statistics on the latest working hours situation of employees in various sectors of Hong Kong. Third, the Economic Analysis and Business Facilitation Unit of the Financial Secretary's Office analysed the data collected to assess the possible impact of introducing SWH in Hong Kong. Towards the end of the report, we will identify a number of key issues that need to be discussed in depth among employees, employers and the community at large in exploring the way forward.

Regulatory Framework in Hong Kong

- ES.3 To allow employees days off for taking rest, the Employment Ordinance (EO) (Cap. 57) has specifically provided for rest days, statutory holidays and paid annual leave. Currently, there is no general statutory provision for standard or maximum working hours, overtime limits or overtime pay in Hong Kong. Employers and employees are at liberty

to negotiate the terms and conditions of employment provided that such terms and conditions meet the relevant requirements set down in the EO and other relevant legislation. An employee whose employment contract provides for overtime pay is protected by the EO against unlawful deduction or defaults. Overtime pay is also included in the calculation of various employee's entitlements.

- ES.4 While there is no general statutory provision for standard or maximum working hours, there are specific regulations under the EO to regulate the working hours of children (under the age of 15) and young persons (aged 15 or above and below 18) working in industrial undertakings, covering the daily working hours, daily rest break, etc. To protect employees from working prolonged hours without rest, the Government also proactively promotes the importance of providing appropriate rest breaks for employees and published a "Guide on Rest Breaks". Certain types of work or occupations are subject to working hours regulation, either in the form of statutory notice (e.g. security personnel), or through occupation-specific guidelines promulgated by government authorities (e.g. franchised bus captains and green minibus drivers).

Overview of Global Working Hours Situation

- ES.5 Working hours regulation could be traced back to the industrial revolution in the 18th-19th century. The first international instrument¹ on working hours was made by the International Labour Organisation (ILO) in 1919 upon its inception. According to the ILO, 101 out of 107 countries surveyed have some form of statutory working hours limits. While 41% of them adopt a 40-hour work week, the rest mostly set their weekly working hours between 40 and 48 hours. In the Asia Pacific region, 48-hour work week is most common (46%), while the majority (67%) of the European Union (the EU) Member States and other developed countries have adopted a 40-hour work week. In Asia Pacific, 31% of countries have not regulated maximum weekly limit and about 31% of the countries mandate a limit of 60 hours or more. As for overtime remuneration, 71% of the countries surveyed provide an overtime pay rate of at least 1.25 times of their normal salary rate; about 14% provide for less than 1.25 times and another 14% do not regulate

¹ The *Hours of Work (Industry) Convention, 1919 (International Labour Convention No. 1)* limits hours of work for employees in industrial undertakings to 8 hours a day and 48 hours a week.

overtime pay at all.

ES.6 While the global working time situation provides a useful reference in formulating Hong Kong's working hours policy, authorities such as the ILO and Organisation for Economic Co-operation and Development (OECD) have cautioned against cross-national comparison of different working hours situation and we must always give due regard to our local social and economic circumstances.

Study of Working Hours Regimes in Other Places

ES.7 We have selected 12 places in our study, including: Singapore, Republic of Korea (Korea), Japan, the Mainland, Macao, Taiwan, Australia, the EU (the EU as a whole, with particular reference to the United Kingdom (the UK) and Belgium), the United States (the US) and Canada. Our research reveals that a working hours regime comprises at least five essential components, namely:

- (a) **Standard or maximum working hours limit:** Standard hours limit is the number of hours that employees are expected to work on a regular basis (e.g. a day or a week). Many regimes stipulate an overtime pay rate at which work beyond the standard hours should be remunerated. Maximum working hours, on the other hand, protects employees' safety and health by setting the limit beyond which any work should be stopped, regardless of whether additional compensation would be given.
- (b) **Overtime limit and overtime pay:** Overtime limits may be set by reference to timeframes of a day, a week, a month, a year, a combination of them and/or any other time period. Overtime hours may be compensated by overtime pay at a premium rate/normal rate, or by time-off/compensatory rest period, or both.
- (c) **Exemptions:** Exemptions from working hours limits are common and allowed under different categories, such as: (i) by occupation or job responsibility; (ii) by salary level; (iii) by industry or sector; (iv) by size or sales volume of company; and (v) other exceptional circumstances.

- (d) **Flexibility arrangements:** Many regimes allow the statutory hours limit to be averaged over a certain period of time called “reference period” (e.g. two weeks, one month or even longer, etc.), so that employees and employers can schedule working hours flexibly on a daily and weekly basis. Within the reference period, any hours beyond the standard limit in individual days/weeks can be worked without resort to overtime pay, as long as the average working hours do not exceed the statutory limit. Other flexibility measures include tailor-made working hours systems for specific industries or occupations and an “opt-out” arrangement.
- (e) **Rest period:** Rest period, which aims to preserve employees’ safety and health, usually takes three forms: (i) rest breaks within a working day; (ii) daily rest periods between two consecutive working days; and (iii) a weekly rest day.

Observations on Regime Design

ES.8 We have identified the following five issues that are crucial to the design of any working hours regime, namely:

- (a) **Definition of “working hours”:** Among the 12 economies studied, six have defined “working hours”, which generally comprises the element of “the time during which the employee is at the disposal of the employer”. Eight legislated for daily rest breaks to be taken during the working day but most do not stipulate rest breaks, and for that matter meal breaks, as working hours. In the EU, “on-call” time would amount to working time when an employee is required to be at his place of work during that “on-call” time.
- (b) **Objectives of working hours policy:** Working hours policy may serve different policy objectives, including: (i) occupational safety and health (e.g. the EU and Japan); (ii) job creation and sharing (e.g. Korea); (iii) better work-life balance (e.g. Australia); and (iv) fair compensation for overtime (e.g. the US). The adoption of different objectives will eventually lead to very different regime designs.

- (c) **“Standard working hours” vs “maximum working hours”**: For those regimes which adopt standard daily limits, the 8-hour day is most common (e.g. Singapore, Korea, Japan, the Mainland, Macao, Taiwan and Canada). In terms of weekly limits, while a 40-hour week is prevalent (e.g. Korea, Japan, the Mainland, Canada and the US), the number of such weekly limits could also vary significantly from 38 hours (e.g. Australia), 44 hours (e.g. Singapore), to 48 hours (e.g. Macao). To prevent excessive working hours, the EU adopts a maximum weekly limit of 48 hours. Many other regimes introduce a cap on weekly overtime hours (e.g. 12 hours in Korea) and/or monthly overtime hours (e.g. 36 hours on the Mainland, 45 hours in Japan, 46 hours in Taiwan and 72 hours in Singapore). The standard hours limits together with overtime limits constitute the absolute maximum working hours limits of these economies.
- (d) **Exemptions**: Exemptions from working hours limits are found in all the regimes studied, and are vital for the effective provision of essential public service, certain occupations or industries, etc. The most common form of exemption is “by occupation or job responsibility”. Certain occupations or work nature such as “managerial, supervisory or professional work”, government employees, domestic workers, surveillance or intermittent work, etc. are commonly exempted from the working hours regimes of the economies covered by the study. If SWH is to be established in Hong Kong, thorough discussion among different stakeholders is essential for achieving consensus on the scope of exemptions required.
- (e) **Flexibility arrangements**: Flexibility arrangements are devised to allow for variations in daily and weekly hours of work. Some regimes adopt a simple reference period across the board to allow working hours to be averaged over a certain period of time (e.g. Singapore). Some regimes have designed various working hours systems to cater for the specific needs of certain industries or occupations (e.g. Korea). In some regimes, employees are even allowed to opt-out generally from the working hours limit so that they can work longer hours if they so wish (e.g. the UK).

Implementation Experience in Other Places

ES.9 Experience in other places reveals that many important issues would only come to light during the consensus building and implementation stage. They include the following:

- (a) **A politicised and lengthy process of consensus building:** Polarised views of different stakeholders over SWH often led to negotiation deadlock which prevented prompt legislation and implementation. For instance, a review of the EU's Working Time Directive which commenced in 2004 is still unfinished as of today. That said, the consensus building process is indispensable for designing a solid framework of working hours policy, without which arguments may persist post-legislation and undermine implementation.
- (b) **Disputes over key legal definitions:** Key legal definitions, however well-thought-out, may still be subject to challenge and has to be resolved at court level. The European Court of Justice's rulings on "on-call" time has immensely impacted on the public service sectors involving "on-call" time. In the US, disputes on exemption criteria have resulted in an upsurge in labour lawsuits. Thus certain key concepts under an SWH regime must be carefully studied, without which the implementation will certainly be hindered and fraught with problems.
- (c) **Employees benefits vs public service and business flexibility:** Different economies have incorporated different kinds of exemptions and flexibility arrangements into their working hours regimes to cater for their own needs having regard to their individual circumstances. As there is no one-size-fits-all solution to this complex issue, it is important that we take into account our socio-economic conditions in considering the level and kinds of exemptions and flexibility arrangements to be adopted in the local context should SWH be contemplated. We also cannot ignore the need to provide essential services, the importance of business flexibility (for both big and small businesses) in maintaining our competitive edge and the

sentiment as well as rights and benefits of employees.

- (d) **Possible wage reduction resulting from shorter working hours:** Faced with the legal requirement to pay overtime premium, employers may no longer require employees to work overtime but instead go for other means such as employing part-time workers, etc. In contemplating working hours policy, careful consideration must therefore be given to the possibility of wage shrinkage, particularly for lower-skilled workers in elementary occupations, as a result of working hours reduction.
- (e) **Enforcement challenges:** Non-compliance of SWH mainly relates to non-payment of overtime and violation of overtime limit as well as violation of statutory weekly hours limits. Unlike the Statutory Minimum Wage (SMW) which concerns only low-paid jobs, the coverage of any working hours regime is much wider and affects many more employees. Experience in other places indicates that enforcement is a very challenging task in a working hours regime owing to the gap between the legislative requirements and the highly dynamic workplace operations. Effective enforcement requires a good design of the regime, as well as the allocation of necessary resources to enforcement agencies for carrying out inspection and promotional work.

Impact on the Labour Market and Working Hours Situation

ES.10 Experience in other places shows that the implementation of SWH carries significant implications for the labour market and economy, including:

- (a) **Implications for small and medium enterprises (SMEs):** Implementation of SWH may impact strongly on SMEs' operational flexibility, competitiveness and operating costs. Specifically, SMEs may have to hire additional staff and/or give overtime pay to existing ones to cope with seasonal surge in workload. Additional administrative work may also be generated for complying with various SWH requirements. While measures such as delaying or phasing the application of certain SWH requirements to SMEs (e.g. increased overtime pay

rate and reduction of weekly working hours) may tide SMEs over their difficulties, as in the cases of Korea and Japan, they also carry negative impact such as “unequal” treatment for employees of SMEs. Thus the community needs to find the right point of balance.

- (b) **Impact on actual working hours:** While SWH is generally perceived as a policy tool to reduce working hours, one must be cautious not to take it as a panacea for all problems arising from long working hours, which are associated with a wide array of factors specific to individual economies, such as macroeconomic environment, labour market, job nature or seasonal market fluctuations, social or even cultural dimensions.
- (c) **Impact on the labour market and general economy:** For some economies such as Korea, Japan and Australia, there is an increase in part-time employment following working hours reduction or implementation of SWH. With the proliferation of part-time employment, more workers may have to work for multiple employers or contracts, which begs the question of whether working hours limit should apply on the basis of each worker or each contract. As for the relationship between working hours reduction and productivity growth, there has been considerable debate over the years. Recent studies suggest that the effect of working hours reduction on productivity is still far from conclusive.
- (d) **Relationship between SWH and SMW:** While there are views that the introduction of SMW must lead to legislation for SWH, it is important to bear in mind that SMW and SWH each serves very different policy objectives and it is possible for one to exist without the other. Economically, the cumulative effect of SMW and SWH may significantly weaken the flexibility of businesses to adjust and rebound during hard times. Moreover, the level of SMW rate may affect the effectiveness of a working hours regime. In the case of Hong Kong, it is important to weigh carefully the possible interplay of the two regimes to our economic well-being.

Working Hours in Hong Kong: A Macroeconomic Perspective

- ES.11 We explore the possible reasons behind the phenomenon of relatively long working hours in Hong Kong from a macroeconomic perspective. These factors may be structural or cyclical. For example, Hong Kong's structural shift towards a service economy has increased the demand for service-oriented employment, in particular higher-skilled workers in professional services, as well as service and shop sales workers and elementary workers engaged in consumption-related sectors. These groups tend to work longer hours owing to operational needs and for maintaining Hong Kong's competitive edge in the pillar industries.
- ES.12 Hong Kong's labour market structure is also open and flexible, as partly reflected by the dominance of full-time employment, in contrast to what is observed in many other developed economies. Such flexibility facilitates cyclical adjustments of the labour market in absorbing economic shocks, with working hours tending to lengthen to sustain output growth amid employment loss during recessions, and vice versa. In the longer term, working hours could play a more prominent role in economic growth in view of the ageing population.

Overview of the Working Hours Situation in Hong Kong

- ES.13 The study examines the working hours situation in Hong Kong and analyses the subject in terms of sectoral and occupational distribution, as well as other socio-economic attributes such as gender, age and education. Working hours are also analysed in terms of their nature, namely contractual hours (CH), paid overtime (POT), overtime compensated by time-off in lieu (TOIL), and uncompensated overtime (UCOT).
- ES.14 In 2011, the average and median weekly total working hours for all employees were estimated at 47.0 and 46.6 hours respectively. Figures for full-time employees were slightly longer at 49.0 and 48.0 respectively. Most employees worked more than 40 hours a week, and nearly a quarter had overtime work. Among them, about half had their overtime work compensated either by POT or TOIL, while the remaining half had UCOT.

- ES.15 Lower-skilled workers in higher age groups with lower educational attainment engaged in labour-intensive service sectors tend to have longer CH and their overtime are often paid. On the other hand, higher-skilled workers engaged in high value-added service sectors had shorter CH, but many of them worked UCOT which considerably prolonged their total working hours.
- ES.16 The micro-level analysis identifies long-working-hours sectors (LWHS) with more employees having long working hours in absolute or proportionate terms as compared to the overall economy. Based on this definition, the survey results suggest that six sectors can be identified as LWHS, namely: retail; estate management and security; restaurants; land transport; elderly homes; and laundry and dry cleaning services.

Economic Implications and Impact Assessment

- ES.17 The report covers the possible implications of SWH policy to Hong Kong's economy and labour market, and also attempts to assess the potential increase in labour costs to businesses under the policy. In the absence of any experience in implementing working hours policy and a well defined set of policy parameters, the cost impact assessment of SWH has its constraints and limitations, and can only be undertaken by way of scenario studies based on a broad-brush approach with a set of plausible assumptions.
- ES.18 By altering only three policy parameters (i.e. weekly SWH threshold (from 40 to 48 hours), statutory minimum overtime pay rate for working hours beyond the SWH threshold (from 1.0 to 1.5 times), and exemption criteria with regard to employees (e.g. exempting higher-skilled employees from the regime)), a total of 27 scenarios were generated and tested. It was found that the number of affected employees and the increase in total wage bill could vary significantly. For example, under scenarios without any exemption, the number of affected employees would range from 1 320 200 to 2 378 900 (50.6% to 91.1% of full-time employees), and the corresponding estimated increase in total wage bill would be \$8.0 billion to \$55.2 billion per annum (1.7% to 11.4% of 2011 total wage bill), depending on the policy design and employers' response under the prevailing economic and labour market situations.

ES.19 The complexity of the issue can likewise be illustrated from the employees' perspective by a number of hypothetical examples, which showed an inconclusive outcome of employment earnings after SWH implementation. Given the extent of uncertainties of the potential impact on the economy and the labour market without knowing the details of the policy parameters, an in-depth discussion and further deliberation in the community is warranted so that a more realistic impact assessment can be made when charting the way forward.

Key Issues to be Considered

ES.20 Working hours policy is a highly complex and contentious subject which involves a myriad of interrelated social and economic issues. Given the long-term and widespread implications that it will bring to our labour market and work culture as well as our economy, it is necessary for the community to examine and discuss these issues thoroughly before coming to a view on the matter. We have identified at least six key issues that need to be further discussed in depth, not only among employee and employer groups but also by the community at large before the way forward is decided.

- (a) **Objectives of working hours policy:** Working hours policy may achieve a number of policy objectives including: (i) occupational safety and health; (ii) job creation and sharing; (iii) better work-life balance; and (iv) fair compensation for overtime. The adoption of different objectives will involve different policy considerations and result in different regime designs. Since no single regime will fully meet all the objectives, it is important for the community to reach a consensus on the ultimate objective of SWH should it be mandated in Hong Kong.
- (b) **Labour flexibility and Hong Kong's competitiveness:** Should SWH be introduced, we need to recognise the essential mitigating role played by the exemptions and flexibility arrangements in other SWH regimes, and consider in a pragmatic manner how they should function in Hong Kong's context. The community needs to give serious thoughts to whether and how the implementation of SWH, coupled with SMW, could unduly impact on Hong Kong's labour flexibility and business

environment, and whether this may stifle business development and weaken Hong Kong's competitiveness as a global business centre, and impede the economic adjustment process particularly given the current linked exchange rate regime.

- (c) **Possible proliferation of part-timers and casual workers:** As a liberal labour market, Hong Kong has a distinctively low proportion of part-timers and casual workers. Experience in other places shows that SWH may eventually bring about fragmentation of work and underemployment, if employees have to involuntarily work fewer hours owing to ensuing adjustments in the labour market structure with an increase in part-time or casual jobs. The community has to assess whether such a development is desirable, and consider how the possible increase of part-timers and casual workers would further affect working hours, employment and business operations.
- (d) **Impact on businesses in general and SMEs in particular:** The cumulative cost incurred by compliance with various labour-related legislation since the enactment of the EO in 1968 is crudely estimated to be around 6% of the total wage bill in 2011. Although most of the cost entailed should have been absorbed over the years, the total compliance cost on businesses should be considered when evaluating the overall affordability of employers should an SWH policy be adopted. Given the importance of SMEs to our economy, thorough discussion and consultation is required to ascertain how far SMEs in different trades and with different operational needs can cope with statutory working hours requirements, on top of SMW and other statutory labour benefit obligations.
- (e) **Modus operandi of different industries:** It is challenging to devise simple SWH measures to adequately cater for the multifarious needs of different industries and sectors as well as jobs and occupations. Should SWH be introduced, the community needs to consider whether the regime should have universal application, or apply only to certain industries and/or occupations with particularly long working hours, etc. Also, we should consider the need for other general flexibility

arrangements to be incorporated into the regime and the level of flexibility that is considered appropriate.

- (f) **Is legislation the best way forward?:** Long working hours is an issue to be addressed. However, a statutory SWH regime should not be regarded as a panacea for solving all long working hours related problems. We need to consider the most appropriate and effective form of working hours policy that fits Hong Kong's unique socio-economic circumstances on the one hand, and balances the interests of employers and employees as well as broader social concerns (e.g. work-life balance) on the other. Eventually, the community needs to reach a consensus as to whether establishing a comprehensive SWH regime by legislative means is in the best interest of Hong Kong.

The Next Step Forward

- ES.21 A major policy aimed at improving employees' rights and benefits like SWH will affect not only employers and employees, but also the entire community and economy. In seeking to advance labour rights and benefits, the Government must in parallel consider the pace of economic development, other labour protection measures to be introduced and their relative priority, the affordability of the community and the need to strike a sensible balance between the interests of employers and employees. This report is the Government's serious attempt to kick-start a policy discussion on the controversial issue of SWH.
- ES.22 Given the far-reaching implications of the SWH policy on the local economy and community, the success of such a policy could only be built upon consensus to be reached among various sectors of the community, particularly between employers and employees. Indeed, experience in other places also indicates that consensus building for SWH is a lengthy process owing to its complex and technical nature, as well as the controversies involved. Therefore, it is essential that the public is fully aware of the issues involved and their implications. This report should provide a sound and solid basis for further discussion among the stakeholders and the general public.

Note: A list of major questions to be further examined in relation to the implementation of SWH in Hong Kong is given at Appendix 7 of the Report of the Policy Study on Standard Working Hours. The list is now reproduced at **Annex** of this Executive Summary for readers' easy reference.

A List of Questions to be Further Examined in Relation to the Implementation of a Working Hours Regime in Hong Kong

I. Objective and Rationale

- (1) What is/are the objectives of working hours policy? Should we consider it from the angle of protecting employees' occupational safety and health so that a maximum number of hours be prescribed? Or should we focus on the fair compensation of overtime work and if so overtime limitation may not be required?
- (2) Is legislation the best or only way to achieve the objective(s)? Should other alternatives such as educational initiatives, awareness raising campaign, industry or occupation specific codes and guidelines be considered as well?
- (3) Are employees concerned more about long working hours without compensation of overtime pay? Or are they willing to work long hours given due compensation of overtime hours?
- (4) Should employees be given the right to choose the number of hours they work? In other words, should the coverage of working hours policy, if any, be made voluntary or compulsory? How do we balance the employees' freedom to choose the number of hours worked and protection of their safety and health?
- (5) How should we handle the relationship between wages and working hours in working hours regulation? Should employees' wages be allowed to be reduced concomitant with a reduction in working hours?
- (6) Should working hours requirements be applied on the basis of each employee or each employment contract? If the former is adopted, how can the working hours requirements be enforced when the employer concerned may not know how many jobs the employees are working, and how the hours worked should be kept track of? Which employer should give overtime pay for hours worked beyond the weekly threshold when multiple employers are involved?

II. Regime Design

(A) Definition of Working Hours

- (7) What is the definition of working hours?
- (8) Should “on-call” time be treated entirely as working hours or should its inclusion in working hours depend on different circumstances and, if so, what considerations should be given to the statutory definition of “on-call” time and working hours?
- (9) Should meal and/or rest breaks be included as working hours?

(B) Standard working hours or maximum working hours

- (10) Should we adopt standard working hours or maximum working hours?
- (11) What is the weekly threshold (common ones adopted internationally are 40, 44 and 48 hours per week)? Or should we go for a higher threshold, say 54 hours? Should this threshold be applied across-the-board?
- (12) Should we also set daily threshold, say 8 hours or 9 hours per day?
- (13) Can the weekly and daily thresholds be exceeded? If yes, under what circumstances?

(C) Overtime

- (14) Should the number of overtime hours be rigidly restricted? If an upper limit is set, what should be the threshold? Should there be only one upper limit, or different limits for different timeframes? Should overtime exemption apply to certain industries only? If overtime exemption is allowed, do companies have to seek approval from the government authority?
- (15) Will certain categories of employees not be allowed to work overtime e.g. pregnant and young persons?
- (16) Should we impose statutory overtime pay rate? If yes, should it be a normal or premium pay rate?

- (17) Should we have one overtime pay rate for all hours exceeding statutory limit? Any special arrangement for overtime work on statutory holidays and rest days, etc (i.e. different sets of overtime pay rates)? Are there any criteria for overtime pay (overtime counted strictly on a weekly basis or reference period allowed)?
- (18) Is agreement between employers and employees required for overtime work? If yes, should the agreement be in writing? Should we specify that the employees have the right to refuse to work overtime? Are employers allowed to request employees to work overtime and employees have no right to refuse under exceptional circumstances e.g. cases of force majeure, employer faces great loss and unpredictable amount of work? Will there be different overtime pay rates if there is employees' consent or without consent? If the employer has specified that it is not permitted to work overtime, can the employee still work overtime at his own accord and claim overtime pay later?
- (19) Can overtime hours be compensated by leave/time-off? If yes, can overtime hours be partly compensated by overtime pay and partly by leave/time-off? Can employees choose to be compensated by leave/time-off or overtime pay? If overtime is to be compensated by leave/time-off, should it be calculated at the same rate as the overtime pay rate (e.g. if the overtime pay rate is 1.5, 1.5-hour time-off will be granted for 1 hour of overtime worked)?

(D) Exemptions

- (20) Should regulation be imposed across-the-board, or should regulation be introduced for certain industries? Should we set different criteria with reference to the operation of different industries or job types? If so, what sort of platform and mechanism should be used to determine the criteria for different jobs and industries?
- (21) Should exemption be incorporated into the regime? If yes, should it be:
- by occupation or job responsibility (the most common form of exemption under study)?
 - by salary level?
 - by size or sales volume of companies?

- other exceptional circumstances (e.g. emergency work arising from accidents, natural disaster, urgent work on machinery or equipment, etc.)?
- (22) Should one set of exemption criterion (e.g. any one of the above criteria) or multiple exemption criteria (a combination of the above criteria) be considered?
- (23) Should exemption be applied to the entire regime or only certain aspects of the regime (e.g. only weekly working hours limit, only overtime limit or overtime pay, etc.)?

(E) Flexibility Arrangements

- (24) Should any flexibility arrangements be allowed, and how are these arrangements to be designed?
- (25) Should the regime incorporate tailor-made working hours systems for certain industries or work nature?
- (26) What sort of mechanism should be used to determine the criteria for different jobs and industries?
- (27) Should we adopt reference period for averaging of the weekly hours? If yes, what is the length? Should there be different reference periods for different industries/occupations/nature of work?
- (28) Should the regime allow opt-out from working hours regulation by employees? Can the employee withdraw the opt-out and be covered by the regime again?

(F) Night Work and Shift Work

- (29) Will there be different sets of working hours standards for night workers and shift workers?
- (30) Will night workers and shift workers enjoy different overtime pay rate?

(G) Other Considerations

- (31) How, in the course of designing working hours policy, should the potential implications on small and medium enterprises (SMEs) be taken into account? Will there be, say, any exemption on certain standard working hours (SWH) measures for SMEs, or will the implementation of certain SWH measures be deferred to facilitate a smooth transition for SMEs? How should SMEs be defined for this purpose?
- (32) If special measures are designed for SMEs, how do we resolve the possible dilemma of “unfair treatment to employees of SMEs”? Would these special measures be legally tenable in the Hong Kong context?
- (33) How should the regime be designed so as not to substantially increase the labour cost to a level beyond the affordability of employers and hence seriously affect the business environment and overall competitiveness of Hong Kong?
- (34) Do we consider increase in part-time or casual jobs a desirable trend? If not, how should the regime be designed so as to minimise the side-effect of increasing the number of part-time or casual jobs which may eventually bring about fragmentation of work?
- (35) How can we improve employees’ rights and benefits through working hours reduction without significantly causing adverse impact on the employment opportunities of vulnerable employees?

III. Administrative Requirements and Penalty

- (36) What is the level of record keeping requirement imposed by employers on employees’ working hours (i.e. how detailed should it be)?
- (37) How long should employers keep these records for inspection?
- (38) Will employers be held criminally liable for offences such as violation of working hours and/or overtime limit? Will these offences involve imprisonment and fine?
- (39) Will failure to keep proper records constitute an offence?

IV. Implementation

- (40) Whether the introduction of SWH shortly after statutory minimum wage will adversely affect the business sector and in turn the economy? If the answer is affirmative, what would be a reasonable interval for mandating SWH?
- (41) Should SWH be introduced in phases (i.e. certain weekly hours threshold to be achieved by a certain period of time)?
- (42) Should phased implementation be applied based on company size or other criteria?

