

# Report of the Standard Working Hours Committee Executive Summary



January 2017

## Executive Summary

### Chapter 1: Standard Working Hours Committee's Organisation Structure and Work Focus

- ES.1 The Standard Working Hours Committee (SWHC) was set up by the Chief Executive in April 2013 with the following terms of reference:
- (a) to follow up on the Government's policy study on standard working hours (SWH) and conduct further in-depth studies, as necessary, on the key issues identified therein;
  - (b) to promote understanding of SWH and related issues including, among others, employees' overtime work conditions and arrangements; to engage the public in informed discussion on the relevant issues; and to gauge the views of stakeholding groups; and
  - (c) to report to the Chief Executive and advise on the working hours situation in Hong Kong, including whether a statutory SWH regime or any other alternatives should be considered.
- ES.2 Since its formation, SWHC had taken forward its work in four strategic areas, namely (a) enhancing public understanding; (b) collecting working hours statistics and relevant information on working hours regimes; (c) promoting public engagement; and (d) identifying a range of factors relevant to working hours policy, with a view to promoting objective and evidence-based discussions, gathering different views of the community and jointly exploring working hours policy directions suitable for Hong Kong.
- ES.3 Underpinned by its two working groups and Task Force, SWHC completed many tasks, including conducting an in-depth working

hours survey and two rounds of extensive public consultation, and examining a range of social and economic factors relevant to working hours policy.

## **Chapter 2: Existing Regime(s) for Regulating Working Hours and Issues to be Considered**

- ES.4 At present, there is no legislation regulating SWH, maximum working hours (MWH), overtime work and overtime compensation arrangements of employees in general<sup>1</sup>. Employers and employees can negotiate and agree on the terms and conditions of employment, including the hours of work and overtime compensation arrangements, provided that such terms and conditions meet the relevant requirements of the Employment Ordinance (Cap. 57) (EO), Minimum Wage Ordinance (Cap. 608) (MWO) and such other relevant legislation as the Occupational Safety and Health Ordinance (Cap. 509).
- ES.5 SWHC was tasked, among others, to follow up on the Government's "Report of the Policy Study on Standard Working Hours" (hereinafter "the 2012 Report"). The 2012 Report studied the experience of 12 selected places in implementing working hours regimes, preliminarily examined Hong Kong's working hours situation, pointed out the positive and negative implications of a working hours regime for the labour market, work culture and economic development, etc., and set out the important issues requiring consideration in exploring working hours policy directions which included:

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<sup>1</sup> There are regulations under the Employment Ordinance (Cap. 57) regulating the working hours of children (persons under the age of 15 years) and young persons (persons who have attained the age of 15 years but under the age of 18 years) working in industrial undertakings, including daily working hours, daily rest breaks, etc. Moreover, employees of certain sectors are subject to working hours regulation in the form of specific regulations (e.g. employees of aviation and seagoing navigation), licensing requirements (e.g. security personnel) or administrative guidelines on the working hours arrangements issued by the Government (e.g. franchised bus captains and green minibus drivers).

- (a) Objective of working hours policy in Hong Kong;
- (b) Impacts of working hours policy on the society and economy of Hong Kong;
- (c) Whether working hours policy would lead to an increase in part-time jobs and fragmentation of work;
- (d) The affordability of the business sector particularly small and medium-sized enterprises (SMEs);
- (e) Whether a working hours regime should apply across-the-board, or should be introduced to specific sectors or occupations only; and
- (f) Whether legislation is the best way forward.

ES.6 Working hours policy is extremely complex and controversial, and carries widespread and far-reaching implications for the community and economy. To facilitate an in-depth exploration of various working hours issues, SWHC resolved to adopt an evidence-based approach for conducting objective, rational and informed discussions based on the relevant data and information.

### **Chapter 3: Major Findings of the Working Hours Survey and the First-stage Consultation**

ES.7 In 2014, SWHC conducted the first ever territory-wide comprehensive working hours survey, which included the Household Survey (10 275 employed persons were successfully enumerated) and Survey on Selected Professions/ Occupations (2 277 self-administered questionnaires were received) to collect working hours data and opinions on working hours arrangements/ working hours policy from persons interviewed. SWHC also conducted the extensive Public Engagement and Consultation on

Working Hours (First-stage Consultation), which included organising and participating in various types of consultation activities and conducting the Opinion Survey for members of trade associations and labour unions (altogether 1 507 opinion collection forms were received, comprising 750 from members of trade associations and 757 from members of labour unions), to collect public views on working hours issues.

ES.8 SWHC came up with the following overall observations having regard to the findings of the working hours survey and the First-stage Consultation:

- (a) The two major working hours policy objectives acknowledged by most employees and employers were work-life balance, and occupational safety and health. Besides, employees were also concerned about overtime compensation while employers placed more emphasis on the possible impacts of working hours policy on Hong Kong's overall competitiveness and business environment.
- (b) Employees generally expressed their aspirations for legislating for working hours regulation. Both employers and employees agreed that a uniform ("across-the-board") working hours regulation for all sectors could result in serious impacts on individual sectors or even the society and the economy at large.
- (c) The working hours of employees with lower income and engaged in lower-skilled occupations were comparatively longer in general. Meanwhile, employers tended to accept working hours policy which focuses on helping grassroots employees with lower income, less bargaining power and who were required to work overtime without compensation.

- (d) The Household Survey showed that while more employees had signed written employment contracts (82.7%), some employees still did not have written employment contracts (17.2%) or their weekly working hours were not specified in contracts/ agreements (11.0%), and relatively more employees (61.1%) did not have the method of overtime compensation stipulated in contracts/ agreements.
- (e) According to the statistics of the Household Survey, of the employees who considered their working hours “too long”, 69.9% did not wish to have their working hours reduced if their income would also decrease. Among all employees, 41.8% were willing to work more overtime if the overtime work would be reasonably compensated.
- (f) The Household Survey and the Opinion Survey revealed that 93.7% of employees and 55% of labour union members agreed with “providing for stipulation of hours of work, overtime arrangements and overtime compensation in employment contracts”; 81.9% of employers and 38% of trade association members also agreed with this working hours policy approach. Besides, 67.1% of employees and 49% of labour union members agreed with “setting standard working hours”, while the corresponding figures for employers and trade association members were 56.1% and 11%.

#### **Chapter 4: Range of Factors Relevant to Working Hours Policy**

ES.9 Apart from conducting working hours survey and public consultations, SWHC also identified and examined a range of factors relevant to working hours policy for discussions from four perspectives, including the society, employees, enterprises and the overall economy:

- (a) **Perspective of the Society:** employees and employers generally recognised the importance of work-life balance, and occupational safety and health. A suitable working hours policy may help employees achieve better work-life balance and reduce potential health problem, enhance productivity and performance of employees, and foster labour relations and social harmony. In addition, working hours policy may increase employees' income, but it may push up inflation and the general public could be affected. At the same time, some employees may also face a decrease in income brought about by shorter working hours.
- (b) **Perspective of Employees:** income is an important consideration for employees in weighing whether to accept longer working hours. The working hours situation varies vastly among employees of different wage levels/ sectors/ skill sets. Hence, it is difficult to have a unique solution to completely eradicate the problem of long working hours and uncompensated overtime work for different sectors/ occupations. Employees generally agreed that setting SWH and MWH could improve "staff morale" and "productivity of employees". However, some employees considered that "flexibility in operation" and "competitiveness of the company" may be hampered. Therefore, the design of working hours policy should strike a balance among its possible impacts on different aspects.
- (c) **Perspective of Enterprises:** a majority of the employers tended to adopt more flexible means to arrange hours of work with employees. As the manpower and cost structures, mode of operation and profit situation of individual sectors are different, working hours policy should take into account the various operational practices and complexities of different sectors. In the short term,

working hours policy involves additional labour costs. Enterprises would adopt different mitigation measures, including passing additional costs on to consumers or adjusting their staffing structure to save costs. Yet sectors which are less capable of passing on the increased costs would face a reduction in their profits. In the medium to long term, care must be taken in respect of whether working hours policy would thwart Hong Kong's business development and jeopardise Hong Kong's competitiveness as a global commercial centre.

- (d) **Perspective of the Overall Economy:** hours of work play a part in labour market adjustment to help maintain the flexibility and resilience of the labour market, which is in turn vital to economic development. If working hours policy imposes further constraints to the adjustment capability of working hours amid the evolving economic environment, it may result in greater fluctuations in the labour market. The local economy may also take longer time to fully recover. Over-regulation of labour supply may further constrain potential for economic growth, thereby undermining Hong Kong's competitiveness. The short-term impacts of working hours policy on our economy and labour market hinge on the policy design and the economic situation at the time of implementation. Its long-term implications to economic development and to what extent the labour market would stay resilient are indeed even more important.

## Chapter 5: Basic Principles in Exploring Working Hours Policy Directions

ES.10 With reference to the findings of the above work, members of SWHC agreed to the following principles in exploring working hours policy directions:

- (a) a legislative approach to implement a policy to regulate working hours of employees;
- (b) owing to the varied circumstances of different trades and occupations, working hours policy should provide the necessary flexibility, hence an “across-the-board” legislative approach would be inappropriate;
- (c) an in-principle agreement to explore a legislative approach to mandate employers and employees to enter into written employment contracts, which shall include the specified working hours terms, such as overtime compensation arrangement (the “big frame”); and
- (d) to explore, on the premise of the “big frame”, whether there is a need for other suitable measures (e.g. setting a working hours standard and an overtime pay rate) to further protect grassroots employees with lower income, lower skills and less bargaining power (the “small frame”).

ES.11 SWHC conducted the Consultation on Working Hours Policy Directions (Second-stage Consultation)<sup>2</sup> from 25 April to 24 July 2016 to collect views of the public and stakeholding organisations on its preliminary discussion outcomes and the working hours policy directions under exploration, which included the four directions of whether to implement the “big frame” and/ or the “small frame”.

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<sup>2</sup> The six employee members of the Labour Advisory Board considered that SWHC could not give a commitment on legislating for SWH, and therefore declined to attend the meetings of SWHC since the end of 2015. Together with the three labour-sector Legislative Council members at the time, they appealed to labour organisations and employee unions not to take part in SWHC’s Second-stage Consultation.

## Chapter 6: “Big Frame” under the Second-stage Consultation

ES.12 SWHC raised the idea of adopting a legislative approach, on the premise of EO, to mandate employers and employees to enter into written employment contracts, which shall include the specified working hours terms, such as the number of working hours, overtime work arrangements and overtime compensation methods. Employers and employees may work out and agree on the details of these terms (i.e. the “big frame”).

ES.13 With reference to some existing sample employment contracts and standard employment contracts, SWHC preliminarily identified the following seven specified working hours terms and three relevant issues in respect of the design of the “big frame”:

<b>Specified Working Hours Terms</b>	<b>Relevant issues</b>
(1) Agreed working hours (2) Overtime situation (3) Overtime compensation arrangement (4) Agreed wages (5) Meal breaks and rest periods (6) Rest days (7) Records of hours worked	(1) Coverage (2) Flexibility arrangements (3) Consequences and liability

## Chapter 7: “Small Frame” under the Second-stage Consultation

ES.14 SWHC in parallel explored if there would be a need for other suitable measures (e.g. setting a working hours standard and an overtime pay rate) to further protect grassroots employees with lower income, lower skills and less bargaining power (i.e. the “small frame”) on the premise of the “big frame”.

ES.15 In exploring the “small frame”, SWHC conducted data analyses and assessments of the potential impacts of the 28 parameter combinations on employees, enterprises and the overall economy. The parameter combinations included:

- (a) the first 27 parameter combinations:
  - (i) Employees with total monthly wages: Not exceeding \$10,000, \$12,000, \$15,000;
  - (ii) Weekly working hours: Over 44, 48, 52 hours;
  - (iii) Overtime pay rates (i.e. the rates of original hourly pay to hourly overtime pay): 1:1.0, 1:1.3, 1:1.5; and
- (b) an additional 28<sup>th</sup> parameter combination agreed by SWHC for analysis in response to the proposal raised by employee members of the Labour Advisory Board (LAB) in SWHC: Employees with total monthly wages not exceeding \$25,000, weekly working hours exceeding 44 hours and the overtime pay rate of 1:1.5.

ES.16 For the Second-stage Consultation, SWHC published the assessment results of relevant data in full to facilitate the community to have objective and informed consideration of the pros and cons of different scenarios and provide views on the basis of solid data.

## **Chapter 8: Major Findings of the Second-stage Consultation**

ES.17 The issues under consultation in SWHC’s Second-stage Consultation included the ideas and contents of the “big frame” and “small frame”, as well as the following four working hours policy directions:

- (a) only implementing the “big frame”;
- (b) only implementing the “small frame”;

- (c) on the premise of implementing the “big frame”, to implement the “small frame” as well; and
- (d) not to implement the “big frame” nor “small frame”, but recommend implementing other policies/ measures pertaining to working hours (e.g. formulating voluntary guidelines according to the needs of individual sectors).

ES.18 During the consultation period, SWHC widely collected public views through different consultation activities and written submissions.

ES.19 Major views collected in the Second-stage Consultation are summarised as follows:

#### “Big Frame”

- ♦ Some employers preferred maintaining the status quo and considered it unnecessary to adopt a legislative approach to regulate the working hours of employees. Some employers’ associations suggested encouraging the relevant sectors to draw up voluntary guidelines having regard to their own operational circumstances.
- ♦ On the premise that SWH legislation would not be pursued, employers in general supported in principle the “big frame” as a compromise. Some employees also supported the “big frame”. However, employees generally considered that the “big frame” could not substitute SWH legislation, and worried that they do not have sufficient bargaining power to negotiate with employers about the terms of the employment contracts. As a result, they could only reluctantly accept the conditions set by employers, which in turn would legitimise long working hours and uncompensated overtime work.

### “Big Frame”

- ◆ Employers and employees were both concerned about the coverage of the “big frame”. Some employers and employees considered that the “big frame” should apply to all existing and future employees of enterprises. However, some employers’ associations were concerned about the possible impacts on business operations, administrative costs and labour relations, etc. should employers be required to review and draw up employment contracts in accordance with the “big frame”.
- ◆ Employers and employees generally considered that working hours policy should not cover persons to whom EO and MWO do not apply (e.g. a live-in domestic worker, a family member of the employer who lives in the same dwelling as the employer, an employee as defined in the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78), etc.). However, organisations of foreign domestic helpers considered that live-in domestic workers should be covered.
- ◆ Some employers (including SMEs) reflected the difficulties in defining and calculating the working hours and overtime compensation of employees in some sectors (e.g. catering and tourism sectors), some higher-skilled occupations (e.g. doctors, accountants, teachers, managerial personnel, etc.), and certain occupations (e.g. tourist guides, agents, and those remunerated on a piece-rated basis, etc.).
- ◆ It was generally considered that there would be a need to provide for a suitable transitional period for preparation and the “big frame” should have legal effect to ensure employers’ and employees’ compliance with the relevant requirements. The Labour Department should provide ample reference materials and consultation services to

### “Big Frame”

assist employers and employees to set out the details of written employment contracts. The Labour Department should follow up on the implementation of the “big frame”.

### “Small Frame”

- ♦ The views of employers and employees on legislating for SWH were much more divided. Employers generally opposed to any form of legislation of SWH.
- ♦ Some employers considered that non-legislative measures could be adopted, e.g. voluntary guidelines with suggested working hours standards and overtime compensation methods could be issued for enterprises’ reference and adoption. To cater for the operational circumstances of different sectors, some employers’ associations considered that the Government could through consultation draw up suitable sector-specific guidelines jointly with employers’ associations and labour organisations.
- ♦ Some employers considered that a review could be conducted some time after the implementation of the “big frame”, before contemplating whether the implementation of “small frame” would be required.
- ♦ On the other hand, employees and relevant organisations generally supported SWH legislation for most sectors/occupations. They considered that legislating for a working hours standard and an overtime pay rate is the only effective means to improve the remuneration and working hours situation of employees, safeguard employees’ health, reduce occupational accidents caused by long working hours, and ensure compensation for employees’ overtime work.

### “Small Frame”

- ◆ Individual employers shared the ideas of the “small frame”, and considered that, if necessary, first exploring a direction with smaller impact on employees, enterprises and the overall economy would be more appropriate (such as covering only employees with monthly wages slightly above \$10,000).
- ◆ Employees and relevant organisations had divergent views on the coverage and parameter combinations of an SWH regime, ranging from uniform protection for most employees (with a weekly working hours standard of 40 hours or 44 hours and an overtime pay rate of 1:1.5, 1:2, or 1:3) to covering employees with monthly wages not exceeding \$10,000 or \$12,000 (with a weekly working hours standard of 48 hours and an overtime pay rate of 1:1 or 1:1.3).

## Chapter 9: Labour Sector’s “Consultation Report on Legislating for Standard Working Hours”

ES.20 The labour-sector Legislative Council members and LAB employee members on 16 November 2016 submitted the “Consultation Report on Legislating for Standard Working Hours” (hereinafter “the Labour Sector Report”) to the Chief Executive direct. The Labour Sector Report noted that long working hours and uncompensated overtime work are problems generally faced by employees in Hong Kong, and considered it necessary to legislate for SWH to safeguard the rights of employees.

ES.21 Chapter 4 of the Labour Sector Report puts forward the labour sector’s proposed legislative framework for SWH, which includes: the working hours standard to be set at 44 hours per week with an overtime pay premium of 1:1.5; and, as a matter of principle, SWH should protect all sectors but consideration may

be given to providing certain exemptions and implementing SWH in phases based on the total number of working hours; and details of the reference period and exemptions should be worked out by a tripartite standing committee comprising employees, employers and government officials, etc.

ES.22 The Chief Executive subsequently referred the Labour Sector Report to SWHC. SWHC perused and deliberated on the Labour Sector Report.

## Chapter 10: Overall Observations on Working Hours Policy Directions

ES.23 With reference to the information and opinions collected through various tasks completed by SWHC, the major aspirations and concerns of employers and employees on working hours policy directions are summarised below:

Employees	Employers
<ul style="list-style-type: none"> <li>♦ Demanded SWH legislation (with a working hours standard of 44 hours per week and an overtime pay rate of 1:1.5) to solve the problem of long working hours and uncompensated overtime work.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Opposed SWH legislation which would increase the operational costs of enterprises, aggravate the problem of manpower shortage, affect the flexibility of the labour market and undermine Hong Kong's competitiveness.</li> </ul>
<ul style="list-style-type: none"> <li>♦ SWH should cover employees of most sectors/ occupations but providing certain exemptions could be considered.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Opposed an "across-the-board" working hours regulation since different working hours arrangements were already in place in respective sectors or occupations on account of their work nature and requirements.</li> </ul>
<ul style="list-style-type: none"> <li>♦ Consideration might be given to implementing SWH in phases</li> </ul>	<ul style="list-style-type: none"> <li>♦ On the premise of not legislating for SWH, specification of working</li> </ul>

Employees	Employers
<p>based on the total number of working hours. Details of the reference period and exemptions should be worked out by a tripartite standing committee comprising employees, employers and government officials.</p>	<p>hours arrangements through written employment contracts and/or formulation of voluntary guidelines for different sectors was generally supported.</p>
<p>♦ Specification of working hours arrangements through written employment contracts could not help solve the problem of long working hours and uncompensated overtime work. It could not be a substitute for SWH legislation either.</p>	<p>♦ While the requirement of entering into written employment contract could be accepted as a compromise, there were concerns about the possible impacts on labour relations and business operations, etc. brought about by specification of working hours arrangements through written employment contracts. They considered it difficult to define and calculate the working hours of some higher-skilled occupations and certain occupations.</p>
<p>♦ Concerned that the written employment contract arrangement would formalise uncompensated overtime work and demanded legislating for overtime pay rate to protect employees' entitlement to overtime compensation.</p>	<p>♦ Considered that the Government could pay heed to the working hours situation of employees and encourage employers and employees to draw up appropriate sector-specific guidelines. They tended to accept working hours policy targeting at helping grassroots employees with lower income, less bargaining power and who were required to work overtime without compensation.</p>

ES.24 Overall speaking, the ideas and approach of the “big frame” have commanded a relatively higher degree of support, though the contents and details like the definition of working hours and coverage of the “big frame”, would require further exploration. Furthermore, in respect of some sectors and occupations (particularly occupations with remuneration calculated according to revenue or on a project basis), the applicability of such legislation mandating written employment contract is questionable. On legislating for SWH, the views in the community are widely divided, though there are views reckoning that the Government’s working hours policy could focus on helping grassroots employees with lower income, lower skills and less bargaining power.

## Chapter 11: Recommendations

ES.25 SWHC had completed many tasks outlined above over the period of more than three years. It had discussed various working hours issues objectively and thoroughly in the exploration of working hours policy directions suitable for Hong Kong.

ES.26 Working hours issues are highly complex and carry far-reaching implications. When formulating the working hours policy direction, SWHC needed to consider the problems that should be pinpointed or addressed. Furthermore, any legislative measure on working hours policy would possibly bring about a certain degree of impact on the community, employees, enterprises and the overall economy. In contemplating working hours policy, SWHC should weigh the pros and cons of the policy that may bring to different parties, and strike a proper balance between employees’ interests and the affordability of enterprises with a view to maintaining sustainable socio-economic development in the long run.

- ES.27 SWHC noted the expectation of some people in the community for working hours policy that could address the problem of long working hours and uncompensated overtime work, so as to help achieve better work-life balance for employees and safeguard occupational safety and health. Nonetheless, there are also views in the community that due consideration should be given to the possible impacts on Hong Kong's overall competitiveness and business environment in the process of formulating the working hours policy direction. SWHC considered that working hours policy should be implemented progressively to facilitate the community to gradually cope with its possible impacts. Furthermore, owing to the varied circumstances of different trades and occupations, working hours policy should allow certain flexibility and thus any "across-the-board" legislation would be inappropriate.
- ES.28 At the same time, SWHC noted the general views expressed during the Second-stage Consultation that working hours policy should not cover persons to whom EO and MWO do not apply (e.g. a live-in domestic worker, a family member of the employer who lives in the same dwelling as the employer, an employee as defined in the Contracts for Employment Outside Hong Kong Ordinance, etc.). Also, some stakeholders were concerned about the difficulties in defining and calculating the working hours of employees in some sectors (e.g. catering and tourism sectors), some higher-skilled occupations (e.g. doctors, accountants, teachers, managerial personnel, etc.), and certain occupations (e.g. tourist guides, agents, and those remunerated on a piece-rated basis, etc.). SWHC also noted that the community was more amenable to focusing working hours policy on assisting the grassroots employees.

## Legislating for Written Specification of Working Hours Terms

- ES.29 At present, employers and employees can agree on employment terms, including the working hours arrangements, orally or in writing, provided that such terms do not violate relevant legislation. According to the findings of the Household Survey, 17.2% of employees (540 600) did not enter into written employment contracts with their employers whereas 61.1% of employees (1 919 800) did not have overtime compensation methods specified in their employment contracts/ agreements. The survey findings further revealed that among those employees (1 546 000) who had entered into written employment contracts with their employers without overtime compensation methods specified therein, 444 100 had engaged in overtime work during the seven days before enumeration. Uncompensated overtime work was prevalent among them (99.7%).
- ES.30 SWHC noted that some grassroots employees either did not have written employment contracts or did not have the method of overtime compensation specified in contracts/ agreements. According to the findings of the Household Survey, among the 540 600 employees who had not entered into written employment contracts with their employers, 88.4% (478 000) were engaged in lower-skilled occupations (11.4% (61 700) were engaged in higher-skilled occupations). Among the 1 919 800 employees who did not have the method of overtime compensation specified in contracts/ agreements, 61.5% (1 181 100) were engaged in lower-skilled occupations (38.2% (733 200) were engaged in higher-skilled occupations). Overall, among the employees engaged in lower-skilled occupations, only 33.9% (706 700) had entered into written employment contracts with their employers with method of overtime compensation specified therein.

- ES.31 Having regard to the above survey findings as well as the community's views on working hours policy, SWHC considered that the approach of legislating for mandatory written employment contracts, which shall include the specified working hours terms, should focus on the grassroots employees with lower income. As a first and foremost step in taking forward working hours policy, SWHC was of the view that the approach of legislating for mandatory written employment contracts could provide an important working hours management framework to avoid ambiguities arising from oral agreements so that employers and grassroots employees can enter into appropriate agreements on working hours terms in a legally binding, transparent and fair manner. In addition, SWHC considered that the mandatory requirement of specifying the terms of working hours in writing will further enhance the transparency of working hours terms. In the long run, this approach would help drive the culture of enterprises providing reasonable working hours arrangements.
- ES.32 Based on the above observations and considerations, SWHC recommends that the Government may consider adopting a legislative approach to mandate employers to enter into written employment contracts with the lower-income grassroots employees which shall include terms on working hours and overtime compensation arrangements. Having regard to the operational needs of different sectors and occupations, employers and employees may work out the agreed contents of these terms on the premise that the relevant legal requirements are satisfied. As to the difficulties in defining and calculating the working hours for employees in some sectors (e.g. catering and tourism sectors) and certain occupations (e.g. tourist guides, agents, and those remunerated on a piece-rated basis, etc.), SWHC appreciated that the actual effectiveness would be in doubt if the concerned employers and employees specify "not applicable" and/ or "not fixed" in most of the written working hours terms owing to the circumstances of the sectors/ occupations.

Therefore, SWHC recommends that the Government may further listen to the views of the community and make reference to relevant information so as to consider whether these sectors and occupations should be included in the coverage of this recommendation. Taking account of the views of the community, SWHC considers that this recommendation should not cover persons to whom EO and MWO do not apply (e.g. a live-in domestic worker, a family member of the employer who lives in the same dwelling as the employer, an employee as defined in the Contracts for Employment Outside Hong Kong Ordinance, etc.).

### **Legislating for Specification of Overtime Compensation**

ES.33 The Household Survey revealed that the median total working hours during the seven days before enumeration for all employees (excluding live-in domestic workers) (3 142 500) in Hong Kong was 44.0. The figures for employees engaged in higher-skilled occupations and lower-skilled occupations were 42.0 and 45.0 respectively. Besides, of all employees, 18.4% (578 300) had engaged in uncompensated overtime work, and the median uncompensated overtime hours concerned was 5.0. Among the employees engaged in lower-skilled occupations, 10.5% (218 700) had engaged in uncompensated overtime work, and the median uncompensated overtime hours concerned was 3.5. For employees engaged in higher-skilled occupations, the corresponding figure was 34.1% (358 400), and the median uncompensated overtime hours concerned was 6.0.

ES.34 SWHC noted that there is currently no legislation in Hong Kong mandating employers to pay their employees overtime compensation. Some employers have requested their lower-income grassroots employees to undertake overtime work and yet either compensated them at a rate lower than their existing wage rate (e.g. employees receiving only overtime

compensation based on the SMW rate or basic wage rate) or even did not give any compensation. SWHC considered this situation undesirable and unfair, and agreed that suitable measures should be formulated to tackle the problem of uncompensated overtime work of these employees.

ES.35 According to the findings of the Household Survey, among the 621 300 employees engaged in lower-skilled occupations who had overtime compensation specified in their contracts/ agreements, 76.1% (473 000) of their specified overtime rate (relative to basic wage rate) was at 1:1; and 94.8% (588 700) at the rate of not less than 1:1. These revealed that overtime compensation rate of not less than 1:1 was a common arrangement of overtime compensation. Having fully considered the findings of the working hours survey and two rounds of public consultation, the views of the community, the principle of upholding the evidence-based approach and striving to forge common grounds, SWHC recommends that the Government may consider adopting a legislative approach to prescribe that these lower-income grassroots employees should be entitled to overtime compensation by way of overtime pay at a rate no less than the rate of the agreed wages<sup>3</sup> or equivalent time-off in lieu, so as to further protect these lower-income employees. SWHC considers that mandating overtime compensation rate no less than the rate of the agreed wages for the grassroots employees is appropriate and fair. SWHC envisaged that this approach would not bring about any serious impacts on enterprises and the overall economy.

ES.36 Based on the views of the community and in line with the above recommendation of a legislative approach to specify working hours employment terms in writing, SWHC considers that this recommendation should not cover persons to whom EO and

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<sup>3</sup> It refers to the wage rate calculated based on the agreed wages. For the definition of agreed wages, please see paragraph 6.6 for details.

MWO do not apply (e.g. a live-in domestic worker, a family member of the employer who lives in the same dwelling as the employer, an employee as defined in the Contracts for Employment Outside Hong Kong Ordinance, etc.). SWHC recommends that the Government may conduct detailed examination and impact assessment taking account of the affordability of enterprises and the need to maintain economic competitiveness, with a view to determining the scope of lower-income employees requiring protection. It is further recommended that the Government may, through a tripartite platform comprising representatives of employers, employees and the Government or other appropriate channels, further gather the views of the community and make reference to relevant information for drawing up the contents and detailed arrangements of this recommendation.

ES.37 SWHC considered that this recommendation can further protect grassroots employees and ensure their entitlement to overtime compensation, thereby effectively addressing the problem of uncompensated overtime work of the grassroots employees. It would also provide a reasonable and fair legal basis for employers and employees to sort out the overtime work arrangements. Through mandating compensation for overtime work, SWHC believed that the long working hours situation of the grassroots employees would be gradually ameliorated.

### **Formulating Sectoral Working Hours Standards**

ES.38 SWHC noted that the Labour Department has currently set up nine industry-based tripartite committees (covering catering, construction, theatre, logistics, property management, printing, hotel and tourism, cement and concrete, and retail industries), to promote tripartite dialogue and collaboration at the industry level with a view to fostering harmonious labour relations. SWHC recommends that the Government may, through the existing

industry-based tripartite committees and setting up new ones for other sectors with relatively long working hours (such as cleaning services and elderly homes), engage in continued dialogue with stakeholders in sectors where long working hours and/ or uncompensated overtime work are relatively more common, with a view to identifying and formulating sector-specific guidelines with suggested working hours standards, overtime compensation methods and good working hours management measures for employers' reference and adoption so as to improve employees' working hours arrangements.

## Review

ES.39 SWHC understood the aspiration of the labour sector for SWH legislation. Nevertheless, the two rounds of extensive public consultation conducted by SWHC revealed that the views of the community on this direction are widely divided, and further deliberation will be required. SWHC also found it difficult to discuss and map out a concrete direction on SWH in the absence of LAB employee members' participation in SWHC's work since end-2015. This notwithstanding, SWHC considered that the above recommendations represent a positive step in taking forward working hours policy. Legislating for mandatory written employment contracts between employers and lower-income grassroots employees with specified working hours terms will help change the culture of enterprises regarding working hours; and legislating for overtime compensation for lower-income grassroots employees at a rate no less than the rate of the agreed wages or equivalent time-off in lieu will render further protection to these grassroots employees. Focusing the protection on grassroots employees could avoid unduly affecting the businesses and the overall economy which might otherwise be brought about by an "across-the-board" working hours regulation. SWHC recommends that the Government should monitor the implementation of the above recommendations (e.g.

collecting relevant information and statistics through enforcement action and statistical surveys) and review their effectiveness after two years of implementation, and continue to discuss and study through an appropriate tripartite platform whether there is a need for SWH legislation and, if so, its contents and relevant arrangements.

### **Other Measures**

ES.40 In tandem with the implementation of the above recommendations and the follow-up on the development of the working hours policy, SWHC recommends that the Government should explore the necessary supportive measures, e.g. launching education and publicity activities, promoting family-friendly employment practices, and regularly conducting household survey on working hours situation.

ES.41 SWHC hopes that the above recommendations could help take forward Hong Kong's working hours policy and strengthen the protection of employees' rights and benefits, while taking full account of the affordability of enterprises and the sustainable development of the community and economy.