



Hong Kong General Chamber of Commerce
香港總商會 1861

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Helping Business since 1861

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Dr Leong Che-hung
Chairperson of the Standard Working Hours Committee
Room A, 1/F Seaview Commercial Building
21-24 Connaught Road West
Sheung Wan
Hong Kong

Dear Dr Leong,

The Hong Kong General Chamber of Commerce would like to express our gratitude to the Standard Working Hours Committee (SWHC) for conducting a very detailed regulatory impact analysis on the number of working hours, the different overtime pay rates and the various surveys. The analyses provide sound evidence based backgrounds on which the Chamber can have an informed discussion.

Very painfully, recent experience when the Fifth Legislative Council came to an end vividly illustrates and reminds us once again, that legislating is extremely tedious and is a very unpredictable risk. It is also highly divisive. That is true not only for introducing a new law, but also when that law needs to be amended in the future, for even the holiest or most innocent reason. Legislating, such a blunt instrument, ought to be avoided as much as possible. In fact, there is no evidence that the existing contract law, which recognises both written and unwritten forms of agreement and has developed and been tested over hundreds of years, is inadequate to deal with labour contracts.

Nevertheless, we understand the importance of building a consensus among stakeholders in tackling the working hour issue. Therefore, the Chamber supports in principle the concept of having a “big frame”, which does not compromise the flexibility of the labour market mechanism. In fact, we have been proposing all along that in a free market economy, rather than standardizing working hours through legislation, employers and employees should draw up contracts based on the needs of individual cases, stipulating job requirement, working hours and arrangement for over-time pay. This arrangement will allow both the free market to play its role efficiently and at the same time protecting the interest of employees through a legally-binding contract.

We object to the “small frame” as this artificial manipulation of employment terms for part of the labour force might weaken the flexibility of the labour market at large. This would not only undermine the ability of companies to respond to market changes, but also inevitably affect the livelihood of workers. Even under the “big frame”, other than the cost of compliance, there are issues which require further study for the proposed policy changes to be implemented effectively and efficiently without reducing market flexibility. Issues to be considered include: duration of the transition period, definition of standard working hours (differences across sectors and staff grades), violation penalties, and overtime rate determination.

We take note of the survey result that of all employees, 25.2% (790,000) had performed overtime work and 18.4% (580,000) had uncompensated overtime work. We believe that the implementation of the “big frame”, which requires employers and employees to enter into employment contracts specifying terms of working hours and overtime pay, can help address this problem.

While the survey also indicated that 24.4% of all employees (770,000) considered their working hours “too long, ” we note that , 69.9% (540,000) of this group did not wish to have their working hours reduced if their income would also be negatively impacted – a finding that the SWHC should not overlook in deliberating the way forward.

We appreciate that the SWHC has conducted data analyses and assessment of the potential impacts of the 28 parameter combinations on employees, businesses and the Hong Kong economy. This provides the basis for rational discussions among stakeholders. According to the analysis in the report, assuming that the total working hours remain unchanged and the overtime compensation rate at 1.1, 1.3, and 1.5 respectively, the average increases in wages of employees would range from 0.7% - 10.1%. This would entail an immediate increase of \$103 million to \$21.63 billion, equivalent to 0.02% to 3.84% of the total annual wage bill. It would be difficult for businesses, especially SMEs, to afford this increase.

If businesses were to offset the increases in payroll expenses in full by profit, the number of companies turning from profits to losses would range from 2,200 to 10,000, jeopardizing jobs of 13,800 to 271,800 employees and possibly rocking the stability of the labour market. The impact would be especially severe for labour intensive industries such as cleaning services and security services. If businesses choose to reduce the hours of work of employees to meet the working hours standard, they would need to hire additional hands to maintain operation. The number of equivalent jobs would range from 17,000 to 304,000. Under the current tight labour market conditions, the shortfall would be hard to fill.

Dr Leong Che-hung

Chairperson of the Standard Working Hours Committee

Agility and adaptability are the keys to success for our economy, which is particularly true for start ups and new economy businesses that should not be working 9-to-5. Based on the experience of previous economic cycles such as the dot-com bubble in 2000 and the financial tsunami in 2009, the flexibility of working arrangements has cushioned the economic slowdown and avoided large-scale layoffs. We believe that legislating standard working hours will not alleviate the problem of long working hours. Instead, it will risk damaging the flexibility of the labour market, thereby undermining our economy's ability to adjust in adverse market conditions. The Chamber is steadfastly against over-reliance on regulation, particularly over-legislation. We have seen many recent examples of over-regulation adding business compliance costs and suffocating entrepreneurship. As a result, Hong Kong's competitiveness and economic development could be severely constrained. Legislating should be the last resort - particularly when under the current political atmosphere, overloading the LegCo may not be a wise choice. Accordingly, there are a host of issues which the SWHC should think carefully about.

I have enclosed our views on some of the questions raised in the consultation document.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Stephen Ng', with a long horizontal flourish extending to the right.

Stephen Ng
Chairman

Consultation Issues of the “Big Frame”

Consultation Issues – Working Hours Terms

- Q1) The “big frame” aims to mandatorily require employers and employees to specify seven working hours terms in written employment contracts, which shall include: agreed working hours, overtime situation, overtime compensation arrangement, agreed wages, meal breaks and rest periods, rest days and records of hours worked. Do you think the “big frame” is appropriate? Please give reason(s). If appropriate, is there any need to add/ delete any specified working hours terms? If so, please give concrete suggestion(s).

The Chamber supports in principle the concept of having a “big frame”. We think that employers and employees should draw up contracts based on the needs of individual cases. The proposed seven working hours terms are appropriate. To take into consideration that there are jobs which might sometimes require employees working long or irregular hours in view of their seniority or job nature such as lawyers or doctors, flexibilities should be provided to allow opting-out from the regulation on specific working hours terms. For employers with a large number of employees, specifying the working hours terms in contracts implies that when changes are required on any of those terms, it would be an extensive time-consuming HR exercise for the employers. Considerations should be given to help lighten the burden on employers.

Consultation Issues – Coverage

- Q2) The “big frame” should widely apply to employers and employees. Do you consider that certain categories of employees, such as persons to whom existing EO and MWO do not apply (see paragraph 5.21 for details) or employees expected to have a short employment duration, should be exempted from the regulation of the “big frame”? If so, please elaborate on the suggested exemption category(ies) and reason(s). If not, please give reason(s).

Same as the Employment Ordinance and the Minimum Wage Ordinance, the “big frame” should not apply to persons to whom the existing EO and MWO do not apply or employees on short employment duration. This would avoid potential conflict between employers and employees and make administration by employers simpler.

- Q3) Do you consider that the “big frame” should apply to all existing and future employees (except the exempted employees), or only employment contracts entered into after the implementation of the “big frame”? What is/ are the reason(s)?

The “big frame” should apply to all employees. This would avoid any potential conflict between employers and employees and make administration by employers simpler.

Q4) If the “big frame” is to be legislated, is there a need to provide a transitional period for preparation by employers and employees? If so, how long should the transitional period be?

If implemented, there should be a transitional period of 12-18 months for preparation by both employers and employees.

Consultation Issues – Flexibility Arrangements

Q5) The “big frame” has provided the flexibility for employers and employees to agree on the contents of the specified working hours terms according to the actual circumstances, provided that the terms do not violate the law. Is there a need for other flexibility measures to be introduced to the “big frame” (see paragraphs 5.24 to 5.25 for details)? If so, please give suggestion(s) and reason(s). If not, please give reason(s).

Flexibility in the labour market is a very important factor to maintain the economy’s ability to adjust in adverse market conditions. Different industries or companies may have seasonal fluctuations in the demand for manpower at different times of the year or according to market demands or their business nature (such as dealing with overseas clients at different time zones and high frequency of irregular working hours). The legislation should provide employers with the flexibilities to accommodate such situations. Since the experience in other places allows employees to voluntarily opt-out from the regulation of working hours, Hong Kong should have similar flexibilities.

Consultation Issues – Consequences and Liability

Q6) The “big frame” will have legal effect and the legislation will stipulate the consequences of non-compliance (see paragraphs 5.26 to 5.27 for details). Do you agree to this?

We agree that consequences of non-compliance should be stipulated in legislation.

Other Consultation Issues of the “Big Frame”

Q7) What measure(s) (e.g. educational promotion, provision of reference information, etc.) do you think can help enhance compliance of employers and employees with the “big frame”?

The penalty of non compliance, together with education and promotion should help enhance the compliance of the “big frame”. Education promotion efforts should be focused more on employers and employees of lower education so that they understand clearly about the proper procedures to adopt and consequences of not complying with the law.

Q8) Do you have other views on the “big frame”?

We have no other views.

Consultation Issues of the “Small Frame”

Consultation Issues – Ideas and Design

Q9) On the premise of the “big frame”, do you think there is a need for other suitable measures (e.g. legislating for a working hours standard and an overtime pay rate, industry-based discussion, etc.) to further protect grassroots employees with lower income, lower skills and less bargaining power? If so, please give concrete suggestion(s). If not, please give reason(s).

There is no need to have other measures as the “big frame” should be able to address concerns such as long working hours and non-compensated overtime work.

Other Consultation Issues

Consultation Issues – Implementation of the “Big Frame” and “Small Frame”

Q17) Having considered the information on the “big frame” and “small frame” (see chapters 5 and 6 for details), please select:

- only implementing the “big frame” ;
- only implementing the “small frame” ;
- on the premise of implementing the “big frame”, to implement the “small frame” as well; or
- 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).

What is/ are the reason(s)? Please specify.

Only implementing the “big frame” as it has already taken care of major concerns.