



The British  
Chamber of Commerce  
in Hong Kong  
香港英商會

Dr Hon Leong Che-hung, GBM, GBS, JP  
The Chairman  
Standard Working Hours Committee  
Room A, 1/F, Seaview Commercial Building  
21-24 Connaught Road West  
Sheung Wan, Hong Kong

18<sup>th</sup> July 2016

Dear Dr Leong

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**Consultation on Working Hours Policy Directions: Response of the British Chamber of Commerce in Hong Kong**

I am writing on behalf of the British Chamber of Commerce in reply to your letter of 7 June seeking views on the consultation on Working Hours Policy Directions. I attach the Chamber's response.

I would be grateful for confirmation of receipt of this response.

Yours sincerely,

Andrew Seaton  
Executive Director



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Further comment on these two options is given below

### **The “Big Frame”**

The provision of written employment contracts, with working hours and compensation arrangements for overtime agreed and specified between employer and employee, is clearly good employment practice. We note that over 80% of employees surveyed by the Standard Working Hours Committee already had written employment contracts; with over 88% of these specifying working hours. This practice is positive in promoting appropriate discipline concerning working hours; in helping achieve a better work/life balance - with potential beneficial impacts in respect of staff morale and productivity, including through providing greater predictability of working hours; and in workplace dispute resolution. We note however that most such contracts/agreements (over 60%) do not specify the method of overtime compensation.

In moving to a legislative approach to mandate written employment contracts, it will be important to provide scope for maximum flexibility in the working hours arrangements, in the method of overtime compensation etc., for example in the reference period taken for working hours, so as to reflect different work patterns and requirements across different sectors. It will also be important to provide effective employer and employee education to go alongside the introduction of this new regulatory approach.

We believe that, over time, this approach should apply to all employees (except those in exempted categories) but that a transitional period may be needed for preparation by employers and employees, accompanied by appropriate education/guidance programmes.

### **The “Small Frame”**

As noted above, the Chamber would not favour moving beyond the “Big Frame” arrangements into further legislative measures including setting standard working hours, overtime pay rates etc. (the “Small Frame”). Leaving aside the substance of the “Small Frame”, it would in any case be preferable to allow businesses to adjust the “Big Frame” measures, and for these to be properly assessed in respect of their impact on business before proceeding further. In respect of the substance, we see the following factors as applying to consideration of such further measures:

- the business sector’s flexibility and speed of response are key competitive strengths for Hong Kong, as a relatively small and open economy, and ones which are central to Hong Kong’s future prosperity
- the user – friendly business environment, low regulatory burden, ease of establishing a business are vital factors in encouraging and facilitating the creation of new businesses, and in Hong Kong’s attractiveness to foreign investors
- the introduction of any legislative Standard Working Hours (SWH) poses risks to these important attributes, in adding rigidity to employment practices and thus restricting companies’ ability to respond quickly to the changing business situation, and to new opportunities. The consequent



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## **Consultation on Working Hours Policy Directions: Response of the British Chamber of Commerce in Hong Kong**

The British Chamber is one of Hong Kong's largest international business organisations. The Chamber has a broad membership of British, Hong Kong, Chinese and international companies, from major multinationals through to small start-up companies, and including many SMEs. Chamber members include some of Hong Kong's largest private sector employers.

The Chamber is an advocate for good workplace and employment practices. It recognises the potential benefits for employee morale and health, for work/life balance – with the potential productivity gains this brings, and for workplace dispute resolution, that could come with appropriate action on the clarification of working hours and overtime arrangements.

On the other hand the Hong Kong's business environment is one characterised by quick response, and by a high degree of flexibility in adapting to, and taking opportunity of, changing business and economic circumstances. The Chamber has already expressed to Government its concerns about Hong Kong's medium-term competitiveness. If Hong Kong is to maintain its competitive edge, particularly given rising competition from other cities and jurisdictions in the region, a crucial element is that it retains the best possible business environment and one which encourages and enables entrepreneurship, flexibility and innovation.

Furthermore, with SMEs comprising 95% of Hong Kong companies and employing 50% of the private sector workforce, it is vital that the impact of any new regulatory proposal on the operations, profitability, and flexibility of SMEs in particular needs to be carefully assessed and taken fully into account.

And at a time when the Government is making significant efforts, which we support, to develop Hong Kong's role as an innovation and start-up hub, it is vital that any new regulatory proposals are seen to support this ambition, and not to increase the regulatory burden on new companies.

Against that background, the Chamber:

- i) supports exploring a legislative approach to mandate employers and employees to enter into written employment contracts, including specified working hours and overtime compensation arrangements (the "Big Frame")
- ii) would however not at this time favour moving beyond this towards the introduction of further measures, e.g. legislating for standard working hours and overtime pay rates (the "Small Frame")





reduction in flexibility over deployment of labour could also make companies more reluctant to take on full-time staff, thus jeopardising Hong Kong's current high levels of employment

- the introduction of an across-the-board approach could also have particular impacts in certain sectors of business where working hours are not easily calculated for example in the creative, customer facing, and new business sectors.
- we have particular concerns about the impact on SMEs. The risks in respect of the flexibility of deployment of staff would apply more forcefully in the SME sector given more limited staff resources. Any increase in employment costs that this measure would entail could also have an impact on SMEs' profitability given the limited potential for raising prices in the current economic situation. Also the increased regulatory burden, taking into account the necessary compliance/checking/ monitoring procedures and sanctions - which would be a necessary part of any such regime, would also weigh heavily on the SME sector and involve a potentially significant increase in administration costs. Taken together with the potential loss of flexibility noted above this could have implication for the viability and sustainability of the SMEs and start-up sectors.
- This risk would in particular seem to apply in the innovation/high-tech/start-up sectors, detracting from the current strategy of encouraging these as new areas of economic growth. For these sectors in particular it is important to maintain as open and flexible an operating environment as possible, and to minimise the new regulatory burden. Moving to a more strict hours – counting approach is inconsistent with encouraging higher value added employment, where employee contributions are judged more by their effectiveness, creativity and quality than by hours worked (indeed there may be value in encouraging imaginative non-financial compensation – more leave, flexi-working – which would help motivate staff in such sectors).

We therefore believe it would not be in the interest of Hong Kong's competitive position to proceed with this further step. If however the outcome of this consultation is a decision to move in this direction, it is vital that a full regulatory impact assessment is undertaken, with a particular focus on the likely impacts on SMEs and on the innovation and high-tech sector, so as to provide a proper evidence base for consideration of the potential risks and benefits of such a measure.