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Paper for the Panel on Manpower meeting on 17 May 2007

Proposal to undertake an overseas duty visit

Purpose

This paper seeks members' agreement for the Panel to undertake an overseas duty visit to the United Kingdom and France.

The proposed visit

Proposed scope

2. At the meeting on 19 April 2007, members supported Hon CHAN Yuen-han's proposal for the Panel to undertake a duty visit during the summer recess to the United Kingdom and France to better understand their experience in implementing statutory minimum wage. It is proposed that the visit should study -

- (a) Government's policy on minimum wage;
- (b) the mechanism for setting and adjusting the statutory minimum wage;
- (c) the enforcement and monitoring of the implementation of the statutory minimum wage;
- (d) the impact of the statutory minimum wage on the business environment and labour market; and
- (e) measures adopted by the Government to address issues of concern or problems arising from the implementation of statutory minimum wage.

3. To assist members in understanding the local situations, the Research and Library Services Division of the Legislative Council Secretariat has prepared fact sheets providing background information on the minimum wage system in the United Kingdom and France (in **Annexes I and II** respectively).

4. Activities to be undertaken during the visit will include meetings with relevant government officials, enforcement agencies and monitoring authorities, as well as exchange of views with relevant employer associations and labour unions.

Proposed duration

5. It is proposed that the visit be conducted from 23 to 29 September 2007.

Delegation size and composition

6. The broad guidelines are that members of the Panel should have priority in participating in the visit, and the delegation should be of a manageable size in order not to create difficulties in logistical arrangements. Non-Panel members may join the visit with the consent of the Panel.

Funding

7. As approved by The Legislative Council Commission on 20 February 2001, each Member (except the President) is provided with an overseas duty visit account for the purpose of duty visits outside Hong Kong organised by committees, other than the Parliamentary Liaison Subcommittee, of the Council. The fund in the account is for use by the Member in a four-year term. The allocation for each Member's overseas duty visit account approved by the Commission for the 2004-08 term is \$55,000. Any expenditure incurred in the term in excess of \$55,000 has to be borne by the Member personally.

The way forward

8. Subject to members' agreement with an overseas duty visit as proposed in paragraph 2 above, the Secretariat will proceed with the preparatory work. The House Committee's permission will be sought, in accordance with House Rule 22(v), for the Panel to undertake the visit.

FACT SHEET

Minimum wage system in the United Kingdom

1. Background

1.1 The Panel on Manpower (Panel) plans to undertake an overseas duty visit to study the minimum wage system in the United Kingdom (UK) and France. Against this background, the Panel has asked the Research and Library Services Division to prepare two separate fact sheets providing some basic information on the minimum wage system implemented in the UK and France.¹ This fact sheet presents the minimum wage system in the UK.

2. Development of the minimum wage system

2.1 The UK's minimum wage system dates back to May 1997 when the Labour party won the general election and formed a new government. At the time, the Labour party's manifesto was that there should be a statutory minimum wage decided not on the basis of a rigid formula but according to the economic circumstances of the time and with the advice of an independent Low Pay Commission (LPC).

2.2 LPC was established in July 1997 with the aim of advising the government about the coverage of the minimum wage system and the initial minimum wage rate. Meanwhile, the National Minimum Wage Bill was introduced into Parliament in November 1997. The main points of the Bill included:

- (a) introducing a national minimum wage system covering most of the workers;
- (b) determining a single minimum wage rate for adults²;
- (c) empowering the government to appoint inspectors to enforce the law; and
- (d) imposing penalties for non-compliance of the minimum wage system.

¹ A fact sheet entitled "Minimum wage system in France" (FS19/06-07) provides some basic information about the minimum wage system implemented in France.

² The government would await the report of LPC before deciding whether there should be a lower rate for trainees and young people.

2.3 LPC commenced its work by studying the academic literature on the subject from the UK and abroad. It also undertook extensive consultation to supplement the analysis of extensive research and official data. LPC received nearly 500 written submissions, and took oral evidence from a wide range of representative organizations. It also made visits to cities, towns and villages throughout the UK, where LPC solicited views from small firms, rural businesses, low wage workers and the unemployed.

2.4 In June 1998, LPC published its first report on the minimum wage system and made the following proposals:

- (a) establishing a national minimum wage system covering all business sectors and regions of the country;
- (b) setting an initial adult minimum wage rate of £3.6 (HK\$46.2)³ an hour and a lower rate of £3.20 (HK\$41.1) an hour for trainees and young people; and
- (c) assessing the effects of the minimum wage system implemented on the labour market and the economy.

2.5 The findings of the report were also presented to Parliament. The National Minimum Wage Act gained Royal Assent in July 1998. The national minimum wage system came into force in April 1999.

3. Coverage of the minimum wage system

3.1 The minimum wage system applies to most of the workers. Some people are not entitled to receive the minimum wage, who are:

- (a) genuinely self-employed;
- (b) some apprentices⁴;
- (c) trainees on government-funded schemes⁵;
- (d) serving members of the armed forces; and
- (e) share fishermen.

³ The average exchange rate in 1998 was £1 = HK\$12.83.

⁴ Apprentices who are under the age of 19, or aged 19 to 25 and in the first 12 months of their apprenticeship are not entitled to receive the minimum wage.

⁵ Some of those schemes are: (a) Entry to Employment in England; (b) Get Ready for Work in Scotland; (c) Access in Northern Ireland; and (d) Skillbuild in Wales.

4. Minimum wage rates

4.1 There are several minimum wage rates, depending on the age of a worker. The rates effective since 1 October 2006 are as follows:

- (a) adults (people aged 22 or above) receive the full rate of £5.35 (HK\$76.7)⁶ an hour (this will increase to £5.52 (HK\$79.1) from 1 October 2007);
- (b) a "development rate" of £4.45 (HK\$63.8) an hour is paid to workers aged 18 to 21 inclusive (this will increase to £4.60 (HK\$65.9) from 1 October 2007); and
- (c) young people (those older than school leaving age⁷ and younger than 18 years old) receive £3.30 (HK\$47.3) an hour (this will increase to £3.40 (HK\$48.7) from 1 October 2007).

Accommodation Offset

4.2 There is a limit on the amount of accommodation payments that can count towards the minimum wage payment. That limit is known as the Accommodation Offset, which is currently set at £4.15 (HK\$59.5) per day (this will increase to £4.3 (HK\$61.6) from 1 October 2007). However, benefits in kind such as meals, cars and fuel do not count towards the minimum wage.

Number of minimum wage workers

4.3 LPC estimated that in 2006 the total number of minimum wage workers was around 1.3 million people, or 4.2% of the labour force. Two-thirds of the minimum wage workers were women.

⁶ The average exchange rate in 2006 was £1 = HK\$14.33.

⁷ The definition of "compulsory school age" varies slightly in England, Wales, Scotland and Northern Ireland. Generally speaking, in the UK, the "compulsory school age" starts at age five and ends at age 16.

5. Procedures for adjusting the minimum wage rates

5.1 Under the National Minimum Wage Act, LPC has a statutory function to provide independent expert advice to the government on matters related to the minimum wage system.⁸ One of its major responsibilities is to advise the government (i.e. the Secretary of State for Trade and Industry) on the rates of minimum wage adjustment as it thinks appropriate, based on the evidence gathered from a variety of sources such as employer associations, trade unions and academic experts.

5.2 Under the National Minimum Wage Act, the government is empowered to determine the minimum wage rates and put forward the determined adjustments to Parliament via regulations. These regulations are subject to affirmative resolution, and debated in Parliament which can agree to the regulations or otherwise. The rates are therefore subject to the decision of Parliament. Meanwhile, in practice, Parliament has not yet overturned recommendations made by the government on the minimum wage rates. The adjustment of the minimum wage rates, if any, usually takes place in October of a given year.

6. Criteria for adjusting the minimum wage rates

6.1 According to LPC, the minimum wage rates must balance the aim to address low pay with the need to ensure that the rates are manageable for businesses and the economy. In general, the criteria for adjusting the minimum wage rates include: economic conditions, pay differentials, the costs of business, competitiveness of the economy, inflation rate and employment level.

7. Enforcement

7.1 Her Majesty's Revenue and Customs (HMRC) has operational responsibility for enforcing the minimum wage system through the following combination of measures:

- (a) publicizing employer obligations and employee rights, principally through direct advertising, the employment right website and the minimum wage helpline;

⁸ LPC undertakes the following activities to form its expert advice: (a) commissioning research projects; (b) analysing relevant data and actively encouraging the Office of National Statistics to carry out better estimates of the incidence of low pay; (c) carrying out surveys of firms in low-paying sectors; (d) consulting employers, workers and their representatives; (e) taking written and oral evidence from a wide range of organizations; and (f) paying fact-finding visits throughout the UK to meet employers, employees and representative organizations.

- (b) requiring employers to keep minimum wage records;
- (c) investigating all complaints about non-payment of minimum wage. Compliance officers of HMRC will visit employers thought to be likely to pay below the minimum wage rates and take enforcement actions when necessary⁹; and
- (d) assisting individuals in taking action through an employment tribunal or the civil court.

Penal provisions

7.2 The penalties for non-compliance are set out in the National Minimum Wage Act, ranging from financial penalties of twice the hourly minimum wage per worker¹⁰ per day of continuing non-payment of minimum wage to prosecution with fines of a maximum of £5,000 (HK\$71,650) for specific criminal offences, which include:

- (a) under-paying minimum wage workers;
- (b) failing to keep minimum wage records;
- (c) producing and keeping false minimum wage records; and
- (d) refusing to give minimum wage records to the enforcement agency.

8. Major parties involved in the minimum wage system

8.1 The Appendix provides a brief description of major parties involved in the UK's minimum wage system.

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15 May 2007
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⁹ The targeted low-paying sectors include: hairdressing, childcare, agriculture, and food processing and packing sectors.

¹⁰ An adult minimum wage rate of £5.35 (HK\$76.7) is applied in the calculation.

Appendix

List of major parties involved in the minimum wage system in the United Kingdom

Legislature

A.1 Parliament has the authority to approve the adjusted minimum wage rates recommended by the government.

Government departments

A.2 The Department of Trade and Industry (DTI) is responsible for trade, business, employees, consumers, and science and energy. The minimum wage system is regulated by DTI.

A.3 Her Majesty's Revenue and Customs is the authority enforcing the minimum wage system.

Statutory body

A.4 The Low Pay Commission is responsible for providing independent expert advice to the government on matters related to the minimum wage system.

Employer associations

A.5 The Confederation of British Industry, founded in 1965, is the largest business organization in the United Kingdom (UK). Membership is corporate, comprising companies and employer associations. Its company members employ over four million people, and its employer association membership represents over six million people in some 200 000 firms.

A.6 The British Chamber of Commerce is the national network for chambers of commerce, which are local, independent and non-profit-making organizations funded by membership subscriptions. It has about 135 000 members in the UK.

Appendix (cont'd)

A.7 The Federation of Small Businesses is a pressure group, which promotes and protects the interests of small firms and the self-employed. It has over 174 000 members, and provides them with information and guidance on subjects related to employment and taxation.

Trade union

A.8 The Trade Union Congress represents the vast majority of trade unionists in the UK. Its membership now stands at 62 unions, representing some 6.5 million working people.

Research organization

A.9 The Low Pay Unit is an independent research organization committed to improving the position of low paid workers in the UK and eradicating poverty, inequality and exclusion through the promotion of social and economic justice.

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FACT SHEET

Minimum wage system in France

1. Background

1.1 The Panel on Manpower (Panel) plans to undertake an overseas duty visit to study the minimum wage system in France and the United Kingdom (UK). Against this background, the Panel has asked the Research and Library Services Division (RLSD) to prepare two separate fact sheets providing some basic information on the minimum wage system implemented in France and the UK.¹ This fact sheet presents the minimum wage system in France.

2. Development of the minimum wage system

2.1 Prior to the introduction of a national minimum wage system in France, wages had been regulated primarily through collective bargaining. In the mid-1940s, most industries had collective agreements that extended to all employees, and had minimum wage rates that were legally binding.

2.2 The Minimum Wage Law was passed in 1950 to establish a national minimum wage system in France to ensure that low-paid workers could enjoy a certain level of living standard. However, the system was complicated by the introduction of a large number of minimum wage rates which varied by region and town. In addition, the minimum wage rates were criticized by labour unions for not being indexed to the inflation rate.

2.3 In view of the problems, the government attempted to reform the national minimum wage system in the 1950s and the 1960s. In 1952, the government began to adjust the minimum wage rates with reference to changes in price levels due to rising pressures from the labour unions. In 1968, the government simplified the system by merging various minimum wage rates into one single minimum wage rate. However, by the end of the 1960s, there was increasing dissatisfaction with the way in which the minimum wage rate declined relative to overall earnings².

2.4 In the 1970 reform, a new national minimum wage (*salaire minimum interprofessionnel de croissance*) (SMIC) system was introduced with the aim of ensuring that low-paid workers would enjoy the benefits of economic growth. The current minimum wage system in France is based on the 1970 framework.

¹ A fact sheet entitled "Minimum wage system in the United Kingdom" (FS18/06-07) provides some basic information about the minimum wage system implemented in the UK.

² The real value of the minimum wage rate did not fall.

3. Coverage of the minimum wage system

3.1 SMIC is applicable to employees aged 18 and above in almost all sectors of the economy, including temporary and part-time workers. However, a few groups, such as professional workers and salesmen, are excluded from the minimum wage system while young workers have lower rates. Disabled workers are also not covered by SMIC.

4. Minimum wage rates

4.1 In July 2006, SMIC was raised by 3.05%³ to €8.27 (HK\$80.8)⁴ an hour. (Please see Appendix I regarding the impacts of the introduction of a statutory 35-hour working week on the minimum wage system.) By law, the percentage increase of SMIC cannot be lower than the inflation rate for that year. In fact, between July 2002 and July 2005, the annual increase of SMIC was around 3% in real terms (i.e. a 5% increase in nominal terms minus 2% inflation rate).

4.2 The corresponding rates for apprentices and young workers are lower than SMIC. Those aged 17-18 are entitled to receive 90% of SMIC, amounting to a rate of €7.44 (HK\$72.7). This rate drops to 80% to €6.62 (HK\$64.7) for those below 17 years of age. However, young workers with six months or more experience in their respective trade are entitled to receive the full rate.

Number of minimum wage workers

4.3 In July 2006, there were about 2.5 million minimum wage workers, or 16.8% of the labour force. The recent government policy of raising SMIC in real terms has also caused the number of minimum wage workers to increase continuously.

³ Nicolas Sarkozy, the new President-elect of France, states that the rise of SMIC should be kept to 1.7% to 2% in the next few years, if both the economic situation and the social climate permit.

⁴ The average exchange rate in 2006 was €1 = HK\$9.77.

5. Procedures for adjusting the minimum wage rate

5.1 SMIC may be adjusted in two ways. First, SMIC changes in accordance with the movement of the national price index. On 1 July each year, it is adjusted to cover the movement of the national price index since the last adjustment. During the interim period, when the national price index changes by 2% or more, SMIC will be adjusted automatically.⁵ In this way, the real value of SMIC will not fall.

5.2 Second, on top of the inflation-pegged adjustment to SMIC on 1 July each year, the National Collective Bargaining Board (NCBB)⁶ will hold meetings in June each year to examine the relevant economic reports for further adjustment to SMIC. After the examination and taking inflation into account, NCBB would recommend an adjusted SMIC to the Council of Ministers (i.e. the cabinet) for final approval. The Ministry for Employment, Social Cohesion and Housing is responsible for publishing the final figure.

6. Criteria for adjusting the minimum wage rate

6.1 The Council of Ministers and NCBB consider the following four criteria when adjusting SMIC:

- (a) the needs of workers and their families;
- (b) the average wage of manual workers;
- (c) inflation rate; and
- (d) economic factors such as the economic situation, productivity and employment levels.

7. Enforcement

7.1 Labour Inspectors under the Ministry for Employment, Social Cohesion and Housing are responsible for ensuring that employers comply with the law on minimum wage. They handle complaints and carry out regular inspections.

⁵ RLSD has not been able to ascertain whether SMIC may be adjusted downward in case of deflation.

⁶ NCBB is a tripartite body consisting of 40 members: four from the government, 18 from five national labour unions and 18 from employer associations. The Minister for Employment, Social Cohesion and Housing presides as the Chair of NCBB.

Penal provision

7.2 The standard penal provision of under-paying minimum wage workers is €1,500 (HK\$ 14,655).

8. Major parties involved in the minimum wage system

8.1 Appendix II provides a brief description of major parties involved in the minimum wage system in France.

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Appendix I**The impacts of the introduction of a statutory 35-hour working week
on the minimum wage system**

A.I.1 In the late 1990s, there were discussions in France on whether the government should reduce the statutory working week to raise the incomes of workers⁷ and increase the employment level⁸. After deliberation in Parliament, in June 1998, France passed a law (i.e. the Aubry Act) reducing the statutory working week from 39 hours to 35 hours.⁹ The Aubry Act was implemented in two phases:

- (a) companies having more than 20 employees should implement the 35-hour working week after 1 February 2000; and
- (b) companies having fewer than 20 employees and the government should adopt the 35-hour working week after 1 January 2002.

A.I.2 At the time, the government feared that the monthly incomes of some low-paid workers might fall because of the reduced statutory weekly working hours. Hence, in addition to the hourly SMIC¹⁰, the government set two "guaranteed monthly wage" rates for workers who worked 35-hour a week and 39-hour a week respectively to maintain their pay levels¹¹.

A.I.3 In view of the wage rates, many employers raised the concerns that:

- (a) the minimum wage system was complicated as there were different rates in effect; and
- (b) the costs of running businesses in France were subsequently higher.

A.I.4 Under such circumstances, the government agreed to re-use a single hourly SMIC rate from July 2002 onwards.

⁷ Hours worked in excess of statutory working hours are counted as overtime. Every hour of overtime is payable at 10% – 50% higher than the normal hourly rate, depending on the cumulative total of overtime hours worked.

⁸ The rationale was that companies might employ more people to share the jobs.

⁹ The new President-elect of France has pledged a deluge of reforms on employment and wage system in his first 100 days in office, including plans to undermine the 35-hour working week requirement by cutting taxes on overtime and curbing labour union powers.

¹⁰ The hourly SMIC rate was applied to part-time workers and full-time workers who worked overtime.

¹¹ This means that when workers switched to the 35-hour week, employees on SMIC were paid the wage that they would have received if they worked 39 hours.

Appendix II

List of major parties involved in the minimum wage system in France

Cabinet

A.II.1 The Council of Ministers (i.e. the cabinet) has the authority to approve the adjusted minimum wage rate.

Ministry

A.II.2 The Ministry for Employment, Social Cohesion and Housing is the authority which regulates the minimum wage system.

Statutory body

A.II.3 The National Collective Bargaining Board is a tripartite body consisting of members from the government, national labour unions and employer associations. Its main responsibility is to propose an adjusted minimum wage rate to the Council of Ministers for final approval.

Employer associations

A.II.4 The Movement of French Enterprises (Mouvement des entreprises de France) is the largest employer association in France.

A.II.5 The General Confederation of Small and Medium-sized Enterprises (Confédération générale des petites et moyennes entreprises) concentrates on promoting the interests of small enterprises.

A.II.6 The Craftwork Employers' Association (Union professionnelle artisanale) is one of the largest employer associations which plays an active role in the labour issues.

Appendix II (cont'd)

Trade unions

A.II.7 The French Democratic Confederation of Labour (Confédération française démocratique du travail), having 875 000 members, is the largest trade union in France.

A.II.8 The General Confederation of Labour (Confédération générale du travail), having 710 000 members, is the second largest trade union in France.

A.II.9 The Workers' Force (Force ouvrière), having 300 000 members, is the third largest trade union in France.

A.II.10 The French Christian Workers' Confederation (Confédération française des travailleurs chrétiens), having 160 000 members, is the fourth largest trade union in France.

A.II.11 The French Confederation of Professional and Managerial Staff – General Confederation of Professional and Managerial Staff (Confédération française de l'encadrement – Confédération générale des cadres), having 140 000 members, is the fifth largest trade union in France. It only organizes unions for professional employees, with higher education and/or in management or executive positions.

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