

**Bills Committee on Minimum Wage Bill**

**Draft Committee Stage Amendments to be Proposed by the Administration**

**MINIMUM WAGE BILL**

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## A BILL

To

Provide for a minimum wage at an hourly rate for certain employees; to establish a Minimum Wage Commission; to repeal the Trade Boards Ordinance and to make consequential amendments to the Labour Tribunal Ordinance, the Employment Ordinance, the Minor Employment Claims Adjudication Board Ordinance and the Disability Discrimination Ordinance.

Enacted by the Legislative Council.

## PART 1

### PRELIMINARY

#### 1. Short title and commencement

(1) This Ordinance may be cited as the Minimum Wage Ordinance.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

#### 2. Interpretation

In this Ordinance –

“accredited programme” (經評審課程) means a full-time programme that –

- (a) is provided by an education institution specified in Schedule 1;
- (b) is a learning programme of a kind described in section 1, 2 or 3 of Schedule 3 to the Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592); and
- (c) if provided by a school registered or provisionally registered under the Education Ordinance (Cap. 279), is at the level of post secondary education (within the meaning of that Ordinance);

“assessment-opting PWD” (選擇受評估殘疾人士) means a PWD who, in accordance with section 3A(2) of Schedule 2, has elected to have an assessment made under that Schedule of his or her degree of productivity in performing the work required under the contract of employment;

“chairperson” (主席) means chairperson of the Commission;

“Commission” (委員會) means Minimum Wage Commission established by section 10;

“Commissioner” (處長) has the same meaning as in the Employment Ordinance (Cap. 57);

“contract of employment” (僱傭合約) has the same meaning as in the Employment Ordinance (Cap. 57);

“domestic worker” (家庭傭工) means a domestic helper, carer, chauffeur, gardener, boat-boy or other personal helper employed in, or in connection with, a household;

“employee” (僱員) means a person engaged as an employee under a contract of employment other than a person covered by section 6(2), (3)-, ~~(4) or (5)~~ ~~(4)~~;

“employee with a disability” (殘疾僱員) means an employee who is a PWD and whose degree of productivity in performing the work required under the contract of employment ~~has been assessed under Schedule 2~~ is stated in a certificate of assessment that has effect for the purposes of section 8(1)(b);

“employer” (僱主) has the same meaning as in the Employment Ordinance (Cap. 57);

“exempt student employment” (獲豁免學生僱用) – see section 2A;

“hours worked” (工作時數) – see section 3;

“member” (委員) means member of the Commission;

“minimum wage” (最低工資), for an employee for a wage period, has the meaning given by section 7(2);

“non-local education programme” (非本地教育課程) means a full-time programme of education which leads to the award of a non-local academic qualification which is at the level of degree or higher;

“option form” (選擇表格) means a form referred to in section 3A of Schedule 2;

“place of employment” (僱傭地點), in relation to an employee, means any place at which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance for the purpose of doing work or receiving training;

“prescribed minimum hourly wage rate” (訂明每小時最低工資額) means the hourly wage rate specified in column 1 of Schedule 3;

“PWD” (殘疾人士) means a person who holds a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation established by the Government;

“student intern” (實習學員) means –

(a) a student undergoing a period of work arranged or endorsed by an education institution specified in Schedule 1 in connection with an accredited programme being provided by the institution to the student; or

(b) a student resident in Hong Kong and undergoing a period of work arranged or endorsed by an institution in connection with a non-local education programme being provided by the institution to the student,  
~~for which means a student undergoing a period of work arranged or endorsed by an education institution specified in Schedule 1 in connection with an accredited programme being provided by the institution to the student for which~~ the work is a compulsory or elective component of the requirements for the award of the academic qualification to which the programme leads;

“trial period of employment” (僱傭試工期) means a trial period of employment referred to in section 2 of Schedule 2;

“wage period” (工資期) – see section 4;

“wages” (工資), subject to section 5, has the same meaning as in the Employment Ordinance (Cap. 57~~);~~);

“work experience student” (工作經驗學員) means a student who –

(a) is enrolled in an accredited programme; or

(b) is resident in Hong Kong and enrolled in a non-local education programme,

and who is engaged under a contract of employment at the beginning of which he or she is under the age of 26 years.

## **2A. Exempt student employment**

A work experience student and his or her employer may agree to treat a continuous period of up to 59 days during the contract of employment (the current contract) as a period of exempt student employment if no period during another contract of employment to which they both were parties and that

commenced in the same calendar year as the current contract was a period of exempt student employment.

### **3. Hours worked**

The hours worked by an employee in a wage period include any time during which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer –

- (a) in attendance at a place of employment, irrespective of whether he or she is provided with work or training at that time; or
- (b) travelling in connection with his or her employment excluding travelling (in either direction) between his or her place of residence and his or her place of employment other than a place of employment that is outside Hong Kong and is not his or her usual place of employment.

~~(1) The hours worked by an employee in a wage period must be taken to include –~~

- ~~(a) any time during which the employee is in attendance at a place of employment, irrespective of whether he or she is provided with work or training at that time; and~~
- ~~(b) any time during which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, travelling in connection with his or her employment except time referred to in subsection (2)(b).~~

~~(2) The hours worked by an employee in a wage period must be taken not to include –~~

- ~~(a) any period allowed by the employer for a meal except to the extent (if any) during that period that the employee is doing work in accordance with the contract of~~



~~employment or with the agreement or at the direction of the employer; and~~

~~(b) any time during which the employee is travelling (in either direction) between his or her place of residence and his or her place of employment other than a place of employment that is outside Hong Kong and is not his or her usual place of employment.~~

#### 4. Wage period

(1) The wage period of an employee is the period in respect of which wages are payable to the employee for work done or to be done under his or her contract of employment.

(2) Unless the contrary is proved, that period must be taken to be one month.

(3) For a completed or terminated contract of employment that has had at least one previous wage period, the final wage period is the period commencing at the end of the penultimate wage period and ending on the day of completion or termination of the contract.

(4) For a completed or terminated contract of employment that has not had at least one previous wage period, the final wage period is the period commencing at the beginning of the contract and ending on the day of completion or termination of the contract.

#### 5. Wages

(1) A deduction from the wages of an employee made under section 25(3) or 32(2)(b), (c), (d), (e), (f), (g), (h) or (i) of the Employment Ordinance (Cap. 57) in respect of any wage period must be counted as part of the wages payable in respect of that period.

(2) A payment made to an employee in any wage period ~~for an hour (or any part of an hour) not worked~~ for any time that is not hours worked by the

employee must not be counted as part of the wages payable in respect of that or any other wage period.

(3) An advance or over-payment of wages made to an employee in any wage period must not be counted as part of the wages payable in respect of that period.

(4) A payment of arrears of wages in respect of an earlier wage period made to an employee in any wage period must not be counted as part of the wages payable in respect of the wage period in which it is paid.

(5) Despite subsections (1), (3) and (4), for the purposes of this Ordinance, any commission paid -, with the prior agreement of the employee, at any time after the first 7 days of a wage period but before the end of the 7<sup>th</sup> day immediately after that period~~in a wage period after the first 7 days of that period, or within 7 days after the end of a wage period,~~ must be counted as part of the wages payable in respect of that period irrespective of when the work is done or the commission is otherwise payable under the contract of employment.

## **6. Application of Ordinance**

(1) Subject to this section, this Ordinance applies to every employee, his or her employer and the contract of employment under which he or she is engaged.

(2) This Ordinance does not apply to a person to whom the Employment Ordinance (Cap. 57) does not apply because of section 4(2) of that Ordinance or who is engaged under a contract of apprenticeship registered under the Apprenticeship Ordinance (Cap. 47)~~or (2A) of that Ordinance.~~

(3) This Ordinance does not apply to a person who is employed as a domestic worker in, or in connection with, a household and who dwells in that household free of charge.

(4) This Ordinance does not apply to a student intern.

(5) This Ordinance does not apply to a work experience student during a period of exempt student employment.

## PART 2

### ENTITLEMENT TO MINIMUM WAGE

#### 7. Employees to be paid at least minimum wage

(1) An employee is entitled to be paid wages in respect of any wage period of not less than the minimum wage.

(2) The minimum wage for an employee for a wage period is the amount derived by multiplying the total number of hours (including any part of an hour) worked by the employee in the wage period by the minimum hourly wage rate for the employee provided by section 8.

(3) This section is subject to section 17 (transitional provisions).

#### 8. Minimum hourly wage rate

(1) The minimum hourly wage rate for an employee is –

(a) for a PWD undergoing a trial period of employment, the hourly rate that is the percentage specified in section 3 of Schedule 2 of the prescribed minimum hourly wage rate;

(b) for an employee with a disability, the hourly rate derived by multiplying the prescribed minimum hourly wage rate by the employee's assessed degree of productivity as stated in the certificate of assessment ~~provided under~~ referred to in section 5 of Schedule 2; ~~and~~

(ba) for an assessment-opting PWD who continues to be employed to do the same work for the same employer, until the end of the day on which the assessment of his or her degree of productivity in performing that work is completed under Schedule 2, the hourly rate that is the percentage specified in the option form of the prescribed minimum hourly wage rate; and

(c) in any other case, the prescribed minimum hourly wage rate.

(2) Despite subsection (1)(c), if a PWD who has undergone a trial period of employment becomes an employee with a disability after the expiry of ~~a trial period of employment~~the trial period, the minimum hourly wage rate for the employee must be taken to be the hourly rate provided by subsection (1)(b) on and from the first day after the expiry of the trial period.

(3) Schedule 2 has effect with respect to assessing the degree of productivity of a PWD and specifying the percentage of the prescribed minimum hourly wage rate that is applicable to a PWD undergoing a trial period of employment.

(4) Schedule 2 also provides for determining the percentage of the prescribed minimum hourly wage rate that is applicable to an assessment-opting PWD until the end of the day on which the assessment of his or her degree of productivity in performing the work required under the contract of employment is completed under that Schedule.

## **9. Entitlement to at least minimum wage under contract of employment**

(1) If, but for this Ordinance, the wages payable to an employee in respect of any wage period are less than the minimum wage for the employee for that period, the contract of employment of the employee must be taken to provide for all purposes that the employee is entitled to additional remuneration in respect of that period of the amount derived by subtracting from that minimum wage the amount of wages that, but for this Ordinance, is payable in respect of that period.

(2) Without limiting subsection (1), the purposes referred to in that subsection include calculating –

(a) the amount of any wages or of any other sum payable under the Employment Ordinance (Cap. 57);

- (b) any amount payable by way of an ex gratia payment under the Protection of Wages on Insolvency Ordinance (Cap. 380);
- (c) the amount of any mandatory contribution required to be paid to a provident fund scheme under the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and
- (d) the monthly earnings of the employee for the purposes of the Employees' Compensation Ordinance (Cap. 282) or the Occupational Deafness (Compensation) Ordinance (Cap. 469).

(3) To avoid doubt and without limiting subsection (1), the amount of any additional remuneration to which an employee is entitled under subsection (1) forms part of the wages payable to the employee under the Employment Ordinance (Cap. 57) and a failure to pay it may be dealt with in the same way as a failure to pay any other portion of those wages.

## PART 3

### MINIMUM WAGE COMMISSION

#### **10. Establishment and constitution of Commission**

(1) A Commission is established to be known as “Minimum Wage Commission” in English and “最低工資委員會” in Chinese.

(2) The Commission consists of –

- (a) a person, who is not a public officer, appointed as the chairperson;
- (b) not more than 9 other members who are not public officers  
of whom –

- (i) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, matters relating to the labour sector;
- (ii) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, matters relating to the business sector; or
- (iii) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, a relevant academic field; and of whom not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in—
  - ~~(i) matters relating to the labour sector;~~
  - ~~(ii) matters relating to the business sector; or~~
  - ~~(iii) a relevant academic field; and~~

(c) not more than 3 other members who are public officers.

(3) The chairperson and all other members are to be appointed by the Chief Executive and, in appointing members under subsection (2)(b) and (c), the Chief Executive may have regard to the need for there to be a balanced number of members appointed under each of the subparagraphs of paragraph (b) of subsection (2) and under paragraph (c) of that subsection.

(4) The Chief Executive must publish in the Gazette notice of the following –

- (a) any appointment of a member made under this section;
  - (b) any appointment of an acting chairperson made under section 3 of Schedule 4.
- (5) A notice under subsection (4) is not subsidiary legislation.
- (6) Schedule 4 has effect with respect to the Commission.

## 11. Functions of Commission

(1) The main function of the Commission is, when required by the Chief Executive to do so, to report to the Chief Executive in Council its recommendation about the amount of the prescribed minimum hourly wage rate.~~(1) The main function of the Commission is, when required by the Chief Executive to do so, to report to the Chief Executive in Council its recommendations about –~~

~~(a) the amount of the prescribed minimum hourly wage rate; and~~

~~(b) the timing and frequency of rate reviews.~~

(2) The Commission has any other function given to it by the Chief Executive in writing.

(3) In performing its functions, the Commission must have regard to the need –

(a) to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs; and

(b) to sustain Hong Kong's economic growth and competitiveness.

(4) Before arriving at the recommendations to be included in its report, the Commission may as it thinks fit –

(a) consult any organization representative of employers or employees or any other person;

(b) consider any submission made to it in the course of its consultations; and

(c) analyse and consider any data derived from, and consider any other information contained in, any research or study.

(5) The Chief Executive must require that a report under subsection (1) is made at least once in every 2 years.

## 12. Powers of Commission

(1) The Commission has power to do all things that are necessary for, or incidental or conducive to, the performance of its functions.

(2) Without limiting subsection (1), the Commission may form a committee for any purpose.

## 13. Report of Commission

~~The Chief Executive must publish a copy of a report made under section 11(1).(1) — The Chief Executive may, by notice given to the Commission, require it to make a report required under section 11(1) within the period specified in the notice.~~

~~(2) — The Chief Executive may, by further notice given to the Commission, extend the period within which a report is to be made.~~

## PART 4

### MISCELLANEOUS

## 14. No contracting out

A provision of a contract of employment (whether the contract was entered into before, on or after the commencement of this section) that purports to extinguish or reduce any right, benefit or protection conferred on the employee by this Ordinance is void.

## 15. Amendment of Schedule 3

(1) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3 to –

- (a) specify in column 1 an hourly wage rate or increase or reduce the then current hourly wage rate specified in that column; and
- (b) specify in column 2 the effective date for any amendment referred to in paragraph (a).



(2) In exercising a power under subsection (1), the Chief Executive in Council may have regard to any recommendation included in a report made under section 11(1) but is not bound by the recommendation.

(3) Subsection (1) only confers power to fix a single hourly wage rate that is applicable to all employees, whether directly or as a factor in calculating their minimum wage.

(4) Section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) applies to a notice under subsection (1) as if –

- (a) for the words “amended in any manner whatsoever consistent with the power to make such subsidiary legislation” there were substituted the words “wholly revoked”; and
- (b) for the words “to be amended” there were substituted the words “to be wholly revoked”.

#### **16. Amendment of Schedules 1 , 2 and 4**

(1) The Commissioner may, by notice published in the Gazette, amend Schedule 1 or 2.

(2) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 4.

#### **17. Transitional provisions**

(1) If the effective date of the first prescribed minimum hourly wage rate is a date after the beginning of a wage period of an employee, in calculating the minimum wage for the employee for that period no account is to be taken of any hour (including any part of an hour) worked by the employee in that period before that effective date nor of any wages payable to the employee for any such hour or part of an hour.

(2) If the prescribed minimum hourly wage rate is increased or reduced under section 15(1) after the beginning of a wage period of an employee, in calculating the minimum wage for the employee for that period the increased

or reduced rate only applies to any hour (including any part of an hour) worked by the employee on or after the effective date of the increase or reduction.

(3) For the purposes of section 2A, no account is to be taken of any period of employment that precedes the commencement of that section.

## PART 5

### REPEAL AND CONSEQUENTIAL AMENDMENTS

#### Trade Boards Ordinance

#### 18. Repeal

The Trade Boards Ordinance (Cap. 63) is repealed.

#### Labour Tribunal Ordinance

#### 19. Schedule amended

(1) Paragraph 1(a) and (aa) of the Schedule to the Labour Tribunal Ordinance (Cap. 25) is amended by adding “or (if relevant) arising by force of section 9(1) of the Minimum Wage Ordinance ( of 2009)” after “implied”.

(2) Paragraph 1(b) of the Schedule is amended by adding “, the Minimum Wage Ordinance ( of 2009)” after “(Cap. 57)”.

#### Employment Ordinance

#### 20. Requirement to keep wage and employment records

(1) Section 49A(3) of the Employment Ordinance (Cap. 57) is amended by adding –

“(ea) if the employee is an employee within the meaning of the Minimum Wage Ordinance ( of 2010) and the wages payable to the employee in respect of any wage period are less than the amount specified in the Ninth Schedule (or the amount that bears the same ratio to that amount as the

length of that wage period bears to a month, calculated where that wage period falls in more than one month according to the number of days of that wage period falling in each particular month), the total number of hours (including any part of an hour) that are hours worked (within the meaning of that Ordinance) by the employee in that wage period;”.~~“(ea) — if the employee is entitled to be paid wages in respect of any wage period, or part of a wage period, of not less than the minimum wage within the meaning of the Minimum Wage Ordinance (— of 2009), the total number of hours (including any part of an hour), calculated in accordance with section 3 of that Ordinance, worked by the employee in any wage period;”.~~

(2) Section 49A is amended by adding –

“(3A) Despite subsection (3), subsection (1) must also be taken to require an employer to keep –

(a) for an employee to whom the Minimum Wage Ordinance ( of 2010) does not apply because of section 6(4) of that Ordinance, a document (or copy of a document) issued by an institution showing that the period of work is arranged or endorsed by the institution in connection with a programme being provided by the institution to the employee that is of a kind covered by the definition of “student intern” in section 2 of that Ordinance; and

(b) for an employee to whom the Minimum Wage Ordinance ( of 2010) does not

apply because of section 6(5) of that Ordinance, a document (or copy of a document) issued by an institution showing that the employee is at the commencement of the employment enrolled in a programme being provided by the institution that is of a kind covered by the definition of “work experience student” in section 2 of that Ordinance.

“(4) Nothing in subsection (1) requires an employer to set out in a record particulars of a kind referred to in subsection (3)(ea) for any wage period, or part of a wage period, of an employee that occurred before the effective date of the hourly wage rate first specified in column 1 of Schedule 3 to the Minimum Wage Ordinance ( of 2009) on or after the commencement of section 15 of that Ordinance.

(5) The Commissioner may, by notice published in the Gazette, amend the Ninth Schedule.”.

## **21. Powers of officers**

Section 72(1)(b) is amended by adding “(and, in the case of a record which includes particulars required to be included under section 49A(3)(ea), require that the particulars under section 49A(3)(a), (d), (e), (ea) and (f) are produced in a single document)” after “Ordinance”.

### **21A. Ninth Schedule added**

The following is added –

“NINTH SCHEDULE [s. 49A]

MONETARY CAP ON KEEPING RECORDS OF HOURS WORKED

per month”.

### **Minor Employment Claims Adjudication Board Ordinance**

#### **22. Jurisdiction of the Minor Employment Claims Adjudication Board**

(1) Paragraph (b)(i) and (ii) of the Schedule to the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) is amended by adding “or (if relevant) arising by force of section 9(1) of the Minimum Wage Ordinance ( of 2009)” after “implied”.

(2) Paragraph (b)(iii) of the Schedule is amended by adding “, the Minimum Wage Ordinance ( of 2009)” after “(Cap. 57)”.

### **Disability Discrimination Ordinance**

#### **23. Further exceptions to this Ordinance**

(1) Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) is amended by renumbering item 1 as item 4.

(2) Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) is amended by adding –

“1. Part III~~Part III~~

Only a person who holds a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation established by the Government being allowed to have his or her degree of productivity assessed under Schedule 2 to the Minimum Wage Ordinance ( of 2009).”

2. Part III~~Part III~~

An employer, in accordance with

the Minimum Wage Ordinance ( of 2009), paying a minimum wage to a person with a disability that is less than that payable to a person without such a disability.

### 3. Part III~~Part III~~

An employer dismissing a person with a disability on account of the outcome of an assessment made under Schedule 2 to the Minimum Wage Ordinance ( of 2009).”.

## SCHEDULE 1

[ss. 2 & 16]

### EDUCATION INSTITUTIONS

1. The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444).
2. University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053).
3. The Hong Kong Polytechnic University established by The Hong Kong Polytechnic University Ordinance (Cap. 1075).
4. The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109).

5. Hong Kong Baptist University established by the Hong Kong Baptist University Ordinance (Cap. 1126).
6. City University of Hong Kong established by the City University of Hong Kong Ordinance (Cap. 1132).
7. The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135).
8. The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap. 1141).
9. The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap. 1145).
10. Lingnan University established by the Lingnan University Ordinance (Cap. 1165).
11. Approved post secondary colleges registered under the Post Secondary Colleges Ordinance (Cap. 320).
12. Bodies established under section 6(2)(h) of the Vocational Training Council Ordinance (Cap. 1130). ~~Technical colleges, technical institutes, industrial training centres or skills centres established under the Vocational Training Council Ordinance (Cap. 1130).~~
13. Schools registered or provisionally registered under the Education Ordinance (Cap. 279).

## ASSESSMENT OF DEGREE OF PRODUCTIVITY OF PWDs

### 1. Interpretation

(1) In this Schedule –

“approved assessor” (認可評估員) means a person who –

- (a) is of a kind specified by the Commissioner for the purposes of this paragraph under subsection (2);
- (b) has the length of experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with a disability that is specified by the Commissioner for the purposes of this paragraph under subsection (3); and
- (c) is approved by the Commissioner under section 4(3) of this Schedule;

“assessment” (評估) means an assessment referred to in section 4 of this Schedule.

(2) The Commissioner may, by notice published in the Gazette, specify kinds of persons for the purposes of paragraph (a) of the definition of “approved assessor” in subsection (1), whether by reference to the profession practised by them or the occupation or qualification held by them or on any other basis.

(3) The Commissioner may, by notice published in the Gazette, specify a length of experience for the purposes of paragraph (b) of the definition of “approved assessor” in subsection (1).

### 2. Trial period of employment

(1A) This section applies to a PWD –

- (a) who on or after the commencement of section 8 is seeking to be engaged under a contract of employment; or



(b) the terms of whose contract of employment are to be varied on or after that commencement as to the kind of work to be done under that contract.

(1) A PWD may, if he or she chooses to do so, before commencing employment or before a variation of the terms of his or her contract of employment as to the kind of work to be done under that contract is due to take effect, agree with an employer to undergo a trial period of employment at not less than the minimum hourly wage rate provided by section 8(1)(a).

(2) The purpose of the trial period is to provide an opportunity for an assessment to be made of the degree of productivity of the PWD.

(3) Subject to subsection (4), the length of the trial period is 4 weeks or until the end of the day on which the assessment of the degree of productivity of the PWD is completed, whichever period is the shorter.

(4) On an application made to the Commissioner jointly by the PWD and the employer before the end of the trial period, the Commissioner may, in exceptional circumstances, extend the length of the trial period applying to them by up to 4 weeks.

### 3. **Percentage of prescribed minimum hourly wage rate applicable during trial period of employment**

For the purposes of section 8(1)(a), the specified percentage is 50%.

#### **3A. PWDs employed before commencement may opt for an assessment**

(1) A PWD who –

(a) was employed immediately before the commencement of section 8;

(b) continues to be employed to do the same work for the same employer; and

(c) is employed at an hourly wage rate that is less than the first prescribed minimum hourly wage rate,

may, before the effective date of the first prescribed minimum hourly wage rate, elect to have his or her degree of productivity in performing the work required under the contract of employment assessed under this Schedule.

(2) An election is made by the employee signing an option form and giving it to his or her employer as soon as practicable after signing it.

(3) An option form must –

(a) be in the form approved by the Commissioner;

(b) specify the hourly wage rate (the current contractual rate) at which the PWD is then employed; and

(c) specify the percentage of the first prescribed minimum hourly wage rate that the current contractual rate represents.

(4) The employer must countersign the option form before the effective date of the first prescribed minimum hourly wage rate and give a copy of it to the employee as soon as practicable after doing so.

### **3B. Other employees may opt for an assessment**

(1) An employee who is a PWD (other than a PWD to whom section 2 of this Schedule applies who has chosen to undergo a trial period of employment or a PWD who is an assessment-opting PWD) may at any time, if he or she chooses to do so, seek to have his or her degree of productivity in performing the work required under the contract of employment assessed under this Schedule.

(2) This section is subject to section 4(5) of this Schedule.

## **4. Assessment**

(1A) This section applies to an assessment under this Schedule with respect to the following employees –

(a) a PWD who has chosen to undergo a trial period of employment under section 2 of this Schedule;

(b) an assessment-opting PWD;

(c) a PWD covered by section 3B of this Schedule who has chosen to have an assessment made.

(1) The purpose of an assessment is to determine the degree (if any) to which the productivity of the PWD in performing the work required under the contract of employment is affected by a disability.

(2) The assessment must be made by an approved assessor at a time agreed by the PWD and his or her employer. For a PWD who has chosen to undergo a trial period of employment under section 2 of this Schedule, that time may be the employer, whether within the trial period of employment or after the expiry of that period.

(3) The Commissioner may, in writing, approve an assessor who satisfies the requirements of paragraphs (a) and (b) of the definition of “approved assessor” in section 1(1) of this Schedule for the purpose of making assessments under this Schedule.

(4) The Commissioner may, by notice published in the Gazette, specify methods of assessment for the purposes of this Schedule.

(5) A PWD ~~whose~~ in respect of whom an assessment of his or her degree of productivity has been ~~assessed~~ completed cannot have any further assessment made for the same work with the same employer.

~~(6) Only a PWD who is undergoing, or has undergone, a trial period of employment for the relevant work is entitled to have his or her degree of productivity assessed under this Schedule.~~

## 5. Certificate of assessment

(1) An approved assessor who makes an assessment of the degree (if any) to which the productivity of the PWD in performing the work required under the contract of employment is affected by a disability must provide to the PWD and the employer a certificate of assessment.

(2) The certificate of assessment must –

- (a) state the degree of productivity capable of being achieved by the PWD in performing the work;
- (b) be in the form approved by the Commissioner; and
- (c) be signed ~~by the PWD and the employer as well as~~ by the approved assessor.

(2A) The assessment of the degree of productivity of the PWD is completed for the purposes of this Ordinance when the certificate is signed by the approved assessor.

(2B) The PWD and the employer must countersign the certificate provided to them under subsection (1). On and from the first day after their doing so the certificate has effect for the purposes of section 8(1)(b).

(3) The signing by the PWD or the employer of a certificate of assessment must not be taken to indicate any agreement on their part to continue the employment relationship.

#### 6. **Status of approved assessor**

In making an assessment under this Schedule, an approved assessor (other than a public officer doing so in his or her capacity as a public officer) is neither a servant nor an agent of the Government.

### SCHEDULE 3

[ss. 2 & 15]

#### PRESCRIBED MINIMUM HOURLY WAGE RATE

Hourly wage rate

Effective date

## SCHEDULE 4

[ss. 10 &amp; 16]

## MINIMUM WAGE COMMISSION

**1. Terms and conditions of appointment of members**

- (1) A member who is not a public officer –
  - (a) holds office for the term that is specified in his or her instrument of appointment and on any other terms and conditions of appointment that the Chief Executive may from time to time determine; and
  - (b) may resign from office by giving notice in writing to the Chief Executive.

(2) A member who is a public officer holds office at the discretion of the Chief Executive.

(3) A member is eligible for reappointment.

(4) A resignation under subsection (1)(b) takes effect on the date specified in the notice or, if no date is specified, on the date the Chief Executive receives the notice.

**2. Removal of members**

The Chief Executive may, by notice in writing, remove from office a member who is not a public officer if the Chief Executive is satisfied that the member is unable or unfit to carry out the duties of the office due to permanent incapacity or other sufficient cause.

**3. Acting chairperson**

(1) The Chief Executive may appoint another member who is not a public officer to act as chairperson –

- (a) during a vacancy in the office of chairperson; or

(b) while the chairperson is absent from Hong Kong or is, for any other reason, unable or unfit to carry out the duties of the office of chairperson.

(2) An acting chairperson has and may exercise all the powers, and must carry out all the duties, of the office of chairperson.

(3) Anything done by or in relation to a person purporting to act as chairperson is not invalid merely because –

- (a) there was a defect or irregularity in, or in connection with, the acting appointment; or
- (b) the occasion for the person to act had not arisen or had ceased.

#### 4. **Meetings**

(1) Meetings of the Commission are to be held at the times and places appointed by the chairperson.

(2) The chairperson must preside at a meeting of the Commission.

(3) The quorum for a meeting of the Commission is –

- (a) the person presiding; plus
- (b) not less than half of the other members in office for the time being including at least 3 members who are not public officers and at least one who is.

(4) Subject to this Schedule, the Commission may regulate its own procedure.

#### 5. **Status of Commission**

The Commission is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government.

## **Explanatory Memorandum**

The object of this Bill is to provide for a minimum wage at an hourly rate for certain employees. The minimum wage is expressed as an hourly rate to help ensure that employees' pay is commensurate with the time that they have worked. The Bill, however, does not seek to regulate the number of hours that employees spend at work. Further, except as expressly provided by it, the Bill does not affect the operation of the Employment Ordinance (Cap. 57) but payment of the minimum wage may be enforced under that Ordinance in the same way as any other portion of unpaid wages.

### **Part 1 – Preliminary**

2. Clause 1 provides for the short title of the Bill (when enacted) and empowers the Secretary for Labour and Welfare to appoint a day for the Bill (when enacted) to come into operation.
3. Clauses 2, 3, 4 and 5 contain definitions that are necessary for the interpretation of the Bill.
4. Clause 6 deals with the application of the Bill. The Bill applies to all employees except the categories specified in clause 6(2), (3) and (4). Domestic workers who dwell free of charge in their employing household are exempt. Student interns are also among the exempted categories. Schedule 1 lists the education institutions with which the interns must be connected.

### **Part 2 – Entitlement to Minimum Wage**

5. Clause 7 gives employees an entitlement to be paid wages that are not less than the minimum wage in respect of any wage period. The clause sets out how the minimum wage is calculated.
6. Clause 8 specifies the minimum hourly wage rate for employees. This is relevant to the calculation of the minimum wage under clause 7. The prescribed minimum hourly wage rate specified in column 1 of Schedule 3 applies to all

employees other than those with a disability or persons who hold a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation established by the Government (“PWDs”) and are undergoing a trial period of employment. Schedule 2 sets out a procedure for the assessment of the degree of productivity of PWDs. For employees with a disability, their minimum hourly wage rate may be discounted from the prescribed minimum hourly wage rate proportionate to the degree to which their productivity in performing the work required under the contract of employment is reduced by the disability. As for PWDs undergoing a trial period of employment, their minimum hourly wage rate may be discounted by up to 50% of the prescribed minimum hourly wage rate.

7. Clause 9 has the effect of modifying contracts of employment so as to provide for a top-up payment if necessary to ensure that employees are paid not less than the minimum wage. The clause makes it clear that the modified contract of employment applies when calculating entitlements and liabilities under the Employment Ordinance (Cap. 57), the Protection of Wages on Insolvency Ordinance (Cap. 380), the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Employees’ Compensation Ordinance (Cap. 282) and the Occupational Deafness (Compensation) Ordinance (Cap. 469). Employees therefore are entitled to any shortfall of payment under those Ordinances arising when the top-up payment is taken into account and enforcement action (including prosecution) may be brought under those Ordinances relating to any such shortfall.

### Part 3 – Minimum Wage Commission

8. Clause 10 provides for the establishment of a Minimum Wage Commission (“Commission”). The members are all appointed by the Chief Executive. Not more than 10 people who are not public officers, and not more than 3 who are, may be appointed. The chairperson cannot be a public officer. Schedule 4 sets out the terms and conditions of appointment of members, specifies how



members may be removed, provides for the appointment of an acting chairperson and regulates the procedure at meetings.

9. Clause 11 sets out the functions of the Commission and the need to which it must have regard in performing its functions. The clause also empowers the Commission to carry out consultations, analyse data and consider submissions before arriving at recommendations.

10. Clause 12 sets out the powers that the Commission has for performing its functions.

11. Clause 13 enables the Chief Executive to specify the timeline within which the Commission must report.

#### Part 4 – Miscellaneous

12. Clause 14 prevents the parties to a contract of employment contracting out of the provisions of the Bill (when enacted).

13. Clause 15 enables the Chief Executive in Council to amend Schedule 3 having regard to any recommendation included in a report made by the Commission without being bound by the recommendation. In scrutinizing a notice amending Schedule 3, the Legislative Council may either approve or revoke the notice.

14. Clause 16 enables the Commissioner for Labour to amend Schedule 1 or 2 and the Chief Executive in Council to amend Schedule 4.

15. Clause 17 contains transitional provisions to cover situations where the first prescribed minimum hourly wage rate, or an increase or reduction in the prescribed minimum hourly wage rate, occurs during the course of a wage period.

#### Part 5 – Repeal and Consequential Amendments

16. Clause 18 repeals the Trade Boards Ordinance (Cap. 63).

17. Clause 19 amends the Labour Tribunal Ordinance (Cap. 25) to ensure that the Labour Tribunal has jurisdiction to deal with claims for sums of money

arising from a breach of the Bill (when enacted) other than claims specified in the Schedule to the Minor Employment Claims Adjudication Board Ordinance (Cap. 453).

18. Clauses 20 and 21 amend the Employment Ordinance (Cap. 57) to require employers to keep records of the total number of hours worked by an employee in a wage period while a prescribed minimum hourly wage rate is in force and to produce those records in a single document with certain other employment records.

19. Clause 22 amends the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) to ensure that the Minor Employment Claims Adjudication Board has jurisdiction to deal with claims for up to \$8,000 arising from a breach of the Bill (when enacted).

20. Clause 23 amends the Disability Discrimination Ordinance (Cap. 487) to provide an exception for certain acts.