

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 90 – LABOUR DEPARTMENT Subhead 000 Operational expenses

Members are invited to recommend to Finance Committee the creation of the following supernumerary post in the Labour Department for a period of three years with immediate effect –

1 Chief Labour Officer
(D1) (\$103,400 - \$109,700)

PROBLEM

We need dedicated support at the directorate level to take forward the legislative exercise on statutory minimum wage (SMW) and ensure the smooth enactment of the SMW Bill and its subsidiary legislation.

PROPOSAL

2. We propose to create one supernumerary post of Chief Labour Officer (CLO) (D1) in the Labour Department (LD) for a period of three years with immediate effect^{Note} to take forward the legislative exercise on SMW.

/JUSTIFICATION

^{Note} Subject to the support of this Subcommittee, our plan is to put the staffing proposal to the Finance Committee for approval at the meeting on 9 January 2009.

JUSTIFICATION

Adopting a Legislative Approach

3. The voluntary Wage Protection Movement for cleaning workers and security guards (WPM) was launched in October 2006 through a multi-pronged approach of promotion, public education, contractual regulation, conciliation and enforcement. Employers joining the WPM undertook to offer their cleaning workers and security guards wages not lower than the relevant average market rates as stipulated in the Census and Statistics Department's (C&SD's) Quarterly Report of Wage and Payroll Statistics. They should also enter into written employment contracts with these workers under their direct employ setting out the employment terms, and these workers should be suitably compensated if they have to work beyond the contractual working hours. The same practices should apply to their contractors and subcontractors providing cleansing and guarding services.

4. The Chief Executive (CE) committed in his 2007-08 Policy Address that legislation on SMW for cleaning workers and security guards would be introduced if the WPM for the two occupations failed to yield satisfactory results. The overall review of the WPM conducted in October 2008 revealed that despite increases in both the number and proportion of workers benefiting from WPM, there were limitations in promoting wage protection through voluntary participation and the effectiveness of the WPM, on the whole, could not be considered satisfactory. The WPM came to an end in mid-October 2008.

5. To honour his pledge, CE announced in his 2008-09 Policy Address that the Administration would proceed with the legislative work with the aim of introducing a bill on SMW into the Legislative Council (LegCo) in the 2008-09 legislative session. Having regard to the concern that cleaning workers and security guards are not the only low-income workers, the mobility among different types of low-income jobs and the difficulty in defining "cleaning workers", the Administration favours an across-the-board SMW.

Legislative Exercise on Statutory Minimum Wage

6. The legislative exercise on SMW would involve five major areas of work, namely, coverage of the SMW; special measures, if any, for vulnerable groups such as people with disabilities; definition of an SMW; mechanism for setting and reviewing the level of an SMW; and enforcement and penalty in relation to the implementation of an SMW. In addition to legislative work, the Administration will establish a Provisional Minimum Wage Commission (MWC) to advise on the initial level of SMW. The Provisional MWC members would be drawn from the labour sector, business community, academia and government departments, and would become a statutory body with the enactment of the SMW legislation.

/7.

7. Alongside the deliberation on the provisions of the future SMW legislation and the establishment of the Provisional MWC, LD would, in cooperation with relevant government departments, commission surveys in order to secure quantitative and qualitative data to support the implementation of SMW. An optimal SMW would need to draw a sensible balance between, on the one hand, forestalling excessively low wages, and on the other, safeguarding job opportunities for the disadvantaged and sustaining the economic competitiveness of Hong Kong. In addition, given that SMW is a value-laden subject, intensive engagement with numerous stakeholders and consultation with the public will be required to help facilitate the forging of a community consensus.

Need for a Chief Labour Officer Post

8. As the SMW subject is itself an important and major policy, we will set up a dedicated team in LD to take forward the SMW legislative exercise. The team will work closely with other departments to deal with a full range of policy issues relating to the SMW legislative exercise. These include designing an SMW scheme which best suits local circumstances, conducting research on relevant overseas experience as well as ensuring that the provisions and implementation of the future legislation would dovetail with other employment legislation. The team will also be responsible for setting up and providing support to the work of the Provisional (and the future statutory) MWC in the identification of an optimal SMW and the development of a review mechanism. Furthermore, the team will solicit and analyse the views from key stakeholders and take them into account in the formulation of legislative proposals to ensure that the SMW legislation can meet the aspirations of different sectors. Accomplishing these tasks would require the dedicated leadership of a sufficiently senior Labour Officer Grade officer who is experienced and well versed in a wide range of labour and related issues and has the ability to handle politically sensitive and complex issues. To this end, we propose to create one supernumerary post of CLO, to be designated as Chief Labour Officer (Statutory Minimum Wage) (CLO(SMW)) and reporting to the Assistant Commissioner (Policy Support and Strategic Planning), for a period of three years with immediate effect to lead the SMW team in taking forward the legislative exercise and ensuring the smooth enactment of the SMW Bill and its subsidiary legislation. In addition to overseeing the whole legislative exercise of preparing and steering through LegCo the SMW Bill and its subsidiary legislation, the proposed CLO(SMW) will also be responsible for coordinating among divisions in LD as well as departments and authorities concerned in working out various operational details for the smooth and effective implementation, enforcement and promotion of the SMW legislation.

9. We will review the continued need of the proposed post in the light of the progress of work in relation to the legislation and implementation of the SMW.

/Other

Other Manpower Resources within LD for the Legislative Exercise

10. As mentioned in paragraph 8 above, we will set up a new dedicated team in LD to take forward the legislative exercise and other related work. The team will be led by the proposed CLO(SMW) post and supported by 13 non-directorate staff, comprising two Senior Labour Officers, four Labour Officers, two Assistant Labour Officers and five supporting staff (including three non-civil service contract staff).

Encl. 1 11. The job description of the proposed CLO(SMW) post is at
Encl. 2 Enclosure 1. The proposed organisation chart of the LD showing the new
CLO(SMW) post is at Enclosure 2.

Alternatives Considered

Encl. 3 12. At present, there are five directorate officers, comprising four Assistant Commissioners for Labour and one CLO, supporting the Deputy Commissioner for Labour (Labour Administration) in the Labour Administration Branch (LAB). We have critically examined the possibility of redeploying existing directorate staff in LD to absorb the duties of the proposed post. However, all the directorate officers are already fully engaged in their own schedule of work and are in fact required to take up more duties with a view to meeting the growing demand for employment, labour relations and other related services triggered by the recent economic downturn and the expected rise in unemployment and labour disputes. It is operationally not possible for them to take up the enormity and complexity of the tasks involved in the SMW preparation without seriously adversely affecting the discharge of their current duties. The areas of work for the existing four Assistant Commissioners for Labour and the CLO in the LAB are set out in Enclosure 3.

FINANCIAL IMPLICATIONS

13. The additional notional annual salary cost of the proposed CLO (D1) post at mid-point is \$1,276,800. The full annual average staff cost, including salaries and staff on-cost, is \$1,748,000. We will absorb the additional expenditure from within the existing provision in 2008-09 and will include the necessary provision in the draft Estimates of subsequent years to meet the cost of this proposal.

14. The notional annual salary cost of the ten non-directorate civil service posts mentioned in paragraph 10 above at mid-point is \$6,331,380, and the full annual average staff cost, including salaries and staff on-cost, is \$8,985,000. The annual salary cost of the three non-civil service contract staff is \$684,000.

PUBLIC CONSULTATION

15. We briefed the LegCo Panel on Manpower on 20 November 2008 on the proposed creation of the CLO(SMW) post. Members in general supported the staffing proposal.

BACKGROUND

16. LD will be leading the SMW legislative exercise, with support from other departments including in particular C&SD and the Economic Analysis and Business Facilitation Unit (EABFU). A total of 17 non-directorate civil service posts, comprising one Senior Economist, one Statistician, two Census and Survey Officers, eight Assistant Census and Survey Officers, two Statistical Officers I and three Statistical Officers II/Student Statistical Officers, will be created in the C&SD and EABFU to support the exercise. Of the 17 posts, 15 are for C&SD to undertake new surveys to collect more reliable wage and employment data to identify the number and demographic profile of affected employees under a particular SMW level and to conduct impact analyses of SMW on the operating costs and profit margins of business enterprises, particularly small and medium enterprises. The remaining two posts are for EABFU to provide professional input, especially support from economists and statisticians, to the deliberations of the Provisional MWC.

ESTABLISHMENT CHANGES

17. The establishment changes in LD for the last two years are as follows –

Establishment (Note)	Number of posts			
	Existing (as at 1 December 2008)	As at 1 April 2008	As at 1 April 2007	As at 1 April 2006
A	13#	14	14	14
B	315	316	304	298
C	1 516	1 512	1 406	1 410
Total	1 844	1 842	1 724	1 722

Note:

A - ranks in the directorate pay scale or equivalent

B - non-directorate ranks the maximum pay point of which is above MPS Point 33 or equivalent

C - non-directorate ranks the maximum pay point of which is at or below MPS Point 33 or equivalent

- As at 1 December 2008, there was no unfilled directorate post in LD.

CIVIL SERVICE BUREAU COMMENTS

18. The Civil Service Bureau supports the proposed creation of the supernumerary CLO post for three years to provide dedicated directorate support to take forward the work on SMW legislation. The grading and ranking of the proposed post are considered appropriate having regard to the level and scope of responsibilities and the professional input required.

ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE

19. As the post is proposed on a supernumerary basis, its creation, if approved, will be reported to the Standing Committee on Directorate Salaries and Conditions of Service in accordance with the agreed procedure.

Labour and Welfare Bureau
December 2008

Job Description
Chief Labour Officer (Statutory Minimum Wage)

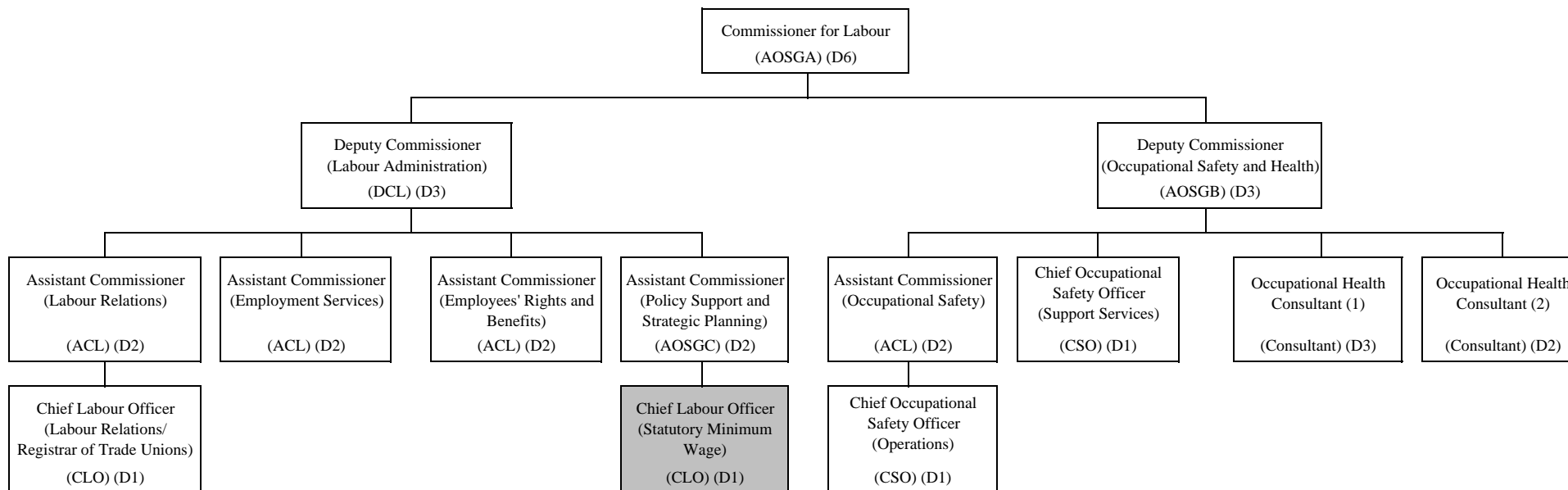
Rank : Chief Labour Officer (D1)

Responsible to : Assistant Commissioner for Labour (Policy Support and Strategic Planning)

Main Duties and Responsibilities –

1. To design a minimum wage scheme which best suits local circumstances, taking into account the possible impact on the economy, business cost, employment and inflation as well as the need to “make work pay”.
2. To set up and support the Provisional Minimum Wage Commission which advises the Government on the initial level of minimum wage.
3. To oversee the research and analysis of local views and overseas experiences on minimum wage legislation, including legal advice on compatibility with other ordinances and obligations.
4. To assist in handling the legislative exercise on statutory minimum wage (SMW) such as attending drafting conferences, examining amendments to the bill and formulating Government’s position, etc.
5. To attend meetings of the Labour Advisory Board and relevant Panels of the Legislative Council and to prepare relevant papers and documents.
6. To work out the implementation details of the SMW.
7. To assess the financial and manpower implications of recommendations made.

Proposed Organisation Chart of Labour Department



Legend

- Proposed supernumerary CLO post for three years from 9 January 2009
- ACL - Assistant Commissioner for Labour
- AOSGA - Administrative Officer Staff Grade A
- AOSGB - Administrative Officer Staff Grade B
- AOSGC - Administrative Officer Staff Grade C
- CLO - Chief Labour Officer
- Consultant - Consultant
- CSO - Chief Occupational Safety Officer
- DCL - Deputy Commissioner for Labour

**Areas of work for the existing directorate officers
in the Labour Administration Branch of Labour Department**

Assistant Commissioner for Labour (Employment Services) formulates policies and strategies in respect of employment services for the unemployed and the disabled, youth employment and training programmes, careers guidance, regulation of employment agencies, and adjudication of minor employment claims. He oversees the work of Careers and Employment Agencies Division, Employment Information and Promotion Division, Employment Services Division, Selective Placement Division and Youth Employment Division, as well as the Minor Employment Claims Adjudication Board of the Labour Department (LD). He is also responsible for mapping out and implementing new employment initiatives and service improvement measures.

2. Assistant Commissioner for Labour (Labour Relations) formulates policies and strategies in respect of labour relations, promotion of tripartite collaboration and good labour-management practices, protection of wages on insolvency, investigation of wage offences and trade union administration. He oversees the work of Labour Relations Division, Registry of Trade Unions, Employment Claims Investigation Division, Wage Security Division and Workplace Consultation Promotion Division under the labour relations programme of LD. He is responsible for reviewing and amending the existing legislation on labour relations, trade unions, and employees' rights and benefits. He also works with the Protection of Wages on Insolvency Fund Board in monitoring and managing the Protection of Wages on Insolvency Fund. Moreover, he coordinates with the Commercial Crimes Division of Police, Legal Aid Department, Official Receiver's Office and Labour Tribunal in various labour matters.

3. Assistant Commissioner for Labour (Employees' Rights and Benefits) formulates policies and strategies in respect of employees' compensation, labour inspection, prosecution, staff training and development of Labour Inspector grade. He oversees the work of Administration and Assessment Section and Central Services Section of the Employees' Compensation Division, as well as the Labour Inspection Division and Prosecutions Division under the employees' rights and benefits programme of LD. He is responsible for reviewing and handling legislation on employees' compensation and compensation-related schemes. He also provides departmental input in pneumoconiosis compensation schemes, occupational deafness compensation scheme and employees' compensation assistance scheme.

4. Assistant Commissioner for Labour (Policy Support and Strategic Planning) formulates policies and strategies on foreign domestic helpers, importation of workers under the Supplementary Labour Scheme, General Holidays Ordinance, Working Holidays Scheme and employment-related discrimination issues. He oversees the work of the Job Matching Centre, the Policy Support and Strategic Planning Division and the Special Duties Team (which formulates and coordinates LD's preparation for legislation on statutory minimum wage). He is also responsible for formulating and coordinating LD's policy inputs in respect of various policy matters such as the Race Discrimination Ordinance, the schemes on admission of talents from overseas and the Mainland and the education hub initiatives, as well as international conventions and obligations.

5. The Chief Labour Officer (Labour Relations)/Registrar of Trade Unions provides support to the Assistant Commissioner for Labour (Labour Relations) in formulating policies and strategies in respect of labour relations, putting forward proposals in legislative reviews and conducting legislative amendment exercises. She assists in steering the operation of the Labour Relations Division and maintaining the industrial peace of Hong Kong. She conciliates in major industrial disputes and also assists in establishing and fostering partnership with various stakeholders of industrial relations. As the Registrar of Trade Unions, she is responsible for performing the statutory functions as required under the Trade Unions Ordinance, and overseeing the administration of the Trade Unions Ordinance as well as the running of the Trade Unions Registry.
