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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 16 April 2009**

Statutory minimum wage - coverage of employees

Purpose

This paper summarizes past discussions by the Panel on Manpower (the Panel) on the coverage of employees under the statutory minimum wage (SMW) regime.

Background

2. Following the financial turmoil and economic downturn in late 1997, wage reduction was reported in many industries. There were calls for the establishment of an SMW in Hong Kong.

3. On 11 October 2006, the Chief Executive (CE) announced in his Policy Address the launching of Wage Protection Movement (WPM) for employees in the cleansing and guarding services sectors. Under WPM, business enterprises were encouraged to follow the lead taken by the Government in paying cleansing workers and security guards wages not lower than the average market rate for the relevant industry/occupation published in the latest Quarterly Report of Wages and Payroll Statistics (the Quarterly Report) issued by the Census and Statistics Department (C&SD).

4. On 10 October 2007, CE stated in his Policy Address that if the mid-term review of WPM indicated that the progress was unsatisfactory, the Administration would further promote WPM as well as proceed with the preparatory legislative work on an SMW. If the overall review of WPM conducted in October 2008 found that the movement had failed to yield satisfactory results, the Administration would introduce a bill on an SMW for security guards and cleaning workers as early as possible in the 2008-2009 legislative session.

5. In his Policy Address 2008-2009, CE referred to the review of WPM and concluded that there were indeed limits in promoting wage protection through voluntary participation. As the result of WPM was unsatisfactory, CE announced that the Government was inclined to go for an across-the-board SMW having regard to social justice. The Labour and Welfare Bureau would press ahead with the preparatory work for the SMW legislation. An advisory Minimum Wage Commission, comprising members from the labour sector, business community, academia and government departments, would be established to study the level of minimum wage as well as the review mechanism, to ensure sensible balance between safeguarding the interests of grassroots workers and forestalling the loss of low-paid jobs, while sustaining economic growth and competitiveness. The Administration aimed to introduce a bill for Members' scrutiny in the 2008-2009 legislative session.

Deliberations of the Panel on Manpower

6. The Panel discussed issues relating to the coverage of employees under the SMW regime at its meetings on 24 April 2008 and 20 November 2008. The deliberations are summarized in the following paragraphs.

7. At its meeting on 24 April 2008, the Panel discussed issues relating to the definition of cleaning workers and security guards in the event of introduction of SMW. The Administration informed the Panel that in considering whether domestic helpers, including foreign domestic helpers (FDHs), should be covered if SMW was introduced in Hong Kong for cleaning workers, the following considerations would seem relevant -

- (a) as in the case of the United Kingdom (UK), though domestic workers also performed cleaning duties, their job was more integrated into the family and household context of the employers;
- (b) the hourly wage rate commanded by local domestic helpers far exceeded the rate under WPM and would most probably be also significantly higher than the SMW wage rate; and
- (c) FDHs were at present accorded various unique employment conditions. These included free accommodation, free passage and free medical treatment as well as a minimum allowable wage (MAW). The acceptance by the FDHs of the terms of the contract, including MAW, was a condition for FDHs' entry and stay in Hong Kong.

8. The Administration informed the Panel that some countries such as France and Australia included domestic workers in their SMW coverage. Other countries, such as South Korea and UK, had explicitly excluded such workers. In UK, some work did not count for the purpose of minimum wage.

Regulation 2 of the National Minimum Wage Regulations 1999 of UK stated that -

"(2) In these Regulations "work" does not include work (of whatever description) relating to the employer's family household done by a worker where the conditions in sub-paragraphs (a) or (b) are satisfied.

(a) The conditions to be satisfied under this sub-paragraph are -

- (i) that the worker resides in the family home of the employer for whom he works;
- (ii) that the worker is not a member of that family, but is treated as such, in particular as regards to the provision of accommodation and meals and the sharing of tasks and leisure activities;
- (iii) that the worker is neither liable to any deduction, nor to make any payment to the employer, or any other person, in respect of the provision of the living accommodation or meals; and
- (iv) that, had the work been done by a member of the employer's family, it would not be treated as being performed under a worker's contract or as being work because the conditions in sub-paragraph (b) would be satisfied.

(b) The conditions to be satisfied under this sub-paragraph are -

- (i) that the worker is a member of the employer's family;
- (ii) that the worker resides in the family home of the employer;
- (iii) that the worker shares in the tasks and activities of the family;

and that the work is done in that context."

9. Some members considered that as the aim of a SMW was to address the problem of working poverty, the coverage of SMW should be as wide as possible. A member drew reference to UK and said that domestic helpers who were provided with free accommodation should be excluded from the definition of cleaning workers for the purpose of SMW. Another member said that as there was in place a MAW for FDHs, it would be for the community to deliberate on the issue.

10. At the Panel meeting on 20 November 2008, the Administration informed the Panel that with the introduction of an across-the-board SMW, the issue of coverage of employees under the SMW bill, including the exclusion or otherwise of domestic workers and other categories of workers, would need to be addressed. The relevant considerations of domestic workers included the present employment terms and hourly wages of local domestic helpers as well as the fact that FDHs were accorded various unique employment conditions, such as free accommodation, free passage, and MAW. The Labour Department would further study the issue, taking into account Hong Kong's local circumstances, the views of the community as well as the experience of other countries.

Relevant papers

11. Members may wish to refer to the following minutes and papers for further details -

Minutes

- (a) Minutes of meeting of the Panel on Manpower on 24 April 2008 [LC Paper No. CB(2)2013/07-08];
- (b) Minutes of meeting of the Panel on Manpower on 20 November 2008 [LC Paper No. CB(2)681/08-09];

Papers

- (c) Administration's paper entitled "Preparatory Work for Introducing a Statutory Minimum Wage for Cleaning Workers and Security Guards if the Wage Protection Movement Fails to Yield Satisfactory Results - Definitions of Cleaning Workers and Security Guards" for the meeting of the Panel on Manpower on 24 April 2008 [LC Paper No. CB(2)1662/07-08(05)]; and
- (d) Administration's paper entitled "Overall review of the Wage Protection Movement for cleaning workers and security guards, and progress report on preparatory work for introducing a bill on a statutory minimum wage" for the meeting of the Panel on Manpower on 20 November 2008 [LC Paper No. CB(2)290/08-09(04)].

12. The above minutes and papers are also available on the website of the Legislative Council (<http://www.legco.gov.hk>).