

For discussion on
20 November 2008

Legislative Council Panel on Manpower

Creation of One Supernumerary Post of Chief Labour Officer in the Labour Department for the Introduction of Statutory Minimum Wage Legislation

PURPOSE

This paper seeks Members' views on our proposal to create one supernumerary post of Chief Labour Officer (CLO) (D1), to be designated as Chief Labour Officer (Statutory Minimum Wage) (CLO(SMW)), in the Labour Department (LD) for a period of three years from 12 January 2009¹ to take forward the legislative exercise on the statutory minimum wage (SMW).

JUSTIFICATION

Adopting a Legislative Approach

2. 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 also apply to their contractors and subcontractors providing cleansing and guarding services.

¹ Subject to the support of this Panel and the Establishment Subcommittee, our plan is to put the staffing proposal to the Finance Committee (FC) for approval at the meeting on 9 January 2009. If the FC endorses the staffing proposal, we will create the CLO post on 12 January 2009, the first working day after FC's approval.

3. The Chief Executive 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.

4. To honour his pledge, the Chief Executive announced in his 2008-09 Policy Address that the Administration would proceed with the legislative work with an aim of introducing a bill on SMW into the Legislative Council 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”, an across-the-board SMW would be introduced.

Legislative Exercise on Statutory Minimum Wage

5. 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 the legislative work, the Administration will also establish a Provisional Minimum Wage Commission (MWC) to advise the Government on the appropriate level of SMW as well as the review mechanism. The Provisional MWC would draw members from the labour sector, business community, academia and government departments, and would become a statutory body with the enactment of the SMW legislation.

6. Alongside the deliberation on the provisions of a future SMW legislation and establishment of the Provisional MWC, LD would, in cooperation with the 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 hand, safeguarding job opportunities for the disadvantaged and 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

7. 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 LO 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. We therefore propose to create one supernumerary post of CLO for a period of three years from 12 January 2009 to lead the SMW team in taking forward the legislative exercise and ensuring smooth enactment of the SMW Bill and its subsidiary legislation. The team, led by the proposed CLO(SMW), will report to the Assistant Commissioner (Policy Support and Strategic Planning).

Other Manpower Resources for the Legislative Exercise

8. Given the wide and complex policy implications of the SMW subject, the Administration plans to establish teams of staff in LD and other departments to take forward the legislative exercise and other related work. The proposed CLO(SMW) post will be supported by a team of 13 non-directorate staff in LD, comprising two Senior Labour Officers, four Labour Officers, two Assistant Labour Officers and five supporting staff. Another 17 non-directorate posts, comprising one Senior Economist, one Statistician, two Chief Statistical 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 the Economic Analysis and Business Facilitation Unit (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.

9. The job description of the proposed CLO(SMW) post is at **Enclosure 1**. The existing and proposed organisation charts of the LD are at **Enclosures 2 and 3** respectively.

ALTERNATIVES CONSIDERED

10. We have critically examined the possibility of redeploying existing directorate staff in LD to absorb the duties of the proposed post. As all the other directorate staff are fully engaged in their own schedule of duties, in particular the expected growing demand for employment, labour relations and other related services in view of 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 of the tasks involved in the SMW preparation without adversely affecting the discharge of their current duties.

FINANCIAL IMPLICATIONS

11. The proposed creation of the CLO(SMW) post will bring about an additional notional annual salary cost at mid-point of \$1,276,800. The full annual average staff cost, including salaries and 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 2009-10 draft Estimates to meet the cost of this proposal and the supporting staff in paragraph 8 above.

WAY FORWARD

12. Subject to Members' comments, we plan to submit the proposal to the Establishment Subcommittee on 17 December 2008 for recommendation to the Finance Committee for approval on 9 January 2009.

Labour and Welfare Bureau
Labour Department
November 2008

Job Description
Chief Labour Officer (Statutory Minimum Wage)

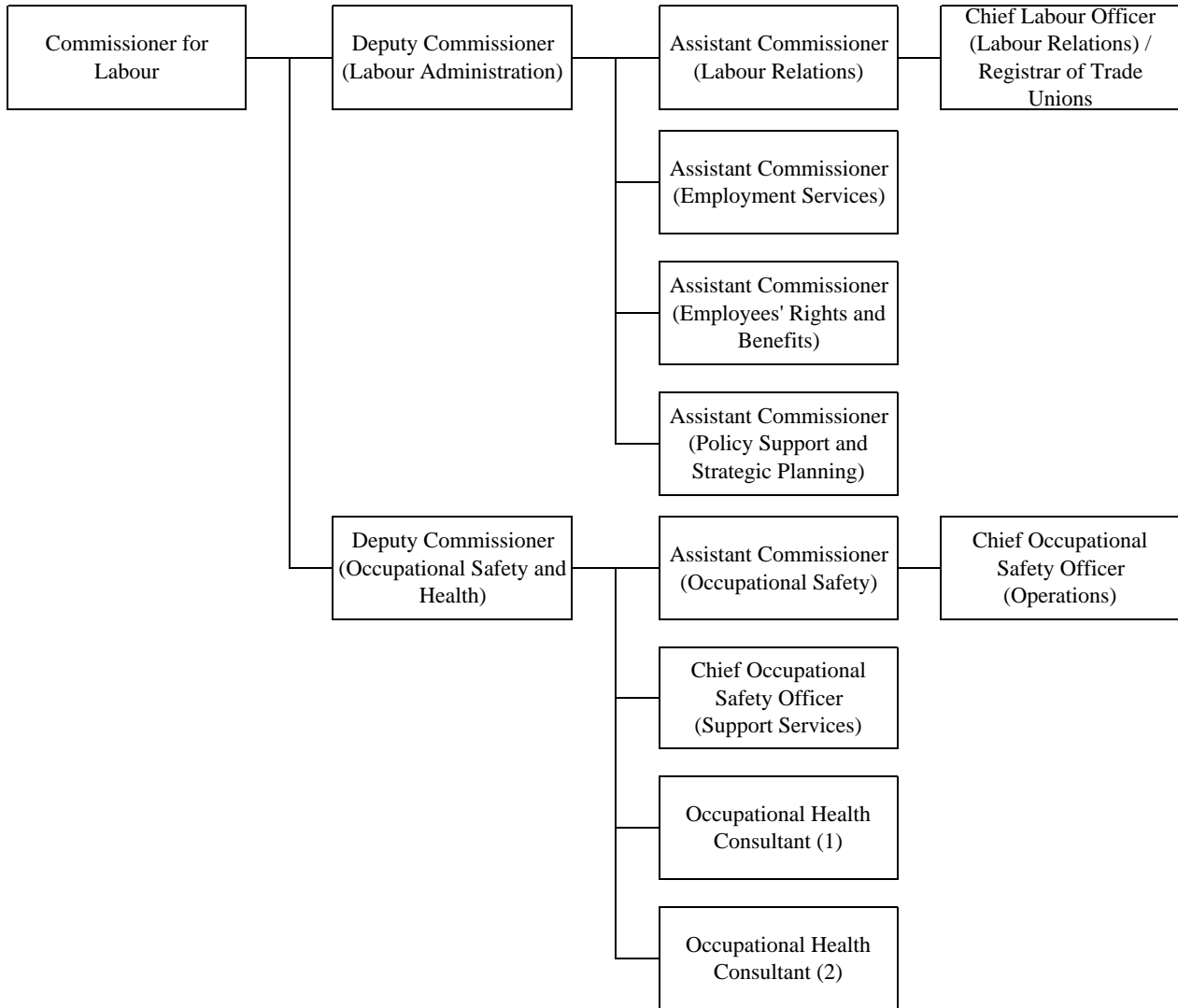
Rank : Chief Labour Officer (D1)

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

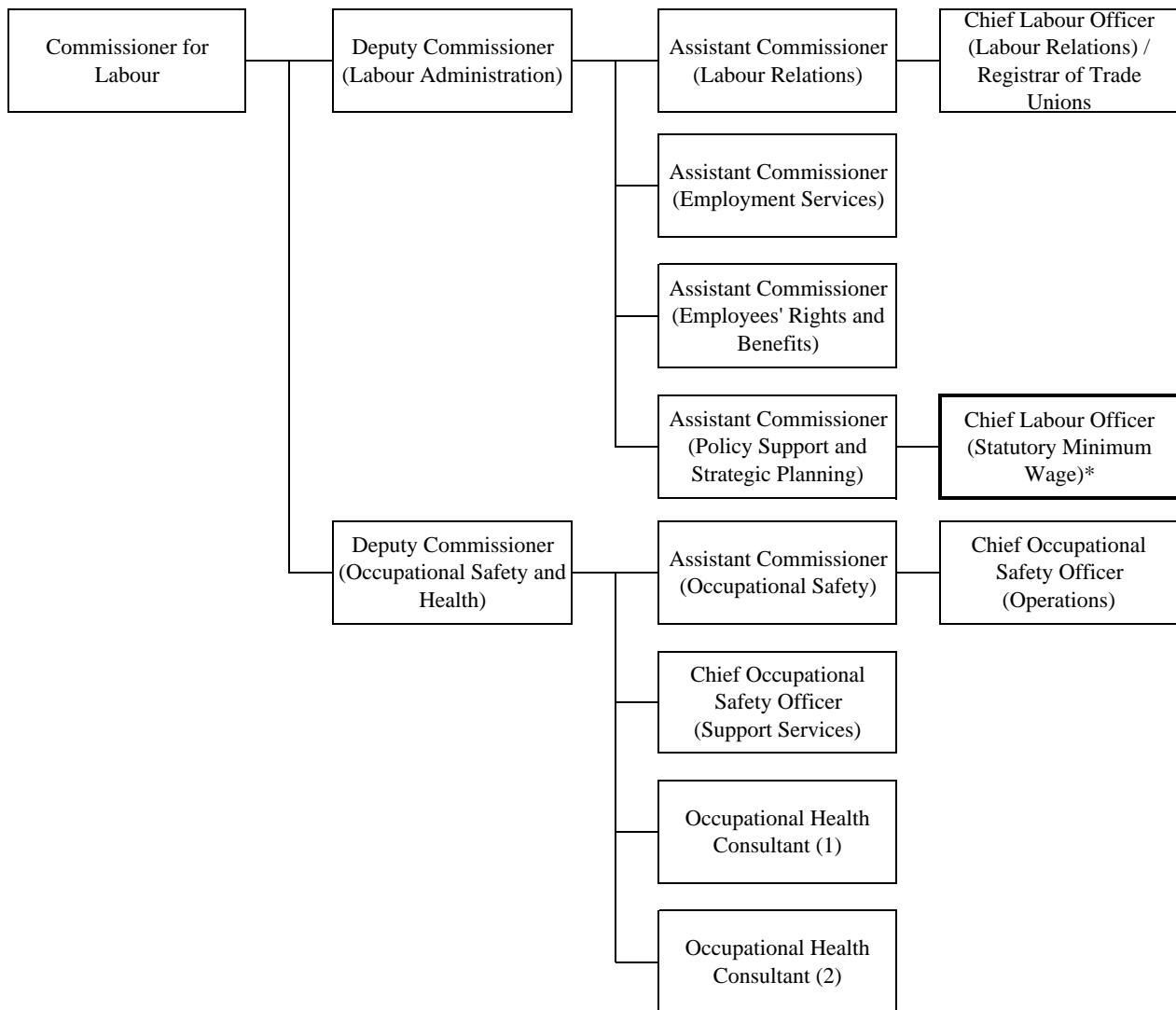
Main Duties and Responsibilities :

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 appropriate level of minimum wage as well as the review mechanism;
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 of the statutory minimum wage (SMW) legislation such as attending drafting conferences, examining amendments 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; and
7. To assess the financial and manpower implications of recommendations made.

Existing Organisation Chart of Directorate Officers in Labour Department



Proposed Organisation Chart of Labour Department



* Post proposed for creation for a period of three years from 12 January 2009.