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**Subcommittee on Subsidiary Legislation relating to
Statutory Minimum Wage**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper summarizes past discussions by the Bills Committee on Minimum Wage Bill ("the Bills Committee") and the Panel on Manpower ("the Panel") on the statutory minimum wage ("SMW") rate, the monetary cap on keeping records of hours worked and commencement of the Minimum Wage Ordinance (Ord. No. 15 of 2010) ("MWO").

Background

2. Schedule 3 to MWO sets out the prescribed minimum hourly wage rate. Section 16 of MWO provides that CE in Council may, by notice published in the Gazette, amend Schedule 3 to specify the SMW rate and its effective date.
3. Section 1(2) of MWO provides that the Ordinance shall come into operation on a day to be appointed by the Secretary for Labour and Welfare ("SLW") by notice published in the Gazette. Section 22 of MWO provides that the monetary cap on keeping records of hours worked by an employee will be set out in the Ninth Schedule to the Employment Ordinance (Cap. 57) ("EO"). Section 49A(3) of EO empowers the Commissioner for Labour to amend the Ninth Schedule to EO by notice published in the Gazette to prescribe the monetary cap on keeping records of hours worked.
4. On 12 November 2010, the Administration published in the Gazette the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010, Minimum Wage Ordinance (Commencement) Notice 2010, Minimum Wage Ordinance (Commencement)(No. 2) Notice 2010 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010.

Deliberations of the Bills Committee

5. In the course of deliberations on the Minimum Wage Bill, the Bills Committee had discussed, among other things, issues relating to the statutory minimum wage rate, the requirement on keeping record of the total number of hours worked by employees, and commencement of MWO.

Criteria and methodology for setting the statutory minimum wage rate

6. Under the Bill, the Minimum Wage Commission ("MWC") must have regard to the need to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs, and to sustain Hong Kong's economic growth and competitiveness when determining the SMW rate. Some members considered that the setting of the SMW rate should be in conformity with Article 7 of the International Covenant on Economic, Social and Cultural Rights. Some members expressed concern about the methodology to be adopted by MWC in deliberating the initial SMW rate.

7. The Administration advised that the Bill sought to establish a SMW regime which would provide a wage floor to forestall excessively low wages but without unduly jeopardizing the labour market flexibility and economic competitiveness and without causing significant adverse impact on the employment opportunities for vulnerable employees. MWC would adopt an evidence-based approach to setting and reviewing the SMW rate through data research and analysis as well as extensive consultations with stakeholders. As SMW would affect many facets of society and the economy, a basket of social, economic and employment indicators that were relevant to, or affected by, the SMW level would be taken into account. MWC would formulate the basket of indicators suitable for Hong Kong's prevailing and changing circumstances.

8. Some members suggested that the SMW rate should be set at a level higher than that of the Comprehensive Social Security Assistance ("CSSA") Scheme. The Administration advised that SMW was a wage floor to forestall excessively low wages and not a living wage. Wages were returns for individual employees' labour. Eligible families in need can separately obtain assistance from the CSSA Scheme. The CSSA Scheme provided assistance to needy persons on a household basis. The current CSSA Scheme already provided a safety net for those households that cannot support themselves financially. It was designed to bring their income up to a level to meet their basic needs.

9. A member considered that the income ceiling of \$6,500 for the Transport Support Scheme ("TSS") and the Employment Navigator Programme ("ENP")

should be converted into an hourly rate and adopted as the basis for setting the SMW rate.

10. The Administration explained that TSS was launched on 25 June 2007 on a one-year pilot basis as one of the poverty alleviation measures. The objective of TSS was to provide time-limited transport subsidy to needy job-seekers and low-income employees living in four designated remote districts, namely, Yuen Long, Tuen Mun, North and Islands, to find jobs and work across districts. Under the pilot TSS, one of the criteria for the Cross-District Transport Allowance was that the applicant had to be engaged in full-time employment and their monthly income levels should be less than or equal to \$5,600. It was roughly the sum of half of the monthly median income (\$5,000) then prevailing and part of the travelling expenses incurred by those living in remote areas and having to commute to work across districts (\$600).

11. The Administration further explained that upon implementation of the pilot TSS, it was identified that most of the unsuccessful applications were ineligible because the applicants' monthly income exceeded the then income ceiling. With salary increasing and inflation picking up, there were views that the income ceiling of \$5,600 per month was too low. There were demands for raising the income ceiling so that those earning slightly more than the amount might also benefit from TSS to help them develop and sustain a work habit. The Labour Department ("LD") subsequently introduced a number of relaxation measures, including raising the monthly income ceiling for eligible persons from \$5,600 to \$6,500.

12. Regarding the proposed ENP, the Administration advised that it sought to address the problem of manpower mismatch, in order to fully utilize the labour productivity and encourage employment. Under the proposed ENP, an incentive of up to \$5,000 would be offered to each eligible ENP participant. This was to encourage the participant to land on and stay in a job for at least three months. One of the eligibility criteria for the incentive was that the job-seeker had to be employed to fill a vacancy listed under LD's employment service and the job concerned was a full-time post offering a salary of \$6,500 or less per month.

13. The Administration advised that in arriving at the threshold of \$6,500 for ENP, reference had been made to the eligibility criteria under TSS. It had also matched this against the salary of vacancies posted by LD and found that a sizable number of job-seekers would benefit should a \$6,500 threshold be adopted. For instance, in the first quarter of 2010, the median salary offered for job-seekers with no previous experience was around \$6,500 per month for posts like sales representatives and shop sales/assistants where manpower mismatch was commonly found.

Requirement on keeping record of the total number of hours worked by employees

14. Employers were required under the Bill to keep records of the total number of hours worked by an employee in a wage period while a prescribed minimum hourly wage rate was in force and to produce those records in a single document with certain other employment records. Some members were gravely concerned that such a requirement would incur substantive administrative work and cost on the part of employers. They requested the Administration to exempt employers from the requirement to keep record of the total number of hours worked for employees who earn more than a specified income.

15. The Administration advised that compliance with the minimum wage requirement was checked by multiplying the total number of hours worked by the employee in the wage period by the SMW rate and comparing against the actual wages payable during that wage period. It was therefore essential for the total number of hours worked to be included in the wage and employment records required under EO. In view of the grave concerns of members and some stakeholders over the related administrative costs of employers, the Administration moved amendments to the Bill to exempt employers from recording the total number of hours worked of employees whose monthly wages were not less than an amount to be prescribed in a schedule to EO. The schedule would be subject to negative vetting by the Legislative Council ("LegCo").

Commencement of the Minimum Wage Ordinance

16. Some members were concerned about the timing for commencement of the enacted Ordinance. Some members were strongly of the view that there should be sufficient time for employers to prepare for the implementation of the enacted Ordinance. Some of these members were concerned that the implementation of the enacted Ordinance may necessitate changes in the terms of employment contracts and hence may lead to massive dismissals. The Administration advised that besides the enactment of the Bill, it would have to prescribe the SMW rate, having regard to the recommendation of the Provisional Minimum Wage Commission ("PMWC"), by way of subsidiary legislation which would be subject to negative vetting by LegCo. The Administration hoped to commence the enacted Ordinance in the first half of 2011. At the request of members, the Administration had undertaken to brief the Panel on Manpower on its guidelines on SMW for employers and employees before the commencement of the enacted Ordinance. In this connection, the Administration will brief the Panel on the guidelines on statutory minimum wage for employers and employees at its meeting on 16 December 2010.

17. A member expressed concern about the adequacy of manpower in LD, including Labour Inspectors, for enforcement of the enacted Ordinance. The Administration advised that it attached great importance to the implementation of the enacted Ordinance and would adopt appropriate measures and strategies to ensure its effective enforcement. Resource requirements for implementing the enacted Ordinance and relevant law enforcement work would be handled according to the established resource allocation mechanism.

18. The Administration stressed that the enforcement work of Labour Inspectors had been suitably adjusted and refined in line with prevailing social developments and economic restructuring over the years. LD reviewed from time to time the manpower resources and workload of various grades in the department, and meets work demands through effective redeployment of resources and adjustment of enforcement strategies. Where necessary, additional resources and manpower would be sought to cope with operational needs. LD also kept its work procedures under review for the purpose of continuous improvement and better manpower utilization.

Deliberations of the Panel

19. At its meeting on 23 March 2010, the Panel was briefed by the Administration on the major findings of the 2009 Annual Earnings and Hours Survey ("AEHS"), which was conducted to identify the level and distribution of wages of employees in Hong Kong.

20. As AEHS was one of the references to be made by PMWC, which was established on 27 February 2009 to advise CE on the initial SMW rate, members enquired about the definition of wages in AEHS and the employees covered by AEHS in connection with the initial SMW rate to be derived by PMWC.

21. The Administration explained that analysis of the distribution of hourly wage in AEHS was based on wages which followed the definition adopted in EO and comprised basic wage/salary, commission, tips, allowances, bonuses of non-gratuitous nature and overtime payment. All the paid overtime hours and overtime payment were counted for the purpose of computing the hourly wage for the survey. AEHS was conducted on all employees under the coverage of EO, except live-in domestic workers.

22. Some members expressed concern about the quality of the wage data collected. The Administration explained that the Census and Statistics Department had consulted chambers of commerce, employers' associations, trade unions, academia and other relevant stakeholders on the methodology of the survey, the design of the sample, and the method for data collection and

processing. In addition, lecturers in the statistical faculty of tertiary institutions were consulted on the computation formulae to ensure that the method adopted was compatible with the sampling method.

23. Some members were concerned whether the survey, which was conducted in the second quarter of 2009 when Hong Kong was adversely affected by the financial tsunami and had a high unemployment rate, was an appropriate reference for determining the initial SMW rate. Given that MWO would not be implemented immediately, they enquired whether PMWC would take into account the findings of AEHS to be conducted in the second quarter of 2010 when determining the initial SMW rate.

24. The Administration advised that the wage statistics in the second quarter were adopted since they were relatively more stable than those in other quarters. In addition, year-on-year comparison on the basis of wage data pertaining to the same reference period in each year would be meaningful, consistent and of good reference value. The results contained in AEHS provided essential inputs for analyses relating to the initial SMW rate, although its statistics might not be the most updated due to the inevitable time lag between data collection and compilation of the AEHS report. PMWC would take into account more recent information such as the standard of living, labour market conditions, economic growth and inflation, and this would offset the inherent limitation of AEHS. In view of the time required to collect data for AEHS and to compile a report, PMWC would unlikely take account of the findings of AEHS in 2010 in determining the initial SMW rate.

25. The Panel discussed the Report of PMWC on the initial SMW rate at its meeting on 18 November 2010. The Panel noted that PMWC had simulated the possible impacts on employees, businesses and output prices as well as inflation based on various assumptions. It had also performed sensitivity tests in various aspects, including knock-on effect on the pay hierarchy, reduction in guaranteed year-end payment/bonus, reduction in meal benefits in kind, and impact on profit conditions after depreciation.

26. Some members were concerned that the findings of a survey conducted in 2009 were used for determining an initial SMW rate to be implemented in 2011. The Administration advised that PMWC had identified a basket of indicators after taking into account the views of stakeholders, experience of other places and socio-economic circumstances of Hong Kong. The basket of indicators included general economic conditions, labour market conditions, competitiveness and standard of living. In recognition of an inevitable time lag between the date on which the recommended initial SMW rate would be submitted and the date of its implementation, PMWC had taken into account the latest performance of the selected indicators in an attempt to address this

limitation. In addition, as some implications of SMW would be either qualitative or could be measured only after SMW implementation, PMWC had also taken into account other relevant considerations, such as enhancing social harmony, enhancing work incentive, enhancing quality of life, raising purchasing power and other potential chain effects.

Relevant papers

27. Members are invited to access the LegCo website at <http://www.legco.gov.hk> to view the relevant papers and minutes of meeting.

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