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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 11 April 2011**

**Statutory minimum wage : reference guidelines
for employers and employees**

Purpose

This paper summarizes the discussions of the Bills Committee on Minimum Wage Bill ("the Bills Committee") and the Panel on Manpower ("the Panel") on the guidelines on statutory minimum wage ("SMW") for employers and employees.

Background

2. Prompted by cases of local workers being paid excessively low wages, there have been calls for decades, notably from pro-labour groups, for the introduction of SMW in Hong Kong. The lack of a consensus on whether a legislative approach should be adopted in preventing excessively low wages led to the launch of a two-year voluntary Wage Protection Movement by the Administration in 2006. As a review of the Movement in October 2008 exposed the limitations of promoting wage protection through voluntary participation, the Chief Executive announced in his 2008-2009 Policy Address that a bill on SMW would be introduced into the Legislative Council ("LegCo").

3. The Minimum Wage Bill was introduced into LegCo on 26 June 2009. At the House Committee meeting on 10 July 2009, a Bills Committee was formed to study the Bill. After detailed scrutiny of the Bill for a year, the Bills Committee supported the Bill, and the Bill was enacted at the Council meeting of 14 July 2010. The Minimum Wage Ordinance ("MWO") seeks to establish an SMW regime and provide a wage floor which will strike a reasonable balance between forestalling excessively low wages and minimizing the loss of

low-paid jobs while sustaining Hong Kong's economic growth and competitiveness.

Deliberations of the Bills Committee

4. Members expressed concern about how "hours worked" should be counted and how a place would be regarded as a "place of employment" under different scenarios in different industries. Some members were concerned about the circumstances under which the travelling time of an employee would be counted as hours worked if the employee had to commute frequently between Hong Kong and the Mainland.

5. The Administration advised that besides the provisions in the Bill, the question as to whether any time or period was hours worked by an employee for SMW computation had to be decided by reference to any agreement or contract between the employer and the employee and to all other relevant circumstances of the case.

6. Some members were concerned that employers and employees of small and medium enterprises might find it difficult to compute hours worked for calculating SMW. They considered that the Administration should launch publicity programmes and draw up industry-based guidelines on the computation of hours worked for SMW purpose.

7. The Administration stressed that the Labour Department ("LD") had undertaken an intensive and extensive engagement and consultation process with various stakeholders and had taken into account the work patterns of employees in different trades and industries with a view to ensuring that the SMW regime was feasible and would strike a reasonable balance among various interests. Prior to the implementation of SMW, LD would vigorously launch publicity and promotional activities so that both employers and employees would understand the legal provisions and their respective obligations and entitlements under the SMW regime. Its engagement process with stakeholder groups would also continue in respect of the preparatory work for implementation, such as the drawing up of guidelines for the concerned sectors.

8. Regarding the question of meal break, the Administration advised that meal break falling outside the meaning of hours worked under the Bill was not hours worked for calculating minimum wage. If meal break was regarded as working hours under the employment contract or agreement between the employer and the employee, it was hours worked in computing minimum wage,

notwithstanding that it was not covered by the Bill. Members requested the Administration to include examples in the guidelines to be drawn up for the concerned sectors.

Deliberations of the Panel

9. The Panel discussed the draft reference guidelines on SMW for employers and employees at its meetings on 16 December 2010 and 20 January 2011. The Administration informed the Panel that -

- (a) employers and employees could agree on their employment terms having regard to the circumstances of individual enterprises and personal needs of employees, including whether meal breaks constituted hours worked by employees;
- (b) as SMW was totally new to Hong Kong, it would take time for the community, especially employers and employees, to get used to it. When employers and employees sought to clarify unclear terms in their existing employment contracts, there should be thorough staff consultation with a view to reaching consensus on lawful, sensible and reasonable grounds through labour-management communication and negotiation. It was pertinent to note that unilateral variation of employment terms and conditions by employers was not allowed under the Employment Ordinance (Cap. 57) ("EO"). Employees who found their employment rights undermined might seek help from the Labour Department ("LD"). Moreover, any provision in the contract of employment seeking to reduce the employee's SMW entitlement should be void; and
- (c) employers should not reduce employees' existing remuneration and employment benefits upon the implementation of SMW. To this end, LD would continue to promote good people management practices. It would also launch extensive promotion and publicity on MWO to enhance employees' understanding of their rights and benefits.

10. Members sought information on whether the Administration would consult stakeholders on the draft reference guidelines. The Administration advised that members of the Labour Advisory Board had been consulted on the draft reference guidelines and the response was generally positive. Over 300 stakeholders had been invited to give views on the draft reference guidelines by the end of December 2010.

11. There were concerns that the guideline regarding whether meal breaks should constitute hours worked for the purpose of computing SMW might cause labour disputes.

12. The Administration explained that employers and employees could agree on their employment terms having regard to the circumstances of individual enterprises and personal needs of employees, including whether meal breaks constituted hours worked by employees, and whether they were remunerated or not. MWO stipulated the circumstances under which meal breaks should constitute hours worked for the purpose of computing SMW. If meal breaks were regarded as working hours of the employee according to his employment contract or agreement with his employer, such hours should also be taken into account in computing SMW.

13. The Administration stressed that employees were the most valuable asset of an enterprise. It was always in the interest of employers to bear in mind the well-being, morale and sentiments of their employees, to treat them well and to maintain harmonious labour relations. The aim of SMW was to protect low-paid employees. Employers should not reduce employees' existing remuneration and employment benefits upon the implementation of SMW. Apart from complying with the legislative provisions, employers should carefully assess the impact on labour relations in contemplating any change to the employment terms. Factors to be considered included employees' request and whether the change was fair and reasonable. Employees would always have a greater commitment to work as well as a stronger sense of belonging when employers responded positively to their reasonable requests. This would enhance the employees' enthusiasm and sense of belonging to the company, and in turn be beneficial to the operation and productivity of the business and achieve a win-win situation for both employers and employees. LD would continue to promote good people management practices.

14. There was a suggestion that besides informing employees who found their employment rights undermined to seek help from LD, the Administration should launch extensive promotion and publicity on MWO to enhance employees' understanding of their rights and benefits.

15. The Administration advised that LD's Labour Relations Division had been providing conciliation service to employers and employees, which recorded a settlement rate of 74% in the third quarter of 2010. LD would also institute prosecution against employers violating EO or MWO if warranted. It would launch extensive promotion and publicity on MWO.

16. Concern was raised on the possibility of some employers taking the opportunity of the implementation of SMW to change the terms and conditions of the existing contracts with employees. The Administration agreed to consider the suggestion of spelling out in the reference guidelines that the implementation of SMW did not necessitate a change to the terms and conditions of existing employment contracts.

Relevant papers

17. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
7 April 2011

**Relevant papers on statutory minimum wage : reference guidelines
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Committee	Date of meeting	Paper
Panel on Manpower	16.12.2010 (Item V)	Agenda Minutes
Panel on Manpower	20.1.2011 (Item V)	Agenda Minutes

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