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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 17 May 2011**

Progress of implementation of statutory minimum wage

Purpose

This paper provides background information and summarizes relevant discussions of the Panel on Manpower ("the Panel") on the progress of implementation of statutory minimum wage ("SMW").

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").

The Minimum Wage Bill ("the Bill")

3. The 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 Bill was enacted at the Council meeting of 14 July 2010. The Minimum Wage Ordinance (Cap. 608) ("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.

Subsidiary legislation on the SMW rate, monetary cap on keeping records of hours worked and commencement of the enacted Ordinance

4. On 12 November 2010, the Administration published in the Gazette four pieces of subsidiary legislation to specify the initial SMW rate of \$28 per hour, the monetary cap of \$11,500 per month below which records are required to be kept on the hours worked by employees, and the date of 1 May 2011 for commencement of the enacted Ordinance. A Subcommittee formed to study the four pieces of subsidiary legislation had completed its scrutiny work.

Subsidiary legislation on the productivity assessment for persons with disabilities

5. MWO provides a special arrangement whereby persons with disabilities and whose productivity may be impaired by their disabilities can choose to have their productivity assessed to help determine whether they should be remunerated at not less than the SMW level or at a rate commensurate with their productivity. Under the special arrangement, a trial period of employment not exceeding four weeks is provided for an assessment to be made of the productivity of a person with disabilities in performing his work in the actual workplace to help determine whether SMW should be discounted.

6. On 7 January 2011, the Administration published in the Gazette two pieces of subsidiary legislation to specify the categories of persons who may become approved assessors for conducting productivity assessments for persons with disabilities and the assessment methods. A Subcommittee formed to study the two pieces of subsidiary legislation had completed its scrutiny work.

Preparation for the implementation of SMW

7. At the Panel meeting on 17 March 2011, the Administration briefed members on the progress of the preparatory work undertaken by the Labour Department ("LD") for the implementation of SMW.

Reference guidelines on SMW

8. Members were informed that LD was working at full steam to prepare for the implementation of SMW. Among others, it had drawn up a set of draft general guidelines on SMW for the reference of employers and employees. In view of the great varieties in the mode of employment, illustrative examples would be provided in the guidelines to elucidate the application of MWO. Given the particular circumstances of individual sectors, LD was working with

industry-based Tripartite Committees, relevant employers' associations, trade unions and stakeholder groups to formulate industry-specific guidelines on SMW to provide employers and employees of several trades which would likely be more affected by the introduction of SMW with more information about the application of MWO. These included the retail, catering, property management, cleaning services and security sectors.

9. Concern was raised over the slow progress of LD in the drafting and preparation of the general as well as the industry-specific guidelines on SMW. Some members pointed out that many employers had yet to fully understand their obligations under the SMW regime and the method for calculating wages. These employers were particularly worried that they might breach the law inadvertently.

10. The Administration advised that the draft of the general guidelines, which were applicable to all trades and industries, had been issued to over 300 stakeholder groups for comments in December 2010. LD was at an advanced stage of finalizing the general guidelines so that they could be ready for wide distribution within March 2011. Regarding the industry-specific guidelines, the Administration explained that since the guidelines were formulated with tripartite members of the relevant industries, the timing of finalizing individual guidelines would depend on the comments of stakeholders of the relevant trade on the draft. LD would expedite the process, with a view to finalizing the industry-specific guidelines before the commencement of MWO on 1 May 2011.

Publicity and promotion

11. On the publicity front, members were informed that LD had vigorously launched publicity and promotional activities to enhance employers' and employees' understanding of the legal provisions and their respective obligations and entitlements under MWO. Up to mid-March 2011, about 9 000 participants had attended some 50 briefings on MWO conducted by LD officers. These briefings included large-scale seminars for employers, employees and the public at large, as well as talks for targetted groups such as owners' corporations, mutual aid committees, property management companies and human resources practitioners. LD had also published leaflets and posters on SMW for wide distribution and display. Advertisements through electronic information panels, cabin banners, seat-backs and cabin bodies on various public transports had been placed. New television and radio announcements of public interest had also been broadcast. LD would also broadcast promotional messages and carry out other publicity activities on various public transports, place newspaper supplements, conduct talks and roving exhibitions, and display banners for outdoor publicity.

Consultation and conciliation services

12. Concerns had been raised over the difficulties encountered by employers and employees in getting through LD's 24-hour special telephone hotline on SMW. Members were concerned that as SMW was a new policy, employers and employees might, at the initial stage of SMW implementation, seek advice from or make enquiries with LD more frequently than expected, particularly when they did not fully understand the SMW requirements. Members held the view that the Administration should ensure that users of the hotline could receive immediate response and support.

13. The Administration advised that SMW was new to Hong Kong and it would take time for the community, especially employers and employees, to get used to it. Employers or employees who had queries about the implementation details of MWO could make enquiries with LD through its 24-hour special telephone hotline and labour relations district offices, visit LD's webpage or make reference to the leaflet on SMW.

Enforcement work

14. The Administration stressed that LD accorded high priority to the implementation and enforcement of SMW. To safeguard employees' rights, LD would adopt a multi-pronged strategy to ensure compliance with the law through conducting proactive workplace inspections to establishments of various trades and mounting targeted enforcement campaigns for low-paying sectors. During workplace inspections, labour inspectors would explain the requirements of MWO to employers and employees who did not have a clear understanding of the calculation of SMW. If problems or irregularities were detected, the labour inspectors would require employers to take appropriate measures to ensure their compliance with MWO, including prompt payment of any wages falling short of the SMW rate to employees.

15. In response to members' concern over issues such as increase in the number of lay-offs and reduction in working hours and fringe benefits after the implementation of SMW, the Administration explained that the Employment Ordinance (Cap. 57) ("EO") provided protection against unreasonable dismissal as well as unilateral variation of employment terms and conditions by employers. Employees who suspected their employment rights being infringed might make enquiries with or seek assistance from LD. LD would step up the publicity of its complaint hotline to encourage employees to report breaches of labour laws. All complaints received would be promptly and thoroughly investigated. LD would make every effort to take out prosecution against offenders where there was sufficient evidence.

Employment support

16. Concern had been raised over the displacement effect brought about by the implementation of SMW. Members sought information about the employment and re-employment services to be provided for displaced workers upon the implementation of SMW.

17. The Administration advised that along with the implementation of SMW, LD would continue to implement its various specialized employment programmes for job seekers. LD provided employment services to all job seekers through a network of 12 Job Centres, two industry-based recruitment centres, the Interactive Employment Service website and exhibitions. To enhance the employment support, LD would also organize job fairs targeting at the low-paying sectors and set up a dedicated hotline for providing employment service for workers affected by the implementation of SMW. Employers who had recruitment needs were also encouraged to approach LD for assistance. The latter would help employers disseminate their vacancy information to job seekers speedily through various channels.

Reference guidelines on SMW for employers and employees

18. On 28 March 2011, LD released the finalized general guidelines for the reference of employers and employees, which were discussed by the Panel at its meeting on 11 April 2011.

19. On the question of whether it was a requirement in law that paid meal break and rest day should be provided to employees, the Administration explained that EO and MWO did not prescribe paid meal breaks and rest days. All along, employers and employees could negotiate and agree on the terms of employment having regard to the nature of work, characteristics of the industries and operational needs of individual enterprises. After an employer and his employees had entered into employment terms specifying that meal breaks were part of the working hours, the employer should not unilaterally vary or remove such employment terms without the consent of employees.

20. Members noted that payments made to an employee in a wage period for any time which did not constitute hours worked, such as payment for rest days and statutory holidays, could not be counted as part of the wages in respect of the wage period. Some members were concerned that the "actual" wages of an employee might vary from one month to another depending on the number of statutory holidays and paid leave taken by an employee in a month, thus causing confusion to employers regarding the requirement on keeping record of the total number of hours worked by employees.

21. The Administration advised that whether an employee was provided with additional remuneration, including paid rest day or meal break, was the crux of all the contention. In determining whether the wages paid to an employee met the statutory requirements, the following two factors should be considered -

- (a) the minimum wage for the employee for the wage period, i.e. the multiple of the total number of hours worked and the SMW rate; and
- (b) the wages payable to the employee in respect of the wage period.

22. Clarification was sought on whether employers could enter into a new employment contract with their employees, with wage period fixed at one year to avoid the likely disputes over the calculation of SMW.

23. The Administration advised that section 22 of EO provided that the wage period in respect of which wages were payable under a contract of employment should, unless the contrary was proved, be deemed to be one month, and a similar provision was found in section 5 of MWO. Employers and employees could, after negotiation, agree to set the wage period at one year. In contemplating any change to the employment terms, both sides should consider the pros and cons of the arrangements in the light of the protection to employees and impact on employers.

24. Concerns were raised as to whether measures would be taken by the Administration to prohibit employers from forcing their employees to enter into a new employment contract for the purpose of reducing their entitlements or benefits. The Administration advised that employees who suspected their employment rights being infringed might make enquiries with or seek assistance from LD.

Wage arrangement for non-skilled workers engaged under government service contracts upon the implementation of SMW

25. The Administration announced on 11 April 2011 that in view of the implementation of SMW, service contractors tendering for government service contracts engaging mainly non-skilled workers after 1 May 2011 must undertake to set the monthly wages under the relevant government service contracts by making reference to the SMW rate plus one paid rest day for every period of seven days. For existing government contracts, if the wages of non-skilled workers were below the SMW requirement, the service contractors would be obliged to pay their non-skilled workers additional remuneration to meet the shortfall with effect from 1 May 2011. As many service contractors

were unable to capture the impact of SMW on their contract prices when offering bids at the tendering stage, the Government decided to make an exceptional arrangement to authorize in principle procuring departments to provide top-up payments to service contractors to cover the increase in wage costs arising solely and directly from the implementation of SMW, in order to protect the employment of existing employees as well as to ensure the continued provision of public services. According to the Administration, some 40 000 non-skilled workers engaged under government service contracts would benefit from the new wage arrangement. A worker working eight hours a day and six days a week would be entitled to monthly wages of not less than \$6,944.

26. When the Panel was briefed on the new wage arrangement at its meeting on 11 April 2011, members expressed grave concern about the legal basis for the Administration to take the decision to mandate service contractors to provide their non-skilled workers with paid rest days. Some members were disappointed that paid meal breaks were not prescribed under the new arrangement.

27. The Administration advised that neither MWO nor EO prescribed whether employers had to pay employees for their meal breaks and rest days. These matters had all along been subject to the agreement between employers and employees having regard to the circumstances of individual enterprises and employees. In deciding on the new wage arrangement to mandate service contractors to pay their non-skilled workers at not less than the SMW rate plus one paid rest day in every period of seven days, the Administration had taken into account in a holistic manner a basket of factors, including the terms and conditions in the existing standard employment contract for use by government service contractors in their employment of non-skilled workers to carry out the service contracts, the impact of SMW on different sectors, legal advice obtained from the Department of Justice, the need of protecting employees' rights and benefits as well as ensuring the prudent use of public funds.

Implementation of SMW in the first week of May 2011

28. Following the implementation of SMW on 1 May 2011, the Administration advised in a press release issued on 8 May 2011 that -

- (a) during the preceding week, labour inspectors had conducted 863 inspections. Of these, 14 employees suspected that their wage level was below SMW and the labour inspectors had immediately explained the requirement of the law to the employers. One telephone complaint about suspected non-compliance of the law was received and LD had followed up the case;

- (b) the implementation of minimum wage had not affected the sentiment of employers to hire staff;
- (c) LD's telephone hotline received an average of 1 000 enquires a day and only six people had approached LD for employment assistance because of displacement arising from SMW; and
- (d) implementation of SMW was generally smooth in the first week of May 2011. The Administration was monitoring the situation closely and helping both employers and employees to comply with the law and to help all employees affected by the implementation of SMW.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
13 May 2011

Appendix

Relevant papers on Progress of implementation of statutory minimum wage

Committee	Date of meeting	Paper
Panel on Manpower	17 March 2011 (Item V)	Agenda Minutes
Legislative Council	6 April 2011	Official Record of Proceedings (Question 12)
Panel on Manpower	11 April 2011 (Items IV and V)	Agenda Minutes
Legislative Council	4 May 2011	Official Record of Proceedings (Question 12)
Legislative Council	11 May 2011	Motion on "Temporarily suspending the implementation of the Minimum Wage Ordinance"

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