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**Panel on Manpower**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 16 December 2010**

**Productivity assessment of persons with disabilities  
under the statutory minimum wage regime**

**Purpose**

This paper summarizes the discussions of the Bills Committee on Minimum Wage Bill ("the Bills Committee") on the productivity assessment of persons with disabilities ("PWDs") under the statutory minimum wage regime.

**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 a statutory minimum wage ("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. The Bills Committee had completed its scrutiny work and the Bill was enacted at the Council meeting of 14 July 2010.

4. The Bill provided a special arrangement whereby PWDs whose productivity might be impaired by their disabilities might choose to have their productivity assessed to help determine whether they should be remunerated at not lower than the SMW level or at a rate commensurate with their productivity. A PWD was defined as a person who holds a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation. Under the special arrangement, a trial period of employment not exceeding four weeks was provided for an assessment to be made of the productivity of a PWD in performing his work in the actual workplace to help determine whether SMW should be discounted.

## **Deliberations of the Bills Committee**

### Cost of assessment

5. Some members were of the view that the cost of assessment of the degree of productivity of a PWD should be borne by the Administration. The Administration advised that there were views from some stakeholders that PWDs whose productivity was affected by their disabilities and thus need to invoke the special arrangement were a vulnerable group and should not be asked to bear the assessment cost. Neither should the employers shoulder the cost, as this might dampen their incentive to employ PWDs. There were thus calls for the Government to take up this responsibility and pay for the assessment cost. While the Administration would consider this suggestion, it would have to ensure that the assessment cost, if paid from the public coffers, should be reasonable in quantum and would not inadvertently provide a financial incentive for possible abuse of the special arrangement. Discussions with the rehabilitation organizations on the details of the assessment mechanism were underway to map out the arrangement for the payment of the assessment fee. The Administration undertook to finalize the arrangement for the assessment cost and advise the Panel on Manpower of the party responsible for bearing the costs for assessment of the degree of PWDs' productivity before the enacted Ordinance came into operation.

### Requirement for the certificate of assessment to be signed by the person with disability, the employer and the approved assessor

6. Under the Bill, the degree of productivity that could be achieved by a PWD in performing his work must be stated in a certificate of assessment, which should be signed by the PWD, the employer and the approved assessor. Some members queried the need for the certificate to be signed by a PWD and his employer. The Administration advised that a PWD and his employer

should be well aware of the outcome of assessment to avoid unnecessary misunderstanding and disputes over computation of the minimum wage to which the PWD employee was entitled. Thus, the certificate of assessment must be signed by the three parties concerned, including the PWD, the employer and the approved assessor.

7. Members were concerned about the status and effect of the certificate of assessment in the event that an employer or a PWD refused to sign the certificate.

8. The Administration advised that under the Bill, an approved assessor must provide a certificate of assessment after conducting an assessment of a PWD's productivity in performing the work, and the certificate must be signed by the PWD, the employer and the approved assessor. As a matter of fact, in the event that the certificate of assessment was not signed by the employer and/or the employee owing to disagreement over the outcome of the assessment, it was unlikely that the parties would continue their employment relationship. Nonetheless, if their employment relationship continued for various reasons, the PWD employee should be paid wages at or above the SMW rate with effect from the following day after the assessment was conducted, given that the assessed rate could not take effect when the certificate of assessment was not signed by the employer and/or the employee.

#### Qualifications required of an approved assessor

9. Some members were concerned about the qualifications required of an approved assessor who carried out the productivity assessment. The Administration explained that an approved assessor should hold the profession or occupation or qualification as specified by the Commissioner for Labour and possess the experience in providing vocational rehabilitation or other services in relation to the employment of PWDs. It was the Administration's intent that the approved assessors should be eligible persons, such as registered social workers, registered occupational therapists and registered physiotherapists, with experience in providing vocational rehabilitation or other services in the employment of PWDs. Information on the assessors approved by the Commissioner for Labour would be included in a list of approved assessors. A PWD who decided to invoke the assessment mechanism was entitled to select any of the approved assessors from the list to conduct his productivity assessment.

10. The Administration pointed out that while some assessors might currently work in the Government or the Hospital Authority, they would not be acting as a servant or an agent of the Government when they conducted a productivity

assessment under the special arrangement, unless they were conducting the assessment in the capacity as a public officer. Approved assessors would act as independent persons in the course of conducting the productivity assessments. They should conduct the assessment impartially in accordance with section 4 of Schedule 2 in order to determine the productivity of a PWD in performing his work. In the event of misconduct on the part of an approved assessor, the Commissioner for Labour might consider withdrawing the approval, and the PWD employee or employer might also lodge a complaint with the professional authority concerned.

### **Relevant papers**

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

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