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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the special meeting on 12 May 2012**

Statutory minimum wage rate

Purpose

This paper highlights the major concerns and views of the Legislative Council ("LegCo") Members and the Panel on Manpower ("the Panel") on the subject of statutory minimum wage ("SMW") rate in the Fourth LegCo.

Background

2. The Minimum Wage Ordinance (Cap. 608) ("MWO"), enacted on 17 July 2010, seeks to establish a SMW regime. Section 16 of MWO provides that the Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3 to specify the SMW rate and its effective date. The Provisional Minimum Wage Commission ("PMWC"), comprising members from the labour, business and academic sectors as well as public officers, was set up in February 2009 to advise the Administration on the appropriate level of the initial SMW rate. PMWC submitted its report in October 2010 and recommended that the initial SMW rate should be set at \$28 per hour.

3. 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. These four pieces of subsidiary legislation is made to specify the initial SMW rate of \$28 per hour and the monetary cap of \$11,500 per month below which records are required to be kept on the hours worked by employees, and to appoint 1 May 2011 as the date for commencement of MWO.

4. The Minimum Wage Commission ("MWC") is an independent statutory body established under Part 3 of MWO and is tasked to report to the Chief Executive in Council on its recommendation about the SMW rate at least once in every two years. MWC will submit its recommendation report on the SMW rate by the end of October 2012 at the latest.

5. MWC adopts an evidence-based approach in deliberating the SMW rate. Apart from making reference to the relevant data in a basket of indicators, it needs to undertake detailed analysis and conduct impact assessment based on wage distribution data and findings of other surveys, and consider views from various sectors of society in order to recommend the appropriate SMW rate.

6. On 22 March 2012, MWC was briefed on the survey results of the 2011 Annual Earnings and Hours Survey ("AEHS") released by the Census and Statistics Department ("C&SD"). As the reference period of the 2011 AEHS was May to June 2011, it reflects the wage distribution of employees after the implementation of SMW, which came into effect on 1 May 2011. According to the survey results of the 2011 AEHS, the lower quartile, median and upper quartile of the hourly wage of employees in Hong Kong in May to June 2011 were \$36.0, \$52.4 and \$82.5 respectively. MWC has commenced an eight-week public consultation to invite views on the SMW rate until 28 May 2012.

Deliberations of the Bills Committee and the Subcommittee

7. In the course of deliberations on the Minimum Wage Bill and the four pieces of subsidiary legislation relating to SMW referred in paragraph 3, the Bills Committee and the Subcommittee on Subsidiary Legislation relating to Statutory Minimum Wage, had discussed, among other things, issues relating to the SMW rate.

Criteria and methodology for setting the SMW rate

8. In response to members' concern about the methodology for setting the initial SMW rate, the Administration advised that the Minimum Wage 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. MWC would take into account a basket of

social, economic and employment indicators that were relevant to, or affected by, the SMW level.

Factors taken into account by PMWC in its deliberation of the initial SMW rate

9. Concern was raised that while the initial SMW rate was to be implemented on 1 May 2011, the SMW rate had been recommended by PMWC by reference to the wage data collected in the 2009 AEHS.

10. According to the Administration, there was inevitably a time lag between data collection and availability of the statistics. In recognition of this limitation, PMWC had already taken into account relevant indicators with more up-to-date data sources, especially with regard to business operating conditions and the latest wage trend, as well as the latest inflation and economic forecasts.

11. The Administration also advised that PMWC had identified a basket of indicators after taking into account the views of stakeholders, experience of other places and the socio-economic circumstances of Hong Kong. The basket of indicators included general economic conditions, labour market conditions, competitiveness and standard of living. As some implications of SMW would be either qualitative or could be measured only after the implementation of SMW, 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.

12. Another concern was raised as to whether PMWC had taken into account the inflation forecast for the period up to 1 May 2011 in conducting impact assessment of the initial SMW rate. The Administration advised that inflation was one of the important considerations of PMWC in deliberating the initial SMW rate. During the deliberation and in conducting impact assessment, PMWC had not only taken into account the latest inflation situation but also the inflation forecast, in recognition of the time lag in annual statistics as well as the inevitable time lag between the submission of the recommendation on the initial SMW rate and the date of its implementation.

Factors to be taken into account by MWC in its review of the SMW rate

13. Some members were concerned about the statistical data to be considered by the MWC in its review of the SMW rate. The Administration advised that as specified in MWO, in the review of the SMW rate, 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. Various

statistical data including the wage data collected through AEHS and the operating characteristics of business through other surveys conducted by C&SD would be available for MWC's consideration. Surveys on the impact of SMW, in particular, on vulnerable workers, low paying sectors and small and medium enterprises would also be conducted.

14. There was a view that as depreciation was a significant cost element especially in the catering industry, it should be taken into account in determining the SMW rate. The Administration advised that C&SD would gather more information on depreciation in its future collection of data relating to the operating cost of enterprises.

Timing for future reviews of the SMW rate

15. Some members were of the view that the SMW rate should be reviewed annually. They considered that the review of the initial SMW rate should commence as soon as possible so that the second SMW rate could be implemented in the first half of 2012. At its meeting on 30 November 2010, the Subcommittee passed a motion calling on the Administration to initiate a review based on the 2010 AEHS and implement the second SMW rate in the first half of 2012.

16. The Administration advised that MWO required MWC to make a report on the SMW rate at least once every two years. The SMW rate was formulated through an evidence-based approach. C&SD conducted AEHS every year to collect comprehensive data on the level and distribution of wages, employment and demographic characteristics of employees in Hong Kong. With the provisions on MWC coming into effect on 12 November 2010, a report on the SMW rate had to be made by MWC before mid-November 2012. In line with the evidence-based approach, the situation would be closely monitored with a view to conducting a review of the SMW rate at an appropriate time. More detailed statistical data would be collected so as to ascertain and verify the impact assessment of the implementation of SMW. Given the high degree of external orientation of Hong Kong's economy with a linked exchange rate system, it was important to ensure that the SMW rate would not have significant adverse impact on the employment opportunities of the vulnerable employees or unduly jeopardize the labour market flexibility and economic competitiveness of Hong Kong.

17. Noting a time lag of about six months between the announcement of the initial SMW rate and its implementation, some members were concerned whether there would also be a six-month time lag in the implementation of future SMW rates.

18. The Administration explained that time was needed for the drawing up of general guidelines for employers and employees, the industry-specific guidelines, and publicity on the implementation of SMW. Time was also needed for some establishments to review and, if necessary, revise their business service contracts. In view of the concern of some members, the Administration agreed to explore whether there was room for shortening in future the lead time between the setting of an SMW rate and its implementation date.

Possible impact of the initial SMW rate

19. As advised by the Administration, the chain effects arising from the interactions of the reaction of different parties to SMW could only be ascertained some time after the implementation of SMW. Given the limitations and constraints arising from the lack of experience and empirical evidence guiding the setting of the appropriate initial SMW rate, the actual impact of SMW could only be identified and assessed over a longer period of time through dedicated studies after the implementation of SMW. To facilitate future reviews of the SMW rate, survey and research studies would be conducted to monitor and evaluate the actual impact of SMW, in particular, on vulnerable workers, enterprises in the low paying sectors and small and medium enterprises, and also with special reference to the changes in detailed pay hierarchy to facilitate an in-depth examination of possible knock-on effects.

Deliberations of the Panel

20. The Panel discussed issues relating to the implementation of the initial SMW rate at its meetings on 11 April 2011 and the major findings of AEHS at its meetings on 17 March 2011 and 12 April 2012. The major concerns of members are summarized in the ensuing paragraphs.

Meal breaks and rest days

21. According to the Administration, neither MWO nor the Employment Ordinance (Cap. 57) ("EO") prescribed that meal breaks or rest days should be with pay or otherwise. These matters had all along been subject to the agreement between employers and employees having regard to the circumstances of individual enterprises and operational needs. MWO stipulated the circumstances under which meal breaks should constitute hours worked for the purpose of computing SMW: if an employee was, during his meal break, in attendance at a place of employment in accordance with the

contract of employment or with the agreement or at the direction of the employer, such time should be included in the hours worked by the employee for computing SMW, irrespective of whether he was provided with work or not. 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.

Frequency of review of the SMW rate

22. Some members considered it necessary to review the SMW rate annually, so as to shorten the time lag between data collection on the SMW rate and its implementation date. The Administration advised that MWO had clearly specified that MWC should make a report on the SMW rate at least once every two years. While the SMW rate would be determined in accordance with the evidence-based principle, C&SD would undertake an AEHS to collect the related information. This would facilitate a review of the SMW rate, when supported by relevant data and when there was a need for it.

23. In response to a member's enquiry as to whether the time required for the compilation of statistics concerning AEHS and the General Household Survey could be compressed, so that the implementation of future SMW rate could be advanced, the Administration advised that C&SD normally required eight months for completion of data analysis, which was broadly comparable with that of overseas countries such as the United Kingdom and Australia. Noting members' concern about the time lag, the Administration would strive to speed up the process. The Administration pointed out that in recognition of the inevitable time lag between data collection and availability of the statistics, MWC would take into account a basket of indicators, supplementary statistical data and other relevant considerations when studying the SMW rate.

SMW-induced knock-on effect

24. Members sought information on the estimated period of time through which the ripple effect of SMW would sustain. There was a view that the Administration should commission a tertiary institution to conduct a "tracking study" on employers and employees, so as to monitor the empirical magnitude of knock-on effects after the implementation of SMW.

25. According to the Administration, the labour market had tightened up in 2011, due to the buoyant demand for labour along with the economic upturn. The seasonally adjusted unemployment rate was 3.4% in the first quarter of 2012. This would have direct impact on the wages and incomes across all segments of the workforce. LD had commissioned a consultancy to conduct a

study targeting employees working in the catering and the retail trade industries, for the purpose of assessing the impact of the implementation of SMW on employees in these two selected sectors including its effect on pay hierarchy and the likely impact of knock-on effect. To ensure the objectivity of the study, a sample of about 1 000 business undertakings was selected for the survey. The findings of the consultancy study were expected to be available in mid 2012.

Relevant papers

26. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
10 May 2012

**Relevant papers on
the statutory minimum wage rate**

Committee	Date of meeting	Paper
Panel on Manpower	23.3.2010 (Item III)	<u>Agenda</u> <u>Minutes</u>
Bills Committee on Minimum Wage Bill	---	<u>Report</u>
Subcommittee on Subsidiary Legislation relating to Statutory Minimum Wage	---	<u>Report</u>
Panel on Manpower	17.3.2011 (Items V and VI)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	12.4.2012 (Item V)	<u>Agenda</u>

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