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Paper for the House Committee meeting

**Report of Subcommittee on
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2015 and
Employment Ordinance (Amendment of Ninth Schedule) Notice 2015**

Purpose

This paper reports on the deliberations of the Subcommittee on Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2015 and Employment Ordinance (Amendment of Ninth Schedule) Notice 2015 ("the Subcommittee").

Background

2. The Minimum Wage Ordinance (Cap. 608) ("MWO"), which was enacted on 17 July 2010, has established the Statutory Minimum Wage ("SMW") regime. Section 16(1) of MWO provides that the Chief Executive ("CE") in Council may, by notice published in the Gazette, amend Schedule 3 to specify the SMW rate (known as the prescribed minimum hourly wage rate) and its effective date. Section 49A(3)(ea) of the Employment Ordinance (Cap. 57) ("EO") provides that an employer is required to record the total number of hours worked by an employee in a wage period if the employee is an employee within the meaning of MWO and the wages payable to that employee in that wage period are less than the monetary cap as specified in the Ninth Schedule to EO (or a proportionate amount if the wage period concerned is not a month). Section 49A(6) 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 recording the total number of hours worked by employees.

3. The Minimum Wage Commission ("MWC"), comprising members from the labour, business and academic sectors as well as public officers, is tasked with reporting to CE in Council its recommendation about the SMW rate. MWC submitted its report to CE in Council in October 2014 and recommended that the hourly SMW rate be increased from \$30 to \$32.5.

4. On 16 January 2015, the Administration published in the Gazette the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2015 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2015 ("the Notices").

The Subcommittee

5. At the House Committee meeting on 23 January 2015, Members agreed to form a subcommittee to study the Notices. The membership list of the Subcommittee is in **Appendix I**.

6. Under the chairmanship of Dr Hon CHIANG Lai-wan, the Subcommittee has held three meetings with the Administration, including one meeting to receive public views. The list of organisations and individuals which/who have provided views to the Subcommittee is in **Appendix II**.

7. To allow more time for the Subcommittee to study the Notices, the scrutiny period of the Notices has been extended from 11 February 2015 to 18 March 2015 by a resolution of the Council passed on 11 February 2015.

Deliberations of the Subcommittee

The recommended SMW rate

8. The Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2015 is made to increase the prescribed minimum hourly wage rate from \$30 to \$32.5 with effect from 1 May 2015. According to the Administration, MWC has by unanimous consensus recommended in its report that the current SMW rate of \$30 per hour be adjusted to \$32.5 per hour, representing an increase of \$2.5 or 8.3%. CE in Council has accepted and adopted MWC's recommended rate of \$32.5 per hour as the revised SMW rate.

9. Diverse views have been expressed on the revised SMW rate at the Subcommittee's meetings. Some members share the concern of employers' associations/representatives that as labour cost is the main portion of the operation cost of the business of small and medium enterprises ("SMEs"), SMEs have been hard hit by the implementation of SMW. In face of both the slow global and local economic growth, there is little room for upward adjustment of the SMW rate, especially in the restaurant sector which is running at a thin profit margin. These members are of the view that the SMW rate should be maintained

at its current level of \$30 per hour. Nonetheless, it is barely acceptable for the SMW rate to be raised to no higher than the recommended SMW rate of \$32.5 per hour in tandem with inflation.

10. Some other members, however, share the concern of labour unions/concern groups that the revised SMW rate should be in the range of \$35 to \$40 per hour, in order to cope with rising living costs. These members have pointed out that the proposed 8.3% increase in the SMW rate is lower than the increase of 9.3% in Consumer Price Index ("CPI")(A) during the same period. An increase of the SMW rate by \$2.5 per hour can hardly improve the living standard of grassroots employees and relieve the problem of working poverty. In these members' view, the main causes for the operating difficulties encountered by the restaurant and retail sectors are high rentals and the increasing prices of raw materials, given that increases in food prices and rentals have accounted for about 70% of the inflation rate over the past four years.

11. The Administration has advised that as specified in MWO, MWC in its review of the SMW rate must have regard to the need to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimising the loss of low-paid jobs while sustaining Hong Kong's economic growth and competitiveness. Income of grassroots workers has continued to improve after the introduction of SMW. The Administration has further advised that SMW provides a wage floor to forestall excessively low wages. Eligible low-income families may apply for the Comprehensive Social Security Assistance ("CSSA") Scheme to meet their basic needs and the upcoming implementation of the Low-income Working Family Allowance Scheme would also help address the needs of low-income families.

12. The Administration has stressed that in making its recommendation on the revised SMW rate, MWC has considered, among other things, the wage distribution data from the Annual Earnings and Hours Survey ("AEHS") conducted by the Census and Statistics Department ("C&SD") and an array of indicators covering information on the socio-economic and labour market conditions as well as Gross Domestic Product ("GDP") and price forecasts, and inflation is only one of the factors considered. MWC has also taken into account other relevant considerations that are related to the review of the SMW rate but cannot be fully quantified such as enhancing incentive to work, additional costs induced by increase in wages, and impact on wage differentials across sectors or positions. To adopt a more holistic approach in reviewing the SMW rate, MWC has also conducted scenario testing for the local economic outlook in view of the time gap between recommending the SMW rate and its implementation. Furthermore, MWC has considered views of various sectors of the community in

order to recommend an appropriate SMW rate. The Administration is of the view that MWC has ably discharged its statutory function of reviewing the SMW rate with reasonable and balanced deliberation.

Impact of SMW on employers and businesses

13. Some members have expressed concern that the implementation of SMW has not only pushed up the wages of lower-paid employees, but also induced a knock-on effect on the pay hierarchy and the ripple effect. Apart from raising employees' wages to the revised SMW level, employers also need to increase the pay of employees at higher ranks in order to maintain staff morale of employees of higher ranks and retain these employees, in turn adding further to the labour costs especially for SMEs which find it more difficult to pass on additional costs to consumers. Moreover, SMW has narrowed the wage gap among various industries and it has been difficult for specific industries with comparatively less favourable working conditions to retain existing staff and recruit new entrants. In order to retain talents, employers often have to offer pay rise to employees with wage rate above the statutory level. Such phenomenon is particularly profound in the restaurant sector which is currently facing an acute problem of labour shortage.

14. Some other members, however, hold the view that recruitment difficulties faced by certain sectors should not be regarded as the negative impact brought about by the implementation of SMW. They consider that this may be caused by the robust economy in Hong Kong and the low unemployment rate.

15. The Administration has advised that in assessing the impact of the recommended SMW rate on businesses, MWC has examined in depth the additional wage bill entailed. Based on the definition of wages under MWO, the estimated additional wage bill arising from the recommended SMW rate of \$32.5 per hour for all enterprises would be about \$1.10 billion. The total additional wage bill would be higher at around \$1.36 billion (up by approximately 0.2%) if rest day and meal break pay (for employees who are granted these payments according to their employment contract or agreement) beyond the statutory requirements and the impact of knock-on effect are included. The increase in wage bill would be more notable in the labour-intensive and low-paying sectors, such as 3% for the cleaning services sector, 2.9% for the security services sector, 1.6% for the real estate maintenance management sector, 1.6% for fast food cafes and 1.1% for elderly homes, taking into account rest day and meal break pay (for employees who are granted these payments according to their employment contract or agreement) beyond the statutory requirements as well as the impact of knock-on effect. MWC has estimated that the additional wage bill entailed by the

recommended SMW rate should be manageable for most enterprises (including the low-paying sectors and SMEs).

16. Regarding the impact of the recommended SMW rate on inflation, the Administration has advised that assuming a full pass-on of the additional wage bill to prices of products and services and taking into account the first round of wage-price spiral effect, MWC has estimated that Composite CPI would go up by about 0.3 percentage point. As a measure of inflation on the grassroots, the corresponding increase in CPI(A) would be around 0.4 percentage point to 0.5 percentage point. However, as it is unlikely for all enterprises to fully pass on the additional wage bill to consumers, the actual impact of the recommended SMW rate on inflation should be smaller than the above estimate.

17. Some members have expressed concern as to whether the Administration has underestimated the impact of the recommended SMW rate on businesses and inflation. To better assess the actual impact of SMW, these members have suggested that the Administration should carry out assessments on the accuracy of its previous estimates on additional wage bill arising from the revision of the SMW rate and provide such findings for the consideration of MWC in the next review of the SMW rate.

Impact of SMW on employees

18. Taking into account the latest data from the General Household Survey and the Labour Earnings Survey conducted by C&SD and based on the assumptions on different economic scenarios, MWC has roughly estimated that in the first half of 2015 and at the time just before the SMW rate is raised to the recommended level, there would be approximately 150 000 employees (accounting for about 5% of all employees) earning an hourly wage less than \$32.5. Regarding the impact on employment, members are given to understand that SMW has brought more visible positive effect on the income of lower-paid employees and narrowed their wage differentials with employees of higher ranks. Implementation of SMW has encouraged more people to participate in the labour market, as reflected from the rise in total employment from 3 542 300 in the pre-SMW level to 3 797 200 in October to December 2014, up by 254 900. Specifically, the average monthly employment earnings of full-time employees in the lowest decile group has increased by about 35% in the past three years or so, which represents an increase of some 14% after netting out inflation, thus relieving the problem of working poverty to some extent. The numbers of unemployment cases and low earnings cases under the CSSA Scheme as at December 2014 also showed a respective reduction of 36% and 46% over those before the implementation of SMW.

19. Most members take the view that the positive impacts of the implementation of SMW have outweighed the negative ones, given that the total employment goes up persistently and the overall unemployment rate decreases. These members are particularly impressed by the fact that the increase in wages induced by the implementation of the SMW regime has encouraged more potential labour force and those with family responsibilities (in particular the women labour force) to enter the labour market.

Review frequency of the SMW rate

20. Some members have expressed grave concern that the findings of AEHS conducted in the preceding year are used for determining the revised SMW rate to be implemented in the following year. They are concerned whether the time required for the compilation of AEHS statistics can be compressed, so that the implementation of future SMW rate can be advanced. These members have also strongly called on the Administration to review and adjust the SMW rate on an annual basis so as to address the problem of time lag between data collection and implementation of the revised SMW rate as well as to avoid employees' purchasing power being eroded by inflation.

21. The Administration has explained that about seven to eight months are required for data collection and analysis in AEHS, which is broadly comparable with similar surveys conducted by other overseas economies. In addition to the findings of AEHS, MWC has made reference to a large number of relevant data (e.g. labour supply and demand, inflation, GDP and price forecasts, unemployment rate, etc.) which are released and updated more frequently. MWC has also conducted scenario testing for the local economic outlook in view of the time gap between recommending the SMW rate and its implementation.

22. On the frequency of review of the SMW rate, the Administration has advised that MWO requires that the SMW rate should be reviewed at least once in every two years, without precluding more frequent rate review should circumstances so warrant. This pragmatic arrangement has been the consensus when legislating on SMW. If the SMW rate is reviewed annually, some employers who wish to maintain their flexibility in controlling labour costs may tend to offer short-term employment contracts and replace their permanent staff with casual workers, leading to fragmented employment. Moreover, employees may suffer from a more immediate wage decrease in the event of a sharp economic downturn if the SMW rate is reviewed annually. As SMW has been implemented for only a few years with limited experience, the existing flexible

arrangement of reviewing the SMW rate at least once in every two years should be maintained.

23. Some members have stressed that the Administration should consider spelling out explicitly the circumstances and considerations under which it will kick start the review of the SMW rate ahead of the two-year cycle. The Administration has advised that MWO stipulates that it is CE to require MWC to review the SMW rate at least once in every two years. A review of the SMW rate can be conducted within less than two years if circumstances so warrant.

Survey reference period of AEHS

24. Mr Tommy CHEUNG has pointed out that adopting May to June as the survey reference period of 2013 AEHS cannot fully reflect the actual impact of the revised SMW rate, which took effect only from 1 May 2013, and the ripple effect on businesses. He has suggested that the Administration should actively consider adopting September to November as the survey reference period of AEHS for the next review of the SMW rate. The wage levels so covered under the proposed reference period would have more accurately reflected the impact of the revised SMW rate on staff costs, and net out the effects of year-end bonus and influence of summer workers on wage rates.

25. The Administration has explained that wage levels in the first and fourth quarters of a year are generally more susceptible to effects of guaranteed bonuses and tend to show larger fluctuations in their year-on-year changes; while wage levels in the third quarter are usually subject to influence of summer workers' wage rates. Wage levels of employees in the second quarter are comparatively more stable and thus more suitable for year-on-year comparisons. In view of this, the second quarter was adopted as the survey reference period for the 2009 and 2010 rounds of AEHS. Subsequently, in consideration of SMW implementation on 1 May 2011, the survey reference period was changed to May to June as from the 2011 round such that the survey results can be directly used for analyses related to SMW. Reference has also been made to the practices of other places in conducting similar surveys when determining the survey reference period of AEHS.

Special arrangement for employees with disabilities

26. A special arrangement is provided under MWO so that employees with disabilities whose productivity may be impaired by their disabilities have the right to undergo a productivity assessment to determine whether they should be remunerated at no less than the SMW rate or at a rate commensurate with their

productivity. Some members have expressed the view that the special arrangement under the SMW regime should be abolished to prevent these employees from receiving a wage rate that is lower than the SMW rate. These members have also called on the Administration to provide wage subsidy to those employees with disabilities earning wages below the SMW rate.

27. The Administration has explained that the special arrangement seeks to strike an appropriate balance between providing wage protection to employees with disabilities and safeguarding their employment opportunities in view of the concern of the community and relevant organisations about possible employment difficulties of some employees with disabilities. The right to invoke the assessment is solely vested in the employees with disabilities. The Administration has just completed a review of the special arrangement and briefed the Panel on Manpower on the results of the review and the enhancement measures in December 2014.

28. The Administration has pointed out that persons with disabilities should be given assistance in finding appropriate jobs having regard to their abilities rather than disabilities in an inclusive society which duly recognises the rights, capabilities and contribution of persons with disabilities. It does not consider that providing wage subsidy for persons with disabilities or other categories of social groups would be consistent with the Government's policy objective owing to the significant policy implication involved. Nonetheless, members have been assured that the Administration will continue to provide vocational training and employment support for persons with disabilities and adopt positive encouragement measures to enhance their job opportunities.

Monetary cap on recording hours worked by an employee

29. The Subcommittee notes that the Employment Ordinance (Amendment of Ninth Schedule) Notice 2015 seeks to increase the monthly monetary cap on recording the total number of hours worked as specified in the Ninth Schedule to EO from \$12,300 per month to \$13,300 per month. According to the Administration, the proposed amendment is consequential and proportionate to the percentage increase (i.e. 8.3%) of the SMW rate adjustment. The Subcommittee also notes that based on the AEHS findings, there were 1 319 800 employees earning less than \$13,300 per month in May to June 2013.

Advice Sought

30. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
10 March 2015

**Subcommittee on
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2015 and
Employment Ordinance (Amendment of Ninth Schedule) Notice 2015**

Membership list

Chairman Dr Hon CHIANG Lai-wan, JP

Members Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon IP Kwok-him, GBS, JP
Hon Frankie YICK Chi-ming
Hon YIU Si-wing
Hon CHAN Chi-chuen
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan

(Total : 20 members)

Clerk Miss Betty MA

Legal Adviser Mr YICK Wing-kin

Date 30 January 2015

**Subcommittee on
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2015 and
Employment Ordinance (Amendment of Ninth Schedule) Notice 2015**

List of organisations/individual which have given oral representation to the Subcommittee

1. Left 21
2. Left 21 Education Department
3. The Forthright Caucus
4. Liberal Party Youth Committee
5. Chosen Power
6. Chosen Parent Network
7. The Hong Kong Federation of Trade Unions Rights and Benefits Committee
8. Hong Kong Buildings Management And Security Workers General Union
9. Hong Kong Catering Industry Association
10. Hong Kong Federation of Restaurants & Related Trades
11. Hong Kong Confederation of Trade Unions
12. Cleaning Workers Union
13. Association of Restaurant Managers
14. 最低工資關注組

15. The Federation of Hong Kong and Kowloon Labour Unions
16. Mr WONG Yun-tat, Member of Kwai Tsing District Council
17. 葵涌勞工權益關注組
18. Institution of Dining Art