



COMMISSIONER FOR LABOUR

勞工處處長箋札

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28 November 2014

Clerk to Panel on Manpower  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong  
(Attn: Miss Betty Ma)

Dear Miss Ma,

**Follow-up to the meeting of the Manpower Panel of the Legislative  
Council on 9 October 2014**

At the meeting of the Manpower Panel (the Panel) of the Legislative Council (LegCo) held on 9 October 2014, Members raised concerns relating to the progress on legislating for compulsory reinstatement or re-engagement, and the proposed Member's Bill by the Hon Kwok Wai-keung on the review frequency of the Statutory Minimum Wage (SMW) rate. The Hon Chan Yuen-han and Hon Tang Ka-piu also issued a joint letter dated 17 October to the Panel, proposing to follow up on the review of the continuous contract requirement under the Employment Ordinance (EO). Notwithstanding that the aforementioned issues have already been included in the Panel's list of outstanding items for discussion (November 2014) (the list), we provide responses below as requested by the Panel Chairman.

**a. Progress on legislating for compulsory reinstatement or re-engagement (Item 17 of the list)**

We put forth in 2012 the legislative proposal of making compulsory order of reinstatement or re-engagement to the Panel for discussion. Having listened to Members' views, we have continued with

the drafting of the bill. As the bill involves complicated legal issues, the Labour Department (LD) and the Department of Justice are conducting discussions on the contents of the bill and ways of resolving the technical issues concerned. We are now working earnestly to finalise the bill and hope to introduce the bill into the LegCo next year.

**b. Review frequency of the SMW rate (Item 19 of the list)**

The Hon KWOK Wai-keung wrote to the Chairman of the Panel on 11 June 2014 suggesting discussion on his proposed Member's Bill to amend the provisions of the Minimum Wage Ordinance (MWO) on the review frequency of the SMW rate.

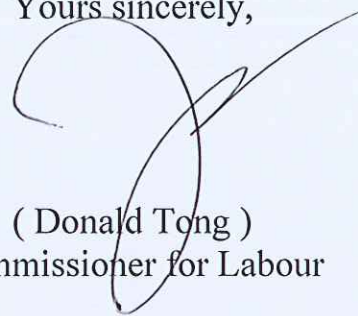
MWO requires that the SMW rate must be reviewed at least once every two years. The review cycle is a pragmatic arrangement and has been the consensus when legislating on SMW. This arrangement is beneficial to both employees and employers. Firstly, it will have less impact on the mode of employment. Should annual review be implemented, there may be more frequent adjustments of the SMW rate. Consequently, 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. Secondly, with an annual review of the SMW rate, employers will also find it hard to estimate their emolument costs in preparing service and business contracts, hence facing difficulties in business operation. The review of the SMW rate involves a host of complicated issues relating to the employment, economic and social situations. As Hong Kong only has limited experience in implementing SMW, the existing flexible arrangement of reviewing the SMW rate at least once in every two years should be maintained. It should be noted that should economic circumstances so warrant, we could conduct an extra review or even more within a two-year cycle.

**c. Review of the continuous contract requirement (Item 1 of the list)**

In their joint letter dated 17 October 2014, the Hon Chan Yuen-han and Hon Tang Ka-piu proposed the Panel to follow up on the review of the continuous contract requirement under the EO. LD has, in response to the concerns of the labour sector over the continuous contract requirement, conducted a review. Since May 2013, LD has deliberated

in details the pros and cons and practicability of various approaches with Employer and Employee Representatives of the Labour Advisory Board (LAB) at several meetings. Taking into consideration of their views, LD has put forward further options for consideration by Employer and Employee Representatives. Since this is a complicated subject that involves considerable practical implementation problems, we will continue to deliberate with Employer and Employee Representatives of LAB with a view to forging a consensus. We will revert to the Panel and consult Members once we are in a position to do so.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Donald Tong', written over the typed name and title.

( Donald Tong )  
Commissioner for Labour

c.c. Permanent Secy for Labour & Welfare  
Administrative Assistant to Secretary for Labour and Welfare