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Paper for the House Committee

**Report of Subcommittee on
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2019 and
Employment Ordinance (Amendment of Ninth Schedule) Notice 2019**

Purpose

This paper reports on the deliberations of the Subcommittee on Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2019 and Employment Ordinance (Amendment of Ninth Schedule) Notice 2019 ("the Subcommittee").

Background

2. The Minimum Wage Bill, which was passed at the Council meeting of 14 July 2010, established the Statutory Minimum Wage ("SMW") regime. Section 16(1) of the Minimum Wage Ordinance (Cap. 608) ("MWO") provides that the Chief Executive ("CE") in Council may, by notice published in the Gazette, amend Schedule 3 to specify the prescribed minimum hourly wage rate (commonly known as "the SMW 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 initial SMW rate was set at \$28 per hour which came into effect on 1 May 2011, and was subsequently increased to \$30 per hour on 1 May 2013 and further increased to \$32.5 per hour on 1 May 2015 and \$34.5 on 1 May 2017 respectively. The present monthly monetary cap on keeping records of hours

worked by employees is set at \$14,100, based on the current SMW rate of \$34.5 per hour.

4. The Minimum Wage Commission ("MWC") chaired by a non-official, comprising three members each from the labour, business and academic sectors as well as three public officers, is tasked with reporting to CE in Council its recommendation about the SMW rate. After completing the latest round of review of the SMW rate, MWC submitted its report to CE in Council in October 2018 and recommended that the current SMW rate be increased from \$34.5 per hour to \$37.5 per hour.

The Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2019 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2019

5. On 18 January 2019, the Administration published in the Gazette the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2019 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2019 ("the two Notices"). The Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2019 increases the prescribed minimum hourly wage rate from \$34.5 to \$37.5. The Employment Ordinance (Amendment of Ninth Schedule) Notice 2019 increases the monetary cap on recording the total number of hours worked as specified in the Ninth Schedule to EO from \$14,100 per month to \$15,300 per month. The two Notices come into operation on 1 May 2019.

The Subcommittee

6. At the House Committee meeting on 15 February 2019, Members agreed to form a subcommittee to study the two Notices. The membership list of the Subcommittee is in **Appendix I**.

7. To allow more time for the Subcommittee to study the two Notices, the scrutiny period of the two Notices has been extended from 20 February 2019 to 20 March 2019 by a resolution of the Council passed at the meeting of 20 February 2019.

8. Under the chairmanship of Hon Vincent CHENG Wing-shun, the Subcommittee has held two meetings with the Administration, and received views from 25 deputations/individuals at one of the meetings. The list of organizations and individuals which/who have provided views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

The recommended SMW rate

9. According to the Administration, MWC has, by consensus, recommended in its report that the current SMW rate of \$34.5 per hour be adjusted to \$37.5 per hour, representing an increase of \$3 or 8.7%. CE in Council has accepted the recommendation.

Number of employees earning SMW

10. While respecting the work of MWC, some members share the dissatisfaction expressed by labour unions that they can only accept grudgingly the recommended SMW rate. These members have pointed out that as set out in the MWC report, the estimated number of employees with an hourly wage less than \$37.5 in the first half of 2019 before the implementation of the recommended SMW rate would be around 61 500 to 75 500, representing 2.0% to 2.5% of all employees in Hong Kong, under the assumption of real economic growth of 2.5% to 3.5% year-on-year in the first half of 2019. These members consider that the recommended SMW rate is on the low side, which should be further adjusted upwards in order to cover a larger proportion of the labour force.

11. The Administration has advised that the estimated number of employees with an hourly wage less than \$37.5 before the implementation of the recommended SMW rate (i.e. the pre-adjustment employees involved) is different conceptually from the number of employees earning the SMW rate after the implementation of the recommended SMW rate. According to the experience in the past years, some of the pre-adjustment employees involved would get pay rises to levels above the new SMW rate. Moreover, taking into account the knock-on effect on pay hierarchies, some employees whose original hourly wages are above the new SMW rate would get pay rises too. Therefore, the number of employees benefitting from pay rises owing to uprating of SMW would eventually be greater than the number of pre-adjustment employees involved.

Proposed indicators for setting the SMW level

12. Some members have expressed concern that most grassroots workers, in particular non-skilled employees engaged by government service contractors, are earning just the SMW rate. The monthly earnings of these employees are too meagre for meeting their basic living needs. Some members consider that the SMW rate should be set at 60% of the median hourly wage (i.e. \$42.5 per hour). Some members take the view that the typical monthly wage implied by the SMW

rate should not be lower than the level of the Comprehensive Social Security Assistance so as to maintain the incentive of low-paid employees to work and earn reasonable wages to improve their living. Some members are of the view that SMW should be conceived as a living wage. When setting the SMW level, MWC should make reference to factors like the basic living needs of employees and their families.

13. The Administration has advised that SMW aims to provide a wage floor to forestall excessively low wages, whilst without unduly jeopardising the labour market flexibility, economic growth and competitiveness or causing significant loss in low-paid jobs. SMW is not intended to be a living wage. As a matter of fact, income of grassroots workers has continued to increase after the introduction of SMW and its upratings. Specifically, by October–December 2018, the average monthly employment earnings of full-time employees in the lowest decile group (excluding government employees and live-in domestic workers) had increased by a cumulative 59.4% over that immediately before the implementation of SMW (i.e. February–April 2011), translating into a real improvement of 23.3% after netting out inflation. The Administration has also drawn to the attention of members that MWC, in making its recommendation on the revised SMW rate, has adopted an evidence-based approach. Relevant information and data of various aspects, including the Annual Earnings and Hours Survey and the Annual Survey of Economic Activities conducted by the Census and Statistics Department ("C&SD") and an Array of Indicators reflecting the latest socio-economic and employment conditions after the implementation of SMW and its upratings as well as forecasts of the local economic growth and inflation have been considered. MWC has also taken into account other relevant considerations that cannot be fully quantified and conducted stress tests under four economic scenarios to assess the potential impact of each SMW test level under different economic conditions. Furthermore, MWC has conducted intensive and extensive consultations with stakeholders and members of the public and has fully considered the views of various sectors of the community, including various proposed indicators for adjusting the SMW rate, before recommending the SMW rate. Nonetheless, the Administration would convey members' views on the indicators to be included when reviewing the SMW level, and in particular the living wage concept, to MWC for reference.

Impact on enterprises

14. Some members have raised concern that the continued escalation of trade friction between major economies recently would weigh on global economic sentiment as well as trade and investment activities which can affect the outlook of the Hong Kong economy. They have enquired whether MWC has taken this into account in recommending the SMW rate. Some members have also

enquired, in making the estimation that the total wage bill would increase by about \$800 million to \$930 million or approximately 0.1% (under the assumption of real economic growth of 2.5% to 3.5% year-on-year in the first half of 2019) consequent upon the SMW uprating, whether MWC has taken into account the impact of knock-on effect on pay hierarchies on enterprises, in particular small and medium enterprises ("SMEs").

15. Members also note the concerns of some employers' associations/representatives that the implementation of SMW has not only pushed up the wages of low-paid employees, but also induced a knock-on effect on the pay hierarchies and the ripple effect. Employers often have to offer pay rise to employees with wage rate above the SMW rate. As many SMEs, especially those in the catering sector which are labour intensive and running with thin profit margin, have been hard hit by the implementation of SMW, these enterprises will face considerable operation difficulties if the SMW rate increases again in May 2019.

16. The Administration has advised that MWC has conducted impact assessment under different economic scenarios and different SMW test levels. Specifically, MWC has examined in depth the additional wage bill entailed, including due consideration of the impact of knock-on effect on pay hierarchies in the review of the SMW rate. MWC has envisaged that the impact of the recommended SMW rate of \$37.5 per hour should be manageable for most sectors, including SMEs. The Administration has stressed that the Government has carefully considered the report of MWC and is of the view that the recommended SMW rate of \$37.5 per hour meets the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs while sustaining the economic growth and competitiveness of Hong Kong.

Review cycle of the SMW rate

17. Some members have pointed out that under the existing biennial review cycle of the SMW rate, low-paid employees with wages close to the SMW rate would have to rely on the SMW uprating to have a pay rise in every two years. Given that the income of most employees, including government employees, is subject to an annual pay adjustment, the SMW rate should be reviewed annually so as to catch up with inflation.

18. Some members have expressed concern that under the existing biennial review arrangement, the study findings of C&SD released in the preceding year are used for determining the revised SMW rate to be implemented in the following year. These members have 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.

19. 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 than a biennial review should circumstances so warrant. The Administration has further advised that in view of the time gap between the review of the SMW rate and the implementation of the recommended rate, MWC has endeavoured to conduct a forward-looking estimation. Specifically, MWC has conducted scenario analysis of the economic conditions at the time when the recommended rate is implemented, so as to have a forward-looking analysis of the impact that may be brought about by different SMW test levels on various aspects as far as possible. The Administration has further pointed out that the existing review mechanism for the SMW rate, comprising data analysis, public consultation, impact assessment as well as deliberations by MWC is already under a very tight timeframe and thus does not see much room for further compressing the existing work schedule. Having regard to sustained improvements to the employment earnings of low-paid employees and the broadly stable labour market since the implementation of SMW, the existing arrangement of reviewing the SMW rate at least once in every two years should be maintained.

20. Notwithstanding the Administration's explanation, many members have maintained the view that the SMW rate should be reviewed annually. At the meeting on 7 March 2019, the Subcommittee passed a motion calling on reviewing the SMW rate on an annual basis in order to address the problem of the SMW rate lagging behind the market, so as to better protect the rights and benefits of low-paid employees. The Administration has agreed to convey members' views to MWC for reference.

Monetary cap on recording hours worked by an employee

21. Members note that the proposed amendment to increase the monetary cap on recording the total number of hours worked as specified in the Ninth Schedule to EO from \$14,100 per month to \$15,300 per month is consequential and proportionate to the percentage increase (i.e. 8.7%) of the SMW rate adjustment. They have not raised any queries.

Recommendation

22. The Subcommittee raises no objection to the two Notices and will not propose any amendment to these two items of subsidiary legislation.

Advice Sought

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

Council Business Division 2
Legislative Council Secretariat
13 March 2019

**Subcommittee on
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2019 and
Employment Ordinance (Amendment of Ninth Schedule) Notice 2019**

Membership list*

Chairman Hon Vincent CHENG Wing-shun, MH

Members Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon Steven HO Chun-yin, BBS
Hon YIU Si-wing, BBS
Dr Hon KWOK Ka-ki
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon POON Siu-ping, BBS, MH
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon HO Kai-ming
Hon LUK Chung-hung, JP
Hon Jeremy TAM Man-ho
Hon AU Nok-hin

(Total : 15 members)

Clerk Miss Betty MA

Legal adviser Miss Linda CHAN

Date 26 February 2019

* Changes in membership are shown in Annex to Appendix I.

**Subcommittee on
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2019 and
Employment Ordinance (Amendment of Ninth Schedule) Notice 2019**

Changes in membership

Member	Relevant date
Hon Andrew WAN Siu-kin	Since 26 February 2019

**Subcommittee on
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2019 and
Employment Ordinance (Amendment of Ninth Schedule) Notice 2019**

List of deputations/individuals which/who have given oral representation to the Subcommittee

1. Association of Restaurant Managers
2. BU Movement
3. Cleaning Workers Union
4. Democratic Alliance for the Betterment and Progress of Hong Kong
5. HK Building Management and Security Workers General Union
6. Hong Kong Catering Industry Association
7. Hong Kong Catholic Commission for Labour Affairs
8. Hong Kong Confederation of Trade Unions
9. Hong Kong Environmental Services, Logistics and Cleaning Employees Association
10. Hong Kong Women Workers' Association
11. Institution of Dining Art
12. Justice Fast Food
13. Liberal Party
14. Living Wage Alliance
15. Mr LEUNG Kwok-hung
16. Mr TO Chun-ho
17. Mr WHY
18. Nepalese Cleaning Workers Concern Group
19. Promoters and Casual Worker Union
20. The Federation of Hong Kong & Kowloon Labour Unions

21. The Hong Kong Federation of Trade Unions
22. The Hong Kong General Union of Security & Property Management Industry Employees
23. 中西區關注中小微企小組
24. 香港民用航空事業職工總會
25. 清潔服務業職工會

List of deputation/individual which/who has provided written views to the Subcommittee only

1. Hong Kong Federation of Restaurants & Related Trades
2. Miss Chloe WONG