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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the implementation of the statutory minimum wage ("SMW") regime and summarizes the major views and concerns expressed by members at various committees relating to the SMW rate and the monetary cap on keeping records of hours worked.

Background

2. The Minimum Wage Ordinance (Cap. 608) ("MWO"), which was passed at the Council meeting of 14 July 2010, established the SMW regime. Section 16 of 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. Under section 49A(3)(ea) of the Employment Ordinance (Cap. 57) ("EO"), an employer is required to record the total number of hours worked by an employee in a wage period if the latter is an employee within the meaning of MWO. The employer is exempted from this requirement if wages payable to the employee in the wage period are not 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 from 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 hourly SMW rate be increased from \$34.5 to \$37.5.

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. These two items of subsidiary legislation are made to increase the prescribed minimum hourly wage rate from \$34.5 to \$37.5 with effect from 1 May 2019 and to increase the monetary cap from \$14,100 to \$15,300 per month below which records are required to be kept on the total number of hours worked by employees in each wage period.

Members' major views and concerns

6. Members' major views and concerns on the subject are summarized in the ensuing paragraphs.

Impact of the implementation of SMW

7. Some members expressed concern that the implementation of SMW had 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 needed to increase the pay of employees at higher ranks in order to maintain staff morale of employees of higher ranks and retain these employees. This had in turn added further to the labour costs especially for small and medium enterprises ("SMEs") which found it more difficult to pass on additional costs to consumers. Moreover, the SMW regime had the effect of narrowing the wage gap among various industries and it was 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 had to offer pay rise to employees with wage rate above the statutory level.

8. Some other members, however, held 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 considered that this might be caused by the robust economy in Hong Kong and the low unemployment rate. These members also pointed out that the main causes for the operating difficulties encountered by the catering and retail sectors were high rentals and the increasing prices of raw materials.

9. According to the Administration, in assessing the impact of the recommended SMW rate on businesses, MWC had examined in depth the additional wage bill entailed. Members were advised that the increase in wage bill would be more notable in the labour-intensive and low-paying sectors, such as cleaning services, security services, real estate maintenance management sector, fast food cafes and elderly homes. Nonetheless, MWC had estimated that the additional wage bill entailed should be manageable for most enterprises (including the low-paying sectors and SMEs).

10. Concern was also raised as to whether the Administration had underestimated the impact of the SMW rate on businesses and inflation. To better assess the actual impact of SMW, some members 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.

Review frequency of the SMW rate

11. Many members 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 under the existing biennial review mechanism. Some members pointed out that under the existing biennial review cycle of the SMW rate, low-paid employees with wages close to the SMW rate would only get a pay rise upon the uprating of SMW in every two years. Given that the income of most employees, including government employees, was subject to an annual pay adjustment, the SMW rate should be reviewed annually so as to avoid employees' purchasing power being eroded by inflation.

12. Some other members, however, considered that in face of both the global and local slackened economic growth environment, there was little room for upward adjustment of the SMW rate, especially in the catering and retail sectors, and the SMW rate should be revised on a biennial basis.

13. The Administration advised that MWO required that the SMW rate should be reviewed at least once in every two years, without precluding more frequent rate review should circumstances so warrant. The Administration stressed that 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. If the SMW rate was to be reviewed annually, some employers who wished to maintain their flexibility in controlling labour costs might tend to offer short-term employment contracts and replace their permanent staff with casual workers, leading to fragmented employment. Moreover, employees might suffer from a more immediate wage decrease in the event of a sharp economic downturn if the SMW rate was reviewed annually. The Administration stressed that SMW had far-reaching impact on various areas including socio-economic conditions and employment market. As SMW had not been implemented for long in Hong Kong, the existing arrangement of reviewing the SMW rate at least once in every two years should be maintained.

Criteria for determining the SMW rate

14. Some members were of the view that the SMW rate should be raised to cope with rising living costs and relieve the problem of working poverty. While agreeing that the livelihood of low-income grassroots workers should be safeguarded by means of SMW, some members expressed reservations about regarding SMW as the wage adjustment mechanism. These members considered that wage increase should be adjusted based on individual workers' performance and the wage differentials in different industries should be determined by the market force.

15. The Administration 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 minimizing the loss of low-paid jobs while sustaining Hong Kong's economic growth and competitiveness. The Administration further advised that SMW provided a wage floor to forestall excessively low wages. Eligible low-income families might apply for the Comprehensive Social Security Assistance Scheme and the Low-income Working Family Allowance Scheme as appropriate.

16. The Administration stressed that in making its recommendation on the revised SMW rate, MWC had considered, among other things, the wage distribution data from Annual Earnings and Hours Survey ("AEHS") conducted by the Census and Statistics and an array of indicators covering information on the socio-economic and labour market conditions as well as the Gross Domestic

Price and price forecasts. MWC also took into account other relevant considerations that were related to the review of the SMW rate but could not 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. Furthermore, MWC had considered views of various sectors of the community in order to recommend an appropriate SMW rate.

17. Some members noted with concern that as revealed from the 2017 AEHS findings, the proportion of employees earning the minimum hourly wage dropped to less than 1% of all employees in 2016 and 2017. In these members' view, SMW could only benefit very limited number of employees and failed to achieve its intended purpose of protecting grassroots workers. At its meeting on 15 May 2018, the Panel on Manpower passed a motion urging the Administration to, among others, raise the SMW rate with reference to the actual living expenses of employees and the median wage rate of employees working in the sectors concerned.

Monetary cap on keeping records of hours worked by an employee

18. Members noted that employers were required to keep records of the total number of hours worked for employees whose wages payable in respect of the wage period were less than the monthly monetary cap as specified in the Ninth Schedule to EO. The proposed amendment, if any, to the monetary cap was consequential and proportionate to the percentage increase of the SMW rate adjustment.

19. According to the Administration, the monetary cap itself did not affect an employee's entitlement to receive wages not less than the SMW rate. Employees whose wages payable were above the monetary cap still needed to be paid not less than the SMW rate, despite their employers not being required to keep records of the total number of hours worked by these employees.

Relevant papers

20. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

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

Committee	Date of meeting	Paper
Panel on Manpower	17.3.2011 (Items V and VI)	Agenda Minutes
	12.4.2012 (Item V)	Agenda Minutes
	29.5.2012 (Item I)	Agenda Minutes
	20.11.2012 (Item IV)	Agenda Minutes
	17.6.2014 (Item IV)	Agenda Minutes
	19.4.2016 (Item IV)	Agenda Minutes
	23.1.2017 (Item III)	Agenda Minutes
	18.4.2017 (Item V)	Agenda Minutes
	27.4.2018 (Item V)	Agenda Minutes
	15.5.2018 (Item IV)	Agenda Minutes
	Subcommittee on Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2012 and Employment Ordinance (Amendment of Ninth Schedule) Notice 2012	---

Committee	Date of meeting	Paper
Subcommittee on Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2015 and Employment Ordinance (Amendment of Ninth Schedule) Notice 2015	---	Report
Subcommittee on Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2017 and Employment Ordinance (Amendment of Ninth Schedule) Notice 2017	---	Report

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