

立法會
Legislative Council

LC Paper No. CB(2)576/10-11

Ref : CB2/SS/2/10

Paper for the House Committee meeting on 17 December 2010

**Report of the Subcommittee on Subsidiary Legislation
Relating to Statutory Minimum Wage**

Purpose

This paper reports on the deliberations of the Subcommittee on Subsidiary Legislation Relating to Statutory Minimum Wage.

Background

2. The Minimum Wage Ordinance (15 of 2010) ("MWO") was passed by the Legislative Council on 17 July 2010 and published in the Gazette on 23 July 2010. Section 1(2) of MWO stipulates that MWO comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette. Section 16 of MWO provides that the Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3 to specify the statutory minimum wage ("SMW") rate and its effective date. Section 49A(3) of the Employment Ordinance (Cap. 57) ("EO") as amended by section 20 of MWO empowers the Commissioner for Labour to amend the Ninth Schedule to EO by notice published in the Gazette to prescribe the monetary cap on keeping records of the total number of hours worked. 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 ("the Notices").

The Subcommittee

4. At the House Committee meeting on 19 November 2010, Members formed a subcommittee to study the Notices. The membership list of the Subcommittee is in **Appendix I**.

5. Under the chairmanship of Hon TAM Yiu-chung, the Subcommittee has held four meetings with the Administration, including one meeting to receive public views. The list of organizations and individuals who have provided views to the Subcommittee is in **Appendix II**.

6. To allow more time for the Subcommittee to study the Notices, the scrutiny period of the Notices has been extended from 15 December 2010 to 5 January 2011 by a resolution of the Council passed on 8 December 2010.

Deliberations of the Subcommittee

Factors taken into account by the Provisional Minimum Wage Commission in its deliberation of the initial statutory minimum wage rate

7. The Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010 specifies \$28 as the first prescribed minimum hourly wage rate and 1 May 2011 as its effective date. Some members are concerned that while the initial SMW rate is to be implemented on 1 May 2011, the SMW rate has been recommended by PMWC by reference to the wage data collected in the 2009 Annual Earnings and Hours Survey ("AEHS") conducted some two years ago in the second quarter of 2009.

8. The Administration has advised that there is inevitably a time lag between data collection and availability of the statistics. In recognition of this limitation, PMWC has 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.

9. The Administration has also advised that PMWC has 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 includes general economic conditions, labour market conditions, competitiveness and standard of living. The Administration has further pointed out that as some implications of SMW would be either qualitative or could be

measured only after SMW implementation, PMWC has 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.

10. A member has pointed out that the Low Pay Commission in the United Kingdom had provided in its first report a deflated recommended minimum wage rate in assessing the impact of the initial National Minimum Wage rate. The member is concerned whether PMWC has taken into account the inflation forecast for the period up to 1 May 2011 in conducting impact assessment of the initial SMW rate.

11. The Administration has advised that inflation is one of the important considerations of PMWC in deliberating the initial SMW rate. During the deliberation and in conducting impact assessment, PMWC has 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.

12. The Administration has stressed that apart from making reference to the experience in other economies in implementing SMW, an appropriate mechanism rooted in the local context should be devised to assess the impact of the initial SMW rate, given the unique characteristics of Hong Kong in its social and economic circumstances.

13. According to the estimate of PMWC, an initial SMW rate of \$28 per hour would represent 47.9% of the median hourly wage in Hong Kong in the second quarter of 2009. With an SMW rate of \$28 per hour, the wages of around 314 600 or 11.3% of the total number of employees in Hong Kong would rise by 16.9%. A member has enquired about the equivalent hourly wage rate in the second quarter of 2009 of the initial SMW rate of \$28 per hour recommended by PMWC and the number and proportion of employees to be covered under the initial SMW rate at the time of implementation of SMW in 2011, if the inflation recorded after the second quarter of 2009 is taken into account.

14. The Administration has explained that since wages change at different rates across workers in different industries and occupations and with different socio-economic characteristics, wage distribution would change according to these factors. Besides, the rates of change in the wages of various industries and occupations may also differ from that of the consumer price index. PMWC has been of the view that it is inappropriate to use the forecast change in the consumer price index or any other indicators to calculate the equivalent hourly wage rate in

the second quarter of 2009 of the hourly wage of \$28 in May 2011 for the purpose of estimating the number or proportion of employees involved at the time of implementation in 2011. The Administration has stressed that in the absence of experience in implementing SMW and without sufficient empirical data and information, the assessment of the SMW impact has its inherent limitations because many factors are involved and the economic and labour market conditions are constantly evolving.

Factors to be taken into account by the future Minimum Wage Commission in its review of the statutory minimum wage rate

15. Some members are concerned about the statistical data to be considered by the future Minimum Wage Commission ("MWC") in its review of the SMW rate. The Administration has advised that as specified in MWO, MWC, in the 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 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 the Census and Statistics Department will 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 ("SMEs") will also be conducted.

16. A member considers that as depreciation is a significant cost element especially in the catering industry, it should be taken into account in determining the SMW rate. The Administration has advised that the Census and Statistics Department will gather more information on depreciation in its future collection of data relating to the operating cost of enterprises.

Timing for commencement of the statutory minimum wage rate

17. Under the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010, 1 May 2011 is appointed as the date on which the provisions in MWO are to come into operation, apart from those provisions which commenced on 12 November 2010 that enabled the gazettal of the commencement of the provisions of MWO, the amendments to specify the initial SMW rate and its effective date to be made, and MWC to be established.

18. Some members are of the view that the commencement of the SMW rate should be advanced from 1 May 2011 to 1 February 2011 so that low-income employees could benefit from the SMW policy before the Chinese New Year.

Some other members are however of the view that even if the SMW rate is to commence on 1 May 2011, the preparation time of about six months is still inadequate for SMEs, as the majority of them lack knowledge about the requirements in MWO. These members are concerned about the measures adopted by the Administration to assist SMEs, especially those enterprises which would likely be more affected by the introduction of SMW such as those in the retail, catering, property management, security and cleaning services industries, to address the difficulties encountered in the implementation of SMW. Some members consider that industry-based guidelines on SMW should be issued two or three months before the implementation of the SMW rate. At its meeting on 30 November 2010, the Subcommittee passed a motion calling on the Administration to implement the initial SMW rate on 1 February 2011.

19. The Administration has advised that implementing the SMW regime on 1 May 2011, which is the next Labour Day, would not only carry symbolic significance but also give some six months' preparation time for the community. Prior to implementation, the Labour Department ("LD") will launch a wide range of publicity and promotional activities to enhance public awareness of the SMW requirements. As proposed by some members of the Bills Committee on the Minimum Wage Bill, reference guidelines with illustrative examples will be prepared to facilitate employers and employees to understand the provisions and application of MWO. In this connection, the Administration will brief the Panel on Manpower at its meeting in December 2010 on the draft reference guidelines on SMW for employers and employees. The Administration will also work in collaboration with the Industry-based Tripartite Committees and stakeholders concerned in drawing up industry-specific guidelines to address the unique characteristics and specific needs of different sectors.

20. The Administration has explained that some establishments, such as property management companies, may need to review the pricing of the products and services under their business contracts. Some owners' corporations may need to adjust management fees of their cleaning and security services contracts. The Administration will also make subsidiary legislation on the criteria for approved assessors and methods of assessment in respect of the productivity assessment of persons with disabilities. Recruitment of assessors, vetting of their applications and training can only commence after the relevant subsidiary legislation is scrutinized by the Legislative Council. A preparation time of some six months, which has reasonably balanced the interests of the society, employers and employees, is necessary.

21. Hon LEE Cheuk-yan has indicated that he may move an amendment to the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010 to the effect that MWO (except sections 1, 2 and 16, Part 3 and Schedule 4) will be

implemented on 1 February 2011 and consequently the SMW rate will have effect as from that date.

Timing for future reviews of the statutory minimum wage rate

22. Some members are of the view that the SMW rate should be reviewed annually. They consider that the review of the initial SMW rate should commence as soon as possible so that the second SMW rate can be implemented in the first half of 2012. The Administration has agreed to consider the suggestion that the review of the initial SMW rate be advanced for completion and release of the findings no later than May 2012. Some members are of the view that a mechanism should be established for the activation of future reviews. 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.

23. The Administration has stressed that MWO requires MWC to make a report on the SMW rate at least once every two years. The SMW rate is formulated through an evidence-based approach. The Census and Statistics Department conducts AEHS every year to collect comprehensive data on the level and distribution of wages, employment and demographic characteristics of employees in Hong Kong. Such information is also accessible by members of the public. With the provisions on MWC coming into effect on 12 November 2010, a report on the SMW rate has to be made by MWC before mid-November 2012. In line with the evidence-based approach, the situation will 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 is 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.

24. Noting that there is a time lag of about six months between the announcement of the initial SMW rate and its implementation, some members are concerned whether there will also be a six-month time lag in the implementation of future SMW rates.

25. The Administration has explained that time is needed for the Administration to draw up general guidelines for employers and employees, the industry-specific guidelines, and publicity on the implementation of SMW. Time is also needed for some establishments to review and, if necessary, revise their

business service contracts. Indeed, it has also been the usual practice of the United Kingdom in allowing some six months' time for the community to prepare for the implementation of each new minimum wage rate. In view of the concern of some members, the Administration has agreed to explore whether there is room for shortening in future the lead time between the setting of an SMW rate and its implementation date.

Monetary cap on keeping records of hours worked by an employee

26. The Employment Ordinance (Amendment of Ninth Schedule) Notice 2010 specifies \$11,500 as the monthly monetary cap for exempting employers from keeping records of the total number of hours worked of employees. Some members are of the view that the monetary cap of \$11,500 per month is appropriate. Some other members are of the view that the monetary cap should be raised to \$20,000 so as to prevent employers from circumventing the legal requirement by asking their employees to work longer hours. Some other members consider that the monetary cap of \$11,500 is too high, as it is equivalent to an employee remunerated at a wage rate of \$28 per hour working more than 15 hours a day for 26 days in a month.

27. The Administration has explained that \$11,500 is the median monthly wage identified in the 2009 AEHS covering 50% of the total number of employees. Employers will be required to keep records of the total number of hours worked for employees whose wages payable in respect of the wage period are less than \$11,500 per month. The monetary cap has been determined having regard to the need to enforce the SMW requirements, the initial SMW rate, the working pattern of low-paying sectors and the need to minimize the administrative burden on employers. As a reference, a monthly wage of \$20,000, on the basis of an employee working for 8 hours per day and 26 days per month, would cover 75% of the total number of employees in Hong Kong according to the 2009 AEHS.

28. The Administration has pointed out that the monetary cap will be reviewed when the SMW rate is revised in the future. The Administration has stressed that the monetary cap itself does not affect an employee's entitlement to receive wages not less than the SMW rate. Employees whose wages payable are above the monetary cap of \$11,500 still need 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.

Possible impact of the initial statutory minimum wage rate

29. Some members have expressed concern about the possible impact of implementation of SMW on the employment opportunities of low-skilled

workers, vulnerable employees and young people. Some of these members are of the view that there should be a lower SMW rate for young people aged below 21 with little or no working experience. The Administration has advised that the introduction of a lower SMW rate for young people may be open to abuse. It will closely monitor the impact of the introduction of SMW. LD also operates a range of special employment programmes with targeted support for job-seekers. The Youth Pre-employment Training Programme and the Youth Work Experience and Training Scheme provide seamless and comprehensive youth training and employment support to proactively assist young people in navigating their career.

30. A member is concerned about the impact of implementation of SMW on trainees in the hairdressing industry. Another member is of the view that the Administration should assess the impact of implementing SMW on the operation of residential care homes for the elderly ("RCHEs"), especially those RCHEs with a majority of residents receiving Comprehensive Social Security Assistance, as it is less likely for such operators to pass the additional SMW-induced wage cost onto consumers. The Administration has advised that while PMWC has assessed the possible impact of the introduction of SMW on employees, employers and prices, the actual effect of SMW can only be assessed after it has been implemented for a period of time. The Administration will closely monitor the impact of the introduction of SMW and strengthen employment services. An example is the launching of the Pilot Employment Navigator Programme.

31. The Administration has stressed that as Hong Kong has no experience in implementing SMW, the impact could not be assessed with precision at this juncture. In addition, 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 will be conducted to monitor and evaluate the actual impact of SMW, in particular, on vulnerable workers, enterprises in the low paying sectors and SMEs, and also with special reference to the changes in detailed pay hierarchy to facilitate an in-depth examination of possible knock-on effects.

32. Some members have expressed concern over issues such as bogus self-employment, increase in the number of lay-offs and reduction in working hours and/or fringe benefits after the implementation of SMW. The Administration has explained that under EO, there is already protection against unilateral variation of employment terms and conditions by employers.

33. A member has suggested that the Work Incentive Transport Subsidy ("WITS") Scheme should be implemented in parallel with the initial SMW rate to provide transport subsidy for low-income workers. The Administration has advised that as the WITS Scheme is a new scheme, sufficient time will be needed for working out the implementation details before the new scheme can be launched. The Administration will brief the Panel on Manpower on the WITS Scheme at its meeting in December 2010.

Publicity and briefings on the Minimum Wage Ordinance

34. Regarding the briefings conducted or to be conducted by LD on MWO, the Administration has advised that prior to the implementation of SMW, LD will launch a wide range of publicity and promotional activities to enhance public understanding of the SMW requirements. These include briefings to facilitate employers and employees to understand their respective obligations and entitlements under MWO. The Administration will include in the publicity materials illustrative examples drawn from different trades and industries to elucidate the application of MWO. Guidelines to address the unique characteristics of specific sectors will also be drawn up through consultation with the relevant stakeholder groups.

35. A member considers that a dedicated team in LD should provide employers with one-stop advisory support on matters relating to the implementation of SMW. The Administration has advised that LD has already established a 24-hour telephone hotline, handled by the 1823 Call Centre, for answering enquiries from employers, employees and members of the public on labour legislation. LD has been providing training and information on MWO to the frontline staff who provide enquiry service through the hotline.

Mandatory wage requirement for non-skilled workers engaged in government service contracts after the implementation of the statutory minimum wage

36. A member has pointed out that under the mandatory wage requirement for non-skilled workers engaged in government service contracts, some workers are currently required to be paid not less than \$31 per hour. The member is concerned about the number of non-skilled workers involved and whether the mandatory wage requirement will be adjusted downwards to \$28 per hour with the implementation of SMW. The Administration has advised that it is studying the impact of MWO on outsourced service contracts and hopes to brief the Panel on Manpower in the first quarter of 2011 on the outcome of its study.

Manpower requirement for implementation of the Minimum Wage Ordinance

37. A member has expressed concern whether LD has sufficient manpower, especially Labour Inspectors, for enforcement of MWO. The Administration has advised that the manpower resources and workload of various grades in LD are reviewed from time to time. Work demands are met through effective redeployment of resources and adjustment of enforcement strategies. Where necessary, additional resources and manpower will be sought to cope with operational needs. The Administration has informed the Subcommittee that request has been made for additional manpower for implementing MWO and relevant law enforcement work according to the established resource allocation mechanism.

38. The Administration has stressed that the work procedures of LD are kept under review for the purpose of continuous improvement and better manpower utilization. Over the years, the enforcement work of Labour Inspectors has been suitably adjusted and refined in line with prevailing social development and economic restructuring.

Persons with disabilities

39. Some members are concerned about the detailed arrangements for the assessment of productivity for persons with disabilities under MWO and the estimated number of persons with disabilities to be assessed. These members are of the view that the Administration should provide wage subsidy for persons with disabilities whose productivity is assessed to be less than 100%.

40. The Administration has explained that it will brief the Panel on Manpower at its meeting in December 2010 on the arrangements for productivity assessment of persons with disabilities under the SMW regime, after which the relevant subsidiary legislation, which will be subject to the negative vetting procedures, will be submitted. While it is difficult to estimate the number of persons with disabilities to be assessed, it should be noted that persons with disabilities can opt for receiving not less than the SMW rate or undergoing a productivity assessment. For persons with disabilities who are serving employees invoking the transitional arrangement, there is no prescribed time limit for conducting the assessment. While various measures and schemes are already in place to assist persons with disabilities in seeking employment, there is no plan to provide wage subsidy, which is not the policy intent of MWO and its subsidiary legislation, to top up the difference between SMW and the wage level of persons with disabilities determined according to their assessed degree of productivity under the special arrangement.

Proposed amendments

41. The Subcommittee notes that Hon LEE Cheuk-yan may move an amendment to the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010 to the effect that MWO (except sections 1, 2 and 16, Part 3 and Schedule 4) will be implemented on 1 February 2011 and consequently the SMW rate will have effect as from that date (paragraph 21 above refers).

Advice Sought

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

Council Business Division 2
Legislative Council Secretariat
16 December 2010

**Subcommittee on Subsidiary Legislation
Relating to Statutory Minimum Wage**

Membership list

Chairman Hon TAM Yiu-chung, GBS, JP

Members Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Hon LEUNG Kwok-hung

(Total : 24 Members)

Clerk Mr Raymond LAM

Legal Adviser Mr KAU Kin-wah

Date 26 November 2010

**Subcommittee on Subsidiary Legislation
Relating to Statutory Minimum Wage**

A. Organizations/individuals which have given oral representation to the Subcommittee

1. Association of Restaurant Managers
2. Choi Wan Community Concern Association
3. Civic Party
4. Cleaning Services Industry Workers Union
5. Community Care and Nursing Home Workers General Union
6. Community Development Initiative
7. Council of Youth Concern in Social Welfare
8. Economic Synergy
9. Factory Canteen Chamber of Commerce
10. Far East Overseas Nepalese Association (FEONA Hong Kong)
11. Federation of Hong Kong Industries
12. Goal Seeker Education Center
13. Hong Kong Buildings Management and Security Workers General Union
14. Hong Kong Catholic Commission for Labour Affairs
15. Hong Kong Confederation of Trade Unions
16. Hong Kong Federation of Restaurants & Related Trades
17. Institution of Dining Art
18. Mr Ivan WONG Yun-tat, Kwai Tsing District Council member

19. Neighbourhood and Workers Service Centre
20. The Federation of Hong Kong & Kowloon Labour Unions
21. The Hong Kong Federation of Trade Unions - Rights & Benefits Committee

B. Organization who have provided written submission only

1. Hong Kong Catering Industry Association