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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 16 December 2010**

Guidelines on statutory minimum wage for employers and employees

Purpose

This paper summarizes the discussions of the Bills Committee on Minimum Wage Bill ("the Bills Committee") on the guidelines on statutory minimum wage for employers and employees.

Background

2. Prompted by cases of local workers being paid excessively low wages, there have been calls for decades, notably from pro-labour groups, for the introduction of a statutory minimum wage ("SMW") in Hong Kong. The lack of a consensus on whether a legislative approach should be adopted in preventing excessively low wages led to the launch of a two-year voluntary Wage Protection Movement by the Administration in 2006. As a review of the Movement in October 2008 exposed the limitations of promoting wage protection through voluntary participation, the Chief Executive announced in his 2008-2009 Policy Address that a bill on SMW would be introduced into the Legislative Council ("LegCo").

3. The Minimum Wage Bill was introduced into LegCo on 26 June 2009. At the House Committee meeting on 10 July 2009, a Bills Committee was formed to study the Bill. The Bills Committee had completed its scrutiny work and the Bill was enacted at the Council meeting of 14 July 2010.

Deliberations of the Bills Committee

4. Members expressed concern about how "hours worked" should be counted and how a place would be regarded as a "place of employment" under different scenarios in different industries. Some members were concerned about the circumstances under which the travelling time of an employee would be counted as hours worked if the employee had to commute frequently between Hong Kong and the Mainland.

5. The Administration advised that besides the provisions in the Bill, the question as to whether any time or period was hours worked by an employee for SMW computation had to be decided by reference to any agreement or contract between the employer and the employee and to all other relevant circumstances of the case.

6. Some members were concerned that employers and employees of small and medium enterprises might find it difficult to compute hours worked for calculating SMW. They considered that the Administration should launch publicity programmes and draw up industry-based guidelines on the computation of hours worked for SMW purpose.

7. The Administration stressed that the Labour Department ("LD") had undertaken an intensive and extensive engagement and consultation process with various stakeholders and has taken into account the work patterns of employees in different trades and industries with a view to ensuring that the SMW regime was feasible and would strike a reasonable balance among various interests. Prior to the implementation of SMW, LD would vigorously launch publicity and promotional activities so that both employers and employees would understand the legal provisions and their respective obligations and entitlements under the SMW regime. Its engagement process with stakeholder groups would also continue in respect of the preparatory work for implementation, such as the drawing up of guidelines for the concerned sectors.

8. Regarding the question of meal break, the Administration advised that meal break falling outside the meaning of hours worked under the Bill was not hours worked for calculating minimum wage. If meal break was regarded as working hours under the employment contract or agreement between the employer and the employee, it was hours worked in computing minimum wage, notwithstanding that it was not covered by the Bill. Members requested the Administration to include examples in the guidelines to be drawn up for the concerned sectors.

9. The Administration undertook to brief the Panel on Manpower on its guidelines on SMW for employers and employees before the commencement of the enacted Ordinance.

Relevant papers

10. Members are invited to access the website of the Legislative Council at <http://www.legco.gov.hk> to view the relevant papers and minutes of meeting.

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