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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 15 December 2011**

**Top-up payment to government service contractors
arising from the implementation of statutory minimum wage**

Purpose

This paper provides background information and summarizes past discussions of the Panel on Manpower ("the Panel") on the top-up arrangement designed to help government service contractors to cover increase in wage cost arising solely and directly from the implementation of statutory minimum wage ("SMW").

Mandatory wage requirement and statutory minimum wage

2. In May 2004, the Administration introduced a mandatory wage requirement ("MWR") for non-skilled workers engaged under government service contracts to protect their benefits. Under MWR, bureaux and departments should, in procuring services that rely heavily on the deployment of non-skilled workers, ensure that service contractors offer their non-skilled workers wage rates not lower than the average monthly wages for the relevant industry/occupation as published in the latest Census and Statistics Department's ("C&SD") Quarterly Report of Wage and Payroll Statistics at the time when the tenders are invited. This wage protection measure serves to prevent non-skilled workers engaged under government service contracts from receiving excessively low wages. To a certain extent, MWR de facto sets non-statutory minimum wages for certain occupations such as cleaner and security guard.

3. For government service contracts engaging mainly non-skilled workers and tendered on or after 1 May 2011, bureaux and departments are required to mandate service contractors to pay their non-skilled workers at not less than the SMW rate plus one paid rest day in every period of seven days. In addition, to ensure that

wages of non-skilled workers would not be reduced upon the implementation of SMW, the Administration decided to introduce the transitional arrangement that for occupations of which the market average monthly wages stipulated in C&SD's Quarterly Report for December 2010 were higher than SMW plus one paid rest day in every period of seven days, their market average monthly wages would continue to apply until the SMW rate plus paid rest day could catch up.

Deliberations of the Panel

4. Members discussed the new wage arrangement for non-skilled workers engaged under government service contracts after the implementation of SMW and the Administration's proposal to authorize bureaux and departments to provide top-up payments to service contractors at the Panel meeting on 11 April 2011. The deliberations are summarized below.

Top-up arrangement

5. Members noted that for government service contracts straddling 1 May 2011 and engaging mainly non-skilled workers, if the wages of workers were below the SMW requirement, the service contractors, as employers, were obliged to pay their workers additional remuneration to meet the shortfall as from 1 May 2011. Although it was basically the contractors' obligation, the Administration appreciated that the implementation of the initial SMW rate was unique in that many service contractors might not be able to capture the impact of SMW on their contract prices when offering bids at the tendering stage. The Administration had thus decided to make a special arrangement to authorize in principle bureaux and departments to provide top-up payments to service contractors to cover their wage cost increase arising solely and directly from the implementation of SMW, including the corresponding increase in Mandatory Provident Fund contributions, in order to protect the employment of existing employees as well as to ensure the continued provision of public services.

Need for providing service contractors with top-up payments

6. Queries were raised about the need for providing top-up payment. There was a view that the issue of implementing SMW had been discussed for a long time and the Minimum Wage Ordinance was passed by the Legislative Council ("LegCo") on 17 July 2010. Service contractors should have taken into account their obligation to pay non-skilled workers SMW and predicted whether this would contribute to higher tender costs, in offering bids for government services.

7. According to the Administration, the top-up arrangement was intended as a one-off measure to help service contractors cover increase in wage costs arising solely and directly from the implementation of SMW. This measure was made out of the Administration's deep concerns over the employment as well as the rights and benefits of non-skilled workers, and the need to avoid disruption to public service delivery. As the level of SMW would be reviewed at least once in every two years, contractors should estimate and take into account the possible impact of the reviews on the level of wage costs in future and reflect this suitably in the tender prices. The Government would not provide any more top-up payments upon subsequent reviews of the level of SMW.

Additional financial implication for the Government

8. Information was sought on the amount of expenditure to be incurred by the Administration in the provision of top-up payments.

9. Members were informed that the new wage arrangement and top-up arrangement would incur additional costs to the Administration. Whilst the former was recurrent in nature, the latter was one-off. The exact amounts of the additional costs would be assessed by the procuring departments, taking into account the individual circumstances of the service contracts. If departments were unable to meet or absorb the additional costs from their existing resources, the Administration would apply for the necessary funding from the Finance Committee according to the established procedures.

Monitoring mechanism

10. Members sought information on the measures adopted by the Administration to ensure that the top-up payments would go to the workers who were the target beneficiaries.

11. According to the Administration, the Labour and Welfare Bureau had briefed relevant bureaux and government departments on the arrangement. These bureaux and government departments would monitor their contractors in accordance with their existing contract management system and spare no efforts to ensure that the top-up payments would go straight to the pocket of workers who were the target beneficiaries. In case of any wilful non-compliance with the statutory requirement, the Labour Department would take out prosecution when there was sufficient evidence to establish an offence.

Relevant papers

12. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
9 December 2011

Appendix

**Relevant papers on
Top-up payment to government service contractors
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Committee	Date of meeting	Paper
Panel on Manpower	11.4.2011 (Item IV)	<u>Agenda</u> <u>Minutes</u>

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