

**立法會**  
**Legislative Council**

LC Paper No. LS14/12-13

**Paper for the House Committee Meeting  
on 4 January 2013**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 14 December 2012**

**Date of tabling in LegCo** : 19 December 2012

**Amendment to be made by** : 16 January 2013 (or 6 February 2013 if extended by resolution)

**Minimum Wage Ordinance (Cap. 608)**

**Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2012 (L.N. 186)**

**Employment Ordinance (Cap. 57)**

**Employment Ordinance (Amendment of Ninth Schedule) Notice 2012 (L.N. 187)**

L.N. 186

L.N. 186 is made by the Chief Executive in Council (CE in Council) under section 16(1) of the Minimum Wage Ordinance (Cap. 608) (MWO) to amend Schedule 3 to MWO by specifying that, with effect from 1 May 2013, the prescribed minimum hourly wage rate (the PMHW rate) in the Schedule shall be \$30 per hour.

2. Section 16 of MWO provides that CE in Council may by notice published in the Gazette, amend Schedule 3 to MWO. In exercising the power to amend under the section, CE in Council may have regard to any recommendation included in a report made by the Minimum Wage Commission (MWC) pursuant to section 12(1) of MWO but is not bound by such recommendation. Further, section 16(4) of MWO provides that section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) applies to L.N. 186 to the effect that if LegCo does not agree to the Notice, LegCo should, by resolution, wholly revoke the Notice instead of amending it.

3. According to the Administration, the MWC has, in accordance with its statutory function, conducted public consultation<sup>1</sup> to collect submissions and to gauge the concerns of various interested parties on the PMHW rate. A report has been made by the MWC, which recommends increasing the PMHW rate to \$30. The Administration has considered the report and adopted its recommendation.

4. Further, in the existing Schedule 3, the effective date of the present PMHW rate (i.e. \$28 per hour) is specified in the Schedule as "the day on which section 9 comes into operation". As section 9 came into operation on 1 May 2011, L.N. 186 also amends the effective date to "1 May 2011".

5. As advised by the Clerk to the Panel on Manpower, the Panel met with the Administration and received views from 49 deputations and individuals on the review of the PMHW rate at its meeting on 20 November 2012. Diverse views were expressed by members and deputations on the revised PMHW rate. Some members and employers' associations and employer representatives considered that the new PMHW rate should be no higher than \$30 per hour as recommended by the MWC. However, some other members and most labour unions and labour policy concern groups considered that the next PMHW rate should be in the range of \$33 to \$35 per hour.

6. L.N. 186 will come into operation on 1 May 2013.

#### L.N. 187

7. L.N. 187 is made by the Commissioner for Labour (the Commissioner) under section 49A(6) of the Employment Ordinance (Cap. 57) (EO) to amend the Ninth Schedule to EO by increasing the monetary cap on keeping records of hours worked specified in the Schedule (the Monetary Cap) from \$11,500 per month to \$12,300 per month.

8. Section 49A(3)(ea) of EO provides that an employer is required to keep records of the total number of working hours of an employee in a wage period if the employee is an employee within the meaning of MWO and if the wages payable to that employee in that wage period are less than the Monetary Cap (or a proportionate amount if the wage period concerned is not a month). Further, Section 49A(6) provides that the Commissioner may, by notice published in the Gazette, amend the Schedule.

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<sup>1</sup> Section 12(4) of MWO provides that MWC may, before arriving at the recommendation to be included in its report, consult any organization representative of employers or employees or any other person and consider any submission made to MWC in the course of its consultation, and analyse and consider any data derived from or information contained in any research or study.

9. According to the Administration, the amendment in L.N. 187 is consequential to the amendments in L.N. 186 in that by increasing the PMHW rate from \$28 to \$30 per hour (which is equivalent to a 7.1% increase), the Monetary Cap is proportionately increased from \$11,500 to \$12,300.

10. As advised by the Clerk to the Panel on Manpower, the Panel has not been consulted on the amendment as stated in L.N. 187.

11. L.N. 187 will come into operation on the day on which L.N. 186 comes into operation (i.e. 1 May 2013).

12. Members may refer to LegCo Brief (File Ref: LD SMW 86-1/2(C)) dated December 2012 issued by Labour and Welfare Bureau for further information regarding L.N. 186 and L.N. 187.

**Telecommunications Ordinance (Cap. 106)  
Telecommunications (Carrier Licences) (Amendment) Regulation 2012  
(L.N. 188)**

13. L.N. 188 is made by the Secretary for Commerce and Economic Development (SCED) under section 7(2) of the Telecommunications Ordinance (Cap. 106) (TO) to amend section 2 in Part 6 of Schedule 3 to the Telecommunications (Carrier Licences) Regulation (the Regulation) by reducing the annual fee payable for customer connections in respect of Unified Carrier Licences (UCLs) from \$800 to \$700 for each 100 customer connections.

14. Section 7(2)(b) of TO provides that SCED may by regulations prescribe the fees payable including for the grant and renewal of a carrier licence other than an exclusive licence and by way of annual fees. According to the Administration, there is a growth in the number of customer connections in the past years and premised upon the assumption of continued growth, there is room for downward adjustment of customer connection fees of the UCLs.

15. Further, the Administration also expressed that, if the fee is reduced as stated in L.N. 188, the Communication Authority will proceed to reduce concurrently the mobile station fees for Public Radiocommunications Service (PRS) Licences (Public Radio Paging Services) and Services-Based Operator (SBO) Licences (Class 3) to the same level.

16. Before amending the Regulation, the SCED is required under section 7(3) of TO to invite, by notice in the Gazette, members of the public who are interested to make representations by a date not less than 21 days after the notice is published and as specified in the notice and consider the representations received by the date. According to the Administration, a public consultation was launched on 29 June 2012 and a total of 6 submissions were received, which are generally supportive of the amendment. Members may refer to LegCo Brief (File Ref: CTB(CR) 7/10/8) issued by Commerce and Economic Development Bureau dated 12 December 2012 for further information.

17. As advised by the Clerk to the Panel on Information Technology and Broadcasting, at the Panel meeting on 10 December 2012, the Administration briefed members on the decision of the Government and the Communications Authority in respect of licence fees reduction for UCLs, PRS Licences (Public Radio Paging Services) and SBO Licences (Class 3), and on the legislative amendments which were proposed to effect the licence fee reduction for UCLs. The Panel supported in principle the Administration's decision and the legislative proposal.

18. L.N. 188 will come into operation on 1 March 2013.

**Clubs (Safety of Premises) Ordinance (Cap. 376)  
Clubs (Safety of Premises) (Exclusion) (Amendment) Order 2012  
(L.N. 189)**

19. L.N. 189 is made by the Secretary of Home Affairs (SHA) under section 3 of the Clubs (Safety of Premises) Ordinance (Cap. 376) (the Ordinance).

20. The Ordinance provides for the regulation, control and safety of club-houses. Section 3(1) of the Ordinance provides that SHA may by order, exclude any club-house or type or description of club-house from the application of the Ordinance for reasons connected with any such type or description. The Schedule to the Clubs (Safety of Premises) (Exclusion) Order specifies the names of the club-houses which are so excluded.

21. L.N. 189 amends the Schedule by removing the names of 2 vessels respectively known as "Chuen Kee" and "Chuen Kee Kitchen Boat" and a club-house known as "Government Secretariat Staff Club" (GSSC) from the Schedule. Further, amendments are also made to amend the locations of 4 club-houses and to add a club-house known as "Education Bureau Staff Recreational Club"(EBSR Club) to the Schedule.

22. According to the LegCo Brief dated December 2012 issued by the Home Affairs Department (without file reference), the 2 vessels were used by fishermen for wedding and other celebrations. The licences of the 2 vessels have expired and they are no longer mooring in Hong Kong waters. Further, upon clarification made by the Administration, the GSSC has ceased to exist and hence is removed from the Schedule. The club-house of EBSR Club, which is situated in government premises, is added to the Schedule to exempt it from the regulation by the Home Affairs Department as the Architectural Services Department and Housing Department are responsible for the design, construction and maintenance of the club-house concerned and for ensuring a reasonable standard of building and fire safety for club-houses. Members may wish to refer to the LegCo Brief for further information.

23. According to the Administration, public consultation is considered not necessary since the amendment is an updating exercise. Further, as advised by the Clerk to the Panel on Home Affairs, the Panel has not been consulted on L.N. 189.

24. L.N. 189 will come into operation on 8 February 2013.

### **Conclusion**

25. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

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