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Paper for the House Committee meeting on 25 January 2013

**Report of Subcommittee on
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2012 and
Employment Ordinance (Amendment of Ninth Schedule) Notice 2012**

Purpose

This paper reports on the deliberations of the Subcommittee on Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2012 and Employment Ordinance (Amendment of Ninth Schedule) Notice 2012 ("the Subcommittee").

Background

2. The Minimum Wage Ordinance (Cap. 608) ("MWO"), which was enacted on 17 July 2010, has established a statutory minimum wage ("SMW") regime. Section 16(1) of MWO provides that the Chief Executive ("CE") in Council may, by notice published in the Gazette, amend Schedule 3 to specify the SMW rate (known as the prescribed minimum hourly wage rate) and its effective date. Section 49A(6) of the Employment Ordinance (Cap. 57) ("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 keeping records of the total number of hours worked by employees.

3. The Minimum Wage Commission ("MWC"), comprising members from the labour, business and academic sectors as well as public officers, is tasked with reporting to CE in Council its recommendation on the SMW rate. MWC submitted its report to CE in Council in October 2012 and recommended that the current SMW rate of \$28 per hour be increased to \$30 per hour.

4. On 14 December 2012, the Administration published in the Gazette the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2012 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2012 ("the Notices").

The Subcommittee

5. At the House Committee meeting on 4 January 2013, Members agreed to form a subcommittee to study the Notices. The membership list of the Subcommittee is in **Appendix I**.

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

7. To allow more time for the Subcommittee to study the Notices, the scrutiny period of the Notices has been extended from 16 January 2013 to 6 February 2013 by a resolution of the Council passed on 9 January 2013.

Deliberations of the Subcommittee

Revised SMW rate

8. The Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2012 is made to increase the prescribed minimum hourly wage rate from \$28 to \$30 with effect from 1 May 2013. According to the Administration, MWC has by consensus recommended in its report that the current SMW rate of \$28 per hour be adjusted to \$30 per hour, representing an increase of \$2 or 7.1%. The Administration has carefully considered the report of MWC and is of the view that MWC has taken into account the performance of a Basket of Indicators to evaluate the socio-economic and employment conditions during the implementation of the initial SMW rate and its impact, and conducted comprehensive analyses and assessment in reviewing the SMW rate as well as extensive consultation to gauge views of various sectors of the community. CE in Council has accepted and adopted MWC's recommendation as the revised SMW rate.

9. Diverse views have been expressed on the revised SMW rate at the Subcommittee's meetings. Some members and employers' associations/representatives have pointed out to the Subcommittee that as labour cost is the main portion of the operation cost of the business of small and medium enterprises ("SMEs"), SMEs have been hard hit by the implementation of SMW. In face of both the slow global and local economic growth, there is little room for upward adjustment of the SMW rate, especially in the catering and retail sectors. They are of the view that the SMW rate should be maintained at its current level of \$28 per hour to give room for enterprises to adapt to the changes. Nonetheless, they find it barely acceptable for the SMW rate to be raised to no higher than \$30 per hour in tandem with inflation.

10. Some other members and labour unions/concern groups generally consider that the revised SMW rate should be in the range of \$33 to \$35 per hour, in order to cope with rising living costs. In their view, an increase of the SMW rate by \$2 per hour can hardly improve the living standard of the grass-root employees, which has been eroded by the soaring inflation since the implementation of SMW. These members have stressed that there is a need to set the revised SMW rate at a higher level, say, no less than \$33 per hour, so as to maintain the basic living standard of workers. In determining the revised rate, the Administration should not be affected by political considerations and should take into account the cumulative inflation during the period between the setting of the initial SMW rate and the implementation of the revised SMW rate. In these members' view, the main causes for the operating difficulties encountered by the catering and retail sectors are high rentals and the increasing prices of raw materials.

11. The Administration stresses that MWC has reviewed and deliberated the SMW rate through an evidence-based approach and in an objective and balanced manner. In recommending to revise the SMW rate to \$30 per hour, MWC has conducted comprehensive analyses on the data and empirical evidence of statistical surveys and research studies commissioned by the Administration. The considerations underlying the recommendation of adjusting the SMW rate together with the statistical surveys are detailed in the report of MWC. The Administration is of the view that MWC has ably discharged its statutory function of reviewing the SMW rate and the basis of its deliberation is reasonable and balanced.

Factors taken into account by MWC in its review of the SMW rate

12. Members have enquired about the considerations underlying the recommendation of the revised SMW rate by MWC. The Administration has 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. In making its recommendation on the revised SMW rate, MWC has considered a Basket of Indicators covering information on the socio-economic and employment conditions for assessing the impact of the initial SMW rate and conducting scenario testing based on the short-term economic and labour market outlook. The Administration has further advised that MWC has also undertaken detailed analyses on wage distribution data and findings of other surveys conducted by the Census and Statistics Department ("C&SD") on low-income workers, low paying sectors and SMEs. MWC has also taken into account other relevant considerations that are related to the review of the SMW rate but cannot be totally quantified such as enhancing incentive to work, additional costs entailed by

increase in wages, and impact on wage differentials across sectors or positions. Furthermore, MWC has considered views received from various sectors of the community in order to recommend an appropriate SMW rate.

Methodology of impact assessment

13. Some members have expressed concern that the findings of the 2011 Annual Earnings and Hours Survey ("AEHS") are used for determining the revised SMW rate to be implemented in 2013. The findings cannot fully reflect the latest situation, making the adjustment to the SMW rate far lag behind the rising inflation. Some other members, however, are concerned that given that SMW has been in force for a couple of months only when the 2011 AEHS was conducted in May to June 2011, there is insufficient data to reflect and assess the actual impact of SMW on various sectors.

14. The Administration has explained that in recognition of an inevitable time lag between the date of making recommendation on the revised SMW rate and the date of its implementation, MWC has taken into account short-term economic and labour market outlook to conduct scenario testing with an attempt to have more thorough consideration when reviewing the SMW rate. For instance, MWC has conducted assessment of the possible impact on additional wage bill brought about by different SMW test levels (from \$28 to \$35 per hour at \$0.5 per interval (15 test levels in total)) and impacts on employees, businesses and unemployment rate as well as inflation before making a decision on whether adjustment to the SMW rate is necessary. It has also estimated the amount of annual additional wage bill under 15 SMW test levels based on the three definitions of wage bill, viz. based on the definition of wages under MWO, total wage bill with rest day and meal break pay included (for employees who are granted these payments according to their employment contract or agreement), and total wage bill (with rest day and meal break pay included) plus the amount of additional wage bill induced by knock-on effect.

15. The Administration has further explained that to mitigate the impact of data limitation arising from the issue of time lag, MWC has conducted scenario testing based on the assumptions on the economic outlook of the first half of 2013 when reviewing the SMW rate. It has studied how enterprises will respond to SMW under four different economic scenarios, including "optimistic scenario", "base case", "pessimistic scenario" and "more pessimistic scenario" to assess the impact on the affordability of businesses under different economic environments.

16. Some members remain of the view that as the revised SMW rate is determined based on the findings of scenario testing, the actual negative impact of the revised SMW rate on specific sectors may be underestimated. These members have suggested that the Administration should make a comparison of

the estimated and actual cost impact of the revised SMW rate and the knock-on effect on various sectors for the consideration of MWC in the next review of the SMW rate.

17. In view of the concern about the magnitude of knock-on effect, the Administration has commissioned a consultancy study, namely the Study on Knock-on Effect of Statutory Minimum Wage on Pay Hierarchies in the Retail and Restaurant Sectors ("Study on Knock-on Effect"), to collect information on organizational structures from enterprises in the retail and restaurant sectors in September 2010 and September 2011, and to examine the possible knock-on effect on these sectors brought about by the implementation of SMW. MWC has assessed the possible knock-on effect of SMW on the concerned sectors based on the study findings and the analyses and deliberations are detailed in its report.

Impact of the SMW rate on employers and businesses

18. Some members have pointed out that the implementation of the initial SMW rate has induced knock-on effect on the pay hierarchy and ripple effect. Apart from raising employees' wages to the SMW level, employers also need to increase the pay of employees at higher ranks in order to maintain a reasonable differential in the pay hierarchy to upkeep staff morale, leading to a significant increase in labour costs especially for SMEs which find it more difficult to pass on additional costs to consumers. These members have further pointed out that SMW has narrowed the wage gap among various industries and it has been 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 have to offer pay rise to employees with wage rate above the statutory level. This will, to some extent, make those sectors with more manual labour work, less favourable working environment and obnoxious duties pay higher wages to retain employees, thereby further pushing up labour costs and inflationary pressure. Such phenomenon is particularly profound in the catering sector which is currently facing an acute problem of labour shortage.

19. Hon Tommy CHEUNG has highlighted to the Subcommittee the findings of a survey conducted by him on the impact of the current SMW rate on the restaurant sector. It is observed that as the restaurant sector is labour intensive, the average wages of about 50% of employees in the sector have been increased after the implementation of SMW. The sector is gravely concerned that the Administration may have underestimated the impact of the knock-on effect in determining the revised SMW rate.

20. Some other members, however, hold 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 consider that it may be caused by the robust economy in Hong Kong and the low unemployment rate.

21. The Administration has advised that based on the findings of the 2010 and 2011 AEHS, it is observed that the wage differentials have been narrowed in different magnitudes among low paying sectors after the implementation of SMW. The Study on Knock-on Effect also reveals that the retail and restaurant sectors are to a certain extent affected by the knock-on effect. In the view of the Administration, MWC has been mindful of the impact of SMW on different sectors and has adopted an objective and balanced approach in reviewing the SMW rate.

22. In assessing the impact of the revised SMW rate on businesses, the Administration has pointed out that MWC has examined in depth the additional wage bill entailed. Based on the definition of wages under MWO, the estimated additional wage bill entailed by the revised SMW rate would be about \$1.35 billion. As rest day and meal break pay (for employees who are granted these payments according to their employment contract or agreement) is over and above the statutory requirements, and given the additional labour costs arising from knock-on effect, the total additional wage bill would rise to around \$2.0 billion (up by approximately 0.3%). The analysis of MWC suggests that the impact on most sectors (including the low paying sectors) should be moderate.

23. Regarding the impact of the revised SMW rate on inflation, the Administration has advised that assuming a full pass-through of additional wage bills to prices of products and services, MWC has estimated that the Composite Consumer Price Index ("CPI") would go up by about 0.3 to 0.4 percentage point. As a measure of inflation on the grassroots, the CPI(A) was estimated to rise by 0.5 to 0.6 percentage point. However, as a full pass-through of additional wage bills to consumer prices would be unlikely, the actual impact on inflation should be milder.

24. Some members have expressed concern about the recruitment difficulties faced by some sectors and the problem of manpower mismatch. They have suggested that the Administration should consider the viability of importing lower-skilled workers to relieve the labour shortage problem in specific sectors. The Administration has pointed out that it has put in place a series of employment assistance programmes for job seekers and employers. In addition, training and retraining services are provided for job seekers and serving employees. Nonetheless, the Administration will closely monitor the labour market and take appropriate measures.

Impact of the SMW rate on employees

25. Members are given to understand from the Administration that the robust economy in Hong Kong has cushioned considerably the negative impact of SMW on labour market and business sentiment. The labour market as a whole has remained stable and low-paid employees have also enjoyed substantial improvement in their employment earnings. The initial SMW rate has brought a significant positive effect on the income of grass-root employees, thereby improving their livelihood and enhancing the quality of life. Some members however remain concerned about the impact of implementation of SMW on the employment situation of lower-skilled employees who will more likely be affected by SMW.

26. The Administration has advised that based on the findings of the 2011 AEHS, there were 279 400 employees within the lowest overall hourly wage decile in May to June 2011. Among these employees, 180 600 (accounting for 64.6%) were employees earning the initial SMW rate of \$28 per hour. According to MWC's estimation, based on the data of the 2011 AEHS, around 327 200 employees would be covered by the revised SMW rate, accounting for 11.7% of all employees in Hong Kong. With the persistent rise in wages over the past year, the actual number of employees involved and the coverage of SMW may be smaller than estimated after SMW uprating. On the basis of the pay trend up to mid-2012, it was estimated that the coverage of SMW would be about 223 100 employees, or 7.9% of all employees. The number of employees involved and the coverage of SMW may dwindle further if wages continue to rise in the months ahead. Using the number of 327 200 employees for calculation, with the hourly wages adjusted upwards to the recommended SMW level of \$30 per hour, their average wage increase would be 5.4% to 5.5%.

27. Some members take the view that SMW does not bring about adverse impact on the job market, given that the total employment goes up persistently and the overall unemployment rate decreases. These members are particularly impressed by the fact that the increase in wages induced by the implementation of the initial SMW rate has encouraged more potential labour force and those with family responsibilities (in particular the middle-aged and women labour force) to enter the labour market.

28. Some members, however, have expressed concern that employers may split jobs into part-time ones or use casual jobs and bogus self-employment after the implementation of SMW to mitigate the increase in labour costs. The Administration has explained that under EO, there is already protection against unilateral variation of employment terms and conditions by employers.

Frequency of review of the SMW rate

29. Some members are of the view that owing to time lag of data collection and the persistent rise in wages over the past year, the actual number of employees involved and the coverage of the revised SMW rate may be less than that estimated by MWC if wages continue to rise in the months ahead. To address the problem of time lag between data collection and implementation of the revised SMW rate as well as to avoid employees' purchasing power being eroded by inflation, these members strongly call on the Administration to review and adjust the SMW rate on an annual basis. Consideration should be given to adjusting the SMW rate automatically in accordance with the annual inflation rate and movement of CPI. It is suggested that the Administration should amend MWO to this effect.

30. Noting that the findings of AEHS conducted in the preceding year are used for determining the revised SMW rate to be implemented in the following year, some other members do not see there is any room for further shortening the review cycle to once a year. These members take a strong view that the SMW rate should be reviewed on a biennial basis.

31. The Administration has explained that in the light of the far-reaching impact of SMW, instead of setting the rate by applying a mathematical formula based on inflation, MWC has made reference to relevant statistics in a Basket of Indicators covering various employment, social and economic conditions so as to have a balanced picture. Noting members' concern about the time lag in the compilation of AEHS, the Administration has pointed out that a large number of other indicators (e.g. labour supply and demand, inflation, Gross Domestic Product and price forecasts, unemployment rate, etc), which are more frequently updated, are made available for MWC to consider the latest socio-economic situation as well as short-term economic and labour market outlook.

32. Members are advised that sufficient time is required for the community to prepare for the adjustment of the SMW rate. Some establishments will also need time to review and, if necessary, revise their business service contracts in the light of the SMW uprating.

33. On the frequency of review of the SMW rate, the Administration has advised that MWO specified that MWC should report on the SMW rate at least once in every two years, without precluding more frequent rate review if there is evidence supporting the need. The SMW rate will be deliberated in line with the evidence-based approach, and apart from the wage statistics compiled by C&SD, MWC will examine a Basket of Indicators, take into account views of stakeholders and conduct impact assessment when studying the SMW rate. The Administration has stressed that it is important to ensure that the SMW rate, while setting a wage floor to prevent excessively low wages, will 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. The Administration has further advised that as the experience of implementing SMW in Hong Kong is still limited, the Administration will continue to closely monitor the implementation of SMW.

34. Some members stress that the Administration should consider setting out explicitly the circumstances and considerations under which the Administration will kick start the review of the SMW rate ahead of the two-year cycle. The Administration has advised that in the event that there is evidence supporting the need for a review of the SMW rate, a review can be conducted within less than two years.

Monetary cap on keeping records of hours worked by an employee

35. The Subcommittee notes that the Employment Ordinance (Amendment of Ninth Schedule) Notice 2012 increases the monthly monetary cap on keeping records of the total number of hours worked as specified in the Ninth Schedule to EO from \$11,500 per month to \$12,300 per month, which is consequential and proportionate to the increase of the SMW rate from \$28 per hour to \$30 per hour. Members raise no queries on the Notice.

Advice Sought

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

**Subcommittee on
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2012 and
Employment Ordinance (Amendment of Ninth Schedule) Notice 2012**

Membership list

Chairman Hon TAM Yiu-chung, GBS, JP

Members Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon CHEUNG Kwok-che
Hon WONG Kwok-kin, BBS
Hon WONG Yuk-man
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Hon Martin LIAO Cheung-kong, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP

(Total : 25 members)

Clerk Miss Betty MA

Legal Adviser Miss Evelyn LEE

Date 11 January 2013

**Subcommittee on
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2012 and
Employment Ordinance (Amendment of Ninth Schedule) Notice 2012**

- A. Organizations/individuals which/who have given oral representation to the Subcommittee
1. Hong Kong Catering Industry Association
 2. Institution of Dining Art
 3. Manpower Concern Group
 4. Hong Kong Federation of Restaurants & Related Trades
 5. Mr Peter SHIU, Eastern District Council member
 6. Youth Committee of the Liberal Party
 7. Mr KWOK Chung-man
 8. Hong Kong Confederation of Trade Unions
 9. Catering and Hotels Industries Employees General Union
 10. People's Alliance for Minimum Wage
 11. Cleaning Service Industry Workers Union
 12. Democratic Party
 13. Hong Kong Buildings Management and Security Workers General Union
 14. Hong Kong Vehicle Transportation Association
 15. Association of Restaurant Managers
 16. Labour Party

B. Organizations which have provided written submission only

1. Federation of Hong Kong Industries
2. Democratic Alliance for the Betterment and Progress of Hong Kong