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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper summarizes past discussions by the Bills Committee on Minimum Wage Bill, the Subcommittee on Subsidiary Legislation relating to Statutory Minimum Wage ("the Subcommittee") and the Panel on Manpower ("the Panel") on the statutory minimum wage ("SMW") rate and the monetary cap on keeping records of hours worked.

Background

2. The Minimum Wage Ordinance (Cap. 608) ("MWO") which enacted on 17 July 2010, seeks to establish a SMW regime. 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 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.

3. 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. These two pieces of subsidiary legislation are made to increase the prescribed minimum hourly wage rate from \$28 to \$30 with effect from 1 May 2013 and to increase the monetary cap from \$11,500 to \$12,300 per month below which records are required to be kept on the total number of hours worked by employees in each wage period.

Past discussions by Members

Criteria and methodology for setting the SMW rate

4. The criteria and methodology for setting the SMW rate had been the major issues of concern raised by members in deliberating on the SMW rate. The Administration advised that as specified in MWO, in the review of the SMW rate, the Minimum Wage Commission ("MWC") 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.

5. Some members were concerned about the statistical data to be considered by MWC in its review of the SMW rate. According to the Administration, various statistical data including the wage data collected through the Annual Earnings and Hours Survey ("AEHS") and the operating characteristics of business through other surveys conducted by the Census and Statistics Department ("C&SD") would be made 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") would also be conducted.

6. At its meetings on 29 May and 20 November 2012, the Panel noted from the Administration that MWC launched an eight-week public consultation to invite views on the SMW rate from members of the public and stakeholders as well as conducted two rounds of consultation meetings with stakeholders in the fourth quarter of 2011 and June 2012 respectively to gauge their views on the SMW rate.

7. Noting members' concern about the factors taken into account in assessing the SMW rate, the Administration affirmed that all relevant data and information as well as views from various sectors of society would be studied in detail in reviewing the SMW rate before making a decision on whether adjustment to the SMW rate was needed. These included the estimated increases in wages of employees involved and in wage bill of enterprises analyzed by sector at different SMW test levels as well as the operating characteristics of enterprises analyzed by sector.

Impact of the implementation of SMW

8. Some members expressed concern about the possible impact of implementation of SMW on the employment opportunities of low-skilled workers, vulnerable employees and young people. As advised by the

Administration, 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 would 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.

9. Members had time and again sought information on the estimated period of time through which the ripple effect of SMW would sustain. There was a view that the Administration should take into account the ripple effect generated by the implementation of SMW in various industries in assessing the precise impact of SMW. Moreover, the Administration should commission a tertiary institution to conduct a "tracking study" on employers and employees, so as to monitor the empirical magnitude of knock-on effects after the implementation of SMW.

10. The Administration advised that as the introduction of SMW was expected to lead to a series of chain reactions or ripple effects, the Preliminary MWC had recommended conducting tracking studies for low-paying sectors with special reference to the retail and restaurant trades to monitor the empirical magnitude of knock-on effects after the implementation of SMW. Notwithstanding this, the robust economy in Hong Kong had cushioned considerably the negative impact of SMW on labour market and business sentiment. The labour market as a whole had remained stable and low-paid employees had also enjoyed substantial improvement in their employment earnings. The Labour Department had commissioned a consultancy to conduct a study targeting employees working in the catering and the retail trade industries, for the purpose of assessing the impact of the implementation of SMW on employees in these two selected sectors including its effect on pay hierarchy and the likely impact of knock-on effect. To ensure the objectivity of the study, a sample of about 1 000 business undertakings was selected for the survey. The findings of the consultancy study once available would be provided to MWC for reference.

11. Concern was also raised about the extent to which the livelihood of low-paid workers had been improved after the implementation of SMW. The Administration advised that the implementation of SMW had helped improve

the employment earnings of the low-paid employees, which had sustained notable growth. As shown from the latest figures (June to August 2012), the average monthly employment earnings for full-time employees (excluding government employees and live-in domestic workers) in the lowest decile group (i.e. the group of the lowest-paid employees) registered a year-on-year growth of 6.3% (or 4.6% in real terms after discounting inflation), outpacing the growth of overall employees of 3.4% (or 0.3% in real terms after discounting inflation). According to the findings of the Hong Kong Council of Social Service, some 50 000 people had been lifted out of poverty in 2011.

Timing for and frequency of future reviews of the SMW rate

12. Some members were of the view that the SMW rate should be reviewed annually. At its meeting on 30 November 2010, the Subcommittee passed a motion calling on the Administration to initiate a review based on 2010 AEHS and implement the second SMW rate in the first half of 2012. Similar concern was raised by the Panel again when issues relating to the SMW rate were discussed. Some members noted with concern that the findings of AEHS in the preceding year were used for determining the SMW rate to be implemented in the following year. To address the problem of time lag between data collection and implementation of revised SMW rate, they called on the Administration to consider adjusting the SMW rate in accordance with the inflation rate and movement of Consumer Price Index compiled by C&SD.

13. The Administration advised that MWO specified the frequency of at least once in every two years, without precluding more frequent rate review if there was evidence supporting the need. The SMW rate would be deliberated in line with the evidence-based approach, and apart from the wage statistics compiled by C&SD, MWC would take into account a Basket of Indicators when studying the SMW rate. The Administration stressed that given the high degree of external orientation of Hong Kong's economy with a linked exchange rate system, it was 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.

14. Noting a time lag of almost half a year between the announcement of the SMW rate and its implementation, some members were concerned whether the time required for the compilation of statistics concerning AEHS and the General Household Survey could be compressed, so that the implementation of future SMW rate could be advanced.

15. The Administration explained that C&SD normally required eight months for completion of data analysis, which was broadly comparable with that of other overseas SMW jurisdictions such as the United Kingdom and Australia. Noting members' concern about the time lag, the Administration would strive to speed up the process. Members were further advised that time was needed for the drawing up of general guidelines for employers and employees, the industry-specific guidelines, and publicity on the implementation of SMW. Some establishments would also need time to review and, if necessary, revise their business service contracts.

Review of the SMW rate

16. The Panel received views from deputations on the review of the SMW rate on 29 May and 20 November 2012. Diverse views were expressed by members and deputations on the revised SMW rate. Some members and employers' associations/representatives were of the view that the SMW rate should not be higher than \$30 per hour as recommended by MWC, and preferably be frozen, given that an upward adjustment of SMW by \$2 per hour represented a 7.1% increase in wage costs on part of employers. They pointed out that as staff cost was the main portion of the operation cost of the business of SMEs, SMEs had been heavily struck by the implementation of SMW. Moreover, the implementation of SMW had narrowed the wage gap among various industries and it had been difficult for specific industries with comparatively less favourable working conditions to retain existing staff and recruit new entrants. Concerns were also raised about the ripple and knock-on effects. They considered that in face of both the global and local slackened economic growth environment, there was little room for upward adjustment of the SMW rate, especially in the catering and retail business, and the SMW rate should be revised on a biennial basis.

17. Some other members and labour unions/concern groups generally considered that the next SMW rate should be in the range of \$33 to \$35 per hour, in order to cope with rising living costs. These members stressed that there was a need to set the next SMW rate at a higher level, say, no less than \$33 per hour, so as to achieve the policy objective of maintaining the basic living standard of workers. These labour unions/concern groups pointed out that the increase in operation costs was largely attributed to the high rental. Instead of closure of SMEs and rise in unemployment as predicted by some employers and political parties before the implementation of SMW, there was notable increase in the working force (in particular the middle-aged and women labour force), and the continued decrease in the unemployment rate and the number of Comprehensive Social Security Assistance ("CSSA") recipients. They urged the Administration to conduct the review of SMW rate on an annual basis and to

take into consideration the basic needs of low-income families, inflation rate and the level of CSSA when reviewing the SMW rate.

Monetary cap on keeping records of hours worked by an employee

18. During the deliberations of the Subcommittee, some members were of the view that the monetary cap of \$11,500 per month capped for exempting employers from keeping records of the total number of hours worked of employees as stipulated under the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010 was appropriate. Some other members, however, were 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. There was a view that the monetary cap of \$11,500 was too high, as it was 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.

19. The Administration explained that \$11,500 was the median monthly wage identified in the 2009 AEHS covering 50% of the total number of employees. Employers would be required to keep records of the total number of hours worked for employees whose wages payable in respect of the wage period were less than \$11,500 per month. The monetary cap was 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 eight 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.

20. Members were advised that the monetary cap would be reviewed when the SMW rate was revised in the future. The Administration stressed that the monetary cap itself did not affect an employee's entitlement to receive wages not less than the SMW rate. Employees whose wages payable were above the monetary cap of \$11,500 still needed 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.

Relevant papers

21. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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**Relevant papers on
the statutory minimum wage rate**

Committee	Date of meeting	Paper
Panel on Manpower	23.3.2010 (Item III)	<u>Agenda</u> <u>Minutes</u>
Bills Committee on Minimum Wage Bill	---	<u>Report</u>
Subcommittee on Subsidiary Legislation relating to Statutory Minimum Wage	---	<u>Report</u>
Panel on Manpower	17.3.2011 (Items V and VI)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	12.4.2012 (Item V)	<u>Agenda</u>
Panel on Manpower	29.5.2012 (Item I)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	20.11.2012 (Item IV)	<u>Agenda</u>