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**Legislative Council**

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**Subcommittee on Minimum Wage Ordinance  
(Amendment of Schedule 3) Notice 2017 and the Employment Ordinance  
(Amendment of Ninth Schedule) Notice 2017**

**Background brief prepared by the Legislative Council Secretariat**

**Purpose**

This paper provides background information on the implementation of the statutory minimum wage ("SMW") regime and summarizes the major views and concerns expressed by Legislative Council ("LegCo") Members relating to the 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 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)(ea) of the Employment Ordinance (Cap. 57) ("EO") provides that an employer is required to record the total number of hours worked by an employee in a wage period if the employee is an employee within the meaning of MWO and the wages payable to that employee in that wage period are less than the monetary cap as specified in the Ninth Schedule to EO (or a proportionate amount if the wage period concerned is not a month). Section 49A(3) of 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. The initial SMW rate was set at \$28 per hour which came into effect from 1 May 2011, and the prescribed SMW rate was increased to \$30 per hour on

1 May 2013 and then \$32.5 per hour on 1 May 2015. The present monthly monetary cap on keeping records of hours worked by employees is set at \$13,300, based on the current SMW rate of \$32.5 per hour.

4. On 20 January 2017, the Administration published in the Gazette the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2017 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2017. These two pieces of subsidiary legislation are made to increase the prescribed minimum hourly wage rate from \$32.5 to \$34.5 with effect from 1 May 2017 and to increase the monetary cap from \$13,300 to \$14,100 per month below which records are required to be kept on the total number of hours worked by employees in each wage period.

### **Members' major views and concerns**

5. Members' major views and concerns on the subject are summarized in the ensuing paragraphs.

#### Impact of the implementation of SMW

6. Some Members expressed concern that the implementation of SMW had not only pushed up the wages of lower-paid employees, but also induced a knock-on effect on the pay hierarchy and the ripple effect. Apart from raising employees' wages to the revised SMW level, employers also needed to increase the pay of employees at higher ranks in order to maintain staff morale of employees of higher ranks and retain these employees, in turn adding further to the labour costs especially for small and medium enterprises ("SMEs") which found it more difficult to pass on additional costs to consumers. Moreover, SMW narrowed the wage gap among various industries and it was 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 had to offer pay rise to employees with wage rate above the statutory level. During the deliberation of the proposal to revise the SMW rate from \$30 per hour to \$32.5 per hour in 2015, some Members pointed out that as staff cost was the main portion of the operating cost of the business of SMEs, SMEs had been heavily struck by the implementation of SMW. These Members took the view that the SMW rate should be frozen in the light of the operating difficulties faced by SMEs, in particular those in the catering sector.

7. Some other Members, however, held 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 considered that this might be

caused by the robust economy in Hong Kong and the low unemployment rate. These Members also pointed out that the main causes for the operating difficulties encountered by the catering and retail sectors were high rentals and the increasing prices of raw materials, given that increases in food prices and rentals had accounted for about 70% of the inflation rate over the past few years.

8. According to the Administration, in assessing the impact of the recommended SMW rate on businesses, the Minimum Wage Commission ("MWC")<sup>1</sup> had examined in depth the additional wage bill entailed. Members were advised that the increase in wage bill would be more notable in the labour-intensive and low-paying sectors, such as cleaning services, security services, real estate maintenance management sector, fast food cafes and elderly homes. Nonetheless, MWC had estimated that the additional wage bill entailed should be manageable for most enterprises (including the low-paying sectors and SMEs).

9. Concern was also raised as to whether the Administration had underestimated the impact of the SMW rate on businesses and inflation. To better assess the actual impact of SMW, some Members suggested that the Administration should carry out assessments on the accuracy of its previous estimates on additional wage bill arising from the revision of the SMW rate and provide such findings for the consideration of MWC in the next review of the SMW rate.

#### Review frequency of the SMW rate

10. Many Members strongly called on the Administration to review and adjust the SMW rate on an annual basis so as to address the problem of time lag between data collection and implementation of the revised SMW rate under the existing biennial review mechanism. Some other Members, however, 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 sectors, and the SMW rate should be revised on a biennial basis.

11. The Administration advised that MWO required that the SMW rate should be reviewed at least once in every two years, without precluding more frequent rate review should circumstances so warrant. The Administration stressed that given the high degree of external orientation of Hong Kong's

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<sup>1</sup> MWC is a statutory body established under MWO with the main function to reports its recommendation about the SMW rate to the Chief Executive in Council.

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. If the SMW rate was to be reviewed annually, some employers who wished to maintain their flexibility in controlling labour costs might tend to offer short-term employment contracts and replace their permanent staff with casual workers, leading to fragmented employment. Moreover, employees might suffer from a more immediate wage decrease in the event of a sharp economic downturn if the SMW rate was reviewed annually. As SMW had been implemented for only a few years with limited experience, the existing flexible arrangement of reviewing the SMW rate at least once in every two years should be maintained.

12. On the concern about the problem of time lag between data collection/analysis and implementation of the revised SMW rate, the Administration explained that the Census and Statistics ("C&SD") normally required eight months for completion of data analysis, which was broadly comparable with that of other overseas SMW jurisdictions. In addition to the findings of Annual Earnings and Hours Survey ("AEHS"), MWC had made reference to a large number of relevant data (e.g. labour supply and demand, inflation, Gross Domestic Product ("GDP") and price forecasts, unemployment rate, etc.) which were released and updated more frequently.

#### Criteria for determining the SMW rate

13. Some Members were of the view that the SMW rate should be raised to cope with rising living costs and relieve the problem of working poverty. While agreeing that the livelihood of low-income grassroots workers should be safeguarded by means of SMW, some Members expressed reservations about regarding SMW as the wage adjustment mechanism. These Members considered that wage increase should be adjusted based on individual workers' performance and the wage differentials in different industries should be determined by the market force.

14. The Administration 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. The Administration further advised that SMW provided a wage floor to forestall excessively low wages. Eligible low-income families might apply for the Comprehensive Social Security Assistance Scheme and the Low-income Working Family Allowance Scheme as appropriate.

15. The Administration stressed that in making its recommendation on the revised SMW rate, MWC had considered, among other things, the wage distribution data from AEHS conducted by C&SD and an array of indicators covering information on the socio-economic and labour market conditions as well as GDP and price forecasts. MWC also took into account other relevant considerations that were related to the review of the SMW rate but could not be fully quantified such as enhancing incentive to work, additional costs induced by increase in wages, and impact on wage differentials across sectors or positions. Furthermore, MWC had considered views of various sectors of the community in order to recommend an appropriate SMW rate.

#### Survey reference period of AEHS

16. Members noted that after the implementation of SMW, the survey reference period of AEHS was changed to May to June such that the survey results could be directly used for analyses related to SMW. Concern was raised whether the survey reference period could fully reflect the actual impact of the revised SMW rate, which took effect only from 1 May in the year, and the ripple effect on businesses. It was suggested that the Administration should instead adopt September to November as the survey reference period of AEHS for the review of the SMW rate in the future, so that the impact of the revised SMW rate on staff costs could be reflected more accurately, and the effects of year-end bonus and influence of summer workers on wage rates would be netted out.

17. The Administration explained that wage levels in the first and fourth quarters of a year were generally more susceptible to effects of guaranteed bonuses and tend to show larger fluctuations in their year-on-year changes; while wage levels in the third quarter were usually subject to influence of summer workers' wage rates. Wage levels of employees in the second quarter were comparatively more stable and thus more suitable for year-on-year comparisons. Reference had also been made to the practices of other places in conducting similar surveys when determining the survey reference period of AEHS.

#### Monetary cap on keeping records of hours worked by an employee

18. Members noted that employers were 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 the monthly monetary cap as specified in the Ninth Schedule to EO. The proposed amendment, if any, to the monetary cap was consequential and proportionate to the percentage increase of the SMW rate adjustment.

19. According to the Administration, 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 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**

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

Council Business Division 2  
Legislative Council Secretariat  
21 February 2017

**Relevant papers on  
the statutory minimum wage rate**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Manpower	17.3.2011 (Items V and VI)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	12.4.2012 (Item V)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	29.5.2012 (Item I)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	20.11.2012 (Item IV)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	17.6.2014 (Item IV)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	19.4.2016 (Item IV)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	23.1.2017 (Item III)	<a href="#"><u>Agenda</u></a>
Subcommittee on Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2012 and Employment Ordinance (Amendment of Ninth Schedule) Notice 2012	---	<a href="#"><u>Report</u></a>
Subcommittee on Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2015 and Employment Ordinance (Amendment of Ninth Schedule) Notice 2015	---	<a href="#"><u>Report</u></a>