

**立法會**  
**Legislative Council**

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**Subcommittee on Minimum Wage Ordinance  
(Amendment of Schedule 3) Notice 2015 and the Employment Ordinance  
(Amendment of Ninth Schedule) Notice 2015**

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

**Purpose**

This paper summarises the past discussions by Members relating to 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 16 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 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. 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. The present monthly monetary cap on keeping records of hours worked by employees is set at \$12,300, based on the current SMW rate of \$30 per hour.

4. On 16 January 2015, the Administration published in the Gazette the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2015 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2015. These two pieces of subsidiary legislation are made to increase the prescribed minimum hourly wage rate from \$30 to \$32.5 with effect from 1 May 2015 and to increase the monetary cap from \$12,300 to \$13,300 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

5. 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")<sup>1</sup> must have regard to the need to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimising the loss of low-paid jobs and to sustain Hong Kong's economic growth and competitiveness.

6. 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.

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 the society would be studied in detail in reviewing the SMW rate before making a decision on whether adjustment to the SMW rate was needed. MWC would also conduct assessment on the possible impact under different SMW test levels, including impact on employees, employers, economy, employment and inflation so as to recommend an appropriate SMW rate.

### 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. Some other members, however, expressed concern that the implementation of the initial SMW rate had induced knock-on effect on the pay hierarchy and ripple effect. Apart

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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 CE in Council.

from raising employees' wages to the SMW level, employers also needed 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 found it more difficult to pass on additional costs to consumers. These members were concerned that SMW had narrowed the wage gap among various industries and it had been difficult for specific industries with comparatively less favourable working environment 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. This would, 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 was particularly profound in the catering sector which was currently facing an acute problem of labour shortage.

9. In view of the concern about the magnitude of knock-on effect, the Administration advised that it had commissioned a consultancy study, namely the Study on Knock-on Effect of Statutory Minimum Wage on Pay Hierarchies in the Retail and Restaurant Sectors, to collect information on organisational 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 had assessed the possible knock-on effect of SMW on the concerned sectors based on the study findings and the analyses.

#### Timing for and frequency of future reviews of the SMW rate

10. 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. 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.

11. 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. On the concern about the problem of time lag between data collection/analysis and implementation of the revised SMW rate, the Administration advised that based on the experience of last review of the SMW rate, it would provide statistical support for MWC in its review of the next SMW rate as appropriate, including projections on the wage distribution with reference to the updated statistics from the C&SD's General Household Survey on employment, unemployment and underemployment as well as employment earnings. 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.

12. 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 called on the Administration to review and adjust the SMW rate on an annual basis. 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 business, and the SMW rate should be revised on a biennial basis.

13. The Administration pointed out 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 an Array of Indicators, including labour demand and supply, inflation, Gross Domestic Product and price forecasts and unemployment rate, and other relevant considerations that could not be totally quantified 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 jeopardise the labour market flexibility and economic competitiveness of Hong Kong.

#### Level of the revised SMW rate

14. Members noted that MWC launched a six-week public consultation from 7 April to 18 May 2014 and conducted consultation meetings with stakeholders in June 2014 to gauge views on the review of the SMW rate, with a view to submitting a report on the SMW rate to the CE in Council before the end of October 2014. The Panel on Manpower met with the Administration and received views from deputations at its meeting on 17 June 2014 on the review of the SMW rate. Diverse views were expressed by members and deputations attending the Panel meeting. Some members and employers' associations/representatives were of the view that the SMW rate should be frozen in the light of the operation difficulties faced by SMEs, in particular those in the catering sector. 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. While they agreed that the livelihood of low-income grassroots workers should be safeguarded by means of SMW, there were reservations about regarding SMW as the wage adjustment mechanism. They

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.

15. Some other members and labour unions/concern groups expressed disappointment that the SMW rate was revised from \$28 per hour in 2011 to \$30 per hour in 2013, which represented an average yearly increase of 3.5% only and was lagged behind the inflation rate. They generally considered that the next SMW rate should not be less than \$35 per hour. Given that the grassroots workers did not have much bargaining power in wage negotiation, improvement to their livelihood at times of inflation would largely rely on SMW uprating. These labour unions/concern groups pointed out that the increase in operation costs, which had posed pressure to business operation, 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 labour force (in particular the middle-aged and women labour force), and the continued decrease in the unemployment rate as well as 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 and the inflation rate.

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

16. Members were advised that the initial monetary cap of \$11,500 per month in 2010 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 minimise 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.

17. Members were further 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 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**

18. 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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## Appendix

### 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> <u>Minutes</u>
Panel on Manpower	17.6.2014 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Subcommittee on Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2012 and Employment Ordinance (Amendment of Ninth Schedule) Notice 2012	---	<u>Report</u>