

立法會
Legislative Council

Ref : CB2/BC/3/06

LC Paper No. CB(2)1101/06-07
(These minutes have been seen by
the Administration)

**Bills Committee on
Employment (Amendment) Bill 2006**

**Minutes of meeting
held on Thursday, 1 February 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon KWONG Chi-kin (Chairman)
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon Fernando CHEUNG Chiu-hung

Members absent : Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS

Public Officers attending : Item II
Mr Alan WONG Kwok-lun, JP
Assistant Commissioner for Labour (Labour Relations)

Ms Monica LAW Man-yuen
Senior Assistant Law Draftsman
Department of Justice

Ms Bertha CHENG Wai-yue
Chief Labour Officer (Labour Relations)
Labour Department

Ms Teresa FONG Yuk-sim
Senior Labour Officer (Labour Relations)
Labour Department

Ms Christine BUT Wing-tung
Labour Officer (Labour Relations)
Labour Department

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2) 1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Miss Josephine SO
Council Secretary (2) 1

Miss Helen DIN
Legislative Assistant (2) 1

Action

I. Election of Chairman

Mr KWONG Chi-kin was elected Chairman of the Bills Committee.

2. The Bills Committee deliberated (index of proceedings attached at Annex).

II. Meeting with the Administration

3. The Bills Committee requested the Administration -

- (a) to consider using different modes of calculation of statutory entitlements under the Bill for employees with fixed wages and those with variable wages;
- (b) to consider the suggestion that, while the Bills Committee would proceed with the scrutiny work of the Bill, the Administration should, in parallel, refer the proposal of setting a

Action

ceiling on the commission for calculating statutory entitlements to the Labour Advisory Board for its deliberations; and

- (c) to explain the modes of calculation of severance payment and terminal payments for unreasonable dismissal by employers, and, for the purpose of consistency, why the mode of calculation of severance payment was not proposed to be adopted for calculating the statutory entitlements under the Bill.

4. The Bills Committee also requested Assistant Legal Adviser 5 (ALA5) to examine the long title of the Bill and advise whether the following were relevant to the subject matter of the Bill -

- (a) amendments to give effect to the proposal of setting a ceiling on the commission for the purpose of calculating the statutory entitlements proposed in the Bill; and
- (b) amendments to revise the mode of calculation of statutory entitlements proposed in the Bill by taking an employee's last month's wages, or the average of the wages earned by an employee during the past 12 months, whichever was the higher.

5. The Bills Committee noted that ALA5 would follow up with the Administration on the drafting aspect of the Bill after the meeting.

6. The Bills Committee agreed that labour unions and chambers of commerce be invited to give views on the Bill. The Bills Committee also agreed that The Law Society of Hong Kong be invited to give further views, having regard to the Administration's response to its submission dated 18 January 2007.

III. Date of next meeting

7. The Bills Committee agreed that the next meeting would be held on Thursday, 1 March 2007, from 4:30 pm to 6:30 pm to receive deputations.

8. The meeting ended at 10:20 am.

Council Business Division 2
Legislative Council Secretariat
14 February 2007

**Proceedings of meeting of the
Bills Committee on
Employment (Amendment) Bill 2006
held on Thursday, 1 February 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000240	Hon LEE Cheuk-yan Hon WONG Kwok-hing Hon KWONG Chi-kin	Election of Chairman	
000241- 001458	Chairman Hon LI Fung-ying Hon LEE Cheuk-yan Hon WONG Kwok-hing Hon CHAN Yuen-han Hon Mrs Selina CHOW Hon Jeffrey LAM Hon LEUNG Yiu-chung	Pace of scrutiny of the Bill Work plan of the Bills Committee and subsequent meetings Date of next meeting to receive deputations' views on the Bill	
001459 - 001842	Admin	Briefing on the Bill	
001843 - 002600	Hon LEE Cheuk-yan Admin	The rationale for taking a general approach to adopt the 12-month moving average for calculation of statutory entitlements under the Bill for all employees Effect of the Bill on calculating the statutory entitlements for those employees remunerated on fixed wages	
002601 - 002934	Hon LI Fung-ying Admin	Whether the Bill could clarify all the grey areas in the legislation	
002935 - 003454	Hon Andrew CHENG Admin	Opposition to the suggestion of setting a ceiling on the commission for the purpose of calculating statutory entitlements Paragraphs 12 to 14 of the Administration's response to the submission of The Law Society of Hong Kong (LC Paper No. CB(2)991/06-07(05))	

Time marker	Speaker	Subject(s)	Action Required
003455 - 004025	Hon LEUNG Yiu-chung Admin	Effect of the Bill on calculation of severance payment Formula to be used when the employment period of an employee was shorter than 12 months	
004026 - 004908	Hon Mrs Selina CHOW Admin Hon LEE Cheuk-yan	Whether the Administration and the Labour Advisory Board (LAB) had taken into account the views and concerns of employer organisations regarding the wide-ranging remuneration systems in the services sector, whereby commission was calculated and paid and accounted for a significant proportion of payroll, and the suggestion to set a ceiling on the commission for the purpose of calculating statutory entitlements	
004909 - 005122	Hon LEE Cheuk-yan Admin	Whether the existing mode of calculation of statutory entitlements proposed in the Bill by taking an employee's last month's wages should be upheld for employees remunerated on fixed wages Impact of the proposed amendments in the Bill on the overtime rates for calculation of wages	
005123 - 010131	Hon Jeffrey LAM Admin Hon Vincent FANG	Whether the Administration and LAB had set a timetable to study the proposal of setting a ceiling on the commission The Administration's priority to clarify the grey area in the existing legislation, and its plan to deal with the issue outside the context of the current amendment exercise Components of wages	

Time marker	Speaker	Subject(s)	Action Required
010132 - 010651	Hon Andrew CHENG Admin	<p>Suggestion that the Bills Committee might examine the long title of the Bill, before deciding whether the proposal of setting a ceiling on the commission should be considered</p> <p>Paragraphs 13 to 14 of the Administration's response to the submission of The Law Society of Hong Kong (LC Paper No. CB(2)991/06-07(05)) regarding the concern about the meaning of "full wages" and "leave"</p>	
010652 - 011205	Hon Andrew LEUNG Admin	<p>Suggestion that, while the Bills Committee would proceed with the scrutiny work of the Bill, the Administration should, in parallel, refer the proposal of setting a ceiling on the commission to LAB for its deliberations</p> <p>The position of the Administration on the suggestion</p>	Admin to consider the suggestion
011206 - 011750	Hon LEUNG Yiu-chung Admin Chairman	<p>Whether the Bill could adhere to the principle of consistency in the calculation of statutory entitlements</p> <p>Modes of calculation of severance payment, terminal payments for unreasonable dismissal and statutory entitlements under the Bill</p> <p>Reasons for not adopting the mode of calculation of severance payment for calculating the statutory entitlements under the Bill</p>	Admin to explain the modes of calculation of severance payment and terminal payments for unreasonable dismissal by employers, and, for the purpose of consistency, why the mode of calculation of severance payment was not proposed to be adopted for calculating the statutory entitlements under the Bill

Time marker	Speaker	Subject(s)	Action Required
011751 - 012450	Hon CHAN Yuen-han Chairman Hon LEE Cheuk-yan Hon Jeffrey LAM	Whether the following were relevant to the subject matter of the Bill - <ul style="list-style-type: none"> - amendments to give effect to the proposal of setting a ceiling on the commission for the purpose of calculating the statutory entitlements proposed in the Bill; and - amendments to revise the mode of calculation of statutory entitlements proposed in the Bill by taking an employee's last month's wages, or the average of the wages earned by an employee during the past 12 months, whichever was the higher 	ALA5 to examine the long title of the Bill and advise on the matters
012451 - 012958	Hon Jeffrey LAM Admin	The position of the Administration on the suggestion to set a ceiling on the commission and the timetable to deal with the matter	
012959 - 013828	Hon LEE Cheuk-yan Admin ALA5 Hon Mrs Selina CHOW	Different modes of calculation of statutory entitlements under the Bill for employees with fixed wages and those with variable wages The period to be disregarded in the calculation of the daily average wages Whether leave taken by an employee with the agreement of his employer was to be disregarded Definition of working day The drafting aspect of the Bill	Admin to consider using different modes of calculation of statutory entitlements under the Bill for employees with fixed wages and those with variable wages ALA5 would follow up with the Admin on the drafting aspect of the Bill

Time marker	Speaker	Subject(s)	Action Required
013829 - 015225	Hon LI Fung-ying Admin Chairman Hon Mrs Selina CHOW	Views on the proposal to set a ceiling on the commission The rationale for not including other statutory benefits under the Employment Ordinance, e.g. severance payment and long service payment, in the Bill Possible problems observed in the drafting or legal aspect of the Bill	
015226 - 015252	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
14 February 2007