

立法會
Legislative Council

LC Paper No. CB(2)167/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/BC/11/08

Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Monday, 28 September 2009, at 10:45 am
in the Chamber of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Paul CHAN Mo-po, MH, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Hon Tanya CHAN
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Yuk-man
Hon IP Wai-ming, MH
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

- Members absent** : Hon LEUNG Yiu-chung
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
- Public Officers attending** : Mr Matthew CHEUNG Kin-chung, GBS, JP
Secretary for Labour and Welfare
- Mr Paul TANG Kwok-wai, JP
Permanent Secretary for Labour and Welfare
- Mr Eamonn MORAN, JP
Law Draftsman
Department of Justice
- Mr Alan WONG Kwok-lun, JP
Deputy Commissioner for Labour (Labour Administration)
- Mr FONG Ngai
Assistant Commissioner for Labour (Policy Support and Strategic Planning)
- Miss Mabel LI Po-yi
Senior Labour Officer (Statutory Minimum Wage)
Labour Department
- Ms Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice
- Ms Queenie TANG Yuen-shan
Labour Officer (Statutory Minimum Wage)
Labour Department
- Clerk in attendance** : Mr Raymond LAM
Chief Council Secretary (2) 1
- Staff in attendance** : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2
- Mrs Eleanor CHOW
Senior Council Secretary (2) 4

Miss Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

The Bills Committee accepted the application for late membership by Mr WONG Yuk-man.

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

3. The Administration was requested to -

- (a) consider providing the Bills Committee with papers discussed by the Provisional Minimum Wage Commission; and
- (b) explain the consistency of the Bill with Article 5 of the Basic Law.

(Post-meeting note: The Administration's response to item (b) above was issued to members vide LC Paper No. CB(2)2619/08-09 on 9 October 2009.)

4. The Administration was requested to provide papers on the following issues to the Panel on Manpower for discussion -

- (a) prevention of fake self-employment; and
- (b) the mandatory wage requirement for non-skilled workers engaged in government service contracts after the implementation of the statutory minimum wage.

5. Regarding a paper tabled at the meeting on the proposed order and areas for study by the Bills Committee, members suggested that the following issues be incorporated in the proposed areas -

- (a) commencement of the ordinance;
- (b) policy objectives of the Bill;
- (c) timing and frequency on reviews of the minimum hourly wage rate; and
- (d) guidelines and procedures of the Minimum Wage Commission.

(Post-meeting note: The proposed order and areas for study has been revised taking into account members' comments and was issued to members vide LC Paper No. CB(2)2614/08-09 on 8 October 2009.)

6. Mr LEE Cheuk-yan suggested that issues relating to live-in domestic workers and persons with disabilities be deferred to a later stage of the deliberations, given their controversial nature.

II. Schedule of future meetings

7. Members agreed that the following seven meetings would initially be scheduled between mid-October 2009 and January 2010 -

- (a) 13 October 2009 from 8:30 am to 10:30 am
- (b) 5 November 2009 from 4:30 pm to 6:30 pm
- (c) 19 November 2009 from 4:30 pm to 6:30 pm
- (d) 3 December 2009 from 4:30 pm to 6:30 pm
- (e) 17 December 2009 from 4:30 pm to 6:30 pm
- (f) 7 January 2010 from 4:30 pm to 6:30 pm
- (g) 28 January 2010 from 4:30 pm to 6:30 pm

8. Mr LEE Cheuk-yan suggested that future meetings should be held on a weekly basis to facilitate early implementation of the statutory minimum wage. The Chairman said that as there were different views among members on the number of meetings to be held in a month, members would be consulted by circulation of paper on the arrangements for future meetings.

9. The Chairman informed members that the next meeting had been scheduled for 7 October 2009 from 9:00 am to 1:00 pm to receive public views on the Bill. Having regard to the large number of deputations and individuals attending the meeting, the Bills Committee agreed that the meeting would be extended to end at 6:00 pm.

10. The meeting ended at 1:00 pm.

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Monday, 28 September 2009, at 10:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000440	Chairman	Application for late membership by Hon WONG Yuk-man	
000441 - 001747	Chairman Admin	Presentation on the major policy objectives of the Minimum Wage Bill (Bill) as set out in the Legislative Council (LegCo) Brief	
001748 - 002447	Admin	Power point presentation on the contents of the Bill	
002448 - 003029	Chairman Hon IP Wai-ming Admin	<p>Concerns raised by Hon IP Wai-ming on clause 3(2)(a) of the Bill -</p> <p>(a) why it was specified in the clause that the hours worked by an employee in a wage period should exclude the period allowed for a meal, given that this was not specified in the Employment Ordinance (EO);</p> <p>(b) the clause would encourage existing employers who were used to paying employees for the meal period to cease doing so in future; and</p> <p>(c) the clause would give rise to disputes on whether hours worked in the wage period should include meal time and strain employer-employee relationship</p> <p>Response of the Administration -</p> <p>(a) the clause provided that the hours worked by the employee for the computation of statutory minimum wage (SMW) had to be taken not to include any period allowed by the employer for a meal, except to the extent</p>	

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		<p>(if any) during that period the employee was doing work in accordance with the contract of employment or with the agreement or at the direction of the employer;</p> <p>(b) as always, employers and employees were free to agree between themselves the employment terms on working hours and meal break;</p> <p>(c) in determining the employee's entitlement to be paid wages not less than the SMW, payment for meal break not worked by the employee was not counted as part of the wages payable and thus the hourly wage rate so derived would not be distorted; and</p> <p>(d) the Administration would launch publicity and promotional activities upon the implementation of SMW so that employers and employees would understand the legal provisions and their respective obligations and entitlements under the SMW regime</p> <p>Hon IP Wai-ming advised that he would suggest amendments to clause 3(2)(a) to the effect that hours worked in the wage period would include the meal time which would be set for at least one hour</p>	
003030 - 003803	Chairman Hon LEE Cheuk-yan Admin	<p>Concerns raised by Hon LEE Cheuk-yan -</p> <p>(a) he did not support the proposal to allow six months for the business sector to gear up for the implementation of SMW. He considered that the Bill and its subsidiary legislation, once</p>	

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		<p>enacted, should commence operation;</p> <p>(b) the SMW rate should be set at a level that would enable a low-income worker to sustain a basic standard of living; and</p> <p>(c) Part 4 of the Bill stipulated that the prescribed minimum hourly wage rate in Schedule 3 could be adjusted upward or downward. While the Bill stipulated that LegCo might either approve or revoke the notice to amend the Schedule, it was not given the power to amend the Schedule. Given that the Chief Executive (CE) in Council had the power to amend the prescribed minimum hourly wage rate recommended by the Minimum Wage Commission (MWC), LegCo should also be given the power to amend the Schedule so that if CE in Council decided against the recommendation of MWC, LegCo as a gatekeeper could amend the Schedule to adopt the recommendation of MWC</p> <p>Response of the Administration -</p> <p>(a) given that non-compliance with the SMW legislation would constitute an offence, the business sector should be given sufficient time to prepare for the implementation of SMW. The Administration considered the six-month preparatory period necessary and reasonable;</p> <p>(b) SMW was the wage floor to be set under an evidence-based approach. MWC, in making a recommendation on the prescribed minimum hourly</p>	

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		<p>wage rate, would take account of all pertinent social, economic and employment factors that were relevant to, or affected by, the SMW level; and</p> <p>(c) the prescribed minimum hourly wage rate would be recommended by MWC to CE in Council, and approved by LegCo by subsidiary legislation according to the negative vetting procedure. In the United Kingdom (UK), Parliament also could not amend the SMW rate. In places such as Canada, New Zealand, South Korea and Taiwan, the legislature was not involved in the setting of the SMW rate.</p>	
003804 - 004641	Chairman Hon Miriam LAU Admin	<p>Concerns raised by Hon Miriam LAU -</p> <p>(a) companies belonging to different industries had expressed difficulty in understanding the application of the SMW regime to their operation, such as the calculation of average hourly wage rate and counting of commission, etc. She enquired about the arrangements for consulting stakeholders on the Bill;</p> <p>(b) whether the proposal to apply the SMW rate to students studying overseas and working as local interns while excluding local student interns from the Bill would constitute discrimination; and</p> <p>(c) whether the Administration was shirking its responsibility by entrusting MWC to decide the prescribed minimum hourly</p>	

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		<p>wage rate which entailed great economic implications on Hong Kong</p> <p>Response of the Administration -</p> <p>(a) the Labour Department (LD) had consulted extensively a wide spectrum of stakeholders throughout the process in preparing the Bill. Where necessary, LD would further explain the calculation method and other issues as raised by stakeholders;</p> <p>(b) student internships which formed a compulsory or elective part of their programmes and were required for the award of the academic qualifications in full-time locally-accredited programmes as arranged or endorsed by specified education institutions would be excluded from the application of the SMW legislation. Further extending the exemption to other student employees would impact on job opportunities of local workers; and</p> <p>(c) the Administration was not shirking its responsibility. In UK, which had operated the SMW regime for about 10 years, the SMW rate was also proposed by a statutory body. MWC, which would consist of three members from the labour sector, three members from the business sector, three members from the relevant academic fields, and three members who were public officers, was tasked to advise the CE in Council on the appropriate SMW rate</p>	

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004642 - 005222	Chairman Hon LI Fung-ying Admin	<p>Views of Hon LI Fung-ying -</p> <ul style="list-style-type: none"> (a) the Bill should commence operation as soon as practicable; (b) the SMW rate should be set at a reasonable level, e.g. above the safety net level and above the minimum wage level identified for cleaning workers and security guards; (c) the Bill should set out a system for reviewing the SMW rate, e.g. the timing and frequency of SMW rate reviews; and (d) great care should be exercised in appointing academics to MWC given that they might hold divergent views which would affect how the SMW rate would be set <p>Response of the Administration -</p> <ul style="list-style-type: none"> (a) it was the Administration's intention to implement SMW as soon as practicable; (b) the main function of MWC was to recommend to CE in Council the prescribed minimum hourly wage rate and the timing and frequency of rate reviews, as required by CE; and (c) while academics might hold different views, they were expected to look at the issue from a macroscopic point of view and give an independent and balanced advice 	
005223 - 005816	Chairman Hon WONG Yuk-man Admin	<p>Views of Hon WONG Yuk-man -</p> <ul style="list-style-type: none"> (a) it was not appropriate to compare the SMW arrangements in UK with those 	

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		<p>of Hong Kong given that the former's head of government was elected by universal suffrage;</p> <p>(b) the operation of MWC would not be transparent. Given that its members would be appointed by CE and only three members would come from the labour sector, decision of MWC would tend to be pro-government;</p> <p>(c) LegCo should have the power to amend the proposed SMW rate;</p> <p>(d) he did not support the proposal to exclude all live-in foreign domestic helpers (FDHs) from the coverage of SMW; and</p> <p>(e) the SMW rate should be set at a level not lower than the level of Comprehensive Social Security Assistance (CSSA) or lower than 40% of the average wage rate</p>	
005817 - 010339	Chairman Hon Mrs Regina IP LAU Admin	<p>Views of Hon Mrs Regina IP -</p> <p>(a) students studying overseas should be excluded from the Bill in order to provide them with more opportunities to take up local internships;</p> <p>(b) she did not see how an intern who studied overseas and worked in a local organization on a voluntary basis could affect employment opportunities; and</p> <p>(c) whether persons with disabilities (PWDs) who were currently employed would be excluded from the Bill</p> <p>Response of the Administration -</p> <p>(a) the issue of whether to exempt</p>	

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		<p>student interns from the coverage of the Bill had been discussed by the Labour Advisory Board and other stakeholders. The proposed exemption provision struck a reasonable balance between preserving students' internship opportunities as necessitated by their curricula and preventing possible displacement of local workers as unscrupulous employers might turn a permanent job into one filled up by interns;</p> <p>(b) if a student volunteer did not enter into any employee-employer relationship as per the relevant facts and circumstances of the case, SMW would not be applicable; and</p> <p>(c) a PWD who was currently employed would be covered by the Bill. Where he felt that his productivity might have been affected by his disability, he had the right to initiate an assessment on his productivity in the authentic workplace so as to determine whether he should be remunerated at the SMW rate</p>	
010340 - 011023	Chairman Hon Ronny TONG Admin	<p>Concerns raised by Hon Ronny TONG -</p> <p>(a) the Bill did not confer power on MWC to make a final decision on the SMW rate. Given that its members would be appointed by CE, its independence was called into question. In addition, the prescribed minimum hourly wage rate proposed by MWC would not be binding on CE in Council;</p>	

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		<p>and</p> <p>(b) the Bill did not provide safeguards to prevent the underestimation of the SMW rate, e.g. some unscrupulous employers might require employees to purchase their working tools which would reduce the actual take home wage</p> <p>Response of the Administration -</p> <p>(a) the Bill provided a statutory framework for MWC to advise the CE in Council on the appropriate level of the prescribed minimum hourly wage rate;</p> <p>(b) CE in Council would make a decision on the SMW rate; and</p> <p>(c) clause 15(2) stipulated that CE in Council might have regard to MWC's recommendation on prescribed minimum hourly wage rate but was not bound by it</p>	
011024 - 011811	Chairman Hon Albert HO Admin	<p>Concerns raised by Hon Albert HO -</p> <p>(a) the Bill did not seek to legislate on the SMW rate but merely provided a framework for MWC to advise the CE in Council on the appropriate level of prescribed minimum hourly wage rate;</p> <p>(b) given that MWC members would be appointed by CE, members might be conservative;</p> <p>(c) the Bill should set out the methodology for setting the prescribed minimum hourly</p>	

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		<p>wage rate and the philosophy behind it; and</p> <p>(d) LegCo should be given the power to amend the SMW rate, given that the one proposed by CE in Council might not be able to sustain the basic living of an individual</p> <p>Response of the Administration -</p> <p>(a) the Bill did lay down a framework to legislate on the SMW rate. It was for MWC to make a recommendation on the prescribed minimum hourly wage rate by adopting an evidence-based approach through data research and analysis as well as extensive consultations with stakeholders; and</p> <p>(b) the setting of the SMW rate had to maintain an appropriate balance between forestalling excessively low wages and minimizing the loss of low-paid jobs while sustaining the economic growth and competitiveness of Hong Kong</p>	
011812 - 012341	Chairman Hon WONG Kwok-hing Admin	<p>Concerns raised by Hon WONG Kwok-hing -</p> <p>(a) some unscrupulous employers had started taking steps to free themselves from the employer-employee relationship so that they would not be bound by EO or the SMW legislation. For instance, they outsourced their work or required their workers to be self-employed; and</p> <p>(b) there should be precautionary measures to protect low-income workers from such acts of</p>	

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		<p>employers</p> <p>Response of the Administration -</p> <p>(a) the concerns raised by Hon WONG Kwok-hing did not arise from the introduction of the Bill; and</p> <p>(b) any fake self-employed cases could be referred to LD for investigation and non-compliance with EO would constitute an offence</p> <p>The Administration was requested to prepare a paper on the prevention of fake self-employment to the Panel on Manpower for discussion</p>	Admin
012342 - 013040	Chairman Hon Frederick FUNG Admin	<p>Views of Hon Frederick FUNG -</p> <p>(a) the SMW rate should not be lower than the level of CSSA, 50% of the median wage, and the standard of living specified by the Housing Authority to be eligible for public housing; and</p> <p>(b) as CE would be vested with the power to appoint MWC members and CE in Council with the power to make a decision on the SMW rate which might depart from the recommendation of MWC, CE in Council's power should be restricted to either approve or revoke the proposed SMW as in the case of LegCo</p> <p>Response of the Administration -</p> <p>(a) MWC would take into account a basket of factors as well as the views collected from stakeholders during public consultation in recommending</p>	

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		<p>the prescribed minimum hourly wage rate; and</p> <p>(b) in line with the established practice, CE in Council would make a decision on government policies</p>	
013041 - 013520	Chairman Hon Paul TSE Admin	Response of the Administration that the Bill was consistent with Article 5 of the Basic Law and that some capitalist countries also had a SMW regime in place	
013521 - 014053	Chairman Dr Hon LAM Tai-fai Admin	<p>Concerns raised by Dr Hon LAM Tai-fai -</p> <p>(a) members should avoid being confrontational in the discussion on SMW; and</p> <p>(b) whether there was any indicator or yardstick to ascertain the minimum hourly wage rate so prescribed could forestall excessively low wages, minimize the loss of low-paid jobs while sustaining the economic growth and competitiveness of Hong Kong</p> <p>Response of the Administration that MWC would make use of the data from the Census and Statistics Department (C&SD) surveys and take account of a basket of factors with a view to deriving a prescribed minimum hourly wage rate which would maintain an appropriate balance between forestalling excessively low wages and minimizing the loss of low-paid jobs while sustaining the economic growth and competitiveness of Hong Kong</p>	
014054 - 014737	Chairman Hon Miriam LAU Hon Cyd HO	<p>Views of Hon Cyd HO -</p> <p>(a) the Bill had not stipulated the</p>	

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	Admin	<p>policy objectives;</p> <p>(b) MWC, which would comprise some public officers, might be pro-government. It should hold open meetings in order to be accountable to the public; and</p> <p>(c) MWC should make known its guidelines and procedures in order to be transparent</p> <p>Response of the Administration -</p> <p>(a) the Bill sought to provide for the legal and regulatory framework for implementing an SMW which was a wage floor by maintaining an appropriate balance between forestalling excessively low wages and minimizing the loss of low-paid jobs while sustaining the economic growth and competitiveness of Hong Kong; and</p> <p>(b) given that the Provisional MWC was in possession of some sensitive data, its meetings had to be held in a closed door manner. The Provisional MWC would publicise its work progress as appropriate</p>	
014738 - 015036	Chairman Hon CHAN Kin-por Admin	<p>Concerns raised by of Hon CHAN Kin-por -</p> <p>(a) the Administration should step up publicity to educate employers that they would be liable to workers' occupational injuries if their workers were forced to enter into fake self-employment schemes upon the implementation of SMW; and</p> <p>(b) whether MWC accorded any</p>	

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		<p>priority to the basket of factors in determining the prescribed minimum hourly wage rate</p> <p>Response of the Administration -</p> <p>(a) the Administration would launch publicity and promotional activities upon the implementation of SMW; and</p> <p>(b) the Provisional MWC would need time and room to consider how to make use of the information collected and to proceed with its work. It would adopt an evidence-based approach in recommending the initial SMW rate</p>	
015037 - 015552	Chairman Hon WONG Sing-chi Admin	<p>Hon WONG Sing-chi raised the concern of whether a person with chronic disease whose productivity was adversely affected could apply for a Registration Card for People with Disabilities (the Card) and be excluded from the Bill</p> <p>Response of the Administration -</p> <p>(a) persons could apply for the Card on a voluntary basis by presenting certificates issued by doctors or allied health personnel; and</p> <p>(b) employees with disabilities were covered by the Bill. An assessment of a PWD's productivity to ascertain whether he should be remunerated at the SMW rate could be initiated by the PWD</p>	
015553 - 020032	Chairman Dr Hon Priscilla LEUNG Admin	<p>Concerns raised by Dr Hon Priscilla LEUNG -</p> <p>(a) two groups of people, namely SMEs and employers of FDHs had expressed the view that</p>	

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		<p>ordinance;</p> <p>(b) policy objectives of the Bill;</p> <p>(c) timing and frequency of rate reviews; and</p> <p>(d) guidelines and procedures of MWC</p> <p>Proposal of Hon LEE Cheuk-yan to defer issues relating to live-in domestic workers and PWDs to a later stage of the deliberations</p> <p>Schedule for future meetings</p> <p>Extension of the ending time of the next meeting on 7 October 2009 to receive the views of the public on the Bill</p>	