

立法會
Legislative Council

LC Paper No. CB(2)538/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/BC/11/08

Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Thursday, 5 November 2009, at 4:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon Paul CHAN Mo-po, MH, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
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 Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS, JP
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 Kwok-kin, BBS
Hon WONG Yuk-man
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
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 TAM Yiu-chung, GBS, JP (Chairman)
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
- Public Officers attending** : 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 Bertha CHENG Wai-yue
Chief Labour Officer (Statutory Minimum Wage)
Labour Department
- Miss Mabel LI Po-yi
Senior Labour Officer (Statutory Minimum Wage)
Labour Department
- Ms Queenie TANG Yuen-shan
Labour Officer (Statutory Minimum Wage)
Labour Department
- Mr Eamonn MORAN, JP
Law Draftsman
Department of Justice
- Ms Roxana CHENG Pui-lan
Senior Assistant Solicitor General
Department of Justice
- Ms Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice
- 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 deliberated (index of proceedings attached at **Annex**).

2. Regarding the policy objectives of the Bill, the Bills Committee requested the Administration to -

- (a) consider whether the criteria for setting the statutory minimum wage (SMW) rate should be determined by the Minimum Wage Commission (MWC) or stipulated in the Bill;
- (b) provide information on the procedures for setting the National Minimum Wage rates in the United Kingdom (UK);
- (c) provide information in table form on the minimum wage systems in other jurisdictions;
- (d) respond to the issues raised by Hon LEE Cheuk-yan in his letter dated 5 November 2009; and
- (e) relay the request of the Bills Committee to the Provisional MWC to provide a report on its study mission to UK and France.

3. Regarding the application of the Ordinance, the Bills Committee requested the Administration to -

- (a) provide information on the circumstances under which a student intern, a volunteer, or a pupil barrister would or would not be regarded as having entered into an employer-employee relationship;
- (b) consider exempting overseas students taking up local internships and volunteers from the Bill;
- (c) provide information on case law in UK which had held respectively that a volunteer or a pupil barrister was not an employee; and
- (d) provide information on the application of SMW in relation to various industries, particularly domestic workers, in Taiwan.

(Post-meeting note: The Administration's responses to issues raised at the meeting and to Hon LEE Cheuk-yan's letter were issued vide LC Paper No. CB(2)288/09-10 on 16 November 2009.)

II. Date of next meeting

4. The Bills Committee noted that the next meeting would be held on 19 November 2009 at 4:30 pm.
5. The meeting ended at 6:50 pm.

Council Business Division 2
Legislative Council Secretariat
11 December 2009

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Thursday, 5 November 2009, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000515	Deputy Chairman	Opening remarks	
000516 - 001137	Admin	Briefing on the Administration's response to issues raised at the Bills Committee meeting held on 13 October 2009 (LC Paper No. CB(2)169/09-10(01))	
001138 - 001809	Deputy Chairman Hon LEE Cheuk-yan Admin	Policy objectives of the Bill; the need to state in the Bill the principles enshrined in Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Administration's clarification that wages were returns for employees' labour and statutory minimum wage (SMW) might not be sufficient to cover family expenses of all employees; whether ICESCR was promotional in nature as stated in paragraph 16 of LC Paper No. CB(2)169/09-10(02)	
001810 - 003357	Deputy Chairman Admin	Briefing on the Administration's response on Article 39 of the Basic Law and Article 7 of ICESCR (LC Paper No. CB(2)169/09-10(02))	
003358 - 004011	Deputy Chairman Hon Andrew LEUNG Admin	Policy objectives of the Bill; factors to be considered by the Provisional Minimum Wage Commission (MWC) in recommending the initial SMW rate; whether there was any indicator or yardstick to ascertain whether the SMW 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; criteria for determining the SMW rate in other jurisdictions and whether these criteria were stated in	

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		<p>their SMW legislation; reasons for not stating these criteria in the Bill; study mission of the Provisional MWC; whether the Provisional MWC would make public the criteria for recommending the initial SMW rate; Administration's explanation of an evidence-based approach to be adopted in setting and reviewing the SMW rate</p>	
<p>004012 - 004637</p>	<p>Deputy Chairman Hon LEUNG Yiu-chung Admin</p>	<p>How to define excessively low wages; whether the SMW rate would be set at a level above/below the level of the Comprehensive Social Security Assistance (CSSA) Scheme; whether the Bill sought to ensure a worker would be paid at an SMW rate that could sustain the basic living standard of a family; Administration's explanation that the SMW rate would be computed on an individual basis while the CSSA Scheme provided assistance to needy persons on a household basis; adoption of an evidence-based approach by the Provisional MWC in recommending the initial SMW rate; data to be collected by the Census and Statistics Department (C&SD) to support the work of the Provisional MWC on an evidence-based approach</p>	
<p>004638 - 005408</p>	<p>Deputy Chairman Hon WONG Sing-chi Admin</p>	<p>How to define excessively low wages; whether the Bill sought to ensure an employee would be paid at an SMW rate that could sustain the basic living standard of his family; Administration's explanation of the need to collect empirical data so as to support the setting of an SMW rate that could meet the criteria set out in clause 11(3) of the Bill; related surveys being undertaken by C&SD</p>	

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005409 - 010030	Deputy Chairman Hon LEUNG Kwok-hung Admin	Whether the SMW rate should be set at more than 50% of the median wage; whether the SMW level to be adopted in Hong Kong would be comparable to the international standard; how to define excessively low wages; Administration's explanation that other jurisdictions arrived at the SMW rates having regard to a basket of factors relevant to their respective circumstances, instead of adopting a pre-determined percentage of the median/average wage	
010031 - 010619	Deputy Chairman Hon LI Fung-ying Admin	The immense difficulty faced by the Provisional MWC in deriving an SMW rate that could meet the criteria set out in clause 11(3); whether the Administration was shirking its responsibility by entrusting MWC to recommend the SMW rate; whether and, if so, how the criteria set out in clause 11(3) were prioritized; the need to determine the baseline for excessively low wages to facilitate meaningful discussion; Administration's explanation of the need to adopt an evidence-based approach and collect empirical data so as to set an appropriate SMW rate	
010620 - 011136	Deputy Chairman Hon IP Wai-ming Admin	What principles would be adopted by the Provisional MWC in interpreting the empirical data to be collected by C&SD; whether the Administration was shirking its responsibility by entrusting MWC to recommend the SMW rate; whether the Provisional MWC would make public the criteria for recommending the initial SMW rate; the role of LegCo in monitoring the setting of the SMW rate; Administration's explanation of the adoption of an evidence-based approach by the Provisional MWC in	

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		recommending the initial SMW rate; the importance to respect the independence of the Provisional MWC in its objective and disinterested deliberations	
011137 - 011719	Deputy Chairman Hon Emily LAU Admin	Concern about LegCo being deprived of the right to study the major issues relevant to the setting of the SMW rate; transparency of the operation of MWC and its representativeness; Administration's explanation that some jurisdictions did not specify in their SMW law the criteria for determining the SMW rate; the mechanism of a statutory body advising the government on the SMW rate also adopted in some jurisdictions	The Administration to consider whether the criteria for setting the SMW rate should be determined by MWC or stipulated in the Bill
011720 - 012029	Deputy Chairman Dr Hon LEUNG Ka-lau Admin	The need to set out a basket of factors and their weighting for determining the SMW rate	
012030 - 012436	Deputy Chairman Hon Albert HO Admin	Concern about the Administration shirking its responsibility by entrusting MWC to recommend the SMW rate; the lack of information for LegCo to determine whether the SMW to be recommended by MWC was reasonable; procedures adopted by the United Kingdom (UK) in setting the National Minimum Wage rates	The Administration to provide information on the procedures for setting the National Minimum Wage rates in UK
012437 - 012527	Deputy Chairman Hon LEE Cheuk-yan	<p>Proceeding to discussion of issues under item II in the proposed order and areas for study</p> <p>Letter from Hon LEE Cheuk-yan dated 5 November 2009 regarding Article 37 of the Basic Law and Article 7 of ICESCR (tabled at the meeting and issued vide LC Paper No. CB(2)212/09-10 on 6 November 2009)</p>	The Administration to respond to the issues raised in Hon LEE Cheuk-yan's letter

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012528 - 013024	Deputy Chairman Hon LEUNG Kwok-hung Admin	Why the Administration followed certain practices of other jurisdictions instead of developing its own in determining the SMW rate; Administration's explanation of SMW being a new system in Hong Kong and the need to consider Hong Kong's unique circumstances	
013025 - 013243	Deputy Chairman Hon Cyd HO Admin	Policy objectives of the Bill; practices adopted by other jurisdictions in implementing SMW; study mission made by the Provisional MWC	The Administration to provide information in table form on the minimum wage systems in other jurisdictions, and to relay to the Provisional MWC about members' request for a report on its study mission to UK and France
013244 - 013812	Deputy Chairman Hon Tommy CHEUNG Hon LEE Cheuk-yan	Policy objectives of the Bill; support for the criteria set out in clause 11(3); problem of in-work poverty to be resolved by social welfare measures; relationship between wages and productivity; the need for a business to achieve reasonable return in order to survive and to attract investment; wages should be determined by market forces; the impact of implementation of SMW on unemployment	
013813 - 014159	Deputy Chairman Hon LEUNG Yiu-chung Admin	Accountability of MWC if the SMW rate so recommended was unable to achieve the intended objective; whether guidelines were provided to MWC on how to handle its work; functions of MWC and whether it should be obliged to disclose information on the basket of factors for determining the SMW rate; Administration's explanation that in UK, Low Pay Commission would include the criteria for	

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		determining the National Minimum Wage rates in its report for recommending the rates; MWC to recommend to the Chief Executive in Council the SMW rate under the Bill	
014200 - 014411	Deputy Chairman Dr Hon PAN Pey-chyou Hon Tommy CHEUNG	Whether the implementation of SMW would lead to unemployment; benefits of SMW to provide a wage floor to forestall excessively low wages	
014412 - 015255	Deputy Chairman Hon LEE Cheuk-yan Admin	<p>Administration's paper on "Eligibility criteria for low earnings category and provision of disregarded earnings under the CSSA Scheme" (LC Paper No. CB(2)169/09-10(03))</p> <p>Hon LEE Cheuk-yan's letter dated October 2009 and the Administration's initial response (LC Paper Nos. CB(2)202/09-10(01) and 212/09-10(01))</p> <p>Application of the Ordinance; meaning of "employee" and "employer" in the Bill; how to prevent false self-employment especially for a cleaning worker of a single block building which had no owners' corporation and the cleaner was forced to be self-employed; difficulty in enforcing SMW on cleaning workers of a single block building after the Bill was enacted because the employer who paid the cleaning workers below the SMW rate might not be identifiable among the property owners; setting up a social enterprise under the Home Affairs Department to employ cleaning workers for carrying out cleaning work for single block buildings to facilitate the establishment of an employer-employee relationship; whether the definition of</p>	

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		<p>"employee" under the Employment Ordinance should be amended to include self-employed persons who might not be regarded as engaged in his own business; Administration's response that the issue of self-employment would be discussed by the Panel on Manpower; whether all the owners of a single block building which was managed neither by a management company nor an owners' corporation would be the employer of a cleaning worker was a mixed question of fact and law and each case had to be determined on its own facts and circumstances</p>	
015256 - 020109	Deputy Chairman Hon Mrs Regina IP Admin	<p>Application of the Ordinance; meaning of "student intern"; the need to exempt students who studied overseas and worked as local interns from the Bill; whether students working in a local organization on a voluntary basis were outside the scope of the Bill; Administration's response that whether a person was engaged as an employee would depend on the relevant facts and circumstances of each case and there was case law in UK that a person/volunteer who agreed to carry out work with an organization (with no sanction for a failure to honour that commitment) without pay or who was reimbursed for work-related expenses only would likely not be working under a contract of employment</p>	<p>The Administration to provide information on case law relating to volunteers in UK, to consider exempting students who studied overseas and taking local internships from the Bill, to provide information on whether volunteers were employees and to consider exempting them from the Bill</p>
020110 - 020620	Deputy Chairman Dr Hon LEUNG Ka-lau Admin	<p>Application of the Ordinance to domestic workers; whether the same SMW rate should apply to all trades across the board; whether a different SMW rate should be set for a particular trade (e.g. foreign domestic helpers (FDHs)) under special circumstances; why local live-in domestic workers were exempted from the Bill; how FDHs</p>	<p>The Administration to provide information on the application of SMW in relation to various industries, particularly domestic workers, in Taiwan</p>

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		were paid in Taiwan under the SMW regime; Administration's clarification that the Bill exempted all live-in domestic workers, local or foreign	
020621 - 021225	Deputy Chairman Hon Andrew LEUNG Admin	The need to provide students the opportunities to take up internships and to exempt full-time students from the Bill; whether pupil barristers would fall outside the scope of the Bill; Administration's response that there was case law in UK that a pupil barrister was not an employee	The Administration to provide information on case law relating to a pupil barrister in UK and the circumstances under which a student intern, a volunteer or a pupil barrister would or would not be regarded as having entered into an employee-employee relationship
021226 - 022218	Deputy Chairman Hon Audrey EU Admin	The understanding that a summer intern or a pupil barrister had never been regarded as an employee; narrow interpretation of "student intern" as defined in clause 2; Administration's clarification that a summer intern or a pupil barrister would not be covered by the Bill at all if there was no employer-employee relationship; variations in student internship arrangements, including student interns not engaged as employees (thus falling outside the Bill) and those employed in the capacity of employees	The Administration to provide information on whether a student intern would be regarded as an employee and to explain the circumstances under which a student intern as defined in clause 2 would be regarded as having entered into an employer-employee relationship
022219 - 022222	Deputy Chairman	Closing remarks	