

立法會

Legislative Council

LC Paper No. CB(2)671/09-10
(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, 19 November 2009, at 4:30 pm
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 LEE Cheuk-yan
- Hon LEUNG Yiu-chung
- 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 Audrey EU Yuet-mee, SC, JP
- Hon Vincent FANG Kang, SBS, 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
- Hon LEUNG Kwok-hung
- Hon WONG Ting-kwong, BBS, JP
- Hon Ronny TONG Ka-wah, SC
- Hon CHIM Pui-chung
- 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

- Members absent** : Hon Albert HO Chun-yan
Hon Miriam LAU Kin-ye, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
- 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

Ms Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

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

2. The Bills Committee requested the Administration to -
 - (a) provide information on the power of the United Kingdom Parliament to amend secondary legislation;
 - (b) provide information on whether statutory minimum wage legislation in the United States, Australia and European countries exempted graduates in their first job; and
 - (c) explain the circumstances under which a student studying overseas and taking up internship in Hong Kong would/would not be an employee engaged under a contract of employment.

II. Date of next meeting

3. The Bills Committee noted that the next meeting would be held on 3 December 2009 at 4:30 pm.
4. The meeting ended at 6:38 pm.

Council Business Division 2
Legislative Council Secretariat
4 January 2010

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Thursday, 19 November 2009, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000157 - 000214	Chairman	Opening remarks	
000215 - 000602	Chairman Admin	Briefing on the Administration's response to the issues raised in Hon LEE Cheuk-yan's letter dated 5 November 2009 (LC Paper No. CB(2)288/09-10(03))	
000603 - 000928	Chairman Hon LEE Cheuk-yan Admin	Policy objectives of the Bill; whether to state in clause 11 of the Bill the principles enshrined in Article 7 of the International Covenant on Economic, Social and Cultural Rights; the Administration's clarification that the Bill sought to introduce an optimal statutory minimum wage (SMW) regime to provide a wage floor to forestall excessively low wages	
000929 - 001308	Chairman Hon WONG Kwok-hing Admin	Policy objectives of the Bill; press report about the SMW rate to be set at \$24 per hour or \$5,000 per month; Administration's clarification that the Provisional Minimum Wage Commission (Provisional MWC) would adopt an evidence-based approach in setting the recommended initial SMW rate	
001309 - 002339	Chairman Admin	Briefing on the Administration's response to issues raised at the meeting on 5 November 2009 (LC Paper No. CB(2)288/09-10(01))	
002340 - 002948	Chairman Hon Andrew LEUNG Admin	Why students studying overseas and taking up local internships as employees were not exempted from the Bill; how to determine whether an employer-employee relationship was established between an intern	

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		<p>and the hosting organization; Administration's response on factors considered by courts in identifying employer-employee relationship. Administration also noted the variations in student internship arrangements, and explained that some internships, whether or not forming part of a course requirement, might not constitute employer-employee relationship, and it all depended on facts pertaining to individual cases</p>	
002949 - 003317	<p>Chairman Hon WONG Kwok-hing Admin</p>	<p>Whether the Bill was modeled on any of the 10 places set out in Annex C to the Administration's paper; Administration's response that while overseas experience had been studied, the Bill was so drafted to address the local unique situation</p>	
003318 - 004107	<p>Chairman Hon IP Kwok-him Admin</p>	<p>Whether the Administration would consider amending the Bill to exempt from SMW a student who studied overseas and was engaged as an employee in taking up internship in Hong Kong which formed a compulsory or elective part of the requirements for the award of his academic qualification; Administration's response that stakeholders expressed support for the exemption of student interns as defined in clause 2 of the Bill; the need to strike a balance between internship opportunity and job displacement, local students engaged as employees in summer jobs and internships not necessitated by their programme of study would also not be exempted from the Bill</p>	
004108 - 005035	<p>Chairman Hon LEUNG Yiu-chung Admin</p>	<p>Procedures for setting the National Minimum Wage (NMW) rates in the United Kingdom (UK); acceptance of the proposed NMW rates by the UK Parliament;</p>	<p>The Administration to provide information on the power of the UK Parliament to amend</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>whether the UK Parliament had the power to amend secondary legislation; whether MWC would conduct a periodic review on the SMW rate; whether the Legislative Council (LegCo) had the power to amend the SMW rate; whether to stipulate in the Bill that LegCo should be consulted on the SMW rate; Administration's response that neither the Bill nor the NMW legislation in UK had specified the frequency of reviewing the SMW rate and the NMW rate respectively; power of LegCo to scrutinize any proposed amendment to the SMW rate under the negative vetting procedure; power of LegCo to revoke but not amend the SMW rate as proposed in the Bill</p>	<p>secondary legislation</p>
<p>005036 - 005416</p>	<p>Chairman Hon LEE Cheuk-yan Admin</p>	<p>Definition of "student intern" in clause 2 of the Bill; difficulty in enforcing exemption of overseas students taking up employment in Hong Kong; volunteers not covered by the Bill if an employer-employee relationship could not be established; the need to ensure that students taking summer jobs would be protected by SMW; Administration's explanation on reimbursement of work-related expenses to students not engaged under an employment contract as distinguished from employees working in return for wages or remuneration</p>	
<p>005417 - 005821</p>	<p>Chairman Hon LI Fung-ying Admin</p>	<p>Whether young people enrolling in youth employment programmes organized by LD, Employees Retraining Board and Vocational Training Council would be exempted from the Bill; Administration's clarification that under LD's YPTP • YWETS Programme, trainees joining workplace attachment training had</p>	

Time marker	Speaker	Subject(s)	Action Required
		no employment relationship with the hosting organizations and were therefore not covered by the Bill while those undergoing on-the-job training were engaged as employees of the participating employers and were covered by the Bill	
005822 - 010352	Chairman Hon WONG Yuk-man	Inclusion of foreign domestic helpers (FDHs) and live-in domestic workers in the Bill	
010353 - 011313	Chairman Hon Mrs Regina IP Admin SALA2	Why students studying overseas and taking up employment in local internships as part of the requirements for the award of their academic qualifications were not exempted from the Bill; feedback of the local tertiary institutions that overseas institutions rarely required their students to take up internships in Hong Kong; difficulty in ascertaining whether the internship taken up by an overseas student as an employee formed part of the requirements for the award of his academic qualification; feasibility of providing for the exemption of overseas students taking up internships as employees relevant to their academic qualifications from the Bill; power of the Commissioner for Labour under clause 16(1) to amend Schedule 1; definition of "accredited programme" in clause 2	
011314 - 011826	Chairman Hon CHAN Kin-por Admin	Explanation on how employers could take out insurance for their employees including interns; whether the Minimum Allowable Wage (MAW) for FDHs would be reviewed taking account of the in-kind benefits to ensure that the revised wage would be comparable to the SMW rate when the latter was implemented; Administration's explanation of safeguards provided to FDHs under MAW ; application of SMW to all live-out domestic	

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		workers	
011827 - 012700	Chairman Hon Tommy CHEUNG Admin	Whether the definition of "student intern" in clause 2 was too narrow; whether SMW legislation in other jurisdictions exempted a fresh graduate from SMW in his first job; feasibility of allowing fresh graduates to gain working experience below the SMW rate; Administration's response that the Bill covered graduates who were not student interns as defined in clause 2	The Administration to provide information on whether SMW legislation in the United States, Australia and European countries exempted graduates in their first job
012701 - 013249	Chairman Hon LEUNG Kwok-hung	Inclusion of FDHs in the Bill	
013250 - 013852	Chairman Hon Jeffrey LAM Admin	Training opportunities for students; whether all student interns working as employees should be exempted from the Bill; Administration's response that the Bill had the effect of exempting most of the student interns in local tertiary institutions; practical difficulties to assess whether the internship taken up by an overseas student as an employee formed a compulsory or elective part of the requirements for the award of his academic qualification	
013853 - 014423	Chairman Hon LEE Cheuk-yan	Overseas students not engaged as employees were not covered by the Bill; indirect discrimination against FDHs and women under the Bill; benefits of applying a minimum monthly wage to FDHs computed on the basis of the SMW rate	
014424 - 014934	Chairman Hon LEUNG Kwok-hung	Inclusion of live-in domestic workers in the Bill	
014935 - 015355	Chairman Admin	Case on a veterinary student who studied overseas and undertook a no-paid internship in Hong Kong; Administration's response that the case was unlikely to be one of an employer-employee relationship;	The Administration to explain the circumstances under which a student studying overseas and taking up

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		each case had to be determined on its own facts and circumstances; for payment to students to recompense for their work-related expenses, it was unlikely to be regarded as a consideration whilst students being paid an amount which was found to be a disguised payment of wages on account of the relationship between the parties and other relevant facts of the case would be considered as having a contract of employment	internship in Hong Kong would/would not be an employee engaged under a contract of employment
015356 - 015832	Chairman Hon WONG Ting-kwong Admin	Internship programmes organized by the Democratic Alliance for the Betterment and Progress of Hong Kong; circumstances under which student interns were not engaged as employees and were therefore not covered by the Bill; the understanding that a student intern who was reimbursed for work-related expenses only would unlikely be working under a contract of employment	
015833 - 015918	Chairman	Closing remarks	