

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1794/09-10  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/11/08

**Bills Committee on Minimum Wage Bill**

**Minutes of meeting**  
**held on Wednesday, 31 March 2010, 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 LEUNG Yiu-chung
  - Hon Miriam LAU Kin-ye, GBS, JP
  - Hon Emily LAU Wai-hing, JP
  - Hon Abraham SHEK Lai-him, SBS, 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 Jeffrey LAM Kin-fung, SBS, JP
  - Hon Andrew LEUNG Kwan-yuen, SBS, JP
  - Hon Ronny TONG Ka-wah, SC
  - Hon Cyd HO Sau-lan
  - Dr Hon LAM Tai-fai, BBS, JP
  - Hon CHAN Kin-por, JP
  - 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 IP Wai-ming, MH
  - Dr Hon PAN Pey-chyou
  - Hon Paul TSE Wai-chun
  - Dr Hon Samson TAM Wai-ho, JP
- Members absent** :
- Hon LI Fung-ying, BBS, JP
  - Hon Frederick FUNG Kin-kee, SBS, JP

Hon WONG Ting-kwong, BBS, JP  
Hon CHIM Pui-chung  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, 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 Mabel LI Po-yi  
Chief Labour Officer (Statutory Minimum Wage) (Acting)  
Labour Department

Ms Queenie TANG Yuen-shan  
Senior Labour Officer (Statutory Minimum Wage) (Acting)  
Labour Department

Mr Eamonn MORAN, JP  
Law Draftsman  
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

Mr Ian CHOW  
Council Secretary (2) 1

Ms Camy YOONG  
Clerical Assistant (2) 1

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## **I. Meeting with the Administration**

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

2. The Bills Committee requested the Administration to -
  - (a) explain whether clause 5(5) of the Bill would limit the flexibility for commission to be apportioned and payable in different wage periods to meet the statutory minimum wage ("SMW") level, and whether it was compatible with section 23 of the Employment Ordinance (Cap. 57) on the time of payment of wages;
  - (b) consider members' views and suggestion on clause 5(5) with a view to ensuring clarity and certainty to employers and employees in counting commission payment when determining entitlement to SMW in the Bill;
  - (c) consider exempting the requirement for keeping record on the total number of hours worked for employees who earned more than a specified income; and
  - (d) consider whether to provide a grace period to exempt employers from criminal liability after commencement of the Minimum Wage Ordinance.
3. The Administration advised that it would -
  - (a) consider preparing guidelines prior to the implementation of SMW so that both employers and employees would know and understand the statutory provisions and their respective obligations and entitlements under the SMW regime; and
  - (b) provide illustrative examples in publicity materials to show how the amount of commission payable and paid according to a contract of employment was counted for the purpose of computing SMW.

## **II. Date of next meeting**

4. The Bills Committee noted that the next meeting would be held on 13 April 2010 at 8:30 am.

5. At the request of Ms Emily LAU, the Chairman agreed to explore the possibility of scheduling additional meetings for the Bills Committee.

*(Post-meeting note: With the concurrence of the Chairman, two additional meetings have been scheduled for 8 June 2010 at 8:30 am and 10 June 2010 at 8:30 am. An updated schedule of all future meetings of the Bills Committee was issued to members vide LC Paper No. CB(2)1336/09-10 on 21 April 2010.)*

6. The meeting ended at 12:47 pm.

Council Business Division 2  
Legislative Council Secretariat  
10 June 2010

**Proceedings of meeting of the  
Bills Committee on Minimum Wage Bill  
on Wednesday, 31 March 2010, 10:45 am  
in the Chamber of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000338	Chairman	Opening remarks	
000339 - 001128	Chairman Admin	Briefing on the Administration's response to issues raised at the Bills Committee meeting held on 19 March 2010 (LC Paper No. CB(2)1183/09-10(01))	
001129 - 001311	Chairman Hon LEE Cheuk-yan	SALA2 was requested to advise on whether it was necessary to stipulate in the Bill that contractual working hours should be counted as hours worked for the purpose of computing the statutory minimum wage ("SMW")	SALA to advise Hon LEE Cheuk-yan as necessary
001312 - 002652	Chairman Hon Tommy CHEUNG Admin Hon WONG Kwok-hing	<p>Issues raised by Hon Tommy CHEUNG concerning the catering industry -</p> <p>(a) whether it was permissible for an employer to apportion the working hours of employees over different wage periods having regard to seasonal fluctuation of business;</p> <p>(b) whether a wage period, which could be weekly, biweekly, monthly, etc. had to be specified in the contract of employment; and</p> <p>(c) whether an employer could specify in the contract of employment that the wage period was one month, while wage payments were made twice a month</p> <p>Response of the Administration -</p> <p>(a) the Bill did not seek to change</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>existing arrangements under the Employment Ordinance ("EO") whereby employers and employees were free to agree between themselves the employment terms such as working hours, and duration of wage period; and the contract of employment could be in writing or oral, express or implied;</p> <p>(b) whether working hours could be apportioned in different wage periods was subject to the contract of employment;</p> <p>(c) the definition of "wage period" in the Bill was modelled on that in EO, viz. clause 4(2) specifying that unless the contrary was proved, the wage period would be taken to be one month; and</p> <p>(d) minimum wage for an employee for a wage period was the amount derived by multiplying the total number of hours worked by the employee in the wage period by the SMW rate</p>	
002653 - 003641	Chairman Hon Tommy CHEUNG Admin	<p>Issues raised by Hon Tommy CHEUNG concerning the catering industry -</p> <p>(a) if an employee who was scheduled to work in the evening shift on a day was subsequently directed by his employer to be off duty because of lack of business, whether those scheduled hours would be counted as hours worked for the purpose of computing SMW; and</p> <p>(b) whether an employer who had inadvertently defaulted payment</p>	

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		<p>of overtime work would commit an offence</p> <p>Response of the Administration -</p> <p>(a) whether the hours during which an employee was scheduled to work in the evening shift but was asked not to work eventually should be counted as hours worked would be subject to any agreement or contract between the employer and the employee and to all other relevant circumstances of the case. Any arrangement which sought to depart from the contract of employment had to be agreed between the employer and the employee concerned; and</p> <p>(b) apart from the requirement to pay not less than the SMW rate, the employer had to pay to the employee any wages due under the contract of employment in compliance with the wage provisions of EO. An employer who wilfully and without reasonable excuse failed to pay wages to an employee when it became due was liable to prosecution in accordance with EO</p>	
003642 - 004327	Chairman Hon Paul TSE Admin	<p>Concern of Hon Paul TSE about the impact of clause 14 on counting of hours worked as agreed between an employer and employee in a contract of employment</p> <p>Response of the Administration -</p> <p>(a) clause 3 specified what was "hours worked". It did not purport to give an exhaustive list of all the precise circumstances of hours worked for the purpose of computing</p>	

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		<p>SMW;</p> <p>(b) employers and employees were free to agree on how hours worked would be counted, provided that the terms were not inconsistent with clause 3; and</p> <p>(c) the protection for employees was further provided in clause 7 which ensured that each hour worked in a wage period must be counted and employees must be paid not less than SMW</p>	
004328 - 004831	Chairman Hon Tommy CHEUNG Admin	<p>Whether monetary awards, earnings based on a percentage of sales volume, and bonus would be regarded as wages in a wage period for the purpose of computing SMW as raised by Hon Tommy CHEUNG</p> <p>Response of the Administration that wages of an employee could be fixed, variable or a combination of both according to the contract of employment. The definition of "wages" in the Bill was aligned with that in EO which included, among others, all remuneration, earnings, allowances etc. that were capable of being expressed in terms of money, payable to an employee in respect of work done or to be done under his contract of employment, but excluded, among others, any end of year payment or any annual bonus which was of a gratuitous nature or which was payable only at the discretion of the employer</p>	
004832 - 005507	Chairman Dr Hon LEUNG Ka-lau Admin	<p>Issues raised by Dr Hon LEUNG Ka-lau -</p> <p>(a) how hours worked would be counted if place of employment was not specified in the contract of employment; and</p>	



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		<p>(b) whether it was permissible for an employer to ask an employee to work on a rest day and whether the working hours could be counted as hours worked for the purpose of computing SMW</p> <p>Response of the Administration -</p> <p>(a) place of employment could be anywhere which fulfilled the definition in clause 2, depending on the facts of the case; and</p> <p>(b) according to EO, every employee who had been employed by the same employer under a continuous contract should be granted not less than one rest day in every period of seven days. An employee had the discretion to decide whether to work voluntarily on a rest day upon the request of an employer. The period during which an employee, obliged by the employer or in accordance with the employment contract, was in attendance at a place of employment under clause 3 on the rest day should be counted as hours worked for the purpose of computing SMW</p>	
005508 - 010957	Chairman Hon Miriam LAU Hon LEE Cheuk-yan Admin	<p>Issues raised by Hon Miriam LAU -</p> <p>(a) whether a term in a contract of employment in making the commission apportionable and payable in different wage periods would contradict clause 14;</p> <p>(b) why clause 5(2) required that an hour not worked by an employee must not be counted as part of the wages payable in a</p>	Admin to follow up on (c), (d) and (f)

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		<p>wage period;</p> <p>(c) the Administration to provide illustrative examples in publicity materials to show how the amount of commission payable and paid according to a contract of employment was counted for the purpose of computing SMW;</p> <p>(d) whether the Administration would prepare guidelines prior to the implementation of SMW to assist employers and employees to understand the provisions of the Bill;</p> <p>(e) whether the Administration would set up a special unit in the Labour Department ("LD") to assist different industries to implement SMW when the Minimum Wage Ordinance came into operation and whether a hotline would be set up to answer enquiries relating to SMW; and</p> <p>(f) the Administration should consider exempting the requirement for keeping record on the total number of hours worked for employees who earned more than a specified income</p> <p>Response of the Administration -</p> <p>(a) how commission was determined and when it was payable over different wage periods was a matter for contractual agreement between the employer and the employee. If the term of the contract of employment did not purport to extinguish or reduce any right, benefit or protection conferred on the employee by the Bill, it</p>	

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		<p>would not become void under clause 14;</p> <p>(b) clause 5(2) was consistent with the principle of the Bill in counting hours worked for the computation of SMW. As commission was not a payment for hours not worked, it did not call clause 5(2) into play;</p> <p>(c) the Administration would include illustrative examples drawn from different trades and industries in the publicity materials prepared prior to the implementation of SMW;</p> <p>(d) a special team had been formed under LD to deal with matters relating to SMW. The team would continue to function following the commencement of the Minimum Wage Ordinance;</p> <p>(e) LD's existing hotline service would also answer enquiries relating to SMW when the Minimum Wage Ordinance came into operation;</p> <p>(f) the Administration would vigorously launch publicity and promotional activities so that both employers and employees would understand the statutory provisions including those concerning the counting of hours worked and commission payment under the SMW regime. The Administration would meet with individual industries to explain the implementation of SMW if necessary; and</p> <p>(g) the Administration was exploring measures to reduce the administrative costs of employers with regard to the</p>	

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		<p>requirement for the keeping of record on the total number of hours worked of employees in a wage period</p>	
010958 - 011215	<p>Chairman Admin Hon LEE Cheuk-yan Hon WONG Kwok-hing</p>	<p>Whether the Bills Committee should proceed to discuss the Minimum Wage Commission and related issues</p>	
011216 - 012457	<p>Chairman Hon Audrey EU Admin SALA2</p>	<p>Issues raised by Hon Audrey EU -</p> <p>(a) legislative intent of clause 5(2); and</p> <p>(b) whether clause 5(5) would limit the flexibility for commission to be apportioned and payable in different wage periods as agreed by an employer and an employee in a contract of employment</p> <p>Response of the Administration -</p> <p>(a) clause 5(2) sought to deal with payment for hours not worked by an employee at times such as holiday with pay and paid sickness day, which must not be counted as part of the wages payable in respect of that or any other wage period; and</p> <p>(b) how commission was determined and when it was payable over different wage periods remained a matter for contractual agreement between an employer and an employee. Clause 5(5) only set out how commission should be counted for SMW computation in respect of a wage period in order to provide clear guiding principles to determine whether the employee was remunerated at not less than the SMW rate</p>	

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012458 - 012728	Chairman Dr Hon Priscilla LEUNG	Need to enhance clarity of the Bill as raised by Hon Priscilla LEUNG	
012729 - 013317	Chairman Hon Paul TSE Admin	<p>Issues raised by Hon Paul TSE -</p> <p>(a) the Administration to consider whether to provide a grace period to exempt employers from criminal liability after commencement of the Minimum Wage Ordinance having regard to the possible grey areas raised by members;</p> <p>(b) whether clause 14 should apply to written contract only and not to verbal agreement which allowed employers and employees to have greater flexibility to vary from the contractual agreement if warranted;</p> <p>(c) whether SMW should apply to labour-intensive work and not to service and commission based industries, having regard to the possible grey areas in determining whether an employee was "in attendance" in the "place of employment"; and</p> <p>(d) concern about strained relationship between employers and employees as a result of implementing SMW</p> <p>Response of the Administration -</p> <p>(a) clause 14 applied to both express and implied terms of the contract of employment, made orally or in writing, that purported to extinguish or reduce any right, benefit or protection conferred on the employee by the Minimum Wage Ordinance;</p>	Admin to consider (a)

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		<p>(b) the Administration did not intend to exempt any sector from the Bill, other than live-in domestic workers and student interns as specified in clause 6. While preparatory time would be provided for the society and the business sector to gear up for the implementation of SMW, there should not be any grace period to exempt employers from criminal liability after commencement of the Ordinance; and</p> <p>(c) experience in UK and other SMW jurisdictions showed that SMW which was based on an hourly rate could also apply to the service and commission based industries</p>	
013318 - 013754	Chairman Dr Hon LEUNG Ka-lau Admin	Explanation on the relationship between clause 3(1)(a) and "place of employment" as defined in clause 2	
013755 - 014340	Chairman Hon IP Wai-ming Admin	<p>Issues raised by Hon IP Wai-ming -</p> <p>(a) how overseas jurisdictions dealt with the counting of commission payment under their SMW legislation; and</p> <p>(b) given that an employer was required to top up payment if the wages earned by an employee was below the SMW rate during a wage period, there was no such thing as paying commission in advance</p> <p>Response of the Administration -</p> <p>(a) overseas jurisdictions such as UK did not have specific provisions on the counting of commission payment in their SMW legislation;</p>	

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		<p>(b) commission, as defined in EO, was part of wages. Having regard to concerns raised by some industries, clause 5(5) sought to provide clear guiding principles with which to determine whether the employer had remunerated the employee not below the SMW level; and</p> <p>(c) whether commission could be apportioned and payable in different wage periods was subject to the contract of employment</p>	
014341 - 015501	Chairman Hon Audrey EU Admin	<p>Issues raised by Hon Audrey EU -</p> <p>(a) whether clause 5(5) would limit the flexibility for commission to be apportioned and payable in different wage periods to meet the SMW level; and</p> <p>(b) whether clause 5(5) was compatible with section 23 of EO on the time of payment of wages</p> <p>Response of the Administration -</p> <p>(a) how commission was determined and when it was payable over different wage periods remained a matter for contractual agreement between an employer and an employee. Clause 5(5) only set out how commission should be counted for SMW computation in respect of a wage period in order to provide clear guiding principles to determine whether the employee was remunerated at not less than the SMW rate. The Bill was closely aligned to EO, and there was no contradiction between clause 5(5) and section 23 of EO; and</p>	Admin to respond in writing

Time marker	Speaker	Subject(s)	Action Required
		(b) the Administration would consider members' views on clause 5(5) with a view to ensuring clarity and certainty to employers and employees in counting commission payment when determining entitlement to SMW in the Bill	
015502 - 015559	Chairman Hon Tommy CHEUNG	Request for the Administration to provide assistance to help small and medium enterprises understand the implementation of SMW by Hon Tommy CHEUNG	
015600 - 015823	SALA2 Chairman	Views of SALA2 -  (a) according to EO, wages could be payable to an employee in respect of work done or to be done. In other words, wages could be advanced payment of work to be done; and  (b) section 23 of EO stipulated that wages should become due on the expiry of the last day of the wage period. The wages due could be advance payment of work to be done to be determined in the contract of employment	Admin to explain in writing the relationship between clause 5(5) of the Bill and section 23 of EO
015824 - 020313	Chairman Hon LEE Cheuk-yan Hon IP Wai-ming Hon Emily LAU	Agreement of the Bills Committee to proceed to discuss the Minimum Wage Commission and related issues at the next meeting  Whether more meetings should be scheduled for the Bills Committee  Date of next meeting	