

立法會
Legislative Council

LC Paper No. CB(2)2307/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/BC/11/08

Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Saturday, 5 June 2010, at 11:00 am
in Conference Room A 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 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 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 IP Wai-ming, MH
Dr Hon PAN Pey-chyou
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
- Member attending** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
- Members absent** : Hon Albert HO Chun-yan
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 Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
Hon WONG Yuk-man

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

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) advise whether boat-boys or domestic workers engaged under different employment conditions would be exempted from the coverage of statutory minimum wage;
 - (b) explain why the Bill did not bind the Government;
 - (c) provide a response to the issues raised by Senior Assistant Legal Adviser 2 on clauses 7 and 9 of the Bill; and
 - (d) provide a written response to the Hong Kong Retail Management Association regarding its submission to the Bills Committee.

II. Date of next meeting

3. The Bills Committee noted that the next meeting would be held on 8 June 2010 at 8:30 am.
4. The meeting ended at 1:05 pm.

Council Business Division 2
Legislative Council Secretariat
28 September 2010

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Saturday, 5 June 2010, from 11:00 am to 1:00 pm
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|---|--|--|
| 000000 - 001003 | Chairman | <p>Opening remarks</p> <p>Schedule of additional meeting in June 2010</p> <p>Continuation of clause-by-clause examination of the Bill</p> | |
| 001004 - 001636 | Chairman Hon Emily LAU Admin SALA2 | <p>Examination of clause 5</p> <p>Submission from Hong Kong Retail Management Association ("HKRMA") (LC Paper No. CB(2)1715/09-10(01)) on clause 5(4); response of the Administration that the clause was clear as wages (including allowances) paid in accordance with the terms in the contract of employment was not a payment of arrears of wages, and the amendment proposed by HKRMA was thus not necessary</p> | Admin to provide a written response to HKRMA |
| 001637 - 002426 | Chairman Hon Miriam LAU Admin | <p>Explanation of the Administration on the application of clause 5(4) based on the example quoted by Hon Miriam LAU; payment of wages in accordance with the contract of employment; provisions related to wage payment under the Employment Ordinance ("EO") and the Bill; agreement to be reached between employers and employees on the employment terms including whether certain wage components should be apportioned and payable in different wage periods; the need for an employer to top up payment to the employee if the wages payable in respect of a wage period fell below the statutory minimum wage ("SMW"); examples on the application of clause 5(4) on payment of arrears of wages to be formulated in future guidelines</p> | |

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|---------------------------------------|--|--|
| 002427 - 002517 | Chairman Admin | Examination of clause 6 | |
| 002518 - 002939 | Chairman Hon Miriam LAU Admin | Whether boat-boys employed in or in connection with a household and living on boats would be exempted from the coverage of SMW; response of the Administration that whether a boat would be regarded as a household should be determined by reference to the facts of the case; terms and conditions of employment might vary for different boat-boys; any dispute over the exemption from the coverage of SMW to be decided with reference to all the facts and circumstances of individual cases | |
| 002940 - 003423 | Chairman Hon Emily LAU Admin | Explanation of the Administration on clause 6(2) and section 4(2) and (2A) of EO; queries on why the Government was not bound by the Bill | |
| 003424 - 003951 | Chairman Hon Tommy CHEUNG Admin | Whether boat-boys employed in or in connection with a household and living on boats would be exempted from the coverage of SMW; reiteration of the Administration that whether a boat would be regarded as a household would depend on facts of the case | Admin to advise whether boat-boys or domestic workers engaged under different employment conditions would be exempted from the coverage of SMW |
| 003952 - 004820 | Chairman Hon Abraham SHEK Admin | Proposal to provide a clear definition of "household" in the Bill to avoid dispute Response of the Administration that the Bill, in line with EO, did not specify definitions of "boat-boy" and "household". Household usually referred to a group of people living collectively in the premises. In this connection, premises occasionally visited by a family might or might not, subject to the facts of individual cases, be regarded as a household | |

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|---|--|-----------------|
| | | Proposal to widen the exemption for student interns from the Bill so as to provide more internship opportunities; response of the Administration that the proposal was being considered | |
| 004821 - 005507 | Chairman Dr Hon LEUNG Ka-lau Admin Hon Emily LAU | Whether an employee who worked and dwelled in premises which constituted partly a shop and a household would be regarded as a live-in domestic worker; response of the Administration that this would have to be decided with reference to all the facts and circumstances of the case, e.g. whether or not the employee was employed as a domestic worker in or in connection with a household | |
| 005508 - 005630 | Chairman Hon IP Wai-ming | Circumstances under which an employee who worked and dwelled in premises which constituted partly a shop and a household would be regarded as a live-in domestic worker and circumstances under which a boat would be regarded as a household | |
| 005631 - 010139 | Chairman Hon Miriam LAU Admin | Circumstances under which a boat would be regarded as a household and a boat-boy would be regarded as a live-in domestic worker and the implications of applying SMW to boat-boys; the Administration would provide a written response on the exemption of live-in domestic workers from the coverage of SMW; information provided by the Administration that the number of local live-in domestic workers in Hong Kong was about 1 400 according to the 2006 Population By-Census conducted by the Census and Statistics Department; why the Bill did not bind the Government | |

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|---|---|---|
| 010140 - 010534 | Chairman Hon Tommy CHEUNG Admin | Queries on why certain ordinances did not bind the Government; circumstances under which boat-boys would be regarded as live-in domestic workers; risk of incurring criminal liability on the part of employers if the definition of "household" was unclear; the Administration explained that though SMW did not bind the Government, SMW applied to employees of Government service contractors | |
| 010535 - 011009 | Chairman Dr Hon Priscilla LEUNG Admin | Whether there was a need to enhance clarity of the Bill to prevent unnecessary litigation; kinds of commissions and tips to be counted as wages for the purpose of computing SMW should be specified in the Bill or in guidelines; the Administration responded that the definition of "wages" in the Bill was aligned to EO and practical examples on SMW application would be included in future guidelines where appropriate | |
| 011010 - 012007 | Chairman Hon Emily LAU Admin Hon Abraham SHEK Hon Tommy CHEUNG Hon LEE Cheuk-yan | Queries expressed by members that the Government was not bound by the Bill; possibility of judicial review lodged against application of the Bill which exempted live-in domestic workers; explanation of the Administration that the Bill, in line with EO, did not bind the Government; the considerations of exempting live-in domestic workers, irrespective of sex or race, from the Bill | Admin to explain why the Bill did not bind the Government |
| 012008 - 012246 | Chairman SALA2 Admin | The Administration explained that whether the Bill would apply to an employee who had signed a contract of employment overseas to work in Hong Kong or who had signed a contract of employment in Hong Kong to work overseas would depend on whether the contract of | |

| Time marker | Speaker | Subject(s) | Action Required |
|-----------------|---|--|------------------------------|
| | | employment concerned had a substantial connection with Hong Kong and all other relevant facts of the case | |
| 012247 - 012304 | Chairman Hon Emily LAU | Exemption for student-employees from the Bill | |
| 012305 - 013810 | Chairman Admin SALA2 | <p>Examination of clause 7</p> <p>Whether an employer breaching clause 7 was subject to criminal and civil liabilities and if so, the offence involved</p> <p>Response of the Administration that an employer breaching clause 7 would be subject to civil and criminal liabilities. The criminal liability was imposed by section 63C of EO. Clause 9(3) made it clear that the top-up payment formed part of the wages and payment of wages was enforced under EO</p> <p>Views of SALA2 and the Administration on issues raised on clauses 7 and 9, which would be elaborated in writing (LC Paper Nos. CB(2)1818/09-10(04) and 1877/09-10(01) issued after the meeting)</p> | SALA2 and Admin to follow up |
| 013811 - 014659 | Chairman Hon LEUNG Yiu-chung Admin SALA2 | Whether the words "is entitled" should be replaced by "must" in order to enhance clarity of clause 7(1); response of the Administration that clause 7(1) conferred legal entitlement on an employee to be paid no less than the minimum wage and the provision when read in conjunction with clause 14 was sufficiently clear; clarification of the Administration that an employer would be liable to prosecution if he paid his employee less than SMW | |

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|--|---|-----------------|
| 014700 - 015442 | Chairman Hon Miriam LAU Admin | Expression of the view that drafting of clause 7(1) was clear Queries raised on computation of SMW and the Administration explained that if the hourly wage earned by a truck driver during a wage period was on average no less than the SMW rate, the SMW requirement was met even though the hourly rate for overtime work in the wage period was below the SMW rate. Examples on how SMW was computed under this scenario would be included in future guidelines | |
| 015443 - 015750 | Chairman Dr Hon LEUNG Ka-lau Admin | Whether wages were required to be paid by employers in EO; response of the Administration that the obligation of employers to pay wages to employees was stipulated in sections 23, 24, 25 and 63C of EO | |
| 015751 - 020201 | Chairman Hon Tommy CHEUNG Admin | Whether tips paid by customers to an employee should be counted as wages for the purpose of computing SMW; response of the Administration that wages, as defined in EO, included tips received by an employee in the course of and in connection with his employment and recognized by the employer as part of the employee's wages | |
| 020202 - 020409 | Chairman Hon LEE Cheuk-yan Admin | Sums of money (e.g. tips) received by an employee not coming from his employer but in the course of and in connection with his employment, could be regarded as wages if his employer recognized it as part of his wages; obligations of employers to pay employees wages under EO and to pay wages not less than SMW under the Bill | |

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|----------------|---|------------------------|
| 020410 - 020423 | Chairman | Closing remarks Date of next meeting | |

Council Business Division 2
Legislative Council Secretariat
28 September 2010