

**立法會**  
**Legislative Council**

LC Paper No. CB(2)421/10-11  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/11/08

**Bills Committee on Minimum Wage Bill**

**Minutes of meeting**  
**held on Tuesday, 15 June 2010, at 4:30 pm**  
**in the Chamber of the Legislative Council Building**

**Members present** : Hon TAM Yiu-chung, GBS, JP (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 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 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  
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  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon WONG Yuk-man

- Members absent** : Hon Paul CHAN Mo-po, MH, JP (Deputy Chairman)  
Hon Frederick FUNG Kin-kee, SBS, JP  
Hon CHIM Pui-chung  
Hon Cyd HO Sau-lan  
Dr Hon LAM Tai-fai, BBS, JP  
Hon IP Kwok-him, 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
- 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 discussed the Administration's proposed changes to the Minimum Wage Bill and requested the Administration to explore whether it was possible to limit the exemption for internships which were not curriculum-related and/or not arranged/endorsed by the institutions to a continuous period of 59 calendar days or less once in a year so as to prevent abuse.

3. The Administration undertook to review the special arrangement for persons with disabilities, including whether there was a need for a second assessment, in the light of operational experience within two years of the implementation of the statutory minimum wage and report the results to the Panel on Manpower.

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

4. The Bills Committee noted that the next meeting would be held on 17 June 2010 at 8:30 am.

5. The meeting ended at 7:25 pm.

Council Business Division 2  
Legislative Council Secretariat  
30 November 2010

**Proceedings of meeting of the  
Bills Committee on Minimum Wage Bill  
on Tuesday, 15 June 2010, from 4:30 pm to 7:30 pm  
in the Chamber of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000703	Chairman	Opening remarks	
000704 - 001640	Chairman Admin	Briefing on the Administration's proposed changes to the Minimum Wage Bill ("the Bill") in respect of the scope of exemption of student interns from the statutory minimum wage ("SMW") (paragraphs 1 to 10 of LC Paper No. CB(2)1818/09-10(02))	
001641 - 002127	Chairman Hon Mrs Regina IP Admin	Support for the Administration's additional exemption proposals for intern employees in paragraph 3(a) and (b) expressed by Hon Regina IP; explanation of the Administration on the difference between the exemption proposals in paragraph 3(a) and (b) and the application of these proposals; circumstances under which a student intern would be involved or not involved in an employer-employee relationship	
002128 - 002639	Chairman Hon LEE Cheuk-yan Admin	Objection expressed by Hon LEE Cheuk-yan to the exemption proposal in paragraph 3(b) which might be open to abuse and would impact on the employment opportunities of secondary school leavers; stakeholders consulted by the Administration on the exemption proposals included Members, employers' associations, trade unions and education institutions specified in Schedule 1 to the Bill; explanation of the Administration that the exemption proposal in paragraph 3(b) had built in restrictions on the employment of intern employees to prevent abuse	

Time marker	Speaker	Subject(s)	Action Required
002640 - 003112	Chairman Hon Andrew LEUNG Admin	Support for the Administration's exemption proposals for student interns expressed by Hon Andrew LEUNG; explanation of the Administration on the documents to be kept by an employer engaging an intern employee under the exemption proposals; sample document to be kept by employers for intern employees would be designed by the Labour Department ("LD") in consultation with the education institutions specified in Schedule 1 to the Bill; stance of the Labour Advisory Board that graduates who were no longer students should not be exempted from the Bill	
003113 - 003354	Chairman Hon Tommy CHEUNG	Support for the Administration's exemption proposals for student interns expressed by Hon Tommy CHEUNG; whether Form Five school leavers should be exempted from the Bill so as to provide them with opportunities for work experience	
003355 - 004354	Chairman Dr Hon Priscilla LEUNG Admin	How to determine whether a student intern who worked as a volunteer in an organization was exempted from the Bill or not; explanation of the Administration that a volunteer normally would not be involved in an employer-employee relationship and hence would be exempted from the Bill; whether an employer-employee relationship was established between a student intern/volunteer and the host organization would depend on facts of each case	
004355 - 004711	Chairman Hon WONG Yuk-man	Objection expressed by Hon WONG Yuk-man to the proposals for widening the exemption of student interns from SMW, which might be open to abuse and exploitation	

Time marker	Speaker	Subject(s)	Action Required
004712 - 005109	Chairman Hon Jeffrey LAM Admin	Support for the Administration's exemption proposals for student interns expressed by Hon Jeffrey LAM; practice in the United Kingdom under which different minimum wage rates were applied to young people of different age groups; how to ensure compliance with the conditions as set out in paragraph 3(b)(i); explanation of the Administration that the exemption in paragraph 3(b)(i) was limited to once in a year if the intern employee worked for the same employer	
005110 - 005633	Chairman Hon WONG Kwok-hing Admin	<p>Reservations on the Administration's exemption proposals for student interns expressed by Hon WONG Kwok-hing; whether the exemption proposals should cover interns studying in secondary schools; possibility of post secondary students seeking elementary summer jobs to compete with secondary school job-seekers</p> <p>The Administration explained the reason why the exemption proposals did not include secondary school students. It further explained the reason for imposing restrictions on a student intern to work 59 calendar days or less and for the same employer once in a year in paragraph 3(b)(i) was to reduce as far as possible part-time and summer jobs being re-packaged as internship not subject to SMW. The chance of post secondary students taking up elementary work below SMW was relatively slim. The proposal for LD to put in place a central registration and approval mechanism for exemption of student interns from SMW would create unnecessary administrative burden to intern employees and</p>	

Time marker	Speaker	Subject(s)	Action Required
		employers as well as additional administrative costs	
005634 - 010253	Chairman Hon Miriam LAU Admin	Queries raised by Hon Miriam LAU on the exemption proposals and the Administration clarified that the proposal in paragraph 3(b)(ii) would have the effect of exempting a Hong Kong resident pursuing full-time non-local education at undergraduate level or above, irrespective of whether the internship was curriculum-related or not, from SMW. It further explained that the reason for prohibiting a student intern to work for the same employer more than once in a year in paragraph 3(b)(i) was to prevent abuse. The Administration explained that Schedule 1 should be read in conjunction with the definition of "accredited programme" in clause 2	
010254 - 010516	Chairman Hon CHAN Kin-por	Support for the Administration's exemption proposals for student interns expressed by Hon CHAN Kin-por; appeal to the Administration to consider providing exemption for secondary school leavers as well	
010517 - 011140	Chairman Hon LEE Cheuk-yan Admin	Clarification of Hon LEE Cheuk-yan that while he did not object to the exemption proposal in paragraph 3(a), he objected to the one in paragraph 3(b) to extend the exemption to cover internship not related to the curriculum, which would be open to abuse  Queries raised by Hon LEE Cheuk-yan on the restrictions proposed in paragraph 3(b)(i) and the Administration explained that the restrictions imposed on a student intern to work 59 days or less would apply to the same employer once a year only. The	

Time marker	Speaker	Subject(s)	Action Required
		restrictions would reduce as far as possible part-time and summer jobs being re-packaged as internship in order to be exempted from SMW. As the exemption proposals would apply to full-time students, the chance of them being engaged in internships with different employers all year round was slim	
011141 - 011355	Chairman Hon IP Wai-ming Admin	Possibility of a Hong Kong resident disguised as a student intern to work for different employers and be exempted from SMW all year round; explanation of the Administration that the exemption proposed in paragraph 3(b)(i) was confined to education institutions in Schedule 1 to the Bill	
011356 - 011504	Chairman Hon Andrew LEUNG	Whether it was possible to limit student interns to work 59 calendar days or less once in a year so as to prevent abuse	Admin to explore
011505 - 011830	Chairman Hon Miriam LAU	Support for the proposal to extend the exemption to cover internship not related to the curriculum so as to broaden the vision of students expressed by Hon Miriam LAU	
011831 - 012115	Chairman Hon WONG Ting-kwong	Experience sharing of the internship programme run by the Democratic Alliance for the Betterment and Progress of Hong Kong during the summer	
012116 - 012440	Chairman Dr Hon PAN Pey-chyou	Support for the proposals to provide internship opportunities to students to broaden their experience and vision expressed by Dr Hon PAN Pey-chyou; whether a time frame (e.g. summer session) should be imposed for intern employees under paragraph 3(b) to prevent possible abuse	



Time marker	Speaker	Subject(s)	Action Required
012441 - 012616	Chairman SALA2 Admin	Whether the Administration would consider pegging the 59 calendar days with hours worked (e.g. 59 days x 8 hours) in paragraph 3(b); response of the Administration that the proposal might create additional administrative work on the employer	
012617 - 012754	Chairman Admin	Briefing on the Administration's proposed changes to the Bill in respect of exempting employers from keeping records of the total number of hours worked by employees whose wages were not less than a certain amount in the concerned month to be prescribed in a schedule to the Employment Ordinance ("EO"). (paragraph 11 of LC Paper No. CB(2)1818/09-10(02))	
012755 - 013111	Chairman Hon LEE Cheuk-yan Admin	<p>Support for the keeping of the total number of hours worked by employers expressed by Hon LEE Cheuk-yan; how the amount of monthly wages specified to exempt employers from keeping records of the total number of hours worked of employees would be computed and when it would be made public</p> <p>The Administration responded that the specified amount of wages, which would likely be computed on a monthly basis, would strike a reasonable balance between the need to enforce the SMW requirement and that to minimise the administrative cost of employers. The amount would be prescribed in a schedule to EO, which would be subject to negative vetting by the Legislative Council ("LegCo"). The specified amount would be adjusted consequential to the revision of the SMW rate where necessary and appropriate</p>	

Time marker	Speaker	Subject(s)	Action Required
013112 - 013752	Chairman Dr Hon LEUNG Ka-lau Admin	Estimation on the number of employees exempted from the requirement of keeping records of the total number of hours worked based on the different levels of the specified amount of monthly wages; whether it would reduce administrative costs if employers were required to keep records of the total number of overtime hours of employees only; response of the Administration that the Annual Earnings and Hours Survey compiled by the Census and Statistics Department had already provided data on the level and distribution of wages, employment details and demographic profile of employees in Hong Kong	
013753 - 014124	Chairman Hon LEUNG Yiu-chung Admin	Criteria and formula in setting the specified amount of monthly wages to exempt employers from keeping records of the total number of hours worked of employees; reiteration by the Administration that the specified amount would strike a reasonable balance between the need to enforce the SMW requirement and that to minimise the administrative cost of employers and be set out in a schedule to EO subject to the scrutiny of LegCo	
014125 - 014246	Chairman SALA2 Admin	Advice of the Administration that the Commissioner for Labour might, by notice in the Gazette, amend the specified amount in the proposed schedule to EO	
014247 - 014337	Chairman Admin	Briefing on the Administration's proposed changes to the Bill in respect of the recommendation of the SMW rate by the Minimum Wage Commission ("MWC") (paragraph 12 of LC Paper No. CB(2)1818/09-10(02))	

Time marker	Speaker	Subject(s)	Action Required
014338 - 014720	Chairman Hon LI Fung-ying Admin	Queries raised by Hon LI Fung-ying on the review frequency of the SMW rate and the report of MWC and the Administration explained that the proposal to specify a regular review interval of the SMW rate of not less than once every two years in the Bill would imply that more than one review could be carried out by MWC every two years if situation warranted. Amendments would also be introduced to require the Administration to make public the contents of the MWC's report. The Administration would also provide the public and LegCo the justifications the Chief Executive ("CE") in Council had taken into account in making the decision on whether to accept the recommendation of MWC. The drafting of clause 11(1), which provided MWC to report to CE in Council its recommendation when required by CE, was appropriate	
014721 - 014933	Chairman Hon IP Wai-ming Admin	Queries raised by Hon IP Wai-ming on the review frequency of the SMW rate and the Administration explained that its proposal would provide MWC the flexibility to conduct more than one review every two years if situation warranted	
014934 - 015032	Chairman Hon LEE Cheuk-yan	Intention of Hon LEE Cheuk-yan to propose Committee Stage amendments ("CSAs") to require MWC to submit a report on the SMW rate to CE in Council once a year	
015033 - 015319	Chairman Admin	Briefing on the Administration's proposed changes to the Bill in respect of the transitional arrangement for persons with disabilities ("PWDs") already in employment (paragraphs 13 to 14	

Time marker	Speaker	Subject(s)	Action Required
		of LC Paper No. CB(2)1818/09-10(02))	
015320 - 015521	Chairman Hon LEE Cheuk-yan Admin	Acceptance of the proposed transitional arrangement for PWDs already in employment expressed by Hon LEE Cheuk-yan, having regard to the support of the proposal by rehabilitation groups Queries raised on the arrangements for PWDs already in employment and the Administration explained that their contractual wages, expressed as a percentage of the initial SMW rate, would be adjusted accordingly when there was a change in the SMW rate	
015522 - 015932	Chairman Dr Hon LEUNG Ka-lau Admin	Queries raised by Dr Hon LEUNG Ka-lau on the productivity assessment invoked by a PWD already in employment and the Administration explained that both the employer and the PWD could decide whether to continue the employer-employee relationship after the assessment. Clause 23 exempted the employer from the Disability Discrimination Ordinance ("DDO") for dismissal of the PWD on account of the outcome of the assessment. The transitional arrangement would allow a serving PWD the flexibility to invoke the assessment mechanism at an appropriate time of his own volition	
015933 - 020356	Chairman Dr Hon PAN Pey-chyou Admin	Queries raised by Dr Hon PAN Pey-chyou on the proposed transitional arrangement for PWDs and the Administration explained that the arrangement was practical. The rehabilitation groups had indicated that some serving PWDs were reluctant to go through a productivity assessment within a prescribed time limit. The proposed transitional arrangement	

Time marker	Speaker	Subject(s)	Action Required
		would allow a serving PWD the flexibility to invoke the assessment mechanism at an appropriate time as per his choice and ensure that his contractual wages would be adjusted accordingly when there was a change in the SMW rate	
020357 - 020450	Chairman Hon LEE Cheuk-yan	Intention of Hon LEE Cheuk-yan to propose CSAs to the effect that an employer dismissing a PWD on account of the outcome of the productivity assessment was not exempted from DDO	
020451 - 020847	Chairman Hon IP Wai-ming Admin	Whether PWDs could really opt for SMW as provided in paragraph 13(a); the need to provide for a re-assessment on PWDs under the special arrangement as expressed by some rehabilitation groups; explanation of the Administration on the application of the options set out in paragraph 13(a) and (b); different views expressed by stakeholders on whether there was a need for a second assessment; undertaking by the Administration to review the issue within two years after implementation in light of operational experience gained during the implementation of SMW	Admin to follow up
020848 - 021729	Hon LEE Cheuk-yan Hon Tommy CHEUNG Admin	Special arrangement for a serving PWD whose productivity was assessed to be below the contractual wage rate; the Administration explained that the SMW at assessed rate would apply if an employer-employee relationship was to continue after the assessment; the employer was free to offer the PWD at a wage rate higher than the SMW at assessed rate. Clause 23 exempted the employer from DDO for dismissal of the PWD on account of the outcome of the assessment	

Time marker	Speaker	Subject(s)	Action Required
021730 - 022325	SALA2 Hon Tommy CHEUNG Hon LEE Cheuk-yan Admin	Special arrangement for a serving PWD whose contractual wage rate was above the SMW rate; the Administration explained that while the proposed transitional arrangement did not apply to serving PWDs with contractual wage rates not below the initial SMW rate, these PWDs had the discretion to invoke or not to invoke the productivity assessment under the special arrangement. If the employer dismissed the PWD because his wage rate was too high, he might be subject to DDO, depending on facts of the case	
022326 - 022603	Chairman Admin	Briefing on the Administration's proposed changes to clause 3 of the Bill (paragraphs 16 to 17 of LC Paper No. CB(2)1818/09-10(02))	
022604 - 023315	Chairman Hon Miriam LAU Admin	<p>Objection to the proposal to delete clause 3(2)(a) expressed by Hon Miriam LAU as the provision had set out clearly the exclusion of meal breaks from hours worked by an employee and would help prevent labour disputes</p> <p>The Administration explained that the removal of clause 3(2)(a) would not change the spirit of clause 3 because meal break falling outside clause 3(1) was not hours worked for the purpose of calculating SMW. Clause 3 did not change the existing arrangements under EO whereby employers and employees were free to agree between themselves the employment terms including those on meal break</p>	
023316 - 023404	Chairman Hon Tommy CHEUNG Hon IP Wai-ming	Support for the proposal to delete clause 3(2)(a) expressed by Hon IP Wai-ming	

Time marker	Speaker	Subject(s)	Action Required
023405 - 024255	Chairman Hon Tommy CHEUNG Admin	<p>Objection to the proposal to delete clause 3(2)(a) expressed by Hon Tommy CHEUNG as the provision was clear; unique practice in the catering industry to provide free meal at the place of employment</p> <p>The Administration reiterated that clause 3 did not seek to reduce the entitlements provided to the employee under his contract of employment, including those concerning meal break. Clause 3(2)(a) did not exclude the meal break during which the employee worked in accordance with the contract of employment or with the agreement or direction of the employer. The time during which an employee taking free meal in a restaurant, which was the work place, not for the purpose of doing work would not be regarded as hours worked for the purpose of computing SMW</p>	
024256 - 024645	Chairman Hon LEE Cheuk-yan Admin	Whether the retention of clause 3(2)(a) would eliminate disputes; whether clause 3(2)(b) was necessary; whether the Bill should stipulate that hours worked should include contractual hours to avoid disputes; explanation of the Administration that the counting of hours worked in the Bill was for the purpose of computing SMW, while contractual hours not paid would be subject to the contract of employment and EO	
024646 - 024934	Chairman Hon Tommy CHEUNG Admin	The pros and cons of the proposal to stipulate in the Bill that hours worked should include contractual hours	
024935 - 025554	Chairman SALA2 Hon Tommy CHEUNG Admin	View of SALA2 that the removal of clause 3(2)(a) would not change the spirit of clause 3; explanation of the Administration that the original	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		intention of clause 3(2)(a) was for clarity, and the removal of it might help eliminate the misunderstanding that meal break must be excluded from counting as hours worked for the purpose of computing SMW; views expressed by Hon Tommy CHEUNG that clause 3(2)(a) should be retained as it was clear and the removal of it might not necessarily help prevent disputes; inclusion of examples on meal break arrangement in the industry-based guidelines where appropriate	
025555 - 025732	Chairman Hon Tommy CHEUNG Hon LEE Cheuk-yan Admin	Availability of the draft CSAs proposed by the Administration  Date of next meeting	