

立法會
Legislative Council

LC Paper No. CB(2)469/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/BC/11/08

Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Thursday, 17 June 2010, at 8:30 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 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 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 Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
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
Hon Alan LEONG Kah-kit, SC

- Members absent** : Hon LEUNG Yiu-chung
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon CHIM Pui-chung
Dr Hon Priscilla LEUNG Mei-fun
Hon LEUNG Kwok-hung
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 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) advise the Panel on Manpower of the party responsible for bearing the cost of assessment of the degree of productivity of persons with disabilities before the Minimum Wage Ordinance ("MWO") came into operation;
 - (b) brief the Panel on Manpower on the guidelines on statutory minimum wage for employers and employees before the commencement of MWO;
 - (c) consider the suggestion of stating in the speech of the Secretary for Labour and Welfare during the resumption of Second Reading on the Bill that sufficient resources would be provided for publicity on MWO and the preparation of guidelines for different industries where appropriate; and
 - (d) provide an extract of its previous response which elucidated on the exemption in relation to dismissal under the Disability Discrimination Ordinance as provided in the Bill.

II. Date of next meeting

3. The Bills Committee noted that the next meeting would be held on 19 June 2010 at 9:00 am.
4. The meeting ended at 10:32 am.

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Thursday, 17 June 2010, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000603	Chairman	Opening remarks	
000604 - 000754	Chairman Admin	Briefing on the Administration's proposed changes to the Minimum Wage Bill ("the Bill") in respect of clause 5(5) (paragraph 18 of LC Paper No. CB(2)1818/09-10(02)))	
000755 - 000905	Chairman Admin	Briefing on the Administration's proposed changes to the Bill in respect of clause 10 and section 1(2) of Schedule 4 (paragraph 19 of LC Paper No. CB(2)1818/09-10(02)))	
000906 - 001004	Chairman Admin	Briefing on the publicity and promotional activities to be launched by the Labour Department ("LD") prior to the implementation of the statutory minimum wage ("SMW") (paragraph 20 of LC Paper No. CB(2)1818/09-10(02)))	
001005 - 001158	Chairman Hon Paul TSE Admin	Funding provision for the publicity and promotional activities of the implementation of SMW; preparation of industry-based guidelines after enactment of the Bill for the concerned sectors where appropriate	
001159 - 001746	Chairman Hon Tommy CHEUNG Admin	Impact of SMW on the operation of the catering industry; adequacy of manpower in LD to launch promotional activities to enhance awareness of the SMW requirements, especially among small catering establishments; response of the Administration that LD would engage the relevant stakeholder groups to draw up industry-based guidelines for the concerned sectors where	

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		appropriate, and vigorous promotion work would be carried out to facilitate the small and medium enterprises to understand their obligations under the SMW regime	
001747 - 002236	Chairman Admin	Briefing on the Administration's further response to the Bills Committee on setting the SMW rate (paragraphs 2 to 4 of LC Paper No. CB(2)1818/09-10(01))	
002237 - 002353	Chairman Hon WONG Kwok-hing Admin	Explanation of the Administration that the existing SMW rate would prevail, if the proposed SMW rate specified by the Chief Executive in Council was not endorsed by the Legislative Council ("LegCo")	
002354 - 002741	Chairman Hon Emily LAU Admin	The principle of gender mainstreaming in appointing members to the Minimum Wage Commission ("MWC"); response of the Administration on due regard to gender consideration in making future appointments to MWC; the Administration did not intend to stipulate the gender benchmark in the Bill; factors considered by the Administration in appointing members to MWC; intention of Hon Emily LAU to propose Committee Stage amendments ("CSAs") to stipulate the gender benchmark in the Bill	
002742 - 002938	Chairman Hon Mrs Regina IP Admin	Feasibility of adjusting the SMW rate upward or downward after each review; the Administration responded that the SMW rate could be adjusted upward or downward under the Bill and review on the SMW rate would be conducted at least once in every two years according to the Administration's proposed CSAs to the Bill	

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002939 - 003813	Chairman Hon Tommy CHEUNG Hon LEE Cheuk-yan Admin Hon Emily LAU	Frequency of review of the SMW rate and the Administration responded that CSAs would be moved to require MWC to report to the Chief Executive in Council its recommendation of the SMW rate at least once in every two years; views expressed by Hon LEE Cheuk-yan that the SMW rate should be reviewed once a year, and the review would not necessarily result in any change to the rate in force	
003814 - 004036	Chairman Admin	Briefing on the Administration's further response to the Bills Committee on exemption of live-in domestic workers ("DWs") (paragraphs 5 to 6 of LC Paper No. CB(2)1818/09-10(01))	
004037 - 004255	Chairman Hon Miriam LAU Admin	Support for the policy to exempt live-in DWs (local or foreign) from SMW expressed by Hon Miriam LAU; possibility of foreign domestic helpers ("FDH") seeking judicial review on their exemption from the Bill; timing at which FDHs could seek judicial review; response of the Administration that judicial review might be lodged by FDHs any time after the enacted Minimum Wage Ordinance ("MWO") was published in the Gazette	
004256 - 004419	Chairman Hon LEE Cheuk-yan	Hon LEE Cheuk-yan did not fully agree to the implications regarding inclusion of live-in DWs under SMW stated in paragraph 6 of the Administration's paper; Hon LEE's proposal to provide a monthly SMW rate to live-in DWs	
004420 - 004715	Chairman Hon Regina IP Admin	Support for the policy to exempt live-in DWs from SMW expressed by Hon Regina IP; explanation of the Administration that where a decision had been made by the Court of Final Appeal on a case of	

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		judicial review, no other case of judicial review based on the same circumstances of that case might be lodged	
004716 - 005453	Chairman Hon Emily LAU Admin	Consultation with FDHs on SMW and their feedback; inclusion of live-in DWs into SMW regime could cause financial hardship to many families and they might need to stop employing live-in DWs owing to increased cost; suggestion of some stakeholders to prescribe for FDHs a limit on the total number of working hours in a day; regular review of the minimum allowable wage for FDHs; measures implemented by LD to safeguard the employment rights of FDHs	
005454 - 005710	Chairman Admin	Briefing on the Administration's further response to the Bills Committee on the special arrangement for persons with disabilities ("PWDs") (paragraphs 7 to 8 of LC Paper No. CB(2)1818/09-10(01))	
005711 - 010332	Chairman Hon LEE Cheuk-yan Admin	How to prevent excessively low wages being paid to a PWD after the productivity assessment and whether that would contravene the purpose of the Bill; whether the Administration would consider instructing MWC to explore measures such as providing wage subsidy to prevent excessively low wages being paid to PWDs; response of the Administration that it had no plan to provide wage subsidy which was neither the policy intent of the Bill nor the work of MWC	
010333 - 010557	Hon LI Fung-ying Admin	Queries raised on the productivity assessment of PWDs and the Administration responded that another productivity assessment could be invoked if the work of the	Admin to advise LegCo Panel on Manpower before MWO came into operation

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		<p>PWD changed (though still working for the same employer) or if the PWD changed to work for another employer. The Administration was considering the suggestion of bearing the cost of assessment and would advise LegCo Panel on Manpower of the party responsible for bearing the cost of assessment before MWO came into operation</p>	
<p>010558 - 011207</p>	<p>Chairman Hon Emily LAU Admin</p>	<p>Support for the proposal to provide wage subsidy to PWDs who were paid excessively low wages after the productivity assessment expressed by Hon Emily LAU; the Administration explained the assistance currently provided to eligible PWDs under the Comprehensive Social Security Assistance Scheme; the Administration reiterated that it had no plan to provide wage subsidy which was not the policy intent of the Bill</p> <p>Queries raised on the conformity of the exemption provided to employers in clause 23 with the Disability Discrimination Ordinance ("DDO") and the Basic Law and the Administration explained that the exemption in clause 23 pertained to termination of employment on account of the assessment outcome only and the proposal was in conformity with the Basic Law including the provisions on human rights. The Administration elucidated on the exemption (detailed in paragraphs 5 to 8 of LC Paper No. CB(2)1511/09-10(01)). It further explained that if an employee was dismissed on ground of his disability rather than his failure to satisfy the inherent requirements of the particular employment, the Bill would not affect his claim under DDO</p>	<p>Admin to provide an extract of its previous response on the exemption in relation to dismissal under DDO as provided in the Bill (LC Paper No. CB(2)1511/09-10(01))</p>

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011208 - 011358	Chairman Hon Tommy CHEUNG Admin	Views of Hon Tommy CHEUNG that the cost of assessment should be borne by the Administration; response of the Administration that discussions with the rehabilitation organizations were underway on the details of the assessment mechanism which would affect the cost of assessment	
011359 - 011458	Chairman Admin	Briefing on the Administration's further response to the Bills Committee on whether employers should be exempted from criminal liability after the implementation of SMW (paragraph 9 of LC Paper No. CB(2)1818/09-10(01))	
011459 - 012208	Hon Miriam LAU Admin	<p>Timing for commencement of MWO; appeal to the Administration to implement MWO only when industry-based guidelines were published; the need to promote understanding of the detailed operation of SMW through the guidelines to different sectors; response of the Administration that should everything proceed well and allowing time for the community to gear up for the implementation of SMW, it was hoped that MWO would commence operation in the first half of 2011 if the Bill was enacted in July 2010, and the engagement process with stakeholder groups would continue in respect of the preparatory work for implementation such as the drawing up of guidelines for the concerned sectors where appropriate</p> <p>Queries raised on the criminal liability incurred by an employer who had breached MWO inadvertently because of his misunderstanding on the operation of SMW; response of the Administration that for wage offences, prosecution would be</p>	

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		instituted against the employer only when there was evidence showing that he had breached the relevant provisions wilfully and without reasonable excuse	
012209 - 013133	Chairman Hon Tommy CHEUNG Admin	Views of Hon Tommy CHEUNG that clause 3(2)(a) should be retained as it set out clearly the exclusion of meal breaks from hours worked by an employee; time required for employers and employees to understand the industry-based guidelines given the new SMW regime; time required for employers to amend terms of employment contracts (e.g. whether meal breaks should be counted as hours worked in the catering industry) where found necessary; risk of employers incurring criminal liability if there was misunderstanding on the operation of the SMW regime; timetable on the preparatory work required for implementing SMW; response of the Administration that it would lose no time to prepare for implementation including the drawing up of guidelines for the concerned sectors where appropriate and to vigorously launch a wide range of publicity and promotional activities to gear up for the implementation of SMW after enactment of the Bill; difficulty at the present stage to commit to a timetable for preparation of the industry-based guidelines	
013134 - 013347	Chairman SALA2 Admin	Undertaking by the Administration that it would brief the Panel on Manpower on its guidelines on SMW for employers and employees before MWO came into operation	Admin to follow up

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013348 - 013551	Hon Emily LAU Admin	Request for the Admin to state in the speech of the Secretary for Labour and Welfare during the resumption of Second Reading on the Bill that sufficient resources would be provided for publicity on MWO and the preparation of guidelines for the concerned sectors where appropriate	Admin to consider
013552 - 013656	Chairman Admin	Briefing on the Administration's further response to the Bills Committee on the coverage under the SMW legislation (paragraphs 10 to 11 of LC Paper No. CB(2)1818/09-10(01))	
013657 - 014848	Chairman Hon Tommy CHEUNG Admin SALA2	<p>Reasons for the Bill and the Employment Ordinance ("EO") not binding on the Government; feasibility of Members proposing CSAs to the Bill to bind the Government</p> <p>SALA2 advised that it would be difficult for the Bills Committee to move a CSA to the effect of applying the Bill to the Government. Apart from the possibility that the proposed CSA would have charging effect and might be outside the scope of the Bill, there were policy implications and practical operational problems to apply EO and MWO to the Government</p> <p>The Administration responded that as the Bill was aligned closely with the provisions of EO to ensure consistency, facilitate enforcement and forestall confusion to employers and employees, the proposal to apply the Bill to the Government would require an overhaul of EO. It was the Administration's policy to pay its employees no less favourably than the prevailing SMW rate stipulated under the SMW legislation (as and</p>	

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		<p>when enacted). In addition, employees of Government service contactors would be covered by MWO</p> <p>Hon Tommy CHEUNG expressed that he might consider proposing a CSA or moving a motion in relation to the applicability of the Bill to the Government</p>	
014849 - 015334	<p>Chairman Dr Hon LEUNG Ka-lau SALA2 Admin</p>	<p>Views of Dr Hon LEUNG Ka-lau that the Bill should bind the Government; whether public bodies such as the Hospital Authority ("HA") which was bound by EO would be subject to criminal sanction</p> <p>SALA2 explained that HA, being a body corporate, was subject to EO. As for the Government, although certain provisions in, for instance, the Environmental Impact Assessment Ordinance applied to the Government, civil servants breaching the provisions in the course of discharging their official duties would only be required to report to the Chief Secretary for Administration who would sanction the civil servants concerned by administrative means</p> <p>The Administration affirmed that public organizations were bound by EO and would be bound by MWO</p>	
015335 - 020036	<p>Chairman Hon LEE Cheuk-yan Admin Hon Tommy CHEUNG Hon Abraham SHEK</p>	<p>Views of Hon LEE Cheuk-yan and Hon Abraham SHEK that the laws of Hong Kong should apply to the Government; whether the Administration would consider stipulating in its contracts of employment that the Government would comply with EO and MWO, although it was not legally bound by them; views that the complete overhaul of EO had wide implications and the applicability of</p>	

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		laws to the Government involved constitutional issues, which had to be dealt with outside the context of this Bill; reiteration of the Administration's stance on the issue (paragraphs 10 to 11 of LC Paper No. CB(2)1818/09-10(01))	
020037 - 020316	Chairman Hon Tommy CHEUNG SALA2	Confirmation by SALA2 that civil servants in discharging their official duties would not be held criminally liable for any breach of the laws of Hong Kong	
020317 - 020419	Chairman Hon LI Fung-ying	Closing remarks Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
6 December 2010