

立法會
Legislative Council

LC Paper No. CB(2)470/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/BC/11/08

Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Saturday, 19 June 2010, at 9:00 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 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 Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
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
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man

- Members absent** : Hon WONG Kwok-hing, MH
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Dr Hon LAM Tai-fai, BBS, JP
Dr Hon LEUNG Ka-lau
Hon IP Kwok-him, GBS, JP
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 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 completed examination of the draft Committee Stage amendments ("CSAs") to the Bill as proposed by the Administration ((LC Paper Nos. CB(2)1861/09-10(01)) and CB(2)1903/09-10(01)). The Bills Committee requested the Administration to -

- (a) consider whether to stipulate in the Bill that the Minimum Wage Commission would provide a report on its function performed under clause 11(2); and
- (b) relay to the Secretary for Labour and Welfare members' request for him to state in the speech during the resumption of Second Reading on the Bill the rationale adopted for prescribing amount in the Ninth Schedule to the Employment Ordinance for the purpose of exempting employers from keeping records of the total number of hours worked of employees.

3. Members were requested to forward to the Clerk the draft CSAs, if any, before 12:00 noon on 21 June 2010 in order to facilitate discussion at the next meeting.

4. Senior Assistant Legal Adviser 2 was requested to assist in the vetting of the drafting of the English version of the draft CSAs.

II. Date of next meeting

5. The Bills Committee noted that the next meeting would be held on 22 June 2010 at 8:30 am.

6. The meeting ended at 11:44 am.

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Saturday, 19 June 2010, at 9:00 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000511	Chairman	Opening remarks	
000512 - 000803	Chairman Hon Jeffrey LAM Admin	<p>Examination on the marked-up copy of the Bill prepared on the basis of the draft Committee Stage amendments ("CSAs") to be proposed by the Administration (LC Paper No. CB(2)1861/09-10(01)) and its further revision (clauses 2A, 10 and 20 only) (LC Paper No. CB(2)1903/09-10(01))</p> <p>Examination of pages i to iii of LC Paper No. CB(2)1861/09-10(01)</p>	
000804 - 000952	Chairman Admin	Definitions of "non-local education programme" and "work experience student" to be added to clause 2 (pages 3 and 4 of LC Paper No. CB(2)1861/09-10(01))	
000953 - 003334	Chairman Hon Miriam LAU Hon Tommy CHEUNG Hon CHAN Kin-por Hon LEE Cheuk-yan Deputy Chairman Hon Mrs Regina IP Hon Jeffrey LAM Hon LI Fung-ying Admin	<p>Views of Hon Miriam LAU, Hon Tommy CHEUNG, Hon CHAN Kin-por, the Deputy Chairman and Hon Jeffrey LAM that the definition of "non-local education programme" should be relaxed to cover all non-local education programmes at post-secondary level or above</p> <p>Views of Hon LEE Cheuk-yan and Hon LI Fung-ying that such further relaxation might be open to abuse. The statutory minimum wage ("SMW") would not apply to student internships where an employment relationship did not exist</p>	

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		<p>The Administration responded that further relaxation would be open to abuse, as it would be difficult to verify whether or not an education programme was at post secondary level when the education system was different. The Administration explained that from the decision of some decided cases, it appeared that a volunteer who was reimbursed for work-related expenses only would likely not be working under a contract of employment when there was no consideration and/or intention to create legal relations. To prevent abuse of the exemption proposal, new clause 2A in LC Paper No. CB(2)1903/09-10(01) set out the conditions for exempt student employment. A student intern was required to provide the employer with a statutory declaration (or a copy) confirming that exempt student employment commencing in the same calendar year had not been undertaken</p>	
003335 - 003403	Chairman Admin	Examination of the draft CSAs to the definition of "employee with a disability" ("PWD") in clause 2 (page 2 of LC Paper No. CB(2)1861/09-10(01))	
003404 - 003917	Chairman Hon Mrs Regina IP Admin	The Administration explained the purpose of the special arrangement for PWDs; flexibility for a PWD to select an assessor and the timing for the productivity assessment; reason for not providing an appeal mechanism for the productivity assessment	
003918 - 003932	Chairman Admin	Examination of the draft CSAs to the definition of "employee" in clause 2 (page 2 of LC Paper No. CB(2)1861/09-10(01))	

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003933 - 004017	Chairman Admin	Examination of the draft CSAs to the definition of "student intern" in clause 2 (pages 3 and 4 of LC Paper No. CB(2)1861/09-10(01))	
004018 - 004044	Chairman Admin	Examination of the draft definition of "option form" to be added to clause 2 (page 3 of LC Paper No. CB(2)1861/09-10(01))	
004045 - 004111	Chairman Admin	Examination of the draft definition of "assessment-opting PWD" to be added to clause 2 (page 2 of LC Paper No. CB(2)1861/09-10(01))	
004112 - 004831	Chairman Admin Hon Tommy CHEUNG Hon LEE Cheuk-yan	<p>Examination of the draft definition of "exempt student employment" to be added to clause 2 (page 2 of LC Paper No. CB(2)1861/09-10(01)) and the new clause 2A (page 1 of LC Paper No. CB(2)1903/09-10(01))</p> <p>Purpose of limiting exempt student employment of work experience students to a continuous period of 59 calendar days or less and no more than once in a year and the requirement for them to provide employers with a statutory declaration (or a copy) confirming that they had not undertaken any exempt student employment commencing in the same calendar year</p>	
004832 - 004944	Chairman Admin	Examination of the draft CSAs to clause 3 on hours worked (pages 5 and 6 of LC Paper No. CB(2)1861/09-10(01))	
004945 - 011914	Chairman Hon Miriam LAU Admin Hon Tommy CHEUNG Hon LEE Cheuk-yan Hon IP Wai-ming	Views expressed by Hon Miriam LAU and Hon Tommy CHEUNG that clause 3(2)(a) was clear as it set out the exclusion of meal breaks from hours worked by an employee and would help prevent labour disputes. If the clause was deleted, there was a need to make	

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		<p>employers aware that they had to stipulate the meal break arrangement in the contracts of employment upon the implementation of SMW. Hon Tommy CHEUNG expressed concern about the unique practice of the catering industry whereby employees were provided with free meals and employees refusing to sign the revised contracts of employment because of a change in the meal break arrangement might face the risk of dismissal</p> <p>Views of Hon LEE Cheuk-yan that the words "outside Hong Kong" in the draft CSAs to clause 3(b) should be deleted as the hours worked by an employee should include any time during which the employee was travelling between his place of residence and his place of employment that was not his usual place of employment. The removal of clause 3(2)(a), in his view, would not change the spirit of clause 3 because meal break falling outside clause 3(1) (i.e. an employee taking meal not in attendance at a place of employment) was not hours worked under clause 3 for calculating SMW</p> <p>The Administration explained that the removal of clause 3(2)(a) would not change the existing arrangements under the Employment Ordinance ("EO") where employers and employees were free to agree between themselves the employment terms including those on 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</p>	

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		<p>which an employee took meal in the work place not for the purpose of doing work or receiving training would not be regarded as hours worked under clause 3. The Administration would provide examples in the industry-based guidelines to explain the application of clause 3 to facilitate employers and employees to understand their rights and obligations under the SMW regime. The Administration could arrange briefing to the catering industry on the SMW requirements, if necessary. The Administration further explained that wording of clause 3(2)(b) was incorporated into clause 3(b) of the draft CSAs</p>	
011915 - 012035	Chairman Admin	Examination of the draft CSAs to clause 5 on wages (pages 6 and 7 of LC Paper No. CB(2)1861/09-10(01))	
012036 - 012108	Chairman Admin	Examination of the draft CSAs to clause 6 on application of the Minimum Wage Ordinance ("MWO") (page 7 of LC Paper No. CB(2)1861/09-10(01))	
012109 - 012254	Chairman Admin	Examination of the draft CSAs to clause 8 on minimum hourly wage rate (pages 8 and 9 of LC Paper No. CB(2)1861/09-10(01))	
012255 - 012505	Chairman Admin Hon Tommy CHEUNG	Examination of the draft CSAs to clause 10 on establishment and constitution of the Minimum Wage Commission ("MWC") (pages 1 and 2 of LC Paper No. CB(2)1903/09-10(01) and pages 10 and 11 of LC Paper No. CB(2)1861/09-10(01))	
012506 - 012555	Chairman Admin	Examination of the draft CSAs to clause 11 on function of MWC (page 12 of LC Paper No. CB(2)1861/09-10(01))	

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012556 - 012934	Chairman Admin Hon Mrs Regina IP Hon Tommy CHEUNG	Whether the decisions of MWC were made by voting and if so, whether the chairman of MWC would have two votes Response of the Administration that section 4 of Schedule 4 provided that MWC might regulate its own procedure	
012935 - 012953	Chairman Admin	Examination of the draft CSAs to clause 13 on report of MWC (page 13 of LC Paper No. CB(2)1861/09-10(01))	
012954 013234	Chairman Hon LI Fung-ying Admin	Views of Hon LI Fung-ying that MWC should provide a report on its function performed under clause 11(2); explanation of the Administration that the function performed by MWC under clause 11(2) might not necessarily lead to a report	Admin to consider whether to stipulate in the Bill that MWC would provide a report on its function performed under clause 11(2)
013235 - 013301	Chairman Admin	Examination of the draft CSAs to clause 17 on transitional provisions (page 15 of LC Paper No. CB(2)1861/09-10(01))	
013302 - 013703	Chairman Admin SALA2	Examination of the draft CSAs to the proposed section 49A(3)(ea) of EO in clause 20 on requirement to keep wage and employment records (pages 15 and 16 of LC Paper No. CB(2)1861/09-10(01)), the proposed section 49A(5) of EO to be added to clause 20, and the draft Ninth Schedule to EO to be added under the new clause 21A on monetary cap on keeping records of hours worked (pages 17 and 18 of LC Paper No. CB(2)1861/09-10(01)) Queries raised by SALA2 on the draft CSAs to the proposed section 49A(3)(ea) of EO and the Administration explained that the specified amount to exempt employers from keeping records of	

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		the total number of hours worked of employees would be computed on a monthly basis	
013704 - 014251	Chairman Hon Tommy CHEUNG Admin	<p>How to derive the monetary cap on keeping records of the total number of hours worked</p> <p>The Administration responded 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 would be stated in a schedule to EO, which would be subject to negative vetting by the Legislative Council ("LegCo")</p>	Admin to relay to the Secretary for Labour and Welfare members' request for him to state in the speech during the resumption of Second Reading on the Bill the rationale adopted for prescribing the specified amount in the Ninth Schedule for the purpose of exempting employers from keeping records of the total number of hours worked of employees
014252 - 015154	Chairman Hon LEUNG Yiu-chung Admin SALA2	<p>Queries raised by Hon LEUNG Yiu-chung on whether the specified amount for the purpose of exempting employers from keeping records of the total number of hours worked of employees would be expressed in terms of monthly wages as well as hourly wages and the Administration responded that to reduce administrative costs on the employers, the specified amount would be on monthly basis</p> <p>Advice of SALA2 that LegCo could amend the specified amount proposed in the Ninth Schedule</p> <p>Queries raised by SALA2 on the draft CSAs to the proposed section 49A(3)(ea) of EO and the Administration explained that the parenthesis in the revised section 49A(3)(ea) sought to set out how the amount could be computed when the wage period fell in more</p>	

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		than one month	
015155 - 015352	Chairman Admin	Examination of the draft CSAs to the proposed section 49A(3A) of EO (pages 2 and 3 of LC Paper No. CB(2)1903/09-10(01)) to be added to clause 20 on keeping of employment records for student interns and work experience students during exempt student employment	
015353 - 015411	Chairman Admin	Examination of the draft CSAs to clause 23 on further exceptions to DDO (pages 18 and 19 of LC Paper No. CB(2)1861/09-10(01))	
015412 - 015544	Chairman Hon LEE Cheuk-yan SALA2	Intention of Hon LEE Cheuk-yan to move CSAs to clause 23 and the procedure involved	
015545 - 015605	Chairman Admin	Examination of the draft CSAs to Schedule 1 on education institutions (page 20 of LC Paper No. CB(2)1861/09-10(01))	
015606 - 015736	Chairman Admin	Examination of the draft CSAs to section 2(1A) and (1) of Schedule 2 on trial period of employment of persons with disabilities ("PWDs") (pages 21 and 22 of LC Paper No. CB(2)1861/09-10(01))	
015737 - 015908	Chairman Admin	Examination of the draft section 3A to be added to Schedule 2 on PWDs employed before the commencement of the MWO who might opt for an assessment (pages 22 and 23 of LC Paper No. CB(2)1861/09-10(01))	
015909 - 021128	Chairman Hon LEE Cheuk-yan Admin SALA2	Queries raised by Hon LEE Cheuk-yan on whether the option form in the proposed section 3A(3)(b) of Schedule 2 should be filled in by PWDs and the Administration explained that while the clause provided to PWDs already in employment with	

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		<p>contractual wage rates below the initial SMW rate a right to elect to have their degree of productivity assessed, the clause did not specify that the option form must be completed by the PWDs concerned. A PWD could choose to complete the form with the assistance of his employer who was required to countersign the form. Views of SALA2 that while the PWD could seek assistance from the employer, the PWD had the duty to fill in the form as the PWD was the one to invoke the assessment mechanism</p> <p>Concerns raised by SALA2 on the difficulties of a PWD in specifying the current contractual rate in the proposed section 3A(3)(b), which might not be expressed on a hourly wage rate basis; concerns raised by Hon LEE Cheuk-yan on the difficulties of a PWD in qualifying the "current" contractual rate when the monthly wages might fluctuate from month to month</p> <p>The Administration explained that it was necessary to derive the hourly wage rate in the proposed section 3A(3)(b) in order to come up with a percentage of the initial SMW rate in the proposed section 3A(3)(c). The proposed special arrangement allowed a serving PWD the flexibility to invoke the assessment mechanism at an appropriate time as per his choice</p>	
021129 - 021328	Chairman Admin Hon Andrew LEUNG	Examination of the draft section 3B to be added to Schedule 2 on how an employee might opt for an assessment (page 23 of LC Paper No. CB(2)1861/09-10(01))	
021329 - 021453	Chairman Admin	Examination of the draft CSAs to section 4 of Schedule 2 on assessment (pages 23 and 24 of LC Paper No. CB(2)1861/09-10(01))	

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021454 - 021555	Chairman Admin	Examination of the draft CSAs to section 5 of Schedule 2 on certificate of assessment (page 25 of LC Paper No. CB(2)1861/09-10(01))	
021556 - 021614	Chairman Admin	Examination of the draft CSAs (Chinese version only) to section 1(2) of Schedule 4 on terms and conditions of appointment of members of MWC (page 26 of LC Paper No. CB(2)1861/09-10(01))	
021615 - 021642	Chairman Admin SALA2	Assistance to be rendered by SALA2 on the vetting of the English version of the draft CSAs	SALA2 to follow up
021643 - 022637	Chairman Hon Andrew LEUNG Admin Hon Tommy CHEUNG Hon LEE Cheuk-yan	Queries raised by Hon Andrew LEUNG on how the specified amount for the purpose of exempting employers from keeping records of the total number of hours worked of employees would be set in the Ninth Schedule to EO and the Administration reiterated that the specified amount would be set to strike a reasonable balance between the need to enforce the SMW requirement and that to minimise the administrative cost of employers and stated in the Ninth Schedule to the EO, which would be subject to negative vetting by LegCo	
022638 - 022859	Chairman Hon Mrs Regina IP Hon Tommy CHEUNG	CSAs to be proposed by Members to be provided to the Bills Committee before 12:00 noon on 21 June 2010 to facilitate discussion at the next meeting	
022900 - 023028	Chairman Hon Tommy CHEUNG	Administration's response to issues raised at the meeting held on 27 April 2010 (LC Paper No. CB(2)1818/09-10(03))	
023029 - 024358	Chairman Hon Tommy CHEUNG Admin	Administration's response to issues raised at the meeting held on 3, 5, 8 and 10 June 2010 (LC Paper No.	

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	SALA2	<p>CB(2)1832/09-10(01))</p> <p>Queries raised by Hon Tommy CHEUNG on whether the wage period should be specified in a contract of employment, given the unique practice of the catering industry whereby employees were paid twice a month (the so-called "大細糧")</p> <p>The Administration responded that when an employer and an employee had a clear understanding (either through express or implied terms of a contract of employment made orally or in writing) that the wage period was one month, the wage period should be taken to be one month even though the employer paid wages twice in a wage period</p> <p>SALA2 suggested that the guidelines to be formulated by the Administration should elaborate on the arrangement for wage period in different industries so as to address the concerns raised by Hon Tommy CHEUNG</p>	
024359 - 024425	Chairman	Date of next meeting	