

立法會
Legislative Council

LC Paper No. CB(2)471/10-11
(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, 22 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 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 CHAN Kin-por, JP
Dr Hon LEUNG Ka-lau
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
- Members absent** : Hon Albert HO Chun-yan
Hon LEUNG Yiu-chung
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon Ronny TONG Ka-wah, SC

Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon CHEUNG Kwok-che
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon PAN Pey-chyou
Hon LEUNG Kwok-hung
Hon WONG Yuk-man

Public Officers : Mr Alan WONG Kwok-lun, JP
attending 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

Ms Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice

Clerk in : Mr Raymond LAM
attendance Chief Council Secretary (2) 1

Staff in : Mr Arthur CHEUNG
attendance Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2) 4

Ms Camy YOONG
Clerical Assistant (2) 1

I. Meeting with the Administration

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

2. The Bills Committee examined the draft Committee Stage amendments to the Bill as proposed by Members (LC Paper Nos. CB(2)1875/09-10(01)) to (04)).

II. Date of next meeting

3. The Bills Committee agreed that the next meeting originally scheduled for 24 June 2010 would be rescheduled to 25 June 2010 from 5:30 pm to 7:30 pm.

(Post-meeting note: On the instruction of the Chairman, the meeting originally scheduled for 25 June 2010 was cancelled as the Council meeting of 23 June 2010 was resumed in the morning of 25 June 2010 for the continuation of unfinished business. The next meeting would be held on 28 June 2010 at 2:30 pm.)

4. The meeting ended at 10:55 am.

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Tuesday, 22 June 2010, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000650	Chairman	Opening remarks Examination of the draft Committee Stage amendments ("CSAs") proposed by Members	
000651 001254	Chairman Hon LEE Cheuk-yan Admin	Briefing by Hon LEE Cheuk-yan on the draft CSAs to clause 3 proposed by Hon CHEUNG Kwok-che, Hon Cyd HO, Hon LEE Cheuk-yan, Hon LEUNG Kwok-hung and Hon LEUNG Yiu-chung in <u>Group 1</u> (page 1 of LC Paper No. CB(2)1875/09-10(01)) which provided that the hours worked by an employee included 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 Administration responded that the draft CSAs had departed from the principle of excluding from hours worked under clause 3 the travelling time during which an employee was commuting between his residence and place of employment (other than a place of employment that was outside Hong Kong and was not the employee's usual place of employment)	
001255 001615	Chairman Hon LEE Cheuk-yan Admin	Briefing by Hon LEE Cheuk-yan on the draft CSAs to clause 5 proposed in <u>Group 2</u> (page 2 of LC Paper No. CB(2)1875/09-10(01)) which provided that holiday premium and overtime premium should not be counted as part of the wages payable The Administration responded that the draft CSAs would create	

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		<p>confusion to employers and employees as it did not align with the definition of "wages" in the Employment Ordinance ("EO") on which the drafting of the Bill was based</p>	
<p>001616 004310</p>	<p>Chairman Hon LEE Cheuk-yan Hon LI Fung-ying Admin Hon Tommy CHEUNG Hon WONG Kwok-hing</p>	<p>Briefing by Hon LEE Cheuk-yan on the draft CSAs proposed in Groups 3 to 8 (pages 2 to 4 of LC Paper No. CB(2)1875/09-10(01))</p> <p><u>Group 3</u> - draft CSAs to clause 10(2)(b)(iii) to delete the word "academic" so as to broaden the scope of members of the Minimum Wage Commission ("MWC") to include persons from research institutes and think tanks</p> <p>The Administration explained that the reason for appointing persons who had knowledge of, or experience in, a relevant academic field to MWC was because of the possible impact of SMW on Hong Kong. "A relevant academic field" in clause 10(2)(b)(iii) could include academic institutions, research institutes, think tanks etc. It was hence not necessary to delete the word "academic" from the clause</p> <p><u>Group 4</u> - draft CSAs to clause 10(2) to provide that public officers sitting on MWC would have no voting rights</p> <p>The Administration explained that section 4 of Schedule 4 of the Bill provided that MWC might regulate its own procedure, including whether its decisions should be reached by agreement or voting. On the question of whether MWC could make a decision to prevent members of MWC from certain sectors from voting as raised by Hon Tommy CHEUNG, the</p>	

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		<p>Administration explained that such decision would not be consistent with the spirit of clause 10 which required the appointment of a balanced number of members under each of the sectors stipulated in clause 10(2)</p> <p>Hon LEE Cheuk-yan explained that the draft CSAs would ensure that when a decision of MWC was to be made by voting, public officers would not be involved in the process</p> <p><u>Group 5</u> - draft CSAs to clause 10 to require the Chief Executive ("CE") to have regard to any nomination made by labour organizations specified in the new Schedule 3A in appointing members representing the labour sector to MWC</p> <p>Hon LI Fung-ying queried why only three labour unions were specified in the new Schedule 3A to represent the labour sector and the basis for selecting them. Hon Tommy CHEUNG enquired about the membership size of the three labour unions. Hon WONG Kwok-hing considered that the draft CSAs were too rigid and it had failed to take into account of the changes and development in labour unions. In addition, the CSAs ran counter to the principle that all labour unions should have equal standing irrespective of their sizes</p> <p>Hon LEE Cheuk-yan explained that in line with the International Labour Organization which recommended that representatives of labour unions should sit on the relevant advisory and statutory bodies ("ASBs"), the three labour unions specified in the new Schedule 3A had the largest membership.</p>	

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		<p>Information on the membership size of the respective labour unions was available for public access in the Registry of Trade Unions. The specified labour organizations in the new Schedule 3A could be amended as and when required. He held the view that larger labour unions should be formed to better fight for labour rights</p> <p>The Administration responded that non-official members would be appointed to MWC on an ad personam basis (rather than elected or nominated by the respective sector) to facilitate independent, objective and unbiased analyses in deliberating the SMW rate in the overall interest of Hong Kong</p> <p><u>Group 6</u> - draft CSAs to clause 11 to require MWC to make a report every year</p> <p>The Administration explained that the draft CSAs proposed by the Administration to specify a regular review interval of the SMW rate of not less than once every two years would provide the flexibility for MWC to carry out more than one review every two years if situation warranted</p> <p>Hon LEE Cheuk-yan explained that Members' draft CSAs would ensure that the review of the SMW rate would be conducted once a year</p> <p><u>Group 7</u> - draft CSAs to clause 11(3) to provide for factors to be considered by MWC in recommending the SMW rate</p> <p>The Administration explained that clause 11(3) had set out the principles to be upheld by MWC in recommending the SMW rate. Members' draft CSAs had set out</p>	

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		<p>specific factors, such as the needs of employees and their families and economic factors (modelled on Article 3 of the International Labour Convention 131 ("ILC131")), rather than the principles to be considered in determining the SMW rate. It must be noted that ILC131 was not applicable to Hong Kong. The principles set out in clause 11(3) allowed MWC the flexibility to consider relevant indicators which were suitable for Hong Kong's prevailing and changing circumstances in deriving the SMW rate</p> <p>Hon LEE Cheuk-yan responded that in his view, the needs of employees and their families and the economic factors were principles to be upheld in deriving the SMW rate</p> <p>Briefing by Hon LEE Cheuk-yan on the draft CSAs to clause 13 proposed in <u>Group 8</u> (page 4 of LC Paper No. CB(2)1875/09-10(01)) which provided that CE should cause to be laid on the table of the Legislative Council ("LegCo") a copy of the MWC report</p>	
004311 004904	Chairman Hon LEE Cheuk-yan Admin	<p>Briefing by Hon LEE Cheuk-yan on the draft CSAs to clause 15 proposed in <u>Group 9</u> (page 5 of LC Paper No. CB(2)1875/09-10(01)) which provided that LegCo might amend the SMW rate</p> <p>The Administration explained that the SMW rate, which was to be prescribed in Schedule 3 by way of subsidiary legislation, was subject to the scrutiny of LegCo. MWC would adopt an evidence-based approach in coming up with a recommendation on the SMW rate. As MWC was established to advise</p>	

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		<p>CE in Council on the amount of the SMW rate, there should not be any question on the power of CE in Council in determining the prescribed SMW rate. It was not new that in some ordinances, LegCo only had the right to revoke but not to amend certain provisions. The National Minimum Wage Act 1998 in the United Kingdom had not provided its Parliament the power to amend the SMW rate</p>	
004905 - 005646	<p>Chairman Hon LEE Cheuk-yan Admin Hon Abraham SHEK</p>	<p>Briefing by Hon LEE Cheuk-yan on the draft CSAs proposed in <u>Group 10</u> (pages 5 and 6 of LC Paper No. CB(2)1875/09-10(01)) which provided that the Trade Boards Ordinance ("TBO") should not be repealed</p> <p>The Administration explained that TBO had been dormant on Hong Kong's statute books for 70 years and the Government had never invoked the powers under TBO. The provisions of TBO were largely obsolete and legally problematic. Addressing the concern raised by Hon Abraham SHEK, the Administration explained that the Bill did not intend to regulate working hours</p>	
005647 - 010200	<p>Chairman Hon LEE Cheuk-yan Admin</p>	<p>Briefing by Hon LEE Cheuk-yan on the draft CSAs proposed in <u>Group 11</u> (pages 6 and 7 of LC Paper No. CB(2)1875/09-10(01)) which provided that employers should inform their employees of the hours worked and particulars of wages in the wage period concerned upon a written request made by an employee</p> <p>The Administration expressed that the draft CSAs might not be necessary given that employees usually knew more about the number of hours worked in a wage</p>	

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		<p>period than their employers. If there were disputes on the total number of hours worked, employers would normally resolve the matter with the employees concerned. The issue should be dealt with through good management practices rather than regulated by the Bill</p>	
<p>010201 011301</p>	<p>Chairman Hon LEE Cheuk-yan Admin</p>	<p>Briefing by Hon LEE Cheuk-yan on the draft CSAs proposed in Groups 12 and 13 (page 7 and 8 of LC Paper No. CB(2)1875/09-10(01))</p> <p><u>Group 12</u> - draft CSAs to clause 23 to remove the exemption for an employer dismissing a person with a disability ("PWD") on account of the outcome of the productivity assessment from the Disability Discrimination Ordinance ("DDO")</p> <p>The Administration explained that the exemption from DDO relating to dismissal provided in the Bill was limited to the situation where the reason for the dismissal was the outcome of assessment. The exemption sought to reduce the possible adverse impact of SMW on some PWDs' employment opportunities</p> <p><u>Group 13</u> - draft CSAs to section 5 of Schedule 2 to remove the requirement for an employer to sign on the certificate of assessment</p> <p>The Administration explained that the Bill proposed the signing of the certificate of assessment because the employer and the PWD employee had to be well aware of the outcome of assessment to avoid unnecessary misunderstanding over the computation of the minimum wage to which the PWD employee was entitled. It helped to maintain</p>	

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		<p>good employer-employee relationship as unnecessary disputes over the wage rate for the PWD employee could be prevented. The practice was the same as that of the contract of employment on which both the employer and employee would usually sign in order for the contract to take effect. As a matter of fact, if the employer and/or the PWD refused to sign on the certificate owing to disagreement over the outcome of assessment, the parties would unlikely continue their employment relationship. Nonetheless, should their employment relationship continue for various reasons, the employer should then pay the PWD employee at or above the SMW rate</p>	
<p>011302 012543</p>	<p>Chairman Hon LEE Cheuk-yan Dr Hon LEUNG Ka-lau Admin</p>	<p>Briefing on the draft CSAs proposed by Hon LEE Cheuk-yan (LC Paper No. CB(2)1875/09-10(02)) to include live-in domestic workers under the coverage of the Bill and to provide them with a daily SMW calculated from the hourly SMW with a conversion multiplier</p> <p>Concern raised by Dr Hon LEUNG Ka-lau on the impact of the draft CSAs on the maximum hours of work of employees, if implemented in future</p> <p>The Administration responded that its stance on exempting live-in domestic workers from the Bill had been clearly set out in the LegCo Brief</p>	
<p>012544 013101</p>	<p>Chairman Hon Emily LAU Hon IP Wai-ming</p>	<p>Briefing on the draft CSAs proposed by Hon Emily LAU (LC Paper No. CB(2)1875/09-10(03)) to require that in appointing members of</p>	

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		<p>MWC, CE must have regard to a participation target of at least 30% of each gender. She would also move CSAs to provide that a member who was not a public officer might not be appointed as a MWC member continuously for more than six years and might not serve on more than five other public sector ASBs at any one time</p> <p>Concern raised by Hon IP Wai-ming whether stipulating the gender requirement in the Bill would restrict the flexibility of the Administration in appointing suitable members to MWC</p> <p>Hon Emily LAU responded that the draft CSAs sought to ensure women participation in public affairs as some ASBs were constituted of male members only</p>	
013102 - 020044	<p>Chairman Dr Hon LEUNG Ka-lau Hon Paul TSE Hon LEE Cheuk-yan Admin SALA2 Hon IP Wai-ming</p>	<p>Briefing on the draft CSAs proposed by Dr Hon LEUNG Ka-lau (LC Paper No. CB(2)1875/09-10(04)) to broaden the definition of "place of employment" from "for the purpose of doing work" to "for any purpose related to work", and to specify circumstances under which standby hours should be counted as hours worked for the purpose of determining whether the wages payable to an employee met the SMW requirements. Dr Hon LEUNG quoted an example that with his proposed amendment to cover hours "for any purpose related to work", the time during which an employee of an elderly home who was instructed by his employer to stand by and stay overnight at the work place would be counted as hours worked</p>	

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		<p>Hon Paul TSE considered that the drafting of "for any purpose related to work" was too broad and would give rise to disputes. He did not support the proposed amendments. He added that the Administration should clarify whether hours worked included sleeping time and waiting time of a tourist guide while working overseas, otherwise he would have difficulty in supporting the Bill</p> <p>Hon LEE Cheuk-yan expressed support for the merits of the amendments proposed by Dr Hon LEUNG. Hon LEE sought advice whether the amendments would indeed have the effect of ensuring employees of an elderly home be remunerated with the overnight hours in the example quoted by Dr Hon LEUNG</p> <p>The Administration responded that it had already proposed CSAs to clause 3 regarding hours worked having regard to the comments made by members. The CSAs proposed by Dr Hon LEUNG had widened the definition of "place of employment". Given the broad interpretation of "for any purpose related to work", one had to consider its implications very carefully in order to ascertain its impact. As regards the examples concerning the employee of an elderly home and a tourist guide, whether their sleeping time would be counted as hours worked would depend on facts of each case. The Administration had explained on previous occasions that the time in question would be regarded as hours worked by the employee for computing SMW if it fulfilled clause 3(1) or if the time in question was regarded as hours worked by the employee under the</p>	

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		<p>employment contract or the agreement with the employer</p> <p>SALA2 added that the Bills Committee had on previous occasions discussed whether sleeping time during which a tourist guide spent in a hotel should be counted as hours worked</p> <p>Views of Hon IP Wai-ming that examples on counting of hours worked in a wage period should be formulated in guidelines</p> <p>Whether an employee who stayed overnight in an elderly home at the request of the employer would be regarded as part of the staff establishment for the purpose of satisfying the staff requirement in the relevant law</p>	
020045 - 020256	Chairman Dr Hon LEUNG Ka-lau SALA2	<p>Impact of the Administration's draft CSAs to clause 3 on Dr Hon LEUNG Ka-lau's draft CSAs to the same clause</p> <p>Further proposals made by Dr Hon LEUNG on his draft CSAs</p>	
020257 - 020349	Chairman Hon LI Fung-ying Admin	Response of the Administration that it was still considering Hon LI Fung-ying's request regarding MWC report	
020350 - 021538	Chairman Hon Tommy CHEUNG Admin Hon Audrey EU Hon Tommy CHEUNG Hon LI Fung-ying Hon Jeffrey LAM Hon LEE Cheuk-yan Hon Paul TSE	<p>Whether the Bills Committee should hold one more meeting to consider Members' CSAs and to examine the draft CSAs to be revised by the Administration</p> <p>Date of next meeting</p>	
021539 - 022502	Chairman Hon Paul TSE Hon Tommy CHEUNG Admin	Hon Paul TSE envisaged that the implementation of SMW might necessitate changes in the terms of employment contracts in the	

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	Hon LEE CHEUK-yan	<p>tourism industry and might lead to constructive dismissals if employees did not agree to the new terms. He enquired whether the Administration would consider providing a grace period to exempt employers from criminal liability for failure to pay SMW after commencement of the Minimum Wage Ordinance. If not, he might consider proposing CSAs for the purpose of protecting the interests of the tourism sector</p> <p>The Administration responded that time would be provided for the community and the business sector to gear up for implementation of SMW prior to its commencement. This would obviate the need for a grace period. The Administration further said that any changes to the terms of employment contract had to be agreed between the employer and employee concerned</p> <p>Referring to the CSAs proposed by Dr Hon LEUNG Ka-lau to clause 2 to add the definition of "on-call", Hon Lee Cheuk-yan pointed out that the time during which an employee was "not restrained of movement and activity" while on-call would not be counted as hours worked for computing SMW as it did not fulfil clause 3(1)</p>	
022503 - 022543	Chairman	Date of next meeting	