

Bills Committee on Minimum Wage Bill

**Administration's Response to the Questions
Relating to the Minimum Wage Commission
Raised by Hon LI Fung-ying**

Introduction

This paper provides the Administration's response to the questions raised by Hon LI Fung-ying relating to the composition and operation of the Minimum Wage Commission ("MWC") under the Minimum Wage Bill ("the Bill") (LC Paper No. CB(2)1140/09-10(01)).

Response from the Administration

(A) Establishment and constitution of the MWC

Question (1)

2. Clause 10(2) of the Bill states that the MWC shall consist of, other than a chairperson who is not a public officer, not more than nine non-official members and not more than three official members. The policy intention of the Administration is to appoint three persons each from the labour sector, business community and academia respectively as non-official members of the MWC. The use of clause 10(2) mainly follows established drafting convention as is apparent from relevant provisions in respect of some other statutory bodies.

Question (2)

3. The official members in the MWC will contribute their expertise, public administration experience and knowledge in areas relevant to the statutory minimum wage (SMW). They will serve to facilitate objective and comprehensive analyses and deliberations at the MWC, and ensure that the interest of the whole community will be taken into account in making recommendations to Chief Executive in Council by the MWC. Currently, there are official members in other statutory bodies.

Question (3)

4. There are varying arrangements in different ordinances. For example, the Protection of Wages on Insolvency Ordinance, in providing for the function of the Fund Board to make recommendations to the Chief Executive on the levy rate for business registration certificates, does not stipulate the requirement on the submission of these recommendations to the Legislative Council (LegCo). On the other hand, under the Electoral Affairs Commission Ordinance, a report of the Commission would be tabled at the LegCo. In the case of the SMW, the rate is subject to LegCo's scrutiny.

Question (4)

5. Clause 10(6) of the Bill provides that Schedule 4 has effect with respect to the MWC, and section 5 of Schedule 4 concerns the status of the MWC, namely, the MWC is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government. Such an arrangement is common among statutory bodies like the Protection of Wages on Insolvency Fund Board, the Employees Retraining Board and the Occupational Deafness Compensation Board, to name a few.

(B) Functions of the MWC

Questions (1) to (2)

6. According to clause 11(3) of the Bill, the MWC must, in performing its functions including the making of a recommendation on the timing and frequency of reviews of the SMW rate, have regard to the need to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimising the loss of low-paid jobs, and to sustain Hong Kong's economic growth and competitiveness. While section 4(4) of Schedule 4 confers the authority on the MWC to regulate its procedures in fulfilment of its functions including deciding on a recommendation on the timing and frequency of reviews of the SMW rate, clause 11(3) lays down the governing principles for the MWC in coming up with a recommendation.

Question (3)

7. The SMW regime is entirely new to Hong Kong. Given the high degree of external orientation of our economy with a linked exchange rate system, we must ensure that the SMW rate would not have significant adverse impact on the employment opportunities of the

vulnerable employees or unduly jeopardise our labour market flexibility and economic competitiveness. It is therefore important to maintain flexibility in the timing and frequency of reviews of the SMW rate so as to cater for the needs and circumstances of Hong Kong prevailing and changing at the time. The arrangement for the MWC to advise the Government on the timing and frequency of reviews of the SMW rate by taking into account a basket of various social, economic and employment factors is also consistent with the principle of an evidence-based approach in setting and reviewing the SMW rate.

Questions (4) to (5)

8. Drawing reference from the experience of other places, decisions on contentious but pivotal issues of direct relevance to SMW taken after a prudent, objective and comprehensive deliberation by a statutory body with members drawn from different backgrounds can enhance community acceptance of the decisions. SMW is a completely new policy for Hong Kong and its precise implications can only be gauged after implementation. It would therefore be prudent to allow flexibility for the Administration to take into account the actual needs and circumstances of society as well as the experience in implementing the SMW legislation; and, where necessary and appropriate, to entrust other advisory functions to the MWC in addition to making a recommendation on the SMW rate and the timing and frequency of rate reviews. These additional advisory functions must remain directly relevant to the object of the SMW legislation and the MWC. There are also other statutory boards to which the Chief Executive may direct other functions or give such directions as he thinks fit, as in the examples of the Aviation Security Committee, the Employees Retraining Board and the Mandatory Provident Fund Schemes Authority.

Questions (6) to (8)

9. While section 4(4) of Schedule 4 in the Bill confers the authority on the MWC to regulate procedures in fulfilling its functions, including deciding on the suitability of any organisations to be consulted before arriving at the recommendations to be submitted to the Chief Executive in Council, the MWC must have regard to the need to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimising the loss of low-paid jobs while sustaining Hong Kong's economic growth and competitiveness. As we have explained in the LegCo Brief, an evidence-based approach to setting and reviewing the SMW rate could best facilitate the attainment of such a fine balance. Requiring the MWC to conduct extensive consultations with

stakeholders is an integral part of the evidence-based approach.

(C) Powers of the MWC

Question (1)

10. Clause 12(1) and (2) of the Bill empowers the MWC to do all things, including the formation of a committee, that are necessary for, incidental or conducive to, the performance of its functions. The examples of statutory bodies that have similar powers under their respective legislation are the Construction Industry Council, the Occupational Deafness Compensation Board and the Protection of Wages on Insolvency Fund Board.

(D) Report of the MWC

Questions (1) and (2)

11. According to clause 11(1) of the Bill, one of the main functions of the MWC is, when required by the Chief Executive, to recommend the timing and frequency of the SMW rate reviews that best suit the local context. In turn, the Administration will take into account the recommendation of the MWC in deciding on the appropriate timing for conducting the next SMW rate review. The introduction of SMW is entirely new to Hong Kong. The Administration will closely monitor the local circumstances after the implementation of SMW and require the MWC to conduct a review on the SMW rate as and when appropriate.

Question (3)

12. With the adoption of an evidence-based approach by the MWC in fulfilling its functions, the information pertaining to the process of consultations with stakeholders and the evidence taken by the MWC as well as the analyses undertaken on information and data collected from statistical surveys conducted by the Census and Statistics Department and stakeholder groups will no doubt be part and parcel of its report.

Question (4)

13. In performing its functions in an evidence-based manner, the MWC would invite views from the public, widely consult stakeholders and draw on data collected through large-scale and representative surveys. MWC members, drawn from different backgrounds, could also harness

their experience and expertise in different areas to facilitate comprehensive and thorough deliberations for the effectual fulfilment of the MWC's functions. It is noteworthy that all statistical information and data collected by the Census and Statistics Department and considered by the MWC would also be accessible to members of the public.

Questions (5) to (7)

14. We fully recognise that the recommendation, in particular, on the SMW rate made by the MWC would be a matter of public concern. After receiving and considering the recommendation of the MWC, the appropriate SMW rate would be decided in a prudent and objective manner, and, subject to the scrutiny and approval of LegCo, prescribed in the Schedule of the Bill. The Administration would provide members of the public and LegCo with the justifications that it has taken into account in making its decision.

Labour and Welfare Bureau
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