

Bills Committee on Minimum Wage Bill
Administration's Response to Issues Raised
at the Bills Committee Meeting Held on 13 April 2010

Introduction

This paper provides the Administration's response to the issues raised by Members of the Bills Committee at its meeting held on 13 April 2010 when examining the Minimum Wage Bill (the Bill) and the submission from the Hong Kong Confederation of Trade Unions (the Submission) as tabled by a Member (LC Paper No. CB(2)1208/09-10(01)).

Constitution of the Minimum Wage Commission (MWC)

2. To help ensure a holistic and balanced deliberation by the MWC, we believe that it is appropriate to have an equal presence of members with labour, business, academia and government backgrounds. To facilitate independent, objective and unbiased analyses and deliberations, as well as a readiness to contribute their individual expertise and experience in the process in the overall interest of Hong Kong, we consider it necessary for the non-official members to be appointed on an ad personam basis rather than as representatives elected or nominated by respective organisations. These considerations underline clause 10(2) of the Bill. In other words, the non-official members will be appointed according to individual attributes including their connections with, and knowledge of and experience in matters relating to, the labour sector, business sector and relevant academic fields.

3. The Government is committed to promoting gender mainstreaming. Through gender-sensitive decision-making processes, gender mainstreaming seeks to ensure that women and men have equitable access to, and benefit from, society's resources and opportunities, with the aim of promoting women's advancement and fostering gender equality and harmony in the long run.

4. Consistent with established policy, appointments to the Provisional MWC and the future MWC upon the enactment of the Bill, as in the case for other advisory and statutory bodies (ASBs), are primarily based on merits taking into account the candidate's ability, expertise, experience, integrity and commitment to public service vis-à-vis the functions and nature of business of the ASB concerned, with due regard to gender balance. The present composition of the Provisional MWC is broadly in line with the target level of female participation in ASBs. In our future appointments to the MWC, we will continue to reach out and identify women who are willing and able to contribute to the work of the Commission. When making appointments, we would also consider the current gender balance, the operational needs of the MWC and the availability of suitable candidates.

5. As regards the removal of non-official members of the MWC under the Bill, section 2 of Schedule 4 provides that the Chief Executive may, by notice in writing, remove from office a member who is not a public officer if the Chief Executive is satisfied that the member is unable or unfit to carry out the duties of the office due to permanent incapacity or other sufficient cause. Such provision is similar to those on the removal of non-official members in the legislation of other statutory bodies.

6. As for official members serving on the MWC, they will contribute their expertise, public administration experience and knowledge in areas relevant to statutory minimum wage (SMW). They will serve to facilitate objective and comprehensive analyses and deliberations at the MWC. There are other statutory boards with both official and unofficial members.

7. We shall carefully consider the drafting aspect of the Chinese version of section 1(2) of Schedule 4 and the use of "not more than" in clause 10(2), which mainly follow the established drafting convention as is apparent from the relevant provisions in respect of some other statutory bodies.

Transparency of the MWC

8. According to clause 11(3) of the Bill, 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, and to sustain Hong Kong's economic growth and

competitiveness. As we have explained in the Legislative Council (LegCo) Brief, an evidence-based approach to setting and reviewing the SMW rate could best facilitate the attainment of such a fine balance.

9. In performing its functions, the MWC will invite views from the public, consult stakeholders widely and draw on data collected through large-scale and representative surveys. It is noteworthy that all statistical information and data to be collected by the Census and Statistics Department (C&SD) and considered by the MWC would also be accessible to members of the public. In formulating its recommendation the MWC will have regard to the information obtained in the process of consultations with stakeholders, the evidence obtained as well as the analyses undertaken based on information and data collected from statistical surveys conducted by C&SD.

10. In this connection, Members may recall that in its letter to this Bills Committee on 24 March 2010 (LC Paper No. CB(2)1188/09-10(01)), the Provisional MWC shared with Members of the Bills Committee information on the stakeholder organisations with which it had met up to that date and a summary of the views collected, as well as its preliminary views on a basket of indicators, other relevant considerations and impact assessment in deliberating on the initial SMW rate. Such information has also been provided to the media and uploaded onto the Provisional MWC's webpage (<http://www.labour.gov.hk>) for public information.

11. We fully recognise that the SMW rate would be a matter of wide public concern. After receiving and considering the recommendation of the MWC, the Government would consider the appropriate SMW rate in a prudent and objective manner. The rate would be subject to the scrutiny and approval of LegCo, as prescribed in Schedule 3 of the Bill. We would provide members of the public and LegCo with the justifications that it has taken into account in making its decision.

Functions of the MWC

12. As regards the MWC's functions and additional functions under clause 11(2) of the Bill, clause 11(3) has already laid down the principles governing such functions. Specifically, 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, and to sustain Hong Kong's economic growth and

competitiveness.

13. As for clause 11(2) which envisages entrusting other functions to the MWC, these additional advisory functions must be directly relevant to the object of the SMW legislation and the MWC. As mentioned in our paper submitted to the Bills Committee (LC Paper No. CB(2)1261/09-10(02)), there are also other statutory boards to which the Chief Executive may direct other functions or give such directions as he thinks fit. SMW is a completely new policy for Hong Kong and its implications can only be more precisely gauged after implementation. It would therefore be prudent to allow flexibility for the Administration to take into account the actual needs, prevailing social and economic circumstances as well as the experience in implementing the SMW legislation and entrust other advisory functions to the MWC where necessary and appropriate.

Frequency of review of the SMW rate

14. The Bills Committee passed a motion at its meeting on 13 April 2010 calling for the Administration to amend the Bill to require that the MWC review the SMW rate once a year. The Submission also asked for an annual review of the SMW rate.

15. We note the concern of the Bills Committee and would carefully consider Members' views. 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 on the timing and frequency of reviews of the SMW rate by taking into account a basket of indicators is also consistent with the principle of an evidence-based approach in setting and reviewing the SMW rate. In the SMW legislation in jurisdictions such as the United Kingdom and the United States, there is no statutory regulation on the frequency of rate reviews either.

16. While there will be flexibility in the timing and frequency of reviews of the SMW rate in order to cater for the changing needs and circumstances of the community, the Annual Earnings and Hours Survey

will be conducted by C&SD every year to capture comprehensive data on the level and distribution of wages, employment details and demographic profile of employees in Hong Kong. The availability of these updated survey findings would facilitate the MWC to conduct reviews on the SMW rate as and when necessary. The Administration also undertakes to make such data available not only to the MWC but also to the public.

Indicators to determine the SMW rate

17. Our aim is to design an SMW regime which would provide a wage floor to forestall excessively low wages but without unduly jeopardising our labour market flexibility and economic competitiveness and without causing significant adverse impact on the employment opportunities for the vulnerable employees. As SMW would affect many facets of society and the economy, a basket of social, economic and employment indicators that are relevant to, or affected by, the SMW level would be taken into account. The MWC would formulate the basket of indicators suitable for Hong Kong's prevailing and changing circumstances. On whether the indicators should be written into the Bill, we note that in the National Minimum Wage Act 1998 of the UK, the Minimum Wage Act 1983 of New Zealand, and the Canada Labour Code (and SMW legislation in most of the provinces of Canada like Ontario and British Columbia), the legislative provisions do not specify the indicators to be adopted in determining the SMW rate.

18. As to whether the SMW rate should be set higher than the CSSA Scheme level, it should be noted that the CSSA Scheme provides assistance to needy persons on a household basis. The current CSSA Scheme already provides a safety net for those households that cannot financially support themselves. It is designed to bring their income up to a level to meet their basic needs. The Scheme has also been so designed that part of the wages of recipients may be disregarded as available income so as to encourage recipients to work. On the other hand, SMW is a wage floor to forestall excessively low wages, and wages are returns for individual employees' labour. Eligible families in need can obtain assistance from the CSSA Scheme.

19. As regards the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Bill is in conformity with Article 7 of the Covenant as explained in previous papers submitted to the Bills Committee (LC Paper No. CB(2)169/09-10(02) and LC Paper No. CB(2)288/09-10(03)). The Bill is a major step taken by the Government

to achieve progressively the rights stipulated in Article 7 of the ICESCR in light of its maximum available resources. We do not consider it necessary for clause 11(3) of the Bill to specify compliance with the requirements of the ICESCR.

Legislative procedure on setting the SMW rate

20. According to the Bill, the SMW rate, to be prescribed in Schedule 3 by way of subsidiary legislation, is subject to the scrutiny of LegCo. The proposed SMW rate cannot take effect if LegCo decides to revoke it. As explained above, the MWC would adopt an evidence-based approach in recommending the SMW rate through data research and analysis as well as extensive consultations with stakeholders, having 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. The adoption of an evidence-based approach could best facilitate the MWC to arrive at an optimal SMW rate. This approach may also best enable the community to understand the impact of different levels of SMW on different groups of stakeholders and hence take a broader view. Given the potentially socially divisive nature, as well as the significant economic and employment implications, of the SMW rate, safeguarding the evidence-based approach is of cardinal importance. Hence, our proposal remains that LegCo may approve or revoke, but not amend, the proposed SMW rate, which is consistent with the evidence-based approach.

Income ceiling under the Transport Support Scheme (TSS) and Pilot Employment Navigation Programme (ENP)

21. The TSS was launched on 25 June 2007 on a one-year pilot basis as one of the poverty alleviation measures to provide time-limited transport subsidy to needy job-seekers and low-income employees living in four designated remote districts, viz. Yuen Long, Tuen Mun, North and Islands districts, to find jobs and work across districts.

22. One of the criteria for the Cross-District Transport Allowance under the pilot TSS was that the applicant had to be engaged in full-time employment with monthly income level of \$5,600 or less. It roughly represented the sum of half of the monthly median income (\$5,000) then prevailing and part of the travelling expenses incurred by those living in

remote areas and having to commute to work across districts (\$600).

23. Upon implementation of the pilot scheme, it was found that most of the unsuccessful applications were rejected for the reason that the applicants' monthly income exceeded the then income ceiling. There were views that, with salary increasing and inflation picking up, the income ceiling of \$5,600 per month was too low. There were demands for raising the income ceiling so that those earning slightly more than the amount might also benefit from TSS to help them develop and sustain a work habit.

24. In response to requests from the LegCo Subcommittee to Study the Subject of Combating Poverty and the community for relaxing the scheme's eligibility criteria, the Administration advanced and completed a review of the pilot scheme in February 2008. As a result, a number of relaxation measures were introduced on 2 July 2008, including raising the monthly income ceiling for eligible persons from \$5,600 to \$6,500.

25. As for the proposed ENP, as announced by the Financial Secretary in his 2010-11 Budget Speech on 24 February 2010, the Government will launch this two-year Programme to provide job-seekers with intensive employment counselling and cash incentives so as to address the problem of manpower mismatch, fully utilise our labour productivity and encourage employment.

26. Under the proposed ENP, an incentive of up to \$5,000 will be offered to each eligible ENP participant so as to encourage him/her to land on and stay in a job for at least three months. One of the eligibility criteria for the incentive is that the job-seeker has to be employed to fill a vacancy listed under the Labour Department's employment service and the job concerned is a full-time post offering a salary of \$6,500 or less per month.

27. In arriving at the \$6,500 threshold, we have made reference to the eligibility criteria under TSS. We have also matched this against the salary of vacancies posted by the Labour Department and found that a sizable number of job-seekers would benefit should a \$6,500 threshold be adopted. For example, for posts like sales representative and shop sales/assistant where manpower mismatch is commonly found, the median salary offered for job seekers with no previous experience is around \$6,500 per month in Q1 of 2010.

Labour and Welfare Bureau
April 2010