



02 October 2009

The Clerk to the Committee
Bills Committee on Minimum Wage Bill
The Legislative Council
8 Jackson Road
Central Hong Kong

**Further Comments by the British Chamber of Commerce in Hong Kong
On The Minimum Wage Bill**

Please find attached further comments made by the British Chamber of Commerce in Hong Kong which reinforce and amplify the paper submitted earlier this year during the consultation. We would be grateful if you would place them before the Committee which is considering the Minimum Wage Bill. We also wish to be represented at the public hearing on 7th October 2009 by the Chairman of our Business Policy Unit, Mr. Timothy Peirson-Smith.

Yours sincerely



Brigadier Christopher Hammerbeck CB.CBE.
Executive Director

Cc: James Riley – Chairman
Timothy Peirson-Smith – Chairman Business Policy Unit
Duncan Abate – Chair minimum Wage Working Group

Where business gets done

**British Chamber of Commerce
Comments on Minimum Wage Bill**

Statutory provision	Comment
1. "domestic worker"	This should be more tightly defined so as not to exclude other "live in" workers.
2. Definition of "employee with a disability"	A contract of employment will not normally set out "the work required under the contract of employment". The contract would normally just have the job title.
3. Definition of "prescribed minimum hourly wage rate"	This is limited to <u>one</u> rate. The UK has 3 rates for different ages. Why don't we at least leave such option as a possibility?
4. Definition of "student intern"	This is very narrow. It will result in a sharp reduction in internships for undergraduates. Suggest do not limit this to academic internships.
5. Section 3(1)	<p>The words "must be taken to include" should be replaced by "shall be". There should never be additional hours over and above those where the employee is either at work or travelling.</p> <p>The words ", in accordance with the contract of employment or with the agreement or at the direction of the employer," should be inserted immediately after the words "at a place of employment" in section 3(1)(a) in order to avoid the suggestion that an employee can unilaterally extend his or her hours without the approval of the employer.</p> <p>This section should include an express reference to time at work which is not approved by the employer being excluded from "hours worked".</p>
6. Section 3(2)	The words "other than a place of employment that is outside Hong Kong and is not his or her usual place of employment" should be deleted. Why should travel outside Hong Kong be "hours worked"?
7. Section 5(1)	There appears to be some confusion between wages "payable" (sections 5 and 9) and wages "paid" (section 7).
8. Section 5(2)	This is dangerous. It could be construed so that an employee who is paid monthly but contracted to work only a set number of hours per month (e.g. 160) can

Statutory provision	Comment
	argue that a substantial part of his or her monthly salary is paid in respect of time in which they are not required to work.
9. Section 5(4)	This could have major implications. Sub-section (4) should be clarified. Currently it is confusing.
10. Section 5(5)	This section is also confusing. Especially in respect of a wage period which is 7 days. To which "period" do the words "in respect of <u>that</u> period" refer?
11. Section 8(2)	<p>What happens between the end of the trial period and the PWD obtaining an assessment? Presumably the PWD gets the 100% hourly wage. If the PWD then becomes an "employee with a disability" then the employee becomes entitled to a reduced amount after the trial period, but what happens to the overpayment of wages since the trial period?</p> <p>It is perfectly possible that a PWD may request an assessment some months/years after a trial period. In such circumstances how does section 8(2) operate?</p>
12. Section 15(3)	Why restrict the Commission to a single rate? Why not allow multiple rates as in the UK?
13. Section 20	<p>This gives rise to a new potential offence under the EO, namely failing to record the hours worked of an employee. There will be many occasions where an employee is earning a salary which makes the minimum wage irrelevant. In such circumstances the administrative obligation to keep a record of hours worked should be removed as being an irrelevance.</p> <p>For example, if an employee worked every hour of every day in a month (roughly 750 hours) and the minimum hourly wage rate is \$20, then, for anyone earning over HK\$15,000 per month, the legislation is irrelevant and the obligation to keep records should also be removed.</p>
14. Schedule 2 (Assessment of PWDs)	This is unclear. Who pays for the assessor? Where are they going to come from? What happens if the job specification of an employee changes whilst the employer does not? What happens about an internal group reorganisation necessitating a change in employer (is a new assessment necessary)? What is the

Statutory provision	Comment
	form of the "certificate" under section 5? Why does it need to be signed by the employer? The whole process seems incredibly inefficient.