

Bills Committee on Minimum Wage Bill

Administration's Response to Issues Raised at the Bills Committee Meeting Held on 13 October 2009

Introduction

This paper provides information requested by Members of the Bills Committee at its meeting held on 13 October 2009 for examining the Minimum Wage Bill (the Bill).

A. Policy objectives of the Bill

2. The Bill seeks to introduce a statutory minimum wage (SMW) regime in Hong Kong. It is a policy initiative by the Administration in responding to community demand for preventing excessively low wages. Given Hong Kong's high degree of external economic orientation and the linked exchange rate system, flexibility of wages and prices is crucial to our competitiveness and resilience to external shocks. Nevertheless, safeguarding the interests of the vulnerable and enhancing social harmony are equally important social policy objectives. Therefore, our aim is to design an optimal SMW regime which would provide a wage floor expressed as an hourly rate to forestall excessively low wages but without unduly jeopardising our labour market flexibility, economic freedom and competitiveness and without causing significant adverse impact on the employment opportunities for the vulnerable employees.

3. Wages are returns for employees' labour. SMW is a wage floor, which prevents individuals from receiving excessively low wages. As family needs vary, the minimum wage may not be sufficient to cover family expenses of all employees.¹

B. Evidence-based approach to setting and reviewing the SMW rate

4. Under the optimal SMW regime proposed in the Bill, the Minimum Wage Commission (the Commission) is tasked to make

1 Families in need can obtain assistance from the current social security system such as supplements under the low earnings category of the Comprehensive Social Security Assistance Scheme.

recommendation on the appropriate level of the SMW rate. The Commission would adopt an evidence-based approach to setting and reviewing the SMW rate through data research and analysis as well as extensive consultations with stakeholders. As SMW would affect many facets of society and the economy, a basket of various social, economic and employment factors that are relevant to, or affected by, the SMW level would be taken into account. The Commission would formulate the basket of factors suitable for Hong Kong's prevailing circumstances, 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.

C. Information on the criteria for determining the SMW rate in other jurisdictions

5. We have studied information on SMW systems in a number of jurisdictions drawing on information trawled from the research report on the minimum wage system in selected places prepared by the Research and Library Services Division of the Legislative Council Secretariat, desktop research on the Internet as well as study visits to some jurisdictions. On whether the criteria for determining the SMW rate are written into the SMW legislation, different practices have been adopted in these jurisdictions. For example, in the United Kingdom (UK), the National Minimum Wage Act 1998, in establishing the Low Pay Commission to advise the UK government on the SMW rate, does not specify the criteria to be adopted in determining the rate. The same is found in New Zealand where the Minimum Wage Act 1983 does not provide for the criteria which are to be taken into account in setting the SMW rate. As for Canada, there are no statutory provisions on these criteria in the Canada Labour Code and in the SMW legislation in most provinces like Ontario and British Columbia. Notwithstanding these examples, there are also jurisdictions such as the United States (US), France, Guangdong and Shenzhen putting in their legislative provisions the criteria to be considered in setting the SMW rate.

6. As regards the criteria for determining the SMW rate, various social, economic and employment factors are often taken into consideration in other jurisdictions. While the circumstances of Hong Kong should be the prime consideration in determining the basket of factors that Hong Kong should adopt in setting the SMW rate, the criteria

used in the UK, US, Guangdong and Shenzhen are listed below for reference:

UK	An evidence-based approach is adopted. In general, the criteria include economic conditions, pay differentials, business costs, competitiveness of the economy, inflation rate and employment level.
US	The criteria include changes in the cost of living and productivity and the level of wages in manufacturing, and the ability of employers to absorb wage increases.
Guangdong and Shenzhen	The criteria include minimum living standards of employees and their dependants, average wage of workers, current economic situation, labour productivity, local employment situation, amount of social security benefits, and differences in the level of economic development within the region.

D. Compatibility of the Bill with Article 5 of the Basic Law (BL 5)

7. At the meeting of the Bills Committee held on 28 September 2009, a Member requested the Administration to submit a written response as to why the Bill in legislating on SMW would not breach BL 5². The Administration’s paper on the Compatibility of the Bill with Article 5 of the Basic Law (LC Paper No. CB(2)2619/08-09(01)) was considered by the Bills Committee at its meeting on 13 October 2009. The paper has explained that the Bill is consistent with BL 5 and it is also within the legislative competence of the HKSAR by virtue of BL 147.

8. As discussed in paragraph 7 of the above Administration’s paper, following the approach of constitutional interpretation laid down by the Court of Final Appeal in *Ng Ka Ling v Director of Immigration* [1999] 1 HKLRD 315 and *Director of Immigration v Chong Fung Yuen* [2001] 2 HKLRD 533, it would be appropriate to consider any relevant domestic legislation at the time of the adoption of the Basic Law on 4 April 1990 in order to ascertain the context of BL 5. We have consulted the Department of Justice. When the Basic Law was adopted in 1990, there was no legislation other than the Trade Boards Ordinance (Cap. 63) which provided for legal measures for the fixing of minimum wages. As

2 BL 5 provides that “[t]he socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.”

regards the requirement of minimum allowable wage stipulated in the standard employment contract for foreign domestic helpers, it is not based on a legislation for fixing minimum wages and thus it is doubtful if such requirement may be relied on to support the compatibility of the Bill with BL 5.

Labour and Welfare Bureau
October 2009