

**Legislative Council**

**Bills Committee on Minimum Wage Bill**

**Summary of major issues/views raised by organizations/individuals**

**(Position as at 18 November 2009)**

<b>Organization/Individual No.</b>	<b>Major issues/views on the Bill</b>
<b>I. Policy objectives of the Bill</b>	
8, 44, 84, 101, 102	The Bill should aim at providing a wage floor to forestall excessively low wages.
4, 47, 50, 63	The Bill should aim at combating poverty.
3, 87, 90	The Bill should ensure that workers will be paid at a statutory minimum wage (SMW) rate that can sustain the basic living standard.
4, 5, 21, 22, 34, 36, 37, 39, 47, 48, 50, 51, 54-56, 62, 89	The Bill should ensure that workers will be paid at a reasonable level so as to sustain the basic living standard of a family.
24-28	The Bill should comply with the principles enshrined in the relevant international conventions.

<b>Organization/Individual No.</b>	<b>Major issues/views on the Bill</b>
<b>II. Application of the Ordinance</b> (clause 2, clause 6, Schedule 1)	
<u>Persons to whom the Ordinance apply</u>	
2, 12, 18, 42, 24-28, 43, 59	The Bill should cover all domestic helpers.
37, 38, 50, 53, 59, 60, 63, 108	The Bill should cover all live-in domestic helpers.
12, 18, 20, 42, 24-28, 34, 35, 36, 39, 40, 47, 61, 62, 63, 108	The Bill should cover foreign domestic helpers (FDHs).
39	The Bill should cover all non-professionals who provide services for another party according to contracts but are not running their own businesses.
12, 18, 20, 42, 34, 43, 53, 59	Exclusion of FDHs from the Bill violates international conventions, such as conventions of the International Labour Organization in respect of wage and other related matters, Convention on the Elimination of All Forms of Discrimination Against Women, etc.
20, 34, 39, 43, 50	Exclusion of FDHs from the Bill may violate local legislation such as the Race Discrimination Ordinance, Sex Discrimination Ordinance, etc.

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68	Concern about judicial review by FDHs who are exempted from the Bill.
<u>Persons to whom the Ordinance does not apply</u>	
1, 77	Flight crew members should be exempted from the Bill in view of the unique operation of an international airline and the stringent flying hours as mandated under aviation laws.
1	High-income employees should be exempted from the Bill.
13, 15, 49, 71, 78	Live-in domestic helpers should be exempted from the Bill.
5, 21, 49, 78	Student interns as defined in clause 2 of the Bill should be exempted from the Bill.
15	Students who work as summer interns should be exempted from the Bill.
8	All full-time students who work as interns should be exempted from the Bill.
31	Student interns who are undergoing a period of work not arranged by an education institution but arranged by employers or the students concerned should be exempted from the Bill.
49	All full-time students of tertiary education level or above should be exempted from the Bill.

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62	Academic internships by professionals who are no longer students should be exempted from the Bill.
15, 21	Apprentices registered under the Apprenticeship Ordinance should be exempted from the Bill.
19	PWDs who are currently employed should be exempted from the Bill.
19, 106	The Factory for the Blind, or sheltered workshop for PWDs and similar operations should be exempted from the Bill.
<b>III. Prescribed minimum hourly wage rate</b> (clause 2, clause 3, clause 4, clause 5, clause 8, clause 17, clause 19, clause 20, clause 21 and clause 22)	
<u>Criteria for determining the SMW rate</u>	
3, 44, 45, 49, 83, 84, 87, 89, 91, 94, 101, 102	The SMW rate should be set at a level higher than the level of Comprehensive Social Security Assistance (CSSA) Scheme.
81	The SMW rate should be set at 50% of the average wage rate from the Labour Earnings Survey conducted by the Census and Statistics Department.
5, 101, 102	The SMW rate should be set at 60% of the average wage rate.

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15, 70	The SMW rate should be set at a percentage of the median wage.
21	The three criteria, namely minimum living standards of employees and dependents, economic performance and consumer price index, should be taken into account in determining the SMW rate.
37	The SMW rate should take account of the needs of the employee and his family and other economic factors as stipulated in Article 131(3) of International Labour Conventions.
44, 45, 83, 84, 86, 87, 89, 90, 92, 95, 101, 102	Various economic and social factors, such as rental expenditure, inflation rate and basic medical needs, etc., should be considered when setting the minimum wage level.
39	The normal working hours and overtime work should be taken into account when calculating the SMW rate in respect of each wage period.
46, 68	The average wages of a full year should be taken into account when calculating minimum wages for commission-based employees so that employers need not top up payments during the periods when employees are receiving wages lower than the minimum wage level.
80	The fluctuation in income of tour guides during peak and off-peak season and the commission received from shops should be taken into account when calculating the SMW rate.
<u>The SMW rate and related issues</u>	
104	Propose to set the SMW rate at \$22/hour (i.e. \$4,500/month) for cleaning workers.

<b>Organization/Individual No.</b>	<b>Major issues/views on the Bill</b>
21	Propose to set the SMW rate at no less than \$27/hour.
22	Propose to set the SMW rate at around \$31/hour.
3, 5, 101, 102, 103	Propose to set the SMW rate at \$33/hour.
34, 36, 47, 48, 50	Propose to set the SMW rate at no less than \$33/hour.
24-28	Propose to set the SMW rate for live-out domestic workers at \$33/ hour.
45, 83, 93, 95	Propose to set the SMW rate at no less than \$35/hour.
52	Propose to set the SMW rate at \$30-\$35/hour.
54-56	Propose to adopt hourly, daily and monthly minimum wage rate, precisely at \$35/hour, \$280/day and \$6,800/month and it should be linked with standard working hours of 8 hours per day.
44, 45, 79, 89, 90, 91	Different SMW rates should be prescribed for respective industries with reference to the distinct job nature.
49	The Administration should consider setting a youth rate under the SMW regime so as to induce employers to offer on-the-job training for young persons.
12, 18, 42, 24-28, 37, 39, 50	The Bill should provide a separate minimum monthly wage for FDHs computed on the basis of

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	the SMW rate.
60	The prevailing "minimum allowable wage" for FDHs should be made statutory and a monthly minimum wage rate should be introduced for live-in domestic workers.
2	The Bill should specify the minimum monthly wage on top of the minimum hourly rate.
<u>Hours worked</u>	
1, 9, 31, 37, 45, 49, 51, 86, 98, 99	The definition of "hours worked" should be clearly defined.
31, 37, 99	"Hours worked" should be defined as working hours in accordance with the contract of employment, or agreement between the employer and employee, or at the direction of the employer.
1, 77, 99	Clause 3 which stipulates that any time spent outside Hong Kong by an employee will be counted as "hours worked" is illogical and unreasonable especially for flight crew members who are not required to work while on an overseas layover.
80	Travelling hours to and from destinations spent by a tour guide during overseas trips should not be counted as hours worked.
80, 98	Travelling hours to a place of employment outside Hong Kong should not be counted as hours

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	worked.
8, 80	Guidelines should be provided in relation to whether and how to count the hours worked of an employee who is on a on-call/stand-by mode, who is suddenly required to work at night, who attends functions and charitable activities on behalf of the company, who attends training programmes arranged by the company, who commutes between Hong Kong and Mainland on a daily basis, who is on a business trip, who works irregular hours, who is paid on a commission basis, etc.
30	The time for attending training by an employee in the catering industry should not be counted as hour worked.
37	The hours worked by an employee in a wage period should include the period allowed for a meal.
98	The hours worked by an employee in a wage period should exclude the period allowed for a meal.
46	Hours worked should exclude waiting time.
<u>Wages</u>	
8	Propose to extend the "seven days" timeline to "ten days" to provide a buffer for the calculation of commission.



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37	The definition of "wage" should exclude overtime premium.
<u>Requirement for wage and employment records to include the total number of hours worked</u>	
1, 77	Some employees are working on a project or task basis, or working from home or other remote locations without being physically present in the workplace, it is technically impossible to count and record the actual hours worked by employees.
1, 31, 77, 99	The requirement to record every single hour of work will create unnecessary administrative burden on employers.
1, 8, 31, 77, 98, 99	Employees who are earning more than a specified income should be excluded from the requirements to record the number of hours worked.
8	Employees who are paid on the basis of productivity should be excluded from the requirements to record number of hours worked.
<b>IV. Entitlement to Minimum Wage</b> (clause 7, clause 9 and clause 14)	
<u>Enforcement and penalty</u>	
21	The Labour Department should be the enforcement agency of the SMW legislation. Failure to pay employees the SMW should be subject to a fine of \$350,000 and three years' imprisonment.

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94	The Labour and Welfare Bureau should set up a task force to enforce the law.
46	The criminal offence clause should be removed from the Bill.
74	The penalty for contravening requirements on SMW should be explicitly written in the Bill.
<b>V. Minimum Wage Commission and process for setting prescribed minimum hourly wage rate</b> (clause 10 to clause 13, clause 15, Schedule 3 and Schedule 4)	
<u>Constitution of the Minimum Wage Commission (MWC)</u>	
83, 85	Criteria for appointing members to MWC should be specified in the Bill.
36, 44	MWC members should not be all appointed by the Chief Executive.
85	Less than half of the MWC members should be appointed by the Chief Executive.
45, 83, 86, 88	MWC members should not be appointed by the Chief Executive and should be elected from the relevant sectors.
82	The membership list of MWC proposed by the Chief Executive should be supported by the

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	relevant sectors and endorsed by LegCo.
3, 4, 21, 34, 36, 39, 44, 50, 54-56, 74, 85, 88	MWC should not comprise public officers.
44, 45	MWC should comprise only one public officer.
37	Public officers sitting in MWC should not have voting rights.
3, 5, 101, 102	MWC should comprise representative from the Labour Advisory Board.
4	MWC should comprise two LegCo Members who are elected from among Members themselves.
44, 45, 48, 83, 85, 86, 88	MWC should comprise more members who come from the grassroots.
44, 88	MWC should comprise members who represent the small-and-medium enterprises.
54-56	MWC should comprise a member from the academic field with social work background.
34, 50, 85	MWC should comprise members who are equally represented from the labour, business and academic sectors.

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50, 74	MWC members should be recommended by organizations which represent the labour, business and academic sectors for appointment by the Chief Executive.
34, 37, 39	The MWC members who represent the labour sector should be recommended by labour unions for appointment by the Chief Executive.
<u>Amendment of prescribed minimum hourly wage rate</u>	
37, 39	LegCo should have the power to amend Schedule 3.
15, 31, 49, 78	LegCo should not have the power to amend Schedule 3.
74	LegCo should be the only party who has the power to consider and approve the SMW rate recommended by MWC.
<u>Review of SMW</u>	
15, 24-28, 37, 39, 54-56, 64, 74, 88	The Bill should specify the mechanism, such as the period, for reviewing the SMW rate.
21, 37, 39, 64, 74, 86, 87	The SMW rate should be reviewed annually.
15	The next review for SMW rate should be conducted at least 12 months after the last review.

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22, 95	The Administration should establish a mechanism for regular review of the SMW rate.
<u>Operation of MWC</u>	
4, 34, 37, 44, 45, 50, 59, 83, 87	The operation of MWC should be transparent.
15	The results of research findings on the criteria for determining the SMW rate and the impact of different SMW rates on unemployment should be made public.
24-28, 61	A working group under MWC should be established for handling minimum wage matters and its members should include representatives from the domestic worker unions.
44, 87, 88	A task force should be set up to monitor the implementation of the SMW regime.
82	The work of MWC should be monitored by LegCo.
<b>VI. Assessment of degree of productivity of PWDs</b> (clause 23 and Schedule 2)	
<u>Assessment</u>	
10, 31, 65	The mechanism for assessing PWDs' productivity should be simple and user-friendly.

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11, 65, 67	The discretion of a PWD to invoke the special arrangement to assess his productivity should be stated in the Bill.
10	A government department such as the Labour Department should be responsible for the operation and supervision of the special arrangement for PWDs.
10, 11, 22, 29, 65	MWC should set up a dedicated committee, comprising representatives from the rehabilitation groups and PWDs, to monitor the implementation of the special arrangement for PWDs.
22, 29	The assessment on PWDs' productivity should be conducted by relevant professionals such as social workers, physiotherapists, etc.
34	A mechanism should be put in place to enable a PWD, when necessary, to appeal against the assessment.
10, 11, 22, 29	A PWD should be allowed to re-assess his productivity one year after employment, if necessary.
36, 65, 67, 107	Concern about the possible abuse of the productivity assessment mechanism and the trial period of employment proposed in the Bill.
78	PWDs should not be paid less than 50% of the SMW rate during the trial period of employment.

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22, 29	The Administration should prepare a guideline on PWDs' productivity assessment setting out the principles, evaluation process, etc.
15	The SMW rate for PWDs should be set at 80% of the SMW rate across-the-board and an assessment mechanism will not be necessary.
10	Object to the proposal to pay PWDs at 80% of the SMW rate across the board.
21, 34, 67, 107	The Government should subsidize the difference if a PWD is paid below the SMW rate after assessment.
4, 10, 11, 22, 29, 34, 65, 67, 107	The Administration should introduce complementary measures such as improved working environment and tax concessions to help PWDs.
<u>Consequential amendment to Schedule 5 of the Disability Discrimination Ordinance</u>	
4, 37, 67, 107	Employers who dismiss PWDs having regard to the outcome of the productivity assessment should not be exempted from the Disability Discrimination Ordinance.
<b>VII. Comments on other aspects of the Bill</b>	
<u>Repeal of the Trade Boards Ordinance</u> (clause 18)	

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37, 39	The Trade Boards Ordinance should not be repealed.
<u>Commencement of the Ordinance</u> (clause 1)	
38	At least one year should be allowed for the industry to gear up for the implementation of SMW, such as making new service contracts and tenders.
40, 54-56, 72, 84, 87, 89, 90, 103, 105	The Bill should be enacted as soon as practicable.
30	The SMW legislation should apply to different trades by phases.
<u>Comments on the drafting of individual clauses in the Bill</u>	
9	Please refer to Appendix I
31	Please refer to Appendix II
66	Please refer to Appendix III



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<b>VIII. Other comments related to the Bill</b>	
<u>General comments</u>	
6, 7, 14, 16, 17, 23, 32, 41, 57, 79, 96, 97	Object to the introduction of the Bill as the drawbacks brought about by the implementation of SMW will outweigh its benefits.
15, 30, 33, 69, 73, 78	Express concern about the drawbacks brought about by the implementation of SMW and stressed the importance of setting a SMW rate that could balance the various interests of the society.
<u>Measures to complement the implementation of SMW</u>	
2, 34, 36, 44, 45, 62, 83, 84, 85, 86, 87, 89, 90	The Administration should consider introducing measures to regulate maximum working hours.
44, 49, 84	Special measures should be introduced to protect the vulnerable groups (e.g. old-aged, middle-aged, low-skill) who may be adversely affected by the implementation of SMW.
21, 48, 83, 84, 86, 87, 89, 90, 92	The Administration should introduce complementary measures to help the working poor, such as provision of travelling allowance, control of property price and rent, etc.

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4, 21, 37, 51, 64	The Administration should introduce measures to prevent fake self-employment.
15	The Administration should consider relaxing the provision of Disregarded Earnings so as to provide low-income CSSA recipients more incentive to take up employment.
38	The prevailing Standard Employment Contract should be banned as the calculation of wages stated in those contracts would be in conflict with that of the hourly minimum wage rate.
64, 104	The prevailing mandatory requirements should be retained for non-skilled workers engaged in projects or services contracted out by the Government to receive wages of not less than the market average wages after the implementation of the SMW legislation.

Organizations/individuals giving oral representations

1. Mr Albert WONG Shun-ye, Islands District Council member (LC Paper No. CB(2)2571/08-09(01))
2. Minimum Wage Concern Group (LC Paper No. CB(2)2392/08-09(03))
3. Mr LUK Chung-hung, Yuen Long District Council member (LC Paper No. CB(2)2571/08-09(02))
4. Hong Kong Association for Democracy and People's Livelihood (LC Paper No. CB(2)2571/08-09(03))
5. The Hong Kong Federation of Trade Unions - Rights & Benefits Committee (LC Paper No. CB(2)2571/08-09(04))
6. Hong Kong Catering Industry Association (LC Paper No. CB(2)2571/08-09(05))
7. Chinese Cuisine Management Association (LC Paper No. CB(2)2571/08-09(06))
8. Hong Kong Institute of Human Resource Management (LC Paper No. CB(2)2571/08-09(07))
9. The Law Society of Hong Kong (LC Paper No. CB(2)2491/08-09(01))
10. The Parents' Association of Pre-School Handicapped Children (LC Paper No. CB(2)2571/08-09(08))
11. Rehabilitation Alliance Hong Kong (LC Paper No. CB(2)2571/08-09(09))
12. Asian Migrants Coordinating Body (LC Paper No. CB(2)2498/08-09(01))
13. Hong Kong Employers of Domestic Helpers Association (LC Paper No. CB(2)2498/08-09(02))
14. Mr Joseph YEUNG (LC Paper No. CB(2)2571/08-09(10))
15. Federation of Hong Kong Industries (LC Paper No. CB(2)2571/08-09(11))

16. Mr LEE Kam-wing (LC Paper No. CB(2)2571/08-09(12))
17. The Lion Rock Institute (LC Paper No. CB(2)2571/08-09(13))
18. United Filipinos in Hong Kong (LC Paper No. CB(2)2498/08-09(01))
19. The Hong Kong Society for the Blind (LC Paper No. CB(2)2571/08-09(15))
20. Coalition of Service Providers for Ethnic Minorities in Hong Kong (LC Paper No. CB(2)2571/08-09(16))
21. Oxfam Hong Kong (LC Paper No. CB(2)2571/08-09(17))
22. The Hong Kong Council of Social Service (LC Paper No. CB(2)2571/08-09(18))
23. Association of Restaurant Managers (LC Paper No. CB(2)2571/08-09(19))
24. Coalition for Migrants Rights LC Paper No. CB(2)2571/08-09(20))
25. Indonesian Migrant Workers Union (LC Paper No. CB(2)2571/08-09(20))
26. Filipino Domestic Workers' Union (LC Paper No. CB(2)2571/08-09(20))
27. Asian Migrant Centre (LC Paper No. CB(2)2571/08-09(20))
28. Filipino Community Services and Information Network (LC Paper No. CB(2)2571/08-09(20))
29. Hong Kong Joint Council for People with Disabilities (LC Paper No. CB(2)2571/08-09(21))
30. Hong Kong Federation of Restaurants & Related Trades (LC Paper No. CB(2)2571/08-09(22))
31. Employers' Federation of Hong Kong/Hong Kong General Chamber of Commerce (LC Paper No. CB(2)2571/08-09(23))

32. Mr Raymond HO Man-kit, Sai Kung District Council member (LC Paper No. CB(2)2571/08-09(24))
33. Chao and Hak
34. Hong Kong Catholic Commission for Labour Affairs (LC Paper No. CB(2)2571/08-09(27))
35. 天主教爭取家庭工資聯盟 (LC Paper No. CB(2)2571/08-09(28))
36. 天主教家庭工資關注組 (LC Paper No. CB(2)2571/08-09(29))
37. Hong Kong Confederation of Trade Unions (LC Paper No. CB(2)2571/08-09(30))
38. Environmental Services Contractors Alliance (Hong Kong) (LC Paper No. CB(2)2571/08-09(31))
39. Catering and Hotels Industries Employees General Union (LC Paper No. CB(2)2571/08-09(32))
40. Civil Human Rights Front (LC Paper No. CB(2)2571/08-09(33))
41. Hong Kong Retail Management Association (LC Paper No. CB(2)2571/08-09(34))
42. Thai Regional Alliance (LC Paper No. CB(2)2498/08-09(01))
43. Hong Kong Human Rights Monitor (LC Paper No. CB(2)2571/08-09(36))
44. Caritas Community Centres - Working Group on Services Relating Legislating Minimum Wage (LC Paper No. CB(2)2571/08-09(37))
45. 「互助情生活易」小組 (LC Paper No. CB(2)2571/08-09(38))
46. Hong Kong Real Estate Agencies General Association (LC Paper No. CB(2)2571/08-09(39))

47. Justice and Peace Commission of the Hong Kong Catholic Diocese (LC Paper No. CB(2)2571/08-09(40))
48. Concerning CSSA Review Alliance (LC Paper No. CB(2)2571/08-09(41))
49. Democratic Alliance for the Betterment and Progress of Hong Kong (LC Paper No. CB(2)2571/08-09(43))
50. Hong Kong Women Workers' Association (LC Paper No. CB(2)2571/08-09(45))
51. Cleaning Workers Union (LC Paper No. CB(2)2571/08-09(46))
52. Women Cooperatives (LC Paper No. CB(2)2571/08-09(47))
53. IUF - International Domestic Workers Network (LC Paper No. CB(2)2571/08-09(48))
54. The Federation of Hong Kong and Kowloon Labour Unions (LC Paper No. CB(2)2571/08-09(50))
55. Commodities Promotion and Retailing Employee General Union (LC Paper No. CB(2)2571/08-09(50))
56. Hong Kong Housing Management Employees Union (LC Paper No. CB(2)2571/08-09(50))
57. Mr Andrew SHUEN Pak-man (LC Paper No. CB(2)2571/08-09(53))
58. Mr Hans Mahncke (LC Paper No. CB(2)2571/08-09(54))
59. Federation of Asian Domestic Workers' Unions in Hong Kong Organizing Committee (LC Paper No. CB(2)2571/08-09(55))
60. Hong Kong Domestic Workers General Union (LC Paper No. CB(2)2571/08-09(56))
61. Neighbourhood and Worker's Service Centre (LC Paper No. CB(2)2571/08-09(57))

62. Unitarian Universalists Hong Kong (LC Paper No. CB(2)2571/08-09(58))
63. Families for Domestic Workers (LC Paper No. CB(2)2571/08-09(59))
64. Hong Kong Buildings Management and Security Workers General Union (LC Paper No. CB(2)2571/08-09(60))
65. Hong Kong Blind Union (LC Paper Nos. CB(2)2571/08-09(62) and 2590/08-09(01))
66. The British Chamber of Commerce in Hong Kong (LC Paper No. CB(2)2571/08-09(63))
67. The Forthright Caucus (LC Paper No. CB(2)2571/08-09(64))
68. Hong Kong Action (LC Paper No. CB(2)2582/08-09(01))
69. Hong Kong Chamber of Professional Property Consultants Limited (LC Paper No. CB(2)2582/08-09(02))
70. Hong Kong Association of Property Management Companies (LC Paper No. CB(2)2590/08-09(02))
71. 外傭僱主義工隊 (LC Paper No. CB(2)2590/08-09(03))

Written submissions from organizations/individuals not attending the meeting

72. A group of entrepreneurs (LC Paper No. CB(2)2300/08-09(01))
73. Ms Sandy AW (LC Paper Nos. CB(2)2392/08-09(01) & (02))
74. Hong Kong & Kowloon Trades Union Council (LC Paper No. CB(2)2510/08-09(01))
75. Cathay Pacific Airways Limited (LC Paper No. CB(2)2515/08-09(01)) **[Restricted]**
76. Hong Kong Dragon Airlines Limited (LC Paper No. CB(2)2529/08-09(01)) **[Restricted]**
77. AHK Air Hong Kong Limited (LC Paper No. CB(2)2571/08-09(61))
78. The Chinese General Chamber of Commerce (LC Paper No. CB(2)2571/08-09(67))
79. Kowloon City District Council members Mr CHAN Wing-lim, Ms WONG Wai-ching and Mr CHAN King-wong (LC Paper No. CB(2)2571/08-09(68))
80. Travel Industry Council of Hong Kong (LC Paper No. CB(2)2571/08-09(69))
81. Ms WONG Mo-tai, Sha Tin District Council member (LC Paper No. CB(2)2571/08-09(70))
82. Hong Kong Federation of Catholic Students (LC Paper No. CB(2)2571/08-09(71))
83. 一群基層待業市民 (LC Paper No. CB(2)2571/08-09(72))
84. 觀塘一些基層街坊 (LC Paper No. CB(2)2571/08-09(73))
85. 小飛俠親子義工小組 (LC Paper No. CB(2)2571/08-09(74))



86. 翱翔社 (LC Paper No. CB(2)2571/08-09(75))
87. 新來港之友互助組 (LC Paper No. CB(2)2571/08-09(76))
88. 幾位牛頭角的婦女 (LC Paper No. CB(2)2571/08-09(77))
89. 關懷愛心互助組 (LC Paper No. CB(2)2571/08-09(78))
90. 新人類(青年組) (LC Paper No. CB(2)2571/08-09(79))
91. 絲一族婦女組 (LC Paper No. CB(2)2571/08-09(80))
92. 荃灣三無(晚間街坊茶聚) (LC Paper No. CB(2)2571/08-09(81))
93. 荃灣三無(日間街坊茶聚) (LC Paper No. CB(2)2571/08-09(82))
94. 吳嘉欣 (LC Paper No. CB(2)2571/08-09(83))
95. 鍾貞霞 (LC Paper No. CB(2)2571/08-09(84))
96. 小麥 (LC Paper No. CB(2)2571/08-09(85))
97. Hong Kong Diecasting and Foundry Association (LC Paper No. CB(2)2571/08-09(86))
98. Freshfields Bruckhaus Deringer (LC Paper No. CB(2)2571/08-09(87))
99. John Swire & Sons (LC Paper No. CB(2)2571/08-09(88))
100. Miss IP Ka-ching (LC Paper No. CB(2)2578/08-09(01)) **[Restricted]**

101. HK Environmental Services and Logistics Employees Association (LC Paper No. CB(2)2604/08-09(01))
102. Supermarkets & Chain Stores Employees General Union (LC Paper No. CB(2)2604/08-09(02))
103. The Hong Kong General Union of Security & Property Management Industry Employees  
(LC Paper No. CB(2)2604/08-09(03))
104. Hong Kong Institute of Real Estate Administrators (LC Paper No. CB(2)75/09-10(01))
105. Manley TAI (LC Paper No. CB(2)110/09-10(01))
106. 羅嘉穗 (LC Paper No. CB(2)110/09-10(02))
107. Dr Fernando CHEUNG (LC Paper No. CB(2)237/09-10(01))
108. Association for the Advancement of Feminism (LC Paper No. CB(2)264/09-10(01))



**The Law Society of Hong Kong  
 Submissions on Minimum Wage Bill**

Section No.	Comment
<b>1. Section 2 (Interpretation)</b>	
(a) <b>Definition of "employee with a disability"</b>	<p>It is unlikely that a contract of employment will set out <i>"the work required under the contract of employment"</i>. Normally, it will simply set out a generic position.</p> <p>Whilst this may be a point to be considered as part of the assessment in Schedule 2, we suggest the words <i>"in performing the work required under the contract of employment"</i> be deleted from this definition.</p>
(b) <b>Definition of "hours of work"</b>	Rather than <i>"- see section 3"</i> this should be <i>"has the meaning given by section 3"</i> .
(c) <b>Definition of "a place of employment"</b>	The words <i>", in accordance with the contract of employment or with the agreement or at the direction of the employer,"</i> should be deleted and inserted into section 3(1).
(d) <b>Definition of "student intern"</b>	This is very narrow. It will result in a sharp reduction in internships for undergraduates. Suggest do not limit this to academic internships.
(e) <b>Definition of "wage period"</b>	<i>"- See section 4"</i> should be deleted and replaced by <i>"has the meaning given by section 4"</i> .
<b>2. Section 3 (Hours of Work)</b>	
(a) <b>Section 3(1)</b>	<p>This section is all encompassing. As such the words <i>"must be taken to include"</i> should be replaced by <i>"shall be"</i>.</p> <p>In addition, the words <i>", in accordance with the contract of employment or with the agreement or at the direction of the employer,"</i> should be inserted immediately after the words <i>"at a place of employment"</i> in section 3(1)(a).</p>

Section No.	Comment
(b) Section 3(2)	<p>The words "<i>must be taken not to</i>" should be replaced with "<i>do not</i>".</p> <p>The words "<i>other than a place of employment that is outside Hong Kong and is not his or her usual place of employment</i>" should be deleted as these words can be interpreted to imply that travel of this type should be included.</p>
3. Section 4 (Wage period)	It would be simpler to adopt the current meaning of " <i>wage period</i> " in section 22 Employment Ordinance. ("EO")
<b>4. Section 5 (Wages)</b>	
(a) Section 5(1)	<p>The term "<i>payable and in respect of that period</i>" appears to contradict section 7(1) which refers to "<i>paid wages in respect of any wage period</i>".</p> <p>Is it amounts <u>payable</u> or <u>paid</u> which are relevant?</p>
(b) Section 5(2)	This section should only apply to hourly paid employees. The concern is that an employee paid monthly but contracted to work only a set number of hours per month could 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.
(c) Section 5(4)	<p>Presumably such arrears of wages should be counted as part of the wages payable in the wage period to which they relate?</p> <p>If this is the case then sub-section (4) should be clarified to make this point.</p>
(d) Section 5(5)	This is confused. Especially in respect of a wage period which is 7 days. To which " <i>period</i> " do the words " <i>in respect of that period</i> " refer?
<b>5. Section 6 (Application)</b>	
(a) Section 6(3)	The words "in, or in connection with, a household and" should be deleted. They are already included in the definition of "domestic worker".
<b>6. Section 7 (Payment of minimum wages)</b>	
(a) Section 7(1)	An employee "is entitled to be <u>paid</u> wages in respect of any wage period". However, section 5 identifies wages

Section No.	Comment
	<p>which are "<u>payable</u>" in respect of a wage period. In addition, section 9 also refers to "<u>wages payable</u>".</p> <p>There is difference between wages being "payable" and wages which are "paid". This leads to confusion in the legislation.</p>
<b>7. Section 8 (Hourly rate)</b>	
<b>(a) Section 8(2)</b>	<p>What happens between the end of the trial period and the PWD obtaining an assessment? Presumably the PWD gets the full minimum hourly wage. If the PWD then becomes an "<i>employee with a disability</i>" 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>
<b>(b) Section 8(3)</b>	<p>We do not see what this section is adding. It should be deleted.</p>
<b>8. Section 20</b>	<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>The obligation to keep records should be restricted to employees who are hourly paid or who have monthly/weekly wages below a specified threshold.</p>
<b>9. Schedule 2 (Assessment of PWDs)</b>	<p>This appears to be a very cumbersome and inefficient process. Why does it need to apply separately for every job?</p>

**Appendix II****Comments on Individual Clause of the Bill**

Statutory provision	Comment
<b>1. Section 2 (Interpretation)</b>	
(a) Definition of "domestic worker"	How do you define "household"? Would this include a farm in the New Territories? If not then why shouldn't "live-in" workers on such farms be excluded also?
(b) Definition of "employee with a disability"	It is unlikely that a contract of employment will set out "the work required under the contract of employment". It will normally simply set out a generic position.
(c) Definition of "a place of employment"	For clarity, the words ", in accordance with the contract of employment or with the agreement or at the direction of the employer," should be inserted into section 3(1) itself.
(d) 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?
(e) 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.
<b>2. Section 3 (Hours of Work)</b>	
(a) Section 3(1)	<p>The words "must be taken to include" should be replaced by "shall be" (as 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</p>



**Employers'  
Federation  
of Hong Kong**  
香港僱主聯合會

Statutory provision	Comment
	<p>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>
(b) Section 3(2)	<p>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"?</p>
3. Section 5 (Wages)	
(a) Section 5(1)	<p>There appears to be some confusion between wages "payable" (sections 5 and 9) and wages "paid" (section 7).</p>
(b) Section 5(2)	<p>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 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.</p>
(c) Section 5(4)	<p>This could have major implications. Sub-section (4) should be clarified. Currently it is confusing.</p>
(d) Section 5(5)	<p>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?</p>
4. Section 8 (Hourly rate)	
(a) 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</p>



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Statutory provision	Comment
	<p>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>
(b) Section 15(3)	<p>Why restrict the Commission to a single rate? Why not allow multiple rates as in the UK?</p>
(c) 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>
9. Schedule 2 (Assessment of PWDs)	<p>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 form of the "certificate" under section 5? Why does it need to be signed by the employer?</p> <p>The whole process seems incredibly inefficient.</p>



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

Statutory provision	Comment
1. <b>"domestic worker"</b>	This should be more tightly defined so as not to exclude other "live in" workers.
2. <b>Definition of "employee with a disability"</b>	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. <b>Definition of "prescribed minimum hourly wage rate"</b>	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. <b>Definition of "student intern"</b>	This is very narrow. It will result in a sharp reduction in internships for undergraduates. Suggest do not limit this to academic internships.
5. <b>Section 3(1)</b>	<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. <b>Section 3(2)</b>	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. <b>Section 5(1)</b>	There appears to be some confusion between wages "payable" (sections 5 and 9) and wages "paid" (section 7).
8. <b>Section 5(2)</b>	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.
<b>9. Section 5(4)</b>	This could have major implications. Sub-section (4) should be clarified. Currently it is confusing.
<b>10. Section 5(5)</b>	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?
<b>11. Section 8(2)</b>	<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>
<b>12. Section 15(3)</b>	Why restrict the Commission to a single rate? Why not allow multiple rates as in the UK?
<b>13. Section 20</b>	<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>
<b>14. Schedule 2 (Assessment of PWDs)</b>	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

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