

立法會
Legislative Council

LC Paper No. ESC19/08-09
(These minutes have been
seen by the Administration)

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Establishment Subcommittee of the Finance Committee

Minutes of the 3rd meeting
held in Conference Room A of Legislative Council Building
on Wednesday, 17 December 2008, at 9:30 am

Members present:

Hon WONG Yung-kan, SBS, JP (Chairman)
Dr Hon Margaret NG (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon CHEUNG Man-kwong
Hon LAU Kong-wah, JP
Hon LI Fung-ying, BBS, JP
Hon WONG Ting-kwong, BBS
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon WONG Sing-chi
Hon WONG Yuk-man
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou

Members absent:

Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP

Public Officers attending:

Ms Bernadette LINN, JP

Deputy Secretary for Financial Services and
the Treasury (Treasury)

Mrs Ingrid YEUNG, JP

Deputy Secretary for the Civil Service

Ms Elsie YUEN

Principal Executive Officer (General),
Financial Services and the Treasury Bureau
(The Treasury Branch)

Mrs Cherry TSE LING Kit Ching, JP
Mr FONG Ngai

Commissioner for Labour
Assistant Commissioner for Labour (Policy
Support and Strategic Planning)

Clerk in attendance:

Ms Rosalind MA

Chief Council Secretary (1)5

Staff in attendance:

Mr Noel SUNG
Ms Alice CHEUNG
Mr Frankie WOO

Senior Council Secretary (1)4
Senior Legislative Assistant (1)1
Legislative Assistant (1)2

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The Chairman drew members' attention to an information paper (ECI(2008-09)10) provided by the Administration before the meeting, which set out the latest changes in the directorate establishment approved since 2002.

EC(2008-09)12 Proposed creation of one supernumerary post of Chief Labour Officer (D1) in the Labour Department for a period of three years with immediate effect to take forward the legislative exercise on statutory minimum wage

2. The Chairman informed members that the Panel on Manpower (MP Panel) was consulted on the staffing proposal at its meeting on 20 November 2008.

3. Ms LI Fung-ying, Chairman of MP Panel, reported that while the Panel supported the staffing proposal in principle, members had expressed concern whether the three-year duration of the post was sufficient for taking forward the legislative exercise on statutory minimum wage (SMW) and ensuring the smooth enactment of the SMW Bill and its subsidiary legislation. There were also concerns about the possible extension arrangements if the post had to be retained upon expiry of the three-year period, the ranking and responsibilities of the proposed post, as well as the availability of candidates with the requisite knowledge to take up the job.

Work of the proposed Chief Labour Officer and legislative timeframe

4. Dr Margaret NG said that Members belonging to the Civic Party attached importance to the introduction of SMW. She was concerned about the involvement

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of relevant officers in the Labour Department (LD) in the legislative exercise, their understanding about SMW and their working relationship with the proposed Chief Labour Officer (CLO).

5. The Commissioner for Labour (C for L) advised that the dedicated team led by the proposed CLO tasked to take forward the legislative exercise on SMW would comprise another 13 non-directorate supporting staff, and eight of them would be redeployed from other divisions in LD. The team would work closely with the Department of Justice and different divisions of LD in the drafting and implementation of the SMW legislation to ensure that the provisions and introduction of the future legislation would dovetail with other employment legislation. For example, the interpretation and components of "wages" would essentially follow the existing provisions of the Employment Ordinance (Cap. 57) (EO), including the inclusion of commission of a contractual nature provided under the Employment (Amendment) Bill 2006. To facilitate understanding of the SMW legislation, briefings would be arranged for relevant officers in LD. Responding to Dr Margaret NG's enquiry about the qualifications and experience required for the proposed CLO post, C for L advised that the candidate had to be conversant with the preparation and enforcement of employment legislation, and should be experienced in handling labour relations matters.

6. Mr WONG Sing-chi enquired about the work to be taken forward by the proposed CLO during the three-year period. In reply, C for L advised that the proposed CLO would engage relevant stakeholders and the public to gauge their views, work closely with the Census and Statistics Department in commissioning and conducting surveys on wage and employment data to support the implementation of SMW, and coordinate Government's inputs to the Provisional Minimum Wage Commission. After enactment of the SMW legislation, the officer would be tasked to coordinate the enforcement and promotion work, review the legislation and propose further refinements, where necessary.

7. Ms LI Fung-ying expressed support for the current proposal, but also expressed concern on the increasing workload faced by LD, especially under the current economic situation. Ms LI considered that SMW should be implemented without delay and the legislative exercise on SMW should not be affected by manpower constraint in LD. She asked the Administration to guarantee the introduction of the SMW Bill according to the proposed timeframe, i.e. within the 2008-2009 legislative session.

8. C for L noted Ms LI Fung-ying's concern and advised that the Administration would endeavour to take forward the legislative exercise expeditiously so that the SMW Bill would be introduced into the Legislative Council within the 2008-2009 session. To this end, the support of the Department of Justice had been obtained for adopting a flexible approach in drafting the SMW legislation, i.e. commencing the drafting of those provisions for which consensus of key stakeholders had been reached, without waiting for the full set of drafting instructions for the proposed legislation.

9. Dr Margaret NG was concerned that such unusual approach adopted for speeding up the drafting of the SMW Bill might not be conducive to the quality of law drafting. Referring to the experience in the scrutiny of the Race Discrimination Bill, Dr NG expressed concern that the SMW legislation might not achieve in full the legislative intent if the Administration could not set out in clear terms such intent during the preparation of the legislation and consultation with stakeholders.

10. In response, C for L reiterated that the adoption of this unconventional approach would not affect the integrity of the future SMW legislation because the legislation would be based on, and dovetail with, the provisions in the existing EO. Hence, LD would invite the Law Draftsman to start preparing only those provisions whose interface with EO was close and which had secured clear support from key stakeholder groups. In addition, the dedicated team would work closely with other divisions in LD in the preparation of the SMW Bill. The team would also solicit and analyze views from key stakeholders and take these into account in the formulation of the future legislation. In this connection, LD had started to engage relevant organizations on related issues, such as soliciting the views of rehabilitation non-governmental organizations to gauge their views on whether there should be special measures for people with disabilities and if so what the key features should be. Given the favourable responses from stakeholders during the consultation in the past months, C for L was confident that the legislative exercise could be taken forward smoothly.

11. Prof Patrick LAU opined that in taking forward the legislative exercise, the Administration should make reference to overseas experience in the implementation of SMW. He enquired whether researches and/or studies had been undertaken by the Administration in this respect.

12. C for L responded that LD had commenced the preparatory work for the possible introduction of SMW in end 2007 following the mid-term review of the Wage Protection Movement, as instructed in the 2007 Policy Address. Studies had been conducted on the implementation of SMW in other jurisdictions and reports were prepared for the information of Labour Advisory Board (LAB). The LAB and government officials from relevant departments had also conducted visits overseas to draw reference from other countries' experience. At the request of Prof Patrick LAU, C for L undertook to provide relevant reports for members' information. She pointed out that while reference would be made to the practices of other jurisdictions, the smooth implementation of SMW would hinge on designing an SMW system which best suited local circumstances. Responding to Prof Patrick LAU's further enquiry on the recruitment of a suitable candidate for the proposed CLO post, C for L said that the incumbent should possess knowledge of local employment legislation and experience in its enforcement. This would ensure that the provisions and implementation of the future SMW legislation would suit local circumstances and dovetail with other employment legislation. As such, an experienced officer in LD would be identified to fill the proposed CLO post.

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13. Noting that the proposed CLO would be responsible for promotion of the SMW legislation, Mr WONG Sing-chi was concerned whether there would be any

overlapping with the duties of the Political Assistant (PA) to the Secretary for Labour and Welfare in lobbying support for the policy initiatives of the bureau. In reply, C for L advised that the duties of the proposed CLO for promotion of the SMW legislation would mainly relate to facilitating public understanding of and compliance with the new statutory requirements under the SMW regime, e.g. the requirement on maintenance of wage records. Unlike the PA, the key role of the CLO was not political work of lobbying support for government policies.

Duration of the proposed post

14. Mr WONG Sing-chi asked whether the Administration would propose to extend the supernumerary post for taking up other duties after the expiry of the three-year period. Mr CHEUNG Man-kwong stated that Members belonging to the Democratic Party supported the proposed creation of the supernumerary post for a period of three years, on the condition that no extension would be sought. Mr CHEUNG was gravely concerned that supernumerary posts created with long duration of over three years would be tantamount to the creation of permanent posts.

15. Dr PAN Pey-chyou remarked that Members belonging to the Hong Kong Federation of Trade Unions supported the introduction of SMW and the proposal of creating a supernumerary CLO post to take forward the legislative exercise. Dr PAN asked whether the proposed CLO would have spare capacity to take up duties of providing support to LAB after enactment of the SMW legislation.

16. C for L said that the proposal to create the CLO post for three years was made on the basis of practical need, anticipated workload and prudent use of resources. As SMW was a new and important policy, the Administration had proposed to create the CLO post for a period of three years, with an aim to completing the major task of overseeing the whole legislative exercise of the SMW Bill and, if possible, the first year of its implementation. After enactment of the SMW legislation, the eight non-directorate officers of the dedicated team who were deployed from other divisions of LD would be incorporated back into the normal day-to-day duties of various functional divisions. LD would review its long term staffing requirement after enactment of the SMW Bill, and decide the need or otherwise for retaining the CLO post and the other five non-directorate posts in the dedicated team. The Administration would report the staffing requirement for implementation of SMW to the MP Panel in due course.

17. As regards the support provided to LAB, C for L advised that the LAB Secretary was currently a Senior Labour Officer in LD. The support to LAB only constituted about 25% of the responsibilities of that officer, who was also responsible for matters relating to international labour conventions and other duties. LD had no plan to deploy the proposed CLO to take up support services to LAB.

18. The item was voted on and endorsed.

19. The Subcommittee was adjourned at 10:05 am.

Council Business Division 1
Legislative Council Secretariat
8 January 2009