

**President's ruling on Committee stage amendments to
the Minimum Wage Bill
proposed by Hon LEE Cheuk-yan**

Hon LEE Cheuk-yan has given notice to move Committee stage amendments (“CSAs”) to the Minimum Wage Bill (“the Bill”) if the motion for the Second Reading of the Bill is agreed to at the meeting of the Legislative Council (“LegCo”) of 14 July 2010. Before considering the admissibility of the CSAs under the Rules of Procedure, I invited the Administration to comment on the CSAs and Mr LEE to offer his response to the comments. I have also sought the advice of Counsel to the Legislature.

Relevant rule of the Rules of Procedure

2. In commenting on Mr LEE’s CSAs, the Administration has referred to Rule 57(4)(a) of the Rules of Procedure, which provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

The Bill

3. According to its long title, the Bill seeks to provide for a minimum wage at an hourly rate for certain employees; to establish a Minimum Wage Commission; and to repeal the Trade Boards Ordinance and to make consequential amendments to the Labour Tribunal Ordinance, the Employment Ordinance, the Minor Employment Claims Adjudication Board Ordinance and the Disability Discrimination Ordinance.

4. For the purpose of making this ruling, it is noted that under clause 6 of the Bill, and as explained in paragraph 4 of the Explanatory Memorandum to the Bill, live-in domestic workers who are described as “a person who is employed as a domestic worker in, or in connection with, a household and who dwells in that household free of charge” (Clause 6(3)), are among the categories of employees excluded from the application of the Bill.

Hon LEE Cheuk-yan’s CSAs

5. Mr LEE has proposed CSAs to the Bill to achieve various purposes, including removing the exclusion from the application of the Bill of live-in domestic workers.

The Administration's views

6. The Administration is of the view that the CSAs proposed by Hon LEE Cheuk-yan in relation to live-in domestic workers are not relevant to the subject matter of the Bill or any clause of the Bill, and therefore do not comply with Rule 57(4)(a) of the Rules of Procedure. The Administration has not raised any procedural issues regarding the other CSAs proposed by Mr LEE.

7. The Administration submits that the purpose of the Bill, as stated in its long title, is "to provide for a minimum wage at an hourly rate for certain employees". The Bill's purpose is repeated in the introductory paragraph and other paragraphs of its Explanatory Memorandum. The objective and need for a universal minimum hourly rate is also explained in the LegCo Brief on the Bill. Further, the hourly rate is referred to in the substantive provisions of the Bill, and the amount of minimum wage in a wage period is derived by multiplying the total number of hours worked by the employee in the wage period by the minimum hourly wage rate. The Bill is thus clearly premised on the minimum hourly rate.

8. The Administration also argues that the CSAs concerned attempt to extend the application of the Bill to live-in domestic workers and seek to apply to them a minimum daily wage rate rather than the minimum hourly rate. Although the way the daily wage rate is to be fixed makes reference to the minimum hourly rate, the rate used is a daily rate which applies without reference to, and regardless of, the number of hours worked during a day, and cannot be said to be an hourly rate.

Hon LEE Cheuk-yan's views

9. Mr LEE does not agree to the Administration's views. He submits that his CSA to clause 6(3) of the Bill is the core amendment while the other CSAs concerned are ancillary amendments for implementing the core amendment. As both clause 6(3) and his core amendment deal with the applicability of the Bill to live-in domestic workers, his core amendment is relevant to the subject matter of the Bill and to the clause. Further, as his core amendment is relevant to the subject matter of the Bill and to the subject matter of clause 6, the ancillary amendments that he has proposed are also relevant to the subject matter of the Bill and that of the clause. Mr LEE argues that this is similar to the Administration adding new clause 6(5) to exempt "a work experience student" from the application of the Bill, which is the core amendment, and proposing new section 49A(3A)(b) of the Employment Ordinance to require an employer to keep the relevant records, which is the ancillary amendment.

10. Mr LEE further submits that the Bill seeks to provide for a minimum wage for certain employees. Under his CSAs, the minimum wage for a live-in domestic worker for a wage period is the amount derived by multiplying the total number of days worked by the live-in domestic worker in the wage period by the minimum daily wage rate, and the latter is the wage rate derived by multiplying the prescribed minimum hourly wage rate by a conversion multiplier¹. The legal effect of his CSAs is the same as that of the calculation method for the minimum wage proposed in the Bill.

11. Mr LEE also explains that his CSAs can in fact be drafted in such a way that the total number of hours worked by the live-in domestic worker is derived by multiplying the total number of days worked in the wage period by the conversion multiplier. The number of hours is then multiplied by the minimum hourly wage rate to arrive at the minimum wage which will then be consistent with the calculation method proposed in the Bill. This drafting approach was not used in order to make it convenient for the public to understand the Bill. Mr LEE argues that in making a ruling on whether the CSAs concerned are admissible under Rule 57(4)(a) of the Rules of Procedure, consideration should be given to the legal effect of the CSAs and not the drafting approach.

My opinion

12. I have read the LegCo Brief on the Bill and the Bill very carefully. It is clearly stated in the Bill's LegCo Brief, long title and introductory paragraph of the Explanatory Memorandum that the Bill provides for a statutory minimum wage at an hourly rate for certain employees. As the CSAs concerned seek to remove the exclusion of live-in domestic workers so that the Bill, which is applicable to most employees, is also made applicable to them, I find it difficult to accept that the CSAs concerned are not relevant to the subject matter of the Bill.

13. As regards the Administration's argument that the CSAs seek to apply to the live-in domestic workers a minimum daily wage rate rather than the minimum hourly rate, it is clear from clause 7(2) of the Bill that the minimum wage is not determined solely by an hourly rate. According to this clause, the calculation method for a minimum wage is to multiply the total number of hours worked by the employee in the wage period by the minimum hourly wage rate for the employee. Hence, reading the Bill as a whole, there are in fact two other components, i.e. total number of hours worked and the wage period, in addition to the minimum hourly wage rate, for determining the minimum wage to which an employee is entitled.

¹ Under Mr LEE's proposal, the value of the conversion multiplier is to be recommended by the Minimum Wage Commission when required by the Chief Executive ("CE") to do so and to report to CE in Council its recommendation.

14. Under Mr LEE's CSAs, the minimum wage for a live-in domestic worker for a wage period is the amount derived by multiplying the total number of days worked by the live-in domestic worker in the wage period by the minimum daily wage rate, which is derived by multiplying the prescribed minimum hourly wage rate by a conversion multiplier. The minimum daily wage rate and the conversion multiplier are essentially the devices employed for arriving at the minimum wage for a live-in domestic worker so as to overcome, as I understand it, the difficulty of logging his/her daily working hours due to the nature of his/her employment. It does not alter the hourly rate basis for determining the minimum wages to which such workers are entitled. I am therefore not convinced that Mr LEE's CSAs are not relevant to the subject matter of the Bill for the reason that a minimum daily wage rate is introduced, even if the Bill is premised on the minimum hourly rate as argued by the Administration. Counsel has advised me to the same effect.

Ruling

15. Having considered the Administration's comments, Hon LEE Cheuk-yan's response and the advice of the Counsel to the Legislature, I rule that the CSAs proposed by Mr LEE in relation to live-in domestic workers are admissible under Rule 57(4)(a) of the Rules of Procedure.

(Jasper TSANG Yok-sing)
President
Legislative Council

12 July 2010