

立法會
Legislative Council

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**Subcommittee on Subsidiary Legislation
Relating to Statutory Minimum Wage**

**Minutes of meeting
held on Friday, 26 November 2010, at 4:00 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon Miriam LAU Kin-ye, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon CHEUNG Kwok-che
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Hon LEUNG Kwok-hung
- Members absent** : Hon Abraham SHEK Lai-him, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Sing-chi

Public Officers : Item II
attending

Mr Matthew CHEUNG Kin-chung, GBS, JP
Secretary for Labour & Welfare

Mr Paul TANG Kwok-wai, JP
Permanent Secretary for Labour & Welfare

Mrs Helen CHAN, JP
Government Economist
Financial Secretary's Office

Ms Reddy NG Wai-lan
Principal Economist
Financial Secretary's Office

Mr Alan WONG Kwok-lun, JP
Deputy Commissioner for Labour (Labour Administration)

Miss Mabel LI Po-yi
Assistant Commissioner for Labour (Special Duties) (Acting)

Miss Cindy YIM Lai-kwan
Secretary of Provisional Minimum Wage
Commission

Ms Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice

Ms Grace LEUNG Pui-kay
Senior Government Counsel
Department of Justice

Clerk in : Mr Raymond LAM
attendance Chief Council Secretary (2) 1

Staff in : Mr KAU Kin-wah
attendance Assistant Legal Adviser 6

Miss Josephine SO
Senior Council Secretary (2) 1

Mr Ian CHOW
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

I. Election of Chairman and application for late membership

Mr TAM Yiu-chung was elected Chairman of the Subcommittee.

2. Members accepted the applications for late membership by Mr WONG Ting-kwong, Ms Cyd HO and Mr CHEUNG Kwok-che.

II. Meeting with the Administration

(File Ref.: LD SMW 1-55/1/4(C), L.N. 145, L.N. 146, L.N. 147, L.N. 148, LC Paper Nos. LS8/10-11 and CB(2)387/10-11(02) & (03))

3. The Subcommittee deliberated (index of proceedings attached at **Annex**).

4. The Subcommittee requested the Administration to provide information on the equivalent hourly wage rate in the second quarter of 2009 of the recommended initial statutory minimum wage ("SMW") rate of \$28 per hour in May 2011 and the number and proportion of employees involved at the time of implementation in 2011, if inflation recorded after the second quarter of 2009 was taken into account.

5. The Administration agreed to consider the suggestion that the review of the initial SMW rate be advanced for completion and release of the findings no later than May 2012.

III. Any other business

Extension of scrutiny period

6. Members agreed that to allow sufficient time for scrutiny of the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010, the Minimum Wage Ordinance (Commencement) Notice 2010, the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010 ("the Notices"), the Chairman would move a motion at the Council

meeting on 8 December 2010 to extend the scrutiny period of the Notices to the Council meeting on 5 January 2011.

Schedule of future meetings

7. Members agreed to hold a meeting on 6 December 2010 from 9:00 am to 12:30 pm to receive public views on the Notices by announcing an invitation on the website of the Legislative Council.

8. Members also agreed to schedule four other meetings for the following dates to continue discussion with the Administration -

(a) 30 November 2010 from 2:30 pm to 4:30 pm;

(b) 3 December 2010 from 8:30 am to 10:30 am;

(c) 8 December 2010 from 8:30 am to 10:00 am; and

(d) 13 December 2010 from 2:30 pm to 4:30 pm.

9. The being no other business, the meeting ended at 6:06 pm.

Council Business Division 2
Legislative Council Secretariat
31 January 2011

**Proceedings of meeting of the
Subcommittee on Subsidiary Legislation Relating to Statutory Minimum Wage
held on Friday, 26 November 2010, at 4:00 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000226	Hon LEE Cheuk-yan Hon WONG Kwok-kin Hon IP Wai-ming Hon IP Kwok-him Hon TAM Yiu-chung	Election of Chairman	
000227 - 000345	Chairman	Application for late membership from Hon WONG Ting-kwong, Hon Cyd HO and Hon CHEUNG Kwok-che	
000346 - 000850	Chairman	<p>Extension of scrutiny period and date to report the Subcommittee's deliberations to the House Committee if the scrutiny period was extended</p> <p>Dates for holding further meetings to receive public views on and to continue the scrutiny of the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010, the Minimum Wage Ordinance (Commencement) Notice 2010, the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010 ("the Notices")</p>	
000851 - 001320	Admin	<p>Briefing on the Notices (File Ref.: LD SMW 1-55/1/4(C)) which sought to -</p> <p>(a) specify the initial statutory minimum wage ("SMW") rate of \$28 per hour;</p> <p>(b) bring those provisions in relation to the short title and commencement of the Minimum Wage Ordinance ("MWO"), interpretation, amendment of Schedule 3 and the statutory Minimum Wage Commission ("MWC") into operation on 12 November 2010, and the other provisions of MWO into operation on 1 May 2011; and</p> <p>(c) specify \$11,500 as the monthly monetary cap on keeping records of hours worked</p>	

Time marker	Speaker	Subject(s)	Action Required
001321 - 002341	Hon LEE Cheuk-yan Admin	<p>Views and concerns raised by Hon LEE Cheuk-yan -</p> <ul style="list-style-type: none"> (a) as Hong Kong had entered an inflationary period with wages and employment earnings picking up, the initial SMW rate of \$28 per hour as recommended by the Provisional Minimum Wage Commission ("PMWC") based on the wage distribution in the second quarter of 2009 would have the time lag issue when it came into operation on 1 May 2011; (b) the Administration should make efforts to advance the commencement of MWO and the initial SMW rate, preferably on or before 1 February 2011; and (c) review of the SMW rate should be conducted right away, so as to shorten the time lag between data collection, deliberation of the SMW rate and the date of its implementation. <p>Response of the Administration -</p> <ul style="list-style-type: none"> (a) in arriving at the recommended initial SMW rate, PMWC had taken into account a basket of indicators. Apart from the wage distribution data in the second quarter of 2009, PMWC had also considered the latest changes in employment earnings and consumer price index ("CPI") as well as the composite CPI and economic forecasts in deliberating the initial SMW rate; (b) to implement the SMW regime on 1 May 2011 (the next Labour Day), in addition to the symbolic significance, gave some six months' preparation time for the community. Prior to implementation, the Labour Department ("LD") would launch a wide range of publicity and promotional activities to enhance public understanding of the SMW requirements; and (c) it had been specified in MWO that MWC should make a report at least once in every two years. In line with 	<p>Admin to consider member's request and provide a written response (paragraph 5 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>the evidence-based approach, a timely review of the SMW rate could be conducted if it was well-founded</p>	
002342 - 002942	Hon Miriam LAU Admin	<p>Whether it was too early for SMW to commence on 1 May 2011; measures adopted by the Administration to assist small and medium enterprises ("SMEs") of various sectors, in particular those enterprises which would likely be more affected by the introduction of SMW, to address the difficulties encountered in the implementation of SMW</p> <p>Suggestion that a dedicated team in LD should provide employers with one-stop advisory support on matters relating to the implementation of SMW</p> <p>The Administration explained various publicity and promotional measures as well as LD's enquiry hotline (handled by 1823 Call Centre)</p>	
002943 - 004350	Hon WONG Kwok-hing Admin Hon LEUNG Yiu-chung	<p>Requested the Administration to complete the review of the initial SMW rate and release the findings of the review no later than May 2012</p> <p>Circumstances to activate the review mechanism; time lag between data collection/analyses, future reviews of the SMW rate and its implementation</p> <p>Concerns over issues such as false self-employment, increase in the number of lay-offs and reduction in working hours and/or fringe benefits after the implementation of SMW</p> <p>Response of the Administration -</p> <p>(a) under the SMW system, the SMW rate was determined on an evidence-based approach, and a timely review of the rate could be conducted if it was well-founded;</p> <p>(b) more detailed statistical data would be collected so as to ascertain and verify the assessment of the impact of the implementation of SMW; and</p> <p>(c) the Employment Ordinance conferred protection to employees e.g. unilateral</p>	<p>Admin to consider member's request and provide a written response (paragraph 5 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		variation of employment terms and conditions by employers was not allowed	
004351 - 005008	Hon IP Wai-ming Admin	<p>Considered that the initial SMW rate should be reviewed in the next year after its implementation, i.e. in early 2012, and future reviews of the SMW rate should be conducted once a year</p> <p>Whether the monthly monetary cap of \$11,500 for exempting employers from recording the total number of hours worked should be raised, so as to prevent unscrupulous employers from circumventing the legal requirement by asking their employees to work longer hours after the implementation of SMW</p> <p>The Administration explained how the monthly monetary cap was determined; the need to strike a reasonable balance between the need to enforce the SMW requirements on the one hand and to minimize the administrative burden on employers on the other hand</p>	Admin to consider member's request and provide a written response (paragraph 5 of the minutes refers)
005009 - 005559	Hon LEUNG Kwok-hung Chairman Admin	<p>The extent to which the SMW implementation would impact working hours; considered that the Administration should deal with the issue of "standard working hours" in one go and embark on the review of the initial SMW rate as early as possible</p> <p>The Administration explained the review of the SMW rate and the policy study on standard working hours</p>	
005600 - 010138	Dr Hon PAN Pey-chyou Chairman Hon LEUNG Kwok-hung Admin	<p>The needs to address the "time lag" issue and to advance the review on the initial SMW rate. The Administration explained that PMWC had taken into account other relevant indicators with data sources which were more frequently updated (especially with regard to business operating conditions and the latest wage trend) as well as the latest inflation and economic forecasts</p> <p>The potential impact of SMW on vulnerable employees, for instance lower-skilled workers; support provided for vulnerable employees upon the implementation of SMW</p>	

Time marker	Speaker	Subject(s)	Action Required
		The Administration explained LD's strengthened employment services	
010139 - 010824	Hon Tommy CHEUNG Admin	<p>Concerns raised by Hon Tommy CHEUNG -</p> <ul style="list-style-type: none"> (a) expressed support for the proposal to specify \$11,500 as the monthly monetary cap on keeping records of total number of hours worked; (b) considered that depreciation rates and profit ratios after depreciation should be taken into account in determining the SMW rate; and (c) there should be a lower SMW rate for young people aged below 21 with less or even no working experience <p>Response of the Administration -</p> <ul style="list-style-type: none"> (a) the Administration envisaged that the full impact of the initial SMW rate would only become clear some time after its implementation and the mechanism for deliberating the SMW rate would have to be further refined so as to properly take into account further evidence that might become available in the future; (b) given the limitations and constraints arising from the lack of experience and empirical evidence guiding the identification of the appropriate initial SMW rate, the actual impact of SMW could only be identified and measured over a longer period of time through dedicated studies after the implementation of SMW. To facilitate future reviews of the SMW rate, survey and research studies would be conducted to monitor and evaluate the actual impact of SMW, in particular, on vulnerable workers, enterprises in the low paying sectors and SMEs, and also with special reference to the changes in detailed pay hierarchy to facilitate an in-depth examination of possible knock-on effects; and (c) in addition to strengthened employment services, the Administration would keep a close 	

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		<p>watch on whether and how the employment opportunities of low-skilled workers, inexperienced young people, the disabled and the elderly might be affected by the introduction of SMW</p>	
010825 - 011634	Hon Andrew LEUNG Admin	<p>Preparatory work relating to and timetable for drawing up the industry-based guidelines on SMW for employers and employees</p> <p>Data collection process in preparation for the periodic review of the SMW rate</p>	
011635 - 012134	Hon LI Fung-ying Admin	<p>Shared the view that the review of the initial SMW rate should be conducted right away, so as to shorten the time lag between data collection, deliberation of the future SMW rate and the date of its implementation</p> <p>The Administration responded that the SMW rate would be reviewed at an appropriate time and at least once in every two years</p>	<p>Admin to consider member's request and provide a written response (paragraph 5 of the minutes refers)</p>
012135 - 012716	Hon Jeffrey LAM Admin	<p>The impact on the employment opportunities of lower-skilled workers and inexperienced young people following the implementation of SMW; whether a lower SMW rate should be set for relatively vulnerable employees; the Administration's explanation on the support provided for them and mechanism for setting and adjusting the SMW rate in future</p>	
012717 - 012848	Chairman Admin	<p>Whether guidelines would be provided for employers and employees in the hairdressing industry; the Administration's explanation on the progress of preparation of draft reference guidelines on SMW for employers and employees</p>	
012849 - 013600	Chairman Hon LEE Cheuk-yan Admin	<p>Time lag between data collection, availability of relevant statistics and the date on which the SMW rate was implemented</p> <p>The number and proportion of employees to be covered under the recommended initial SMW rate of \$28 per hour, if inflation recorded after the second quarter of 2009 was taken into account</p>	<p>Admin to provide a written response (paragraph 4 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action Required
013601 - 014222	Hon WONG Kwok-hing Chairman Admin	Suggested that MWC should complete the review of the initial SMW rate by May 2012 Suggested that the Work Incentive Transport Subsidy ("WITS") Scheme should be implemented in step with the SMW regime on the next Labour Day The Administration explained the review of the SMW rate and that the Panel on Manpower would discuss the WITS Scheme	
014223 - 014746	Hon LEUNG Kwok-hung	Considered that future reviews of the SMW rate should be conducted once a year	
014747 - 015636	Hon IP Wai-ming Admin Chairman	Statistical data on which the future MWC would rely in reviewing the SMW rate; the time required for collecting statistical data for activating the review of the initial SMW rate; timetable for forming the MWC	
015637 - 015702	Chairman	Hon LEE Cheuk-yan's intention to move a motion	
015703 - 015850	Hon LI Fung-ying Admin	Timetable for finalizing the proposed special arrangement for assessing the degree of productivity of persons with disabilities	
015851 - 020548	Chairman Hon LEE Cheuk-yan Admin Hon LEUNG Kwok-hung	Suggested that the motion proposed by Hon LEE Cheuk-yan be dealt with at the next meeting, since there was a lack of quorum at the meeting Hon LEE Cheuk-yan reiterated his concerns raised at the meeting, including - (a) the time lag between data collection, determination of the SMW rate and the date of its implementation; and (b) the Administration's plan and timeframe for initiating a review on the initial SMW rate Response of the Administration - (a) there was inevitably a time lag between data collection and availability of the statistics. In recognition of this limitation, PMWC had taken into account other relevant indicators with data sources which were more frequently updated(especially with regard to	

Time marker	Speaker	Subject(s)	Action Required
		business operating conditions and the latest wage trend) as well as the latest inflation and economic forecasts; and (b) Hong Kong had no experience in implementing an SMW, the impact of which could not be measured with precision. In addition, the chain effects arising from the interactions of different parties' reaction to SMW could only be ascertained some time after the implementation of SMW	
020549 - 020628	Chairman	The Subcommittee agreed to extend the scrutiny period of the Notices to the Council meeting on 5 January 2011 Date of next meeting	

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