

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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

**Minutes of meeting
held on Tuesday, 30 November 2010, at 2:30 pm
in the Chamber 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 Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun
Hon LEUNG Kwok-hung
- Members absent** : Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Hon CHEUNG Kwok-che
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou

**Public Officers : Item I
attending**

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

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

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

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 : Ms Clara TAM
attendance Assistant Legal Adviser 9**

Miss Josephine SO
Senior Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

I. 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 and LC Paper No. LS8/10-11)

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

2. The Subcommittee passed the following motion moved by Mr LEE Cheuk-yan and seconded by Mr CHEUNG Kwok-che -

"本委員會強烈要求政府當局：

- (一) 首個最低工資應在2011年2月1日開始實施；及
- (二) 根據2010年的工資工時調查開展檢討，並在2012年上半年實施第二個最低工資水平"

(Translation)

"That this Subcommittee strongly calls on the Administration -

- (a) that the initial statutory minimum wage ("SMW") rate should be implemented with effect from 1 February 2011; and
- (b) to initiate a review based on the 2010 survey on wages and working hours and implement the second SMW rate in the first half of 2012."

3. The Administration was requested to take into consideration the motion passed by the Subcommittee and to provide a response.

II. Date of next meeting

4. Members agreed that the meeting originally scheduled for 3 December 2010 at 8:30 am be cancelled. The Subcommittee would hold its next meeting on 6 December 2010 from 9:00 am to 12:30 pm to receive views from deputations and members of the public on the four pieces of subsidiary legislation under scrutiny.

5. The meeting ended at 3:56 pm.

**Proceedings of meeting of the
Subcommittee on Subsidiary Legislation Relating to Statutory Minimum Wage
held on Tuesday, 30 November 2010, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000857	Chairman	Opening remarks	
000858 - 001504	Hon LEE Cheuk-yan Admin Chairman	<p>Whether the Administration had assessed the impact of implementing the statutory minimum wage ("SMW") on the operation of residential care homes for the elderly ("RCHEs"), especially those RCHEs with a majority of residents receiving Comprehensive Social Security Assistance, as it was less likely for such operators to pass the additional SMW-induced wage cost onto consumers; measures adopted by the Administration to assist RCHEs which might have difficulties in implementing SMW</p> <p>Whether the implementation of SMW would impact on other government policies/initiatives, such as the provision of subsidized residential care places for the elderly or the application criteria for public housing units; how impact assessments on the implementation of SMW would be carried out</p> <p>The Administration responded that the Provisional Minimum Wage Commission ("PMWC") had adopted an evidence-based approach and conducted extensive consultations in arriving at the recommended initial SMW rate; the impact of SMW would be identified and measured over a longer period of time through dedicated studies after implementation, and the Administration would monitor the situation</p>	
001505 - 002200	Hon WONG Kwok-hing Admin ALA9 Chairman Hon Miriam LAU	<p>Inviting the new Commissioner for Labour to attend future meetings of the Subcommittee</p> <p>The legislative timetable for the four Notices under scrutiny ("the Notices"); the negative vetting procedures</p> <p>How the monthly monetary cap of \$11,500 for exempting employers from keeping</p>	

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		<p>records of total number of hours worked was determined; whether the cap should be set at a higher level; measures to prevent unscrupulous employers from circumventing the legal requirement by asking their employees to work longer hours after the implementation of SMW; future review/revision of the monthly monetary cap on keeping records of total number of hours worked with reference to the adjustment of the SMW rate</p> <p>The Administration responded that according to the 2009 Annual Earnings and Hours Survey, the median monthly wage of 2 776 600 employees in Hong Kong was \$11,500. Taking into account that the initial SMW rate of \$28 per hour would represent 48% of the median hourly wage of \$58.5, the median monthly wage of \$11,500 should be adopted for the monthly monetary cap to strike a reasonable balance between the need for effective enforcement of the Minimum Wage Ordinance ("MWO") and to minimize the administrative burden of employers. The monthly monetary cap could be reviewed and revised when there was adjustment to the SMW rate in future</p>	
002201 - 002840	Hon LEUNG Yiu-chung Chairman Admin	<p>The possible impact of SMW on the employment opportunities of persons with disabilities whose productivity was impaired by their disabilities; special arrangement and mechanism for assessing the degree of productivity of persons with disabilities; whether the Administration would provide wage subsidies to persons with disabilities by subsidizing the difference between the level an employee was remunerated according to his productivity assessed and the SMW rate</p> <p>The Administration's explanation on measures and schemes already in place to assist persons with disabilities in seeking employment; the Administration advised that there was no plan to provide wage subsidy (which was also not the policy intent of MWO and its subsidiary legislation) to top up the difference between SMW and the wage level of persons with disabilities determined according to their assessed degree of productivity when invoking the special arrangement</p>	

Time marker	Speaker	Subject(s)	Action Required
002841 - 003505	Hon Miriam LAU Admin Chairman	<p>Measures to assist small and medium enterprises ("SMEs") of low paying sectors which normally competed on low prices and would likely be more affected by the introduction of SMW, including the retail, catering, estate management, security and cleaning services industries</p> <p>Whether the Administration had assessed the possibility that the introduction of SMW might end up with some enterprises having to lay off workers or close down their businesses as a result of failing to cope with the SMW rate</p> <p>The Administration's explanation on deliberations of PMWC regarding the possible impact of the initial SMW rate on employees, employers and prices, with different assumptions on downsizing, price pass-through and profit reduction</p>	
003506 - 004045	Hon LI Fung-ying Chairman Admin ALA9	<p>The rationale and justifications for adopting \$11,500 as the monthly monetary cap on keeping records of total number of hours worked; whether it should be adjusted upward so as to enhance the protection for workers; possible enforcement problems 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 effectively the SMW requirements on the one hand and to minimize the administrative burden on employers on the other hand</p> <p>Legislative Council's power to amend the Notices in accordance with section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) subject to section 16(4) of MWO; procedures for moving amendments</p>	
004046 - 004928	Hon Tommy CHEUNG Chairman Admin	<p>Views and concerns raised by Hon Tommy CHEUNG -</p> <p>(a) industries most affected by the introduction of SMW; enterprises which might face greater impact, such as those in the low paying sectors employing a lot of low-paid workers, SMEs with weaker competitive edge, and firms operating at margin of very low or even</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>negative profit;</p> <p>(b) measures adopted by the Administration to assist these enterprises when the cost increase could not be fully passed onto consumers through raising price or be absorbed through profit reduction;</p> <p>(c) the impact of high rental costs and inflation on the viability of business operation; and</p> <p>(d) the difficulties faced by the catering industry</p> <p>Response of the Administration -</p> <p>(a) PMWC had adopted an evidence-based approach and conducted extensive consultations in arriving at the recommended initial SMW rate;</p> <p>(b) the actual impact of SMW could only be identified and evaluated through dedicated studies over a longer period of time after implementation, and the situation would be monitored; and</p> <p>(c) Labour Department would launch publicity and promotional activities to enhance public understanding of the SMW requirements, and draft reference guidelines for employers and employees were being prepared. Industry-specific guidelines addressing the particular needs and characteristics of individual sectors would also be formulated in collaboration with relevant stakeholders</p>	
004929 - 011217	<p>Hon LEE Cheuk-yan Chairman Hon Tommy CHEUNG Hon Miriam LAU Hon WONG Ting-kwong Admin</p>	<p>Motion moved by Hon LEE Cheuk-yan</p> <p>Expression of views by Hon Tommy CHEUNG, Hon Miriam LAU and Hon WONG Ting-kwong on the motion proposed by Hon LEE Cheuk-yan</p> <p>The need to have a six months' period to prepare for the implementation of SMW; the possibility of advancing the review on the initial SMW rate</p> <p>The Administration responded that with the gazettal of the initial SMW rate in November 2010, SMW would commence on 1 May 2011 to allow some six months'</p>	<p>Admin to provide a written response to the motion passed by the Subcommittee (paragraph 2 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>preparation time for the community; MWO provided that MWC should make a report at least once in every two years; in line with the evidence-based approach, a timely review of the SMW rate could be conducted if it was well-founded</p> <p>Voting on the motion moved by Hon LEE Cheuk-yan; passage of the motion with six members in favour of the motion and three against it</p>	
011218 - 012341	<p>Hon LEUNG Yiu-chung Admin Chairman Hon LEUNG Kwok-hung</p>	<p>The possible impact of SMW on persons with disabilities whose productivity was impaired by their disabilities; whether the Administration would consider providing persons with disabilities with wage subsidies; measures to assist persons with disabilities</p> <p>The Administration's explanation on the review of the mechanism for assessing the degree of productivity of persons with disabilities two years after the implementation of the SMW regime; measures and schemes already in place to assist persons with disabilities. The Administration advised that it had no plan to provide wage subsidy for persons with disabilities (which was also not the policy intent of MWO and its subsidiary legislation) who invoked the productivity assessment</p>	
012342 - 012628	<p>Chairman Hon LI Fung-ying Hon Ronny TONG</p>	<p>Date of next meeting</p> <p>Deadline for giving notice of amendments to the Notices</p>	