# 立法會 <br> Legislative Council 

LC Paper No．CB（2）538／09－10
（These minutes have been seen by the Administration）

Ref ：CB2／BC／11／08

Bills Committee on Minimum Wage Bill

> Minutes of meeting
> held on Thursday, 5 November 2009, at 4:30 pm in the Chamber of the Legislative Council Building

Members ：Hon Paul CHAN Mo－po，MH，JP（Deputy Chairman） present<br>Hon Albert HO Chun－yan<br>Hon LEE Cheuk－yan<br>Hon LEUNG Yiu－chung<br>Hon Miriam LAU Kin－yee，GBS，JP<br>Hon Emily LAU Wai－hing，JP<br>Hon Abraham SHEK Lai－him，SBS，JP<br>Hon LI Fung－ying，BBS，JP<br>Hon Tommy CHEUNG Yu－yan，SBS，JP<br>Hon Audrey EU Yuet－mee，SC，JP<br>Hon Vincent FANG Kang，SBS，JP<br>Hon WONG Kwok－hing，MH<br>Hon Andrew LEUNG Kwan－yuen，SBS，JP<br>Hon Alan LEONG Kah－kit，SC<br>Hon LEUNG Kwok－hung<br>Hon WONG Ting－kwong，BBS，JP<br>Hon Cyd HO Sau－lan<br>Dr Hon LAM Tai－fai，BBS，JP<br>Hon CHAN Kin－por，JP<br>Hon Tanya CHAN<br>Dr Hon Priscilla LEUNG Mei－fun<br>Dr Hon LEUNG Ka－lau<br>Hon CHEUNG Kwok－che<br>Hon WONG Sing－chi<br>Hon WONG Kwok－kin，BBS<br>Hon WONG Yuk－man<br>Hon IP Wai－ming，MH<br>Hon IP Kwok－him，GBS，JP<br>Hon Mrs Regina IP LAU Suk－yee，GBS，JP<br>Dr Hon PAN Pey－chyou<br>Hon Paul TSE Wai－chun<br>Dr Hon Samson TAM Wai－ho，JP

Members absent
: Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung

Public Officers attending

Mr FONG Ngai
Assistant Commissioner for Labour (Policy Support and Strategic Planning)
Miss Bertha CHENG Wai-yue
Chief Labour Officer (Statutory Minimum Wage)
Labour Department
Miss Mabel LI Po-yi
Senior Labour Officer (Statutory Minimum Wage)
Labour Department
Ms Queenie TANG Yuen-shan
Labour Officer (Statutory Minimum Wage)
Labour Department
Mr Eamonn MORAN, JP
Law Draftsman
Department of Justice
Ms Roxana CHENG Pui-lan
Senior Assistant Solicitor General
Department of Justice
Ms Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice
Clerk in : Mr Raymond LAM
attendance
$\begin{array}{lll}\text { Staff in } \\ \text { attendance } & : & \text { Mr Arthur CHEUNG } \\ \text { Senior Assistant Legal Adviser } 2\end{array}$
Mrs Eleanor CHOW
Senior Council Secretary (2) 4

Miss Kiwi NG
Legislative Assistant (2) 1

## I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at Annex).
2. Regarding the policy objectives of the Bill, the Bills Committee requested the Administration to -
(a) consider whether the criteria for setting the statutory minimum wage (SMW) rate should be determined by the Minimum Wage Commission (MWC) or stipulated in the Bill;
(b) provide information on the procedures for setting the National Minimum Wage rates in the United Kingdom (UK);
(c) provide information in table form on the minimum wage systems in other jurisdictions;
(d) respond to the issues raised by Hon LEE Cheuk-yan in his letter dated 5 November 2009; and
(e) relay the request of the Bills Committee to the Provisional MWC to provide a report on its study mission to UK and France.
3. Regarding the application of the Ordinance, the Bills Committee requested the Administration to -
(a) provide information on the circumstances under which a student intern, a volunteer, or a pupil barrister would or would not be regarded as having entered into an employer-employee relationship;
(b) consider exempting overseas students taking up local internships and volunteers from the Bill;
(c) provide information on case law in UK which had held respectively that a volunteer or a pupil barrister was not an employee; and
(d) provide information on the application of SMW in relation to various industries, particularly domestic workers, in Taiwan.
(Post-meeting note: The Administration's responses to issues raised at the meeting and to Hon LEE Cheuk-yan's letter were issued vide LC Paper No. CB(2)288/09-10 on 16 November 2009.)

## II. Date of next meeting

4. The Bills Committee noted that the next meeting would be held on 19 November 2009 at 4:30 pm.
5. The meeting ended at $6: 50 \mathrm{pm}$.

Council Business Division 2
Legislative Council Secretariat
11 December 2009

## Proceedings of meeting of the <br> Bills Committee on Minimum Wage Bill on Thursday, 5 November 2009, at 4:30 pm in the Chamber of the Legislative Council Building

| Time marker | Speaker | Subject(s) | Action Required |
| :---: | :---: | :---: | :---: |
| $\begin{aligned} & 000000- \\ & 000515 \end{aligned}$ | Deputy Chairman | Opening remarks |  |
| $\begin{aligned} & 000516- \\ & 001137 \end{aligned}$ | Admin | Briefing on the Administration's response to issues raised at the Bills Committee meeting held on 13 October 2009 (LC Paper No. CB(2)169/09-10(01)) |  |
| $\begin{aligned} & \hline 001138 \text { - } \\ & 001809 \end{aligned}$ | Deputy Chairman Hon LEE Cheuk-yan Admin | Policy objectives of the Bill; the need to state in the Bill the principles enshrined in Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Administration's clarification that wages were returns for employees' labour and statutory minimum wage (SMW) might not be sufficient to cover family expenses of all employees; whether ICESCR was promotional in nature as stated in paragraph 16 of LC Paper No. CB(2)169/09-10(02) |  |
| $\begin{aligned} & 001810 \text { - } \\ & 003357 \end{aligned}$ | Deputy Chairman Admin | Briefing on the Administration's response on Article 39 of the Basic Law and Article 7 of ICESCR (LC Paper No. CB(2)169/09-10(02)) |  |
| $\begin{aligned} & \hline 003358 \text { - } \\ & 004011 \end{aligned}$ | Deputy Chairman Hon Andrew LEUNG Admin | Policy objectives of the Bill; factors to be considered by the Provisional Minimum Wage Commission (MWC) in recommending the initial SMW rate; whether there was any indicator or yardstick to ascertain whether the SMW rate so prescribed could forestall excessively low wages, minimize the loss of low-paid jobs while sustaining the economic growth and competitiveness of Hong Kong; criteria for determining the SMW rate in other jurisdictions and whether these criteria were stated in |  |


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|  |  | their SMW legislation; reasons for <br> not stating these criteria in the Bill; <br> study mission of the Provisional <br> MWC; whether the Provisional <br> MWC would make public the <br> criteria for recommending the <br> initial SMW rate; Administration's <br> explanation of an evidence-based <br> approach to be adopted in setting <br> and reviewing the SMW rate |  |
| 004012 -   <br> 004637 Deputy Chairman <br> Hon LEUNG Yiu-chung <br> Admin How to define excessively low <br> wages; whether the SMW rate <br> would be set at a level above/below <br> the level of the Comprehensive <br> Social Security Assistance (CSSA)   <br> Scheme; whether the Bill sought to   <br> ensure a worker would be paid at an   <br> SMW rate that could sustain the   <br> basic living standard of a family;   <br> Administration's explanation that   <br> the SMW rate would be computed   <br> on an individual basis while the   <br> CSSA Scheme provided assistance   <br> to needy persons on a household   <br> basis; adoption of an   <br> evidence-based approach by the   <br> Provisional MWC in   <br> recommending the initial SMW   <br> rate; data to be collected by the   <br> Census and Statistics Department   <br> (C\&SD) to support the work of the   <br> Provisional MWC on an   <br> evidence-based approach   |  |  |  |
| $004638-$ |  |  |  |


| Time marker | Speaker | Subject(s) | Action <br> Required |
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| $\begin{aligned} & 005409- \\ & 010030 \end{aligned}$ | Deputy Chairman Hon LEUNG Kwok-hung Admin | Whether the SMW rate should be set at more than $50 \%$ of the median wage; whether the SMW level to be adopted in Hong Kong would be comparable to the international standard; how to define excessively low wages; Administration's explanation that other jurisdictions arrived at the SMW rates having regard to a basket of factors relevant to their respective circumstances, instead of adopting a pre-determined percentage of the median/average wage |  |
| $\begin{aligned} & 010031 \text { - } \\ & 010619 \end{aligned}$ | Deputy Chairman Hon LI Fung-ying Admin | The immense difficulty faced by the Provisional MWC in deriving an SMW rate that could meet the criteria set out in clause 11(3); whether the Administration was shirking its responsibility by entrusting MWC to recommend the SMW rate; whether and, if so, how the criteria set out in clause 11(3) were prioritized; the need to determine the baseline for excessively low wages to facilitate meaningful discussion; Administration's explanation of the need to adopt an evidence-based approach and collect empirical data so as to set an appropriate SMW rate |  |
| $\begin{aligned} & \hline 010620 \text { - } \\ & 011136 \end{aligned}$ | Deputy Chairman Hon IP Wai-ming Admin | What principles would be adopted by the Provisional MWC in interpreting the empirical data to be collected by C\&SD; whether the Administration was shirking its responsibility by entrusting MWC to recommend the SMW rate; whether the Provisional MWC would make public the criteria for recommending the initial SMW rate; the role of LegCo in monitoring the setting of the SMW rate; Administration's explanation of the adoption of an evidence-based approach by the Provisional MWC in |  |


| Time marker | Speaker | Subject(s) | Action Required |
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|  |  | recommending the initial SMW rate; the importance to respect the independence of the Provisional MWC in its objective and disinterested deliberations |  |
| $\begin{aligned} & \hline 011137- \\ & 011719 \end{aligned}$ | Deputy Chairman Hon Emily LAU Admin | Concern about LegCo being deprived of the right to study the major issues relevant to the setting of the SMW rate; transparency of the operation of MWC and its representativeness; Administration's explanation that some jurisdictions did not specify in their SMW law the criteria for determining the SMW rate; the mechanism of a statutory body advising the government on the SMW rate also adopted in some jurisdictions | The Administration to consider whether the criteria for setting the SMW rate should be determined by MWC or stipulated in the Bill |
| $\begin{aligned} & 011720- \\ & 012029 \end{aligned}$ | Deputy Chairman Dr Hon LEUNG Ka-lau Admin | The need to set out a basket of factors and their weighting for determining the SMW rate |  |
| $\begin{aligned} & 012030- \\ & 012436 \end{aligned}$ | Deputy Chairman Hon Albert HO Admin | Concern about the Administration shirking its responsibility by entrusting MWC to recommend the SMW rate; the lack of information for LegCo to determine whether the SMW to be recommended by MWC was reasonable; procedures adopted by the United Kingdom (UK) in setting the National Minimum Wage rates | The Administration to provide information on the procedures for setting the National Minimum Wage rates in UK |
| $\begin{aligned} & 012437 \text { - } \\ & 012527 \end{aligned}$ | Deputy Chairman Hon LEE Cheuk-yan | Proceeding to discussion of issues under item II in the proposed order and areas for study <br> Letter from Hon LEE Cheuk-yan dated 5 November 2009 regarding Article 37 of the Basic Law and Article 7 of ICESCR (tabled at the meeting and issued vide LC Paper No. CB(2)212/09-10 on 6 November 2009) | The Administration to respond to the issues raised in Hon LEE Cheuk-yan's letter |

$\left.\begin{array}{|l|l|l|l|}\hline \text { Time marker } & \text { Speaker } & \text { Subject(s) } & \begin{array}{l}\text { Action } \\ \text { Required }\end{array} \\ \hline 012528 \text { - } & \begin{array}{l}\text { Deputy Chairman } \\ \text { Hon LEUNG Kwok-hung } \\ \text { Admin }\end{array} & \begin{array}{l}\text { Why the Administration followed } \\ \text { certain practices of other } \\ \text { jurisdictions instead of developing } \\ \text { its own in determining the SMW } \\ \text { rate; Administration's explanation } \\ \text { of SMW being a new system in } \\ \text { Hong Kong and the need to } \\ \text { consider Hong Kong's unique } \\ \text { circumstances }\end{array} & \\ \hline 013025 \text { - } & \begin{array}{l}\text { Deputy Chairman } \\ \text { Hon Cyd HO } \\ \text { Admin }\end{array} & \begin{array}{l}\text { Policy objectives of the Bill; } \\ \text { practices adopted by other } \\ \text { jurisdictions in implementing } \\ \text { SMW; study mission made by the } \\ \text { Provisional MWC }\end{array} & \begin{array}{l}\text { The Administration } \\ \text { to provide } \\ \text { information in table } \\ \text { form on the } \\ \text { minimum wage } \\ \text { systems in other } \\ \text { jurisdictions, and to }\end{array} \\ \text { relay to the } \\ \text { Provisional MWC } \\ \text { about members' } \\ \text { request for a report } \\ \text { on its study mission } \\ \text { to UK and France }\end{array}\right\}$

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|  |  | determining the National Minimum <br> Wage rates in its report for <br> recommending the rates; MWC to <br> recommend to the Chief Executive <br> in Council the SMW rate under the <br> Bill |  |
| $014200-$ |  |  |  |
|  | Deputy Chairman <br> Dr Hon PAN Pey-chyou <br> Hon Tommy CHEUNG | Whether the implementation of <br> SMW would lead to <br> unemployment; benefits of SMW to <br> provide a wage floor to forestall <br> excessively low wages |  |
| $014412-$ | Deputy Chairman <br> Hon LEE Cheuk-yan <br> Admin | Administration's paper on <br> "Eligibility criteria for low earnings <br> category and provision of <br> disregarded earnings under the <br> CSSA Scheme" (LC Paper No. <br> CB(2)169/09-10(03)) |  |


| Time marker | Speaker | Subject(s) | Action Required |
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|  |  | "employee" under the Employment Ordinance should be amended to include self-employed persons who might not be regarded as engaged in his own business; Administration's response that the issue of self-employment would be discussed by the Panel on Manpower; whether all the owners of a single block building which was managed neither by a management company nor an owners' corporation would be the employer of a cleaning worker was a mixed question of fact and law and each case had to be determined on its own facts and circumstances |  |
| $\begin{aligned} & \hline 015256- \\ & 020109 \end{aligned}$ | Deputy Chairman Hon Mrs Regina IP Admin | Application of the Ordinance; meaning of "student intern"; the need to exempt students who studied overseas and worked as local interns from the Bill; whether students working in a local organization on a voluntary basis were outside the scope of the Bill; Administration's response that whether a person was engaged as an employee would depend on the relevant facts and circumstances of each case and there was case law in UK that a person/volunteer who agreed to carry out work with an organization (with no sanction for a failure to honour that commitment) without pay or who was reimbursed for work-related expenses only would likely not be working under a contract of employment | The Administration to provide information on case law relating to volunteers in UK, to consider exempting students who studied overseas and taking local internships from the Bill, to provide information on whether volunteers were employees and to consider exempting them from the Bill |
| $\begin{array}{\|l\|} \hline 020110- \\ 020620 \\ \hline \end{array}$ | Deputy Chairman Dr Hon LEUNG Ka-lau Admin | Application of the Ordinance to domestic workers; whether the same SMW rate should apply to all trades across the board; whether a different SMW rate should be set for a particular trade (e.g. foreign domestic helpers (FDHs)) under special circumstances; why local live-in domestic workers were exempted from the Bill; how FDHs | The Administration to provide information on the application of SMW in relation to various industries, particularly domestic workers, in Taiwan |

$\left.\begin{array}{|l|l|l|l|}\hline \text { Time marker } & \text { Speaker } & \text { Subject(s) } & \begin{array}{l}\text { Action } \\ \text { Required }\end{array} \\ \hline & & \begin{array}{l}\text { were paid in Taiwan under the } \\ \text { SMW regime; Administration's } \\ \text { clarification that the Bill exempted } \\ \text { all live-in domestic workers, local } \\ \text { or foreign }\end{array} & \\ \hline \begin{array}{l}\text { 020621- } \\ 021225\end{array} & \begin{array}{l}\text { Deputy Chairman } \\ \text { Hon Andrew LEUNG } \\ \text { Admin }\end{array} & \begin{array}{l}\text { The need to provide students the } \\ \text { opportunities to take up internships } \\ \text { and to exempt full-time students } \\ \text { from the Bill; whether pupil } \\ \text { barristers would fall outside the } \\ \text { scope of the Bill; Administration's } \\ \text { response that there was case law in } \\ \text { UK that a pupil barrister was not an } \\ \text { employee }\end{array} & \begin{array}{l}\text { The Administration } \\ \text { to provide } \\ \text { information on case } \\ \text { law relating to a } \\ \text { pupil barrister in UK } \\ \text { and the } \\ \text { circumstances under } \\ \text { which a student } \\ \text { intern, a volunteer or } \\ \text { a pupil barrister } \\ \text { would or would not } \\ \text { be regarded as } \\ \text { having entered into } \\ \text { an } \\ \text { employee-employee } \\ \text { relationship }\end{array} \\ \hline 021226 \text { - } & & \begin{array}{l}\text { Deputy Chairman } \\ \text { Hon Audrey EU } \\ \text { Admin }\end{array} & \begin{array}{l}\text { The understanding that a summer } \\ \text { intern or a pupil barrister had never } \\ \text { been regarded as an employee; } \\ \text { narrow interpretation of "student } \\ \text { intern" as defined in clause 2; } \\ \text { Administration's clarification that a } \\ \text { summer intern or a pupil barrister } \\ \text { would not be covered by the Bill at } \\ \text { all if there was no } \\ \text { employer-employee relationship; } \\ \text { variations in student internship } \\ \text { arrangements, including student } \\ \text { interns not engaged as employees } \\ \text { (thus falling outside the Bill) and } \\ \text { those employed in the capacity of } \\ \text { employees }\end{array}\end{array} \begin{array}{l}\text { The Administration } \\ \text { to provide } \\ \text { information on } \\ \text { whether a student } \\ \text { intern would be } \\ \text { regarded as an } \\ \text { employee and to } \\ \text { explain the } \\ \text { circumstances under } \\ \text { which a student } \\ \text { intern as defined in } \\ \text { clause 2 would be } \\ \text { regarded as having } \\ \text { entered into an } \\ \text { employer-employee } \\ \text { relationship }\end{array}\right\}$

