

立法會

Legislative Council

LC Paper No. CB(2)326/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/BC/11/08

Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Tuesday, 8 June 2010, at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Paul CHAN Mo-po, MH, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, 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, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
- Members absent** : Hon Albert HO Chun-yan
Hon LEUNG Yiu-chung

Hon Emily LAU Wai-hing, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Dr Hon LEUNG Ka-lau
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Hon WONG Yuk-man

Public Officers : Mr Alan WONG Kwok-lun, JP
attending Deputy Commissioner for Labour (Labour Administration)

Mr FONG Ngai
Assistant Commissioner for Labour (Policy Support
and Strategic Planning)

Miss Mabel LI Po-yi
Chief Labour Officer (Statutory Minimum Wage) (Acting)
Labour Department

Ms Queenie TANG Yuen-shan
Senior Labour Officer (Statutory Minimum Wage) (Acting)
Labour Department

Mr Eamonn MORAN, JP
Law Draftsman
Department of Justice

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

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

Staff in : Mr Arthur CHEUNG
attendance Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2) 4

Ms Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to -
 - (a) provide examples on the application of clause 5(4) and 5(5);
 - (b) consider transitional measures to protect the interest of persons with disabilities already in employment whose contractual wage rate was below the initial statutory minimum wage ("SMW") rate and the possibility of their wages not being adjusted in future reviews on the SMW rate;
 - (c) consider proposing Committee Stage amendments to the Bill to specify a regular review of the SMW rate; and
 - (d) consider making public the contents of the report of the Minimum Wage Commission.

II. Date of next meeting

3. The Bills Committee noted that the next meeting would be held on 10 June 2010 at 8:30 am.
4. The meeting ended at 10:34 am.

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Tuesday, 8 June 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000734	Chairman	Opening remarks Continuation of clause-by-clause examination of the Bill	
000735 - 001152	Chairman Hon Andrew LEUNG Admin	Follow-up to the submission from Hong Kong Retail Management Association ("HKRMA") (LC Paper No. CB(2)1715/09-10(01)) on clause 5(4) Response of the Administration that wages (including allowances) paid in accordance with the terms in the contract of employment was not a payment of arrears of wages. An employer, in complying with the statutory minimum wage ("SMW") requirement, would have to top up the difference if wages payable to an employee in respect of a wage period fell below SMW. The Administration would provide a written response to HKRMA	
001153 - 001716	Chairman Hon Tommy CHEUNG Admin	Whether the Bill should bind the Government and if so, whether a Committee Stage amendment ("CSA") to that effect should be moved by the Bills Committee, the Administration, or individual Members; response of the Administration that as explained in paragraph 8 of Annex B to the LegCo Brief, it was the Administration's policy to pay its employees no less favourably than the prevailing SMW rate under the SMW legislation (as and when enacted)	
001717 - 003115	Chairman Hon Miriam LAU Admin	Reasons for the Bill not binding on the Government; concern about the additional administrative work and	

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		costs on employers arising from the requirement to keep records of the total number of hours worked of employees; response of the Administration that suggestions made by members to exempt employers from keeping records on the total number of hours worked of employees whose wages were not less than a specified amount were being considered Explanation of the Administration on the application of clause 5(4) based on the example quoted by Hon Miriam LAU; payment of wages in accordance with the contract of employment, provisions related to wage payment under the Employment Ordinance ("EO") and the Bill; agreement to be reached between employers and employees on the employment terms including whether certain wage components should be apportioned and payable in different wage periods; the need for an employer to top up the difference if the wages payable to an employee in respect of a wage period fell below SMW; examples on the application of clause 5(4) on payment of arrears of wages to be formulated in future guidelines	Admin to provide examples to illustrate the application of clause 5(4)
003116 - 003132	Chairman Hon CHAN Kin-por	The need for the Bills Committee to focus on scrutinizing the Bill rather than discussing whether the Bill should bind the Government	
003133 - 003722	Chairman Hon Jeffrey LAM Admin	Explanation of the Administration on the application of clause 5(4) on payment of arrears of wages and application of clause 5(5) on counting of commission based on the example quoted by Hon Jeffrey LAM; the Administration explained that examples on the application of clause 5(4) and 5(5) would be formulated in future guidelines	Admin to provide examples to illustrate the application of clause 5(4) and 5(5)

Time marker	Speaker	Subject(s)	Action Required
003723 - 003901	Chairman Hon Andrew LEUNG	Request for the Administration to explain the application of clause 5(4) and 5(5) to different industries	
003902 - 004640	Chairman Hon LEUNG Kwok-hung Admin	Whether EO and the Bill could protect the interests of employees adequately; response of the Administration that employers could not change the terms in a contract of employment unilaterally and an employee was entitled to make claims against the employer for any underpayment of wages	
004641 - 004836	Chairman Hon Tommy CHEUNG	Whether an hourly SMW rate departing from the long-standing practice of paying wages on a monthly basis would give rise to various problems	
004837 - 005140	Chairman Hon LEUNG Kwok-hung Hon LEE Cheuk-yan	The need for the Bills Committee to focus on scrutinizing the Bill	
005141 - 005332	Hon Abraham SHEK Chairman Admin	Whether SMW could safeguard the total income of workers; response of the Administration that SMW was based on an hourly rate under which the wages earned by an employee would be commensurate with his hours worked in a wage period at a rate not less than SMW on average	
005333 - 005528	Chairman Hon LEE Cheuk-yan	Examination of clause 8 Concern about the transitional arrangements for persons with disabilities ("PWDs") already in employment with current contractual wage rate below the initial SMW rate and the possibility of their wages not being adjusted in future reviews on the SMW rate	Admin to consider measures to address the concern raised
005529 - 010442	Chairman Admin SALA2 Hon LEE Cheuk-yan	Meaning of "if a PWD becomes an employee with a disability after the expiry of a trial period of employment" in clause 8(2)	SALA2 and Admin to follow up the drafting of the clause, if necessary

Time marker	Speaker	Subject(s)	Action Required
		Response of the Administration that while an employer and employee relationship was established from the first day of the trial period of employment, a PWD became "an employee with a disability" as defined under the Bill only after a certificate of assessment was signed by the PWD, the employer and the approved assessor	
010443 - 019717	Chairman Admin SALA2	Examination of clause 9	
010718 - 011305	Chairman Admin SALA2 Hon Miriam LAU	Effect of the wage period, which was normally taken to be one month as stipulated in clause 4(2), on the computation of the minimum wage in clause 7(2) because days in a calendar month could range from 28 to 31 days; possibility of an employee whose wages, payable on a monthly basis, could marginally meet the SMW rate in a short month (say 30 days) but not in a long month (say 31 days); response of the Administration that an employer was required to top up the difference if the wages payable to an employee in respect of a wage period was below SMW	
011306 - 011355	Chairman Admin	Examination of clause 10	
011356 - 011650	Chairman Hon WONG Sing-chi Admin Hon Miriam LAU	Whether the principle of gender mainstreaming would be taken into account in appointing members to the Minimum Wage Commission ("MWC"); proposal to provide in the Bill the minimum ratio of female and male members in MWC; response of the Administration on due regard to gender consideration in making future appointments to MWC and guidelines on the gender benchmark for appointments to advisory and statutory bodies ("ASBs")	

Time marker	Speaker	Subject(s)	Action Required
011651 - 011958	Chairman Hon Tommy CHEUNG Admin Hon LI Fung-ying	Whether clause 10 could reflect the policy intent of a balanced number of members from different sectors in MWC; response of the Administration that the drafting approach of clause 10 was similar to that adopted by other ASBs, and introducing CSAs to enhance clarity of the clause was being considered	
011959 - 012319	Chairman Hon Miriam LAU Admin	Reasons for the gender benchmark for appointing women to ASBs was set at 30% and not 50%; response of the Administration on the appointment of non-official members to MWC on an ad personam basis with due regard to gender consideration	
012320 - 012614	Chairman Hon Cyd HO Admin	Whether the gender benchmark for appointing women to MWC should be set at 60% given that there were more women than men receiving wages in the low-income bracket; advocated for equal pay for work of equal value for men and women under the SMW regime; response of the Administration that the Bill provided for an hourly SMW rate which was equally applicable to men and women	
012615 - 013049	Chairman Hon LEUNG Kwok-hung	Impact of women accepting low-paid jobs on the employment of men	
013050 - 013200	Chairman Admin	Examination of clause 11	
013201 - 013512	Chairman Hon LI Fung-ying Admin	Whether the Administration would consider proposing CSAs to clause 11(1) to provide for an annual review of the SMW rate; response of the Administration that it was considering the proposal for the Bill to specify a regular review of the SMW rate	Admin to consider

Time marker	Speaker	Subject(s)	Action Required
		Whether the Administration would consider proposing CSAs to clause 11(3) to ensure workers would be paid at a reasonable level so as to sustain the basic living of his family and to encourage employment; response of the Administration that principles set out in clause 11(3) to which MWC must have regard in performing its functions were appropriate and allowed MWC the flexibility to consider relevant indicators which were suitable for Hong Kong's prevailing and changing circumstances in deriving the SMW rate	
013513 - 013907	Chairman Hon IP Wai-ming Admin SALA2	Whether the wording "when required by the Chief Executive ("CE") to do so" in clause 11(1) was necessary if CSAs would be introduced to provide for a regular review of the SMW rate; response of the Administration that the clause provided CE the flexibility to request for a review of the SMW rate when situation warranted	
013908 - 014419	Chairman Admin SALA2	Views of SALA2 and the Administration on the drafting of clause 11(1)	
014420 - 014852	Chairman Hon LEUNG Kwok-hung	Whether the SMW rate should be used as a tool to sustain Hong Kong's economic growth and competitiveness under clause 11(3)(b)	
014853 - 015220	Chairman Hon LEE Cheuk-yan	Whether clause 11(1) gave too much flexibility to CE and clause 11(3) requiring MWC in performing its functions to have regard to the need to sustain Hong Kong's economic growth and competitiveness was too demanding; Hon LEE Cheuk-yan's intention to propose CSAs to clause 11(1) to provide for an annual review of the SMW rate and to clause 11(3) to ensure workers	

Time marker	Speaker	Subject(s)	Action Required
		would be remunerated with reasonable wages that enabled them to sustain the basic living of their families	
015221 - 015329	Hon Cyd HO	Support for the proposal to amend clause 11(1) to provide for an annual review of the SMW rate; Hon Cyd HO's intention to propose CSAs to clause 11(3) to ensure workers would be paid at a reasonable level so as to sustain the basic living of their families	
015330 - 015606	Chairman Hon WONG Ting-kwong Admin	Collective responsibility of MWC and the need to maintain confidentiality of its report to CE; response of the Administration that it would provide the public and LegCo with the justifications in making its decision on the proposed SMW rate	
015607 - 015914	Chairman Hon WONG Kwok-hing Hon LEE Cheuk-yan Admin	Whether the Administration would consider proposing CSAs to clause 11(1) to provide for an annual review of the SMW rate; response of the Administration that it was considering the proposal for the Bill to specify a regular review of the SMW rate, and the Annual Earnings and Hours Survey would be conducted by the Census and Statistics Department once a year to capture comprehensive data on the level and distribution of wages Agreement of members to extend the meeting beyond the appointed ending time of the meeting to complete scrutiny of Part 3 of the Bill	
015915 - 020000	Chairman Admin	Examination of clauses 12 and 13	
020001 - 020109	Chairman Hon LI Fung-ying Admin	The need to make public the contents of the MWC report to enhance transparency; response of the Administration that it would	Admin to consider

Time marker	Speaker	Subject(s)	Action Required
		provide members of the public and LegCo with the justifications in making its decision on the proposed SMW rate	
020110 - 020229	Chairman Hon LEE Cheuk-yan Admin Hon Cyd HO	Clarification of the Administration on clause 13 that MWC would be required to make a report under section 11(1) upon notice given by CE	
020230 - 020318	Chairman Hon LEE Cheuk-yan	Way forward Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
17 November 2010