

立法會
Legislative Council

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by the Administration)

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

**Minutes of meeting
held on Monday, 6 December 2010, at 9:00 am
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 Abraham SHEK Lai-him, SBS, 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 Sing-chi
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon LEUNG Kwok-hung
- Members absent** : Hon Miriam LAU Kin-ye, GBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun

**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)

Ms Reddy NG Wai-lan
Government Economist (Acting)
Financial Secretary's Office

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

**Attendance : Item I
by invitation**

Economic Synergy

Mr Allan FAN
Member

Federation of Hong Kong Industries

Mr Stanley LAU
Deputy Chairman

Civic Party

Mr Patrick LEUNG
Member

Institution of Dining Art

Mr Simon WONG
Chairman

Hong Kong Catholic Commission for Labour Affairs

Miss LAW Pui-shan
Policy Research Officer

Council of Youth Concern in Social Welfare

Mr CHENG Wai-him
Representative

Hong Kong Confederation of Trade Unions

Mr POON Man-hon
Policy Researcher

Neighbourhood and Workers Service Centre

Mr LEUNG Kam-wai
Labour Organizer

Community Development Initiative

Mr Willy KWONG
Project Officer

Goal Seeker Education Center

Mr CHAN Chung-yau
Chief Executive Officer

Hong Kong Federation of Restaurants & Related Trades

Mr LOCK Kwok-on
Chairman

The Federation of Hong Kong & Kowloon Labour Unions

Mr LAM Chun-sing
Director of Social Affairs Committee

Individual

Mr Ivan WONG Yun-tat
Kwai Tsing District Council member

Community Care and Nursing Home Workers General Union

Ms IP Pui-yu
Organizing Secretary

Association of Restaurant Managers

Mr LEUNG Kui-tang
Vice-Chairman

Factory Canteen Chamber of Commerce

Mr CHONG Yam-ming
Chairman

The Hong Kong Federation of Trade Unions -
Rights & Benefits Committee

Mr TAM Kin-sun
Committee Member

Far East Overseas Nepalese Association (FEONA Hong Kong)

Mr Ganga K Khatiwada
Vice-Chairman

Hong Kong Buildings Management and Security
Workers General Union

Mr IU Chung-yiu
Chairman

Cleaning Services Industry Workers Union

Ms LI Kim-man
Organizing Secretary

Choi Wan Community Concern Association

Miss TAM Mei-po
Chairman

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

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

Miss Josephine SO
Senior Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

Ms Camy YOONG
Clerical Assistant (2) 1

I. Meeting with deputations and the Administration

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

2. A total of 21 organizations/individual made oral representation to the Subcommittee. Written submissions were also received from two organizations which did not send representatives to attend the meeting.

3. The Administration was requested to provide information on Labour Department's public education and publicity efforts to enhance employers' and employees' understanding of their respective obligations and entitlements under the Minimum Wage Ordinance, preferably with a breakdown by industry/trade of the promotional and educational activities held or to be held prior to the implementation of the statutory minimum wage to address the unique operating characteristics of different sectors.

II. Date of next meeting

4. The Subcommittee noted that the next meeting would be held on 8 December 2010 from 8:30 am to 10:00 am.

5. The meeting ended at 12:30 pm.

**Proceedings of meeting of the
Subcommittee on Subsidiary Legislation Relating to Statutory Minimum Wage
held on Monday, 6 December 2010, at 9:00 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 001104	Chairman	Opening remarks	
001105 - 001525	Economic Synergy	Presentation of views (LC Paper No. CB(2)452/10-11(01))	
001526 - 001832	Federation of Hong Kong Industries	Presentation of views (LC Paper No. CB(2)452/10-11(02))	
001833 - 002258	Civic Party	Presentation of views (LC Paper No. CB(2)452/10-11(03))	
002259 - 002646	Institution of Dining Art	Presentation of views (LC Paper No. CB(2)452/10-11(04))	
002647 - 003010	Hong Kong Catholic Commission for Labour Affairs	Presentation of views (LC Paper No. CB(2)452/10-11(05))	
003011 - 003420	Hong Kong Confederation of Trade Unions	Presentation of views (LC Paper No. CB(2)452/10-11(07))	
003421 - 003825	Neighbourhood and Workers Service Centre	Presentation of the following views - (a) the initial statutory minimum wage ("SMW") rate should be fixed at \$33 per hour; (b) future reviews of the SMW rate should be conducted once a year; (c) the meal time as well as the scheduled rest time of employees should be counted as working hours and should be paid; and (d) the Administration should provide wage subsidies to persons with disabilities by subsidizing the difference between the wage level of an employee determined according to his assessed degree of productivity under the special arrangement and the SMW rate	
003826 - 004040	Community Development Initiative	Presentation of views (LC Paper No. CB(2)452/10-11(09))	

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004041 - 004151	Goal Seeker Education Center	Considered that the SMW rate should be fixed at \$33 per hour	
004152 - 004455	Hong Kong Federation of Restaurants & Related Trades	Presentation of the following views - <ul style="list-style-type: none"> (a) the implementation of SMW would likely impact more heavily on the catering sector, as small restaurants which generally competed on low prices, employed a high proportion of low-paid workers and operated on slim profit margins would face a more challenging business environment following the introduction of SMW; (b) the catering sector needed time to prepare for the implementation of SMW and to fully adjust to the SMW policy; and (c) the Administration should provide assistance to small and medium enterprises of various sectors 	
004456 - 004818	The Federation of Hong Kong & Kowloon Labour Unions	Presentation of views (LC Paper No. CB(2)452/10-11(12))	
004819 - 005132	Mr Ivan WONG Yun-tat, Kwai Tsing District Council member	Presentation of views (LC Paper No. CB(2)452/10-11(13))	
005133 - 005544	Community Care and Nursing Home Workers General Union	Presentation of views (LC Paper No. CB(2)452/10-11(14))	
005545 - 005756	Association of Restaurant Managers	Presentation of views (LC Paper No. CB(2)452/10-11(15))	
005757 - 010125	Factory Canteen Chamber of Commerce	Presentation of views (LC Paper No. CB(2)452/10-11(15))	
010126 - 010542	The Hong Kong Federation of Trade Unions - Rights & Benefits Committee ("HKFTU")	Presentation of views (LC Paper No. CB(2)452/10-11(17))	
010543 - 010836	Far East Overseas Nepalese Association (FEONA Hong Kong)	Presentation of the following views - <ul style="list-style-type: none"> (a) the initial SMW rate should not be less than \$33 per hour; and (b) the Labour Department ("LD") should adopt appropriate measures and 	

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		strategies to ensure the effective enforcement of the SMW legislation	
010837 - 011217	Hong Kong Buildings Management and Security Workers General Union	Expressed concern over the possibility that some unscrupulous employers might change the employment terms or lay off some of their workers, in order to mitigate the additional SMW-induced staff costs; requested that the Government should ensure that its outsourced service providers would continue to offer their employees wages not lower than the average market rates, although the initial SMW rate recommended by the Provisional Minimum Wage Commission ("PMWC") might be lower than the prevailing average market rates of certain occupations	
011218 - 011424	Cleaning Services Industry Workers Union	Presentation of views (LC Paper No. CB(2)452/10-11(23))	
011425 - 011642	Choi Wan Community Concern Association	Presentation of views (LC Paper No. CB(2)452/10-11(24))	
011643 - 012052	Council of Youth Concern in Social Welfare	Presentation of the following views - (a) the initial SMW rate should not be less than \$33 per hour, so as to ensure that low-paid workers could earn a "living wage" to cover family expenses; and (b) future reviews of the SMW rate should be conducted once a year	
012053 - 012820	Chairman Hon LEE Cheuk-yan Association of Restaurant Managers Factory Canteen Chamber of Commerce	Views and concerns raised by Hon LEE Cheuk-yan - (a) employers should have sufficient time to prepare for the implementation of SMW since the Minimum Wage Ordinance (Cap. 608) ("MWO") was passed by the Legislative Council ("LegCo") on 17 July 2010 and gazetted on 23 July 2010; (b) the implementation of SMW did not entail changes to the existing terms and conditions in the employment contracts entered into with staff, if an employer was already paying his employees wages at a rate not less than the SMW rate. Employers in the low paying sectors would merely be required to raise the wage level of	

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		<p>the relevant employees to the SMW level after the commencement of MWO; and</p> <p>(c) if the initial SMW rate could come into operation on 1 February 2011, the time lag between data collection, determination of the SMW rate and the date of its implementation could be shortened</p> <p>Association of Restaurant Managers and Factory Canteen Chamber of Commerce explained that in the catering sector, most of the employment contracts signed between employers and employees were silent on several important issues, including whether the employees had paid rest days and meal breaks. To cope with the cost impact of SMW, employers might resort to cost cutting by reducing fringe benefits such as the provision of free meals. Employers in the catering sector were fully aware that they needed to discuss the matter with their employees before making any changes to the existing terms and conditions in the employment contracts. Time was therefore required for employers in the catering sector to prepare for the implementation of SMW</p>	
<p>012821 - 014150</p>	<p>Hon Ronny TONG Hong Kong Confederation of Trade Unions Neighbourhood and Workers Service Centre Association of Restaurant Managers Hon Audrey EU Factory Canteen Chamber of Commerce Admin</p>	<p>Whether employees had difficulties in adapting to the SMW policy; whether there was sufficient time for employers to prepare for the implementation of SMW</p> <p>Impact, if any, of the implementation of SMW on employment contracts in the catering sector</p> <p>Response of the Administration -</p> <p>(a) changes to the terms in a contract of employment should be subject to the mutual agreement between the employer and the employee concerned; and</p> <p>(b) under the Employment Ordinance (Cap. 57) ("EO"), there was protection against unilateral variation of employment terms and conditions by employers</p>	

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014151 - 014740	Hon WONG Kwok-hing Admin	<p>Requested that the Administration should ensure that employees of Government outsourced service contractors would continue to receive wages not lower than the average market rate for the relevant industry/occupation published in the latest Quarterly Report of Wages and Payroll Statistics issued by the Census and Statistics Department after MWO came into operation, although the initial SMW rate recommended by PMWC might be lower than the prevailing average market rates of certain occupations</p> <p>The Administration responded that SMW would cover workers employed under Government outsourced service contracts and it would study the impact of MWO. The Administration hoped to revert to the Panel on Manpower on the outcome of its study in the first quarter of 2011</p>	
014741 - 015604	Hon Tommy CHEUNG Chairman Factory Canteen Chamber of Commerce	The impact of the implementation of SMW on employment contracts in the catering sector; whether there should be a lower SMW rate for apprentices or young people aged below 21 with less or even no working experience; whether there were other alternatives than specifying a lower SMW rate for inexperienced employees, such as the provision of wage subsidies	
015605 - 020139	Hon LI Fung-ying Admin Chairman	The possibility of advancing the review on the initial SMW rate; circumstances to activate the review mechanism; measures to complement the implementation of SMW; publicity and promotional activities to educate employers and employees of their respective obligations and entitlements under the SMW regime	
020140 - 020530	Dr Hon PAN Pey-chyou Admin	<p>The actual timeline for the statutory Minimum Wage Commission ("MWC") to complete its review on the initial SMW rate; when the next SMW rate would be recommended and brought into effect; the possibility of shortening the review interval, so as to address the time lag between data collection/analyses, future reviews of the SMW rate and its implementation</p> <p>Response of the Administration -</p> <p>(a) it had been specified in MWO that the SMW rate should be reviewed at least</p>	

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		<p>once every two years; and</p> <p>(b) with the provisions on MWC coming into effect in mid-November 2010, MWC should complete the review of the initial SMW rate and make a report on its recommendation about the amount of the prescribed minimum hourly wage rate by mid-November 2012</p>	
020531 - 021215	Hon LEUNG Yiu-chung Economic Synergy Neighbourhood and Workers Service Centre Admin	<p>The extent to which the implementation of SMW would impact on workers; whether employers might resort to cost cutting by reducing working hours and/or fringe benefits</p> <p>Response of the Administration -</p> <p>(a) according to the stakeholders' views mentioned in the Report of PMWC, employers' reaction/adjustments to SMW could take the form of lay-offs and reduction in working hours and/or fringe benefits;</p> <p>(b) the pass-through of additional wage costs to prices would very much depend on the various concerned parties' adjustment process and interactions, as well as the prevailing economic and labour market conditions; and</p> <p>(c) EO applied to every employee engaged under a contract of employment, with a few exceptions, by virtue of section 4. Irrespective of their hours of work, all employees, including employees who were not employed under a continuous contract, were entitled to certain rights and benefits under EO such as payment of wages and protection against anti-union discrimination</p>	
021216 - 021832	Hon IP Wai-ming Admin Chairman	<p>The possibility of advancing the review on the initial SMW rate; the effective enforcement by LD against possible MWO breaches; adequacy of manpower in LD, including Labour Inspectors, for enforcement of MWO</p> <p>Response of the Administration -</p>	

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		<p>(a) owing to the lack of experience and empirical data, the actual impact of SMW could only be identified and assessed over a longer period of time through dedicated studies after the implementation of SMW;</p> <p>(b) although it had been specified in MWO that the SMW rate should be reviewed at least once in every two years, in line with the evidence-based approach, the situation would be monitored with a view to conducting a review of the SMW rate at an appropriate time;</p> <p>(c) the Administration attached great importance to the implementation of MWO and would adopt appropriate measures and strategies to ensure its effective enforcement; and</p> <p>(d) resource requirements for implementing MWO would be handled according to the established resource allocation mechanism</p>	
021833 - 022330	Chairman Admin	Additional labour costs in relation to statutory entitlements of employees; the impact of SMW on labour costs for businesses, having regard to the amount of contributions from employers to the mandatory provident fund, long service payments and other statutory entitlements of employees which were all calculated with reference to the wage levels; employment protection for employees against dismissal by employers who intended to evade their liabilities under EO	
022331 - 022845	Hon LEUNG Kwok-hung Chairman	Expressed dissatisfaction that live-in domestic workers, local or foreign, were exempted from the SMW regime	
022846 - 023452	Chairman Hon Ronny TONG Admin	Whether the newly enacted MWO required employers to change the prevailing terms and conditions of employment contracts entered into with staff; the Administration explained the measures to facilitate employers and employees to understand MWO, including the drawing up of industry-based guidelines on implementation of SMW; measures to prevent labour disputes in future and to	

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		enable employers and employees to understand how hours worked would be counted for determining whether the remuneration to an employee met the SMW requirement	
023453 - 024310	Hon Tommy CHEUNG Hong Kong Federation of Restaurants & Related Trades	The actual timing and frequency of future reviews of the SMW rate; findings of the survey conducted by Hong Kong Federation of Restaurants & Related Trades in 2009 on the impact of SMW and wage level in the catering sector; unique operating characteristics of enterprises in the catering sector	
024311 - 025040	Hon WONG Kwok-hing Admin HKFTU	Whether the Administration would consider the suggestion put forward by HKFTU to raise the monthly monetary cap on keeping records of hours worked from \$11,500 to \$20,000 The Administration responded that the monetary cap of \$11,500 would strike a reasonable balance between the need for effective enforcement of MWO and to minimize the administrative burden of employers; the monetary cap itself did not affect an employee's entitlement to receive wages not less than the SMW rate	
025041 - 030205	Hon LEUNG Yiu-chung Admin Hon LEUNG Kwok-hung	Protection of the rights and benefits of employees under EO; whether employers had the authority to change the terms in the employment contracts unilaterally and the possible consequences of doing so The Administration explained the protection for employees under EO	
030206 - 030725	Hon WONG Sing-chi Admin	Time required for employers to prepare for the implementation of MWO; adequacy of manpower in LD for enforcement of MWO; measures and strategies adopted by the Administration to ensure the effective enforcement of the legislation	
030726 - 031534	Hon Audrey EU Chairman Admin ALA6 Clerk	Request for information on LD's public education and publicity efforts to enhance employers' and employees' understanding of their respective obligations and entitlements under MWO LegCo's power to amend the subsidiary legislation under the scrutiny of the	Admin to provide the requested information (paragraph 3 of the minutes refers)

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		<p>Subcommittee, in accordance with section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) subject to section 16(4) of MWO</p> <p>Invitation of public views on the subsidiary legislation in line with the usual practice by announcing an invitation for views on the LegCo website</p>	
031535 - 032040	Hon LEUNG Kwok-hung	The possible impact of SMW on the employment opportunities of persons with disabilities whose productivity was impaired by their disabilities; measures to assist persons with disabilities; whether the Administration would consider extending the SMW protection to cover live-in domestic workers, local or foreign; the possibility of shortening the review interval to "once a year"	
032041 - 032929	Admin	<p>Consolidated response to views/suggestions expressed by members and deputations -</p> <ul style="list-style-type: none"> (a) the recommended initial SMW rate at \$28 per hour; (b) the proposed date for commencement of MWO and the initial SMW rate; (c) the review interval of "at least once in every two years" under MWO; (d) the specification of \$11,500 as the monthly monetary cap on keeping records of hours worked; (e) the application of SMW to persons with disabilities and the special arrangements to be put in place; (f) work in progress to prepare for the implementation of SMW; and (g) basket of indicators that had been taken into account by PMWC 	
032930 - 033010	Chairman	Date of next meeting	