

立法會
Legislative Council

LC Paper No. CB(2)2477/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/SS/3/10

Subcommittee on Minimum Wage (Criteria for Approved Assessors)
Notice and Minimum Wage (Assessment Methods) Notice

Minutes of meeting
held on Thursday, 27 January 2011, at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Cyd HO Sau-lan
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon IP Kwok-him, GBS, JP

Members absent : Hon LI Fung-ying, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon IP Wai-ming, MH
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man

Public Officers attending : Item I

Miss Mabel LI Po-yi
Assistant Commissioner for Labour (Development)

Mr Charles HUI Pak-kwan
Chief Labour Officer (Statutory Minimum Wage)
Labour Department

Miss Cindy YIM Lai-kwan
Senior Labour Officer (Statutory Minimum Wage)
Labour Department

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

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

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

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Ms Alice LEUNG
Senior Council Secretary (2) 2

Ms Camy YOONG
Clerical Assistant (2) 1

I. Meeting with the Administration

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

2. The Subcommittee requested the Administration to -
 - (a) provide information on the procedures for withdrawing approval granted to an approved assessor;
 - (b) provide a list of prospective recognized organizations that provided vocational rehabilitation or other services in relation to the employment of persons with disabilities and were eligible for recommending qualified vocational rehabilitation practitioners to become approved assessors; and

- (c) provide the administrative guidelines for approved assessors and the certificate of assessment on the degree of productivity of persons with disabilities at the meeting scheduled for 14 February 2011.

II. Date of next meeting

- 3. The Subcommittee noted that the next meeting would be held on 28 January 2011 from 10:45 am to 12:45 pm to receive views from deputations on the two pieces of subsidiary legislation under scrutiny.
- 4. There being no other business, the meeting ended at 12:29 pm.

Council Business Division 2
Legislative Council Secretariat
4 August 2011

**Proceedings of meeting of the
Subcommittee on Minimum Wage (Criteria for Approved Assessors) Notice and
Minimum Wage (Assessment Methods) Notice
held on Thursday, 27 January 2011, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 001426	Chairman Admin	Opening remarks Briefing by the Administration on its response to issues raised at the Subcommittee meeting on 21 January 2011 (LC Paper No. CB(2)909/10-11(01))	
001427 - 002139	Hon Cyd HO Admin	<p>Enquired about the duty of approved assessors; and whether they were regarded as employees of the Government</p> <p>Considered that an appeal mechanism should be put in place</p> <p>Response of the Administration -</p> <p>(a) in making an assessment under the Minimum Wage Ordinance ("MWO"), approved assessor was neither a servant nor an agent of the Government;</p> <p>(b) details of the general duty of approved assessors and operational procedures of the productivity assessment would be set out in the administrative guidelines for approved assessors;</p> <p>(c) as provided in the Minimum Wage (Assessment Methods) Notice (L.N. 2), an approved assessor was duty bound to, among others, ensure that no conflict would arise between his duties involved in conducting the assessment and his personal interests;</p> <p>(d) the Administration would review the special arrangement for persons with disabilities under MWO, including whether there was a need for an appeal mechanism, within two years after the implementation of the statutory minimum wage ("SMW"); and</p> <p>(e) the Labour Department ("LD") might withdraw the approval granted to an approved assessor if he was considered unable or unfit to carry out the duties of</p>	

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		approved assessor owing to poor performance or other justifiable cause	
002140 - 003431	Hon LEE Cheuk-yan Admin	<p>Considered that the requirement for a vocational rehabilitation practitioner to obtain a recommendation from a recognized organization should be abolished; if not, relevant trade unions should be allowed to make recommendations for eligible vocational rehabilitation practitioners to become approved assessors</p> <p>Enquired whether approved assessors would be required to provide records with relevant details such as the time spent on the assessment and methods in conducting the assessment to LD so that LD could monitor their performance</p> <p>The Administration explained the criteria for approved assessors, the requirement for a vocational rehabilitation practitioner to obtain a recommendation from a recognized person/organization, and monitoring of the assessment mechanism. The Administration also gave a brief outline on the contents of the administrative guidelines and the training to be arranged by LD for approved assessors.</p>	
003432 - 003750	Hon Cyd HO Chairman	Discussed on the way forward pending further information on the administrative guidelines for approved assessors to be provided by the Administration	
003751 - 004105	Hon LEE Cheuk-yan Admin	<p>Urged the Administration to widely publicize the assessment mechanism for persons with disabilities under the SMW regime, in particular, the right of persons with disabilities to invoke the assessment</p> <p>The Administration took note of Hon LEE Cheuk-yan's views</p>	
004106 - 004242	Chairman Admin	The Administration responded to the Chairman's enquiry that approved assessors were not required to pay any registration/renewal fees	
004243 - 004936	Hon Cyd HO Admin	Sought the Administration's explanation for considering it not appropriate to list in the Minimum Wage (Criteria for Approved Assessors) Notice (L.N.1) the names of the recognized organizations	Admin to provide the requested information (paragraph 2(a))

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		<p>The Administration explained that it was to accommodate the need, if any, for updating the list of recognized persons/organizations from time to time in the light of operational experience and to avoid straitjacketing the timely recruitment of approved assessors</p> <p>Requested the Administration to provide information on the procedures for withdrawing approval granted to an approved assessor</p>	<p>of the minutes refers)</p>
004937 - 005617	Hon LEE Cheuk-yan ALA3 Admin	<p>Reiterated his earlier view that trade unions should also be allowed to make recommendations for eligible vocational rehabilitation practitioners to become approved assessors</p> <p>Indicated that he might consider proposing an amendment to the effect that trade unions were also allowed to make recommendations</p> <p>Requested the Administration to provide a list of prospective recognized organizations</p> <p>ALA3 referred members to the Administration's response to the questions relating to section 2(2) of L.N.1 which conferred a power on the Commissioner for Labour ("the Commissioner") to recognize any person as a recognized person for purposes of section 2(1)(d) that he raised in his letter to the Administration dated 7 January 2011 (LC Paper No. CB(2)868/10-11(03))</p>	<p>Admin to provide the requested information (paragraph 2(b) of the minutes refers)</p>
005618 - 005915	Hon Cyd HO ALA3	<p>On Hon Cyd HO's enquiry, ALA3 referred members to the Administration's response to his letter dated 7 January 2011 on the reason for using the expression "persons with a disability" in L.N.1 and discussed the ordinary meaning of "disability" which was not defined in the Notice</p>	
005916 - 010211	Hon CHEUNG Kwok-che Admin	<p>Urged the Administration to consider including the requirement for an approved assessor to advise on the provision of aiding equipment or facilities by the employer to the person with disabilities in the assessment</p> <p>The Administration took note of Hon CHEUNG Kwok-che's view</p>	

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010212 - 011109	Chairman Admin	Section-by-section examination of L.N.1 Briefing by the Administration on the Notice	
011110 - 011715	Hon CHEUNG Kwok-che Admin ALA3	<p>Enquired whether trade unions would be regarded as "recognized persons"; part-time work experience would be reckoned in calculating the 5-year aggregate experience required for vocational rehabilitation practitioners</p> <p>The Administration explained that recognized persons were those persons/ organizations providing vocational rehabilitation or other services in relation to the employment of persons with a disability and recognized by the Commissioner in relation to the experience and recommendation requirements for the vocational rehabilitation practitioner category of approved assessors. Experience gained on a part-time or full-time basis would be reckoned in the same manner in calculating the 5-year aggregate experience required by section 2(1)(d)(i) and section 4(b)</p> <p>Indicated that he might consider proposing an amendment to the effect that trade unions were also recognized organizations that could make recommendations for the vocational rehabilitation practitioner category of approved assessors</p>	
011716 - 011956	Chairman Admin	Section-by-section examination of L.N. 2 Briefing by the Administration on sections 1 to 4 of L.N.2	
011957 - 013120	Hon CHEUNG Kwok-che Admin	<p>Examination of section 4(1)(b) of L.N.2</p> <p>Hon CHEUNG remained of the view that it should spell out clearly the requirement for provision of advice on aiding equipment and facilities by approved assessor in the assessment</p> <p>The Administration responded that it would highlight in the administrative guidelines for approved assessors that an assessor should, if appropriate, make suggestion on the aiding equipment to be provided by the employer to facilitate the person with disabilities to demonstrate his full potential in the productivity assessment</p>	

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013121 - 013425	Hon Cyd HO Admin	Urged the Administration to expedite the drafting of the administrative guidelines for approved assessors and requested it to provide the guidelines at the meeting scheduled for 14 February 2011	The Admin to provide the requested information (paragraph 2(c) of the minutes refers)
013426 - 013654	Chairman Admin	Examination of section 5 of L.N.2	
013655 - 013713	Hon Cyd HO Chairman Admin	The Administration was requested to provide the certificate of assessment on the degree of productivity of persons with disabilities	The Admin to provide the requested information (paragraph 2(c) of the minutes refers)
013714 - 014117	Chairman ALA3	<p>The Chairman informed members of the meeting arrangement on 28 February 2011</p> <p>ALA3 drew members' attention to the relevant empowering provisions in section 17(1) of the Minimum Wage Ordinance (Cap. 608) ("the principal Ordinance") which empowered the Commissioner to amend Schedule 1 or 2 to the principal Ordinance, and sections 1(2), 1(3) and 6(5) of Schedule 2 to the principal Ordinance which empowered the Commissioner to issue L.N.1 and L.N.2. ALA3 advised that while members could propose an amendment to L.N.1 to the effect that a recommendation from a recognized person/organization was not required, proposed amendments such as those relating to wage subsidy and appeal mechanism which were outside the scope of the empowering sections in Schedule 2 would not be possible unless Schedule 2 to the principal Ordinance was first amended by the Commissioner by exercising the power under section 17(1) of the principal Ordinance</p>	
014118 - 014328	Hon Cyd HO Chairman ALA3 Admin	<p>The Chairman advised that the Subcommittee would be required to give a written report to the House Committee on 18 February 2011</p> <p>In response to Hon Cyd HO's enquiry, ALA3 advised that the deadline for giving notice of amending/repealing the Notices would be 23 February 2011</p>	

Time marker	Speaker	Subject(s)	Action Required
014329 - 014358	Chairman	Date of next meeting	

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