

For discussion on
24 May 2004

**Legislative Council
Panel on Administration of Justice and Legal Services
and Panel on Manpower**

**Measures to improve referral of unsettled cases of labour disputes
and claims from the Labour Department to the Labour Tribunal**

Introduction

This paper briefs Members on the measures to improve the mechanism adopted by the Labour Department (LD) in referring unsettled cases of labour disputes and claims to the Labour Tribunal (LT). It also provides LD's preliminary comments on "The Operation of Labour Tribunal and Other Mechanisms for Resolving Labour Disputes in Hong Kong and Selected Places" prepared by the Legislative Council Secretariat.

Referral of unsettled cases to the LT

2. The Labour Relations Division (LRD) of the LD, which operates 10 branch offices throughout the territory, provides conciliation service to help employers and employees in the non-government sector settle their labour disputes and claims. If the case cannot be settled by conciliation, the LRD will refer the party concerned to seek adjudication at the Minor Employment Claims Adjudication Board (MECAB) (for cases involving not more than 10 claimants and with claims not exceeding \$8,000 per claimant) or the LT (for cases involving more than 10 claimants or with claims exceeding \$8,000 per claimant).

3. The LRD adopts client-friendly procedures to assist claimants who wish to pursue their unsettled cases at the LT. They do not have to complete any further forms at the LRD for the purpose of referral. Rather, the LRD will, at its end, provide the LT with all the referral papers which include the documents provided by the parties during the process of conciliation. The LRD will also provide the claimant with an information leaflet on the procedure of filing claim at the LT. The claimant simply needs to call the LT's Telephone Appointment Booking

System to make an appointment should he decide to pursue the case at LT. These procedures apply equally to unsettled cases referred to the MECAB.

4. In 2003, the LRD handled a total of 34 116 cases which represented a decrease of 3% over the historic high figure of 35 254 cases in 2002. In the first quarter of 2004, the number of cases handled was 7 725, a decrease of 8% over the same period of 2003. As for settlement rate of conciliation at the LRD, it went up from 63.2% in 2002 to 65.1% in 2003, an all-time high after the Asian financial crisis in 1997. The figure rose further to 67.1% in the first quarter of 2004.

5. Correspondingly, the number of unsettled cases referred to the LT has declined. In 2003, the LRD referred 10 103 unsettled cases to the LT, a decrease of 9% over 11 132 in 2002. For the first quarter of 2004, the figure stood at 2 119, a decrease of 19% over 2 601 for the same period in 2003.

Improvement Measures

6. The LD is committed to adopting efficient and user-friendly measures in referring unsettled cases to the LT for adjudication. Towards this end, we have, in collaboration with the LT, made constant improvement to the referral mechanism in recent years. Examples are:

- The information leaflet on the procedure of filing claim at the LT which is distributed to the claimant at the LRD has been regularly updated to enable the claimant to have a good understanding of the relevant procedure and make preparation for filing claim at the LT.
- As the claimant has to furnish information on his Mandatory Provident Fund (MPF) accrued benefits and contributions to the LT, the LRD has produced a standard letter for the claimant to request the information from his MPF trustee so that he will have the information ready before his appointment at the LT.
- Booklets on the LT are made available to the claimant and the defendant if they want prior information about the operation of the LT and the post-filing procedures.

7. Regarding standardisation of forms in use by the LRD and the LT, the claim form currently completed by the claimant for the purpose of conciliation at the LRD has been designed to be simple and user-friendly and only information essential and indispensable for conciliation is required. Nevertheless, we have explored with the Judiciary scope for further improvement. Specifically, we have agreed to standardise the claim form used by the claimants in the LRD and the LT. This would obviate the need for them to repeat to the LT information that they have already given at the LRD. The standardised form will be put into use shortly.

Preliminary comments on the parts relating to the LD in the Research Report

Success rate of conciliation

8. The Research Report states that New Zealand has the highest success rate of settling disputes through conciliation while the success rate of Hong Kong is lower than that of New Zealand and higher than those of the United Kingdom and Taiwan.¹

9. It is noteworthy that the settlement rate of 68.5% in New Zealand in 2002-03, as shown in the Research Report, included: (a) cases which were settled (45.4%); and (b) cases which were partially settled, settled by the parties concerned themselves, or decided by the mediator (23.2%).² However, Hong Kong's settlement rate of 63.2% in 2002 only covered cases which were fully settled by the LRD. Our rate does not reckon cases partially settled or settled by the parties themselves. Therefore, if the same definition of settlement rate had been used for comparison, Hong Kong's settlement rate of conciliation should have been higher than that of New Zealand.

10. Our settlement rate of conciliation at LRD has been improving in recent years. In 2003, Hong Kong achieved a settlement rate of 65.1%, an all-time high since the Asian financial crisis in 1997. The settlement rate rose further to 67.1% in the first quarter of 2004. This reflects the effectiveness of LRD's dispute-resolution mechanism.

¹ Para. 2 of Executive Summary, and paras. 6.2.8 and 6.2.9 of Chapter 6 (p.61).

² Para. 4.9.3 of Chapter 4 (p.44) and the box on "Effectiveness of conciliation for cases" (p.76) under the column of New Zealand at Appendix I.

Time needed to complete conciliation

11. The Research Report states that statistics are not available on the time needed to complete the conciliation process in Hong Kong.³ Our performance pledge is to arrange a conciliation meeting within five weeks from the date a claim is lodged at the LRD. At present, the waiting time for conciliation meeting for claims is in the region of three to five weeks, depending on individual LRD offices. As far as conciliation at the LRD is concerned, we wish to point out that most of our cases, including settled cases concluded at the LRD and unsettled cases referred to the LT, normally require only one conciliation meeting. As for labour disputes which involve more than 20 workers, our pledge is to contact the parties concerned for conciliation arrangement immediately upon notification.

Textual comments

12. Our textual comments on the parts relating to the LD in the Research Report are set out at the Appendix.

Labour Department
Economic Development and Labour Bureau
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³ Para. 3 of Executive Summary, para. 6.2.11 of Chapter 6 (p.62), and the boxes on “Any fixed period of conciliation?” (p.70) and “Time needed to complete conciliation” (p.77) under the column of Hong Kong at Appendix I.

Appendix

Textual comments on the parts relating to the Labour Department in the Research Report prepared by the Research and Library Services Division of the Legislative Council Secretariat on “The Operation of Labour Tribunal and Other Mechanisms for Resolving Labour Disputes in Hong Kong and Selected Places”

<u>Part of the Research Report</u>	<u>Textual comments</u>	<u>Remarks</u>
Chapter 2 – Hong Kong		
Para. 2.1.2 (p.3)	“There were 622 employee unions with more than <i>declared membership of</i> 676 534 members and the trade union participation rate ⁴ was around 22% as at 31 December 2002 ⁵ . Trade unions do not have the <i>statutory</i> right to engage employers in <i>compulsory</i> collective bargaining.”	<ul style="list-style-type: none">• The figure of 676 534 was the total declared membership furnished by the 622 employee unions to the Registrar of Trade Unions.• In Hong Kong, there is no legislation to compel employers, employees and trade unions to undertake compulsory collective bargaining. However, they are free to practise voluntary collective bargaining and enter into collective agreements.
Para. 2.1.3 (p.3)	“Trade unions have to register under the Trade Unions Ordinance. The total number of registered trade unions, including the <i>employee unions</i> , employers’ associations and mixed organizations of employees and employers, was 666 as at 31 December 2002.”	<ul style="list-style-type: none">• The total of 666 registered trade unions included employee unions as well as employers’ associations and mixed organizations of employees and employers.
Para. 2.2.5 (p.4)	“ After the High Court has made a bankruptcy or	<ul style="list-style-type: none">• Employees whose employer has

<u>Part of the Research Report</u>	<u>Textual comments</u>	<u>Remarks</u>
	<p>winding up order against the defendant <i>At the same time</i>, the claimant can, through LRD, apply for ex-gratia payment from the Protection of Wages on Insolvency Fund (POWOI Fund).”</p>	<p>become insolvent and who are owed wages, wages in lieu of notice and/or severance payment may apply for ex-gratia payment from the Protection of Wages on Insolvency Fund. Subject to verification of applications, ex-gratia payment may be made to eligible employees on the presentation of a bankruptcy/winding-up petition (not order) against the employer.</p>
Footnote 8 (p.4)	<p>“If no settlement is reached, the Commissioner may submit a report to the Chief Executive in Council who may, with the consent of the parties involved, refer the trade dispute to arbitration <i>with the consent of the parties involved</i> or to a board of inquiry, or take other necessary actions.”</p>	<ul style="list-style-type: none"> ● Under section 11 of the Labour Relations Ordinance, referral of a trade dispute to arbitration requires the consent of the parties involved, but not in the case of referral to a board of inquiry.
Para. 2.2.6 (p.5)	<p>“If one of the parties in dispute declines to make use of the conciliation service or both parties fail to reach a settlement, the Conciliation Officer may, at the request of either of the parties <i>party</i> concerned, refer the party to seek adjudication at LT or MECAB. Minor claims not exceeding HK\$8,000 or <i>and</i> involving not more than 10 persons are referred to MECAB.”</p>	<ul style="list-style-type: none"> ● Referral of an unsettled case to the Labour Tribunal/MECAB is made at the request of the party making the claim and seeking adjudication. ● The jurisdiction of MECAB should be claims not exceeding HK\$8,000 and involving not more than 10 persons.

<u>Part of the Research Report</u>	<u>Textual comments</u>	<u>Remarks</u>
Para. 2.8.4 (p.11)	<p>“If the judgment debtor has become insolvent, the judgment creditor may file a bankruptcy petition or a winding up petition at the High Court and seek assistance from the Legal Aid Department. <i>He/She may also apply for ex-gratia payment from the POWOI Fund.</i> After the High Court has made a bankruptcy/ winding up order against the judgment debtor, the claimant may register himself/herself as one of the creditors of the judgment debtor in the Official Receiver’s Office and apply for ex-gratia payment met by the POWOI Fund.”</p>	<ul style="list-style-type: none"> • Employees whose employer has become insolvent and who are owed wages, wages in lieu of notice and/or severance payment may apply for ex-gratia payment from the Protection of Wages on Insolvency Fund. Subject to verification of applications, ex-gratia payment may be made to eligible employees on the presentation of a bankruptcy/ winding-up petition (not order) against the employer.
Footnote 24 (p.11)	<p>“Section 16 of the Protection of Wages on Insolvency Fund Ordinance (Cap. 380).”</p>	-
Appendix I		
Box on “Conciliation by a statutory body or the Executive” under the column of Hong Kong (p.67)	<p>Employment <u>Labour</u> Relations Division of the Labour Department”</p>	-