Review of the Labour Tribunal and related issues

Summary of views of deputations/members of Panels and the Administration's response

(Part I) Recommendations in the Report of the Working Party on the Review of the Labour Tribunal			
Recommendation		**Views/suggestions**	**Administration's response/ progress of implementation**
1.	The Schedule to the Labour Tribunal Ordinance (LTO) should be amended to put it beyond doubt that the Labour Tribunal (LT) has jurisdiction to deal with both liquidated and unliquidated claims.	It is necessary to assess the implications of the Working Party's recommendation to amend the Schedule to the LTO. The amendment may lead to increase in the number of counter-claims made by employers involving complex issues of law being filed in LT, and hence cause delays in the disposal of the more simple claims made by employees.	Two different High Court judgments on the scope of LT's jurisdiction exist. The Presiding Officers (POs) of LT usually follow the line that a claim for "a sum of money" referred to in Schedule 1 of LTO could extend to damages unliquidated in law but quantified in practice. The proposed amendment is merely to clarify, for avoidance of doubt, that LT has jurisdiction to deal with both liquidated and unliquidated claims. The amendment would not change the original scope of jurisdiction. Moreover, the clarification would ensure that counter-claims made by the employers which might otherwise be referred to other courts would be dealt with by LT. This would benefit the parties as LT can dispose of cases more speedily than other courts.

2.	The possibility of amending the LTO to extend the jurisdiction of LT to cover claims brought by the Mandatory Provident Fund Authority (MPFA) under section 18(3) of the Mandatory Provident Fund Schemes Ordinance (MPFSO) should be explored with all interested parties including the MPFA and the Labour Department (LD).	The legislative amendment should be introduced as soon as possible.	Discussions with MPFA on the legislative amendment are in progress. The timetable for finalizing the amendment has yet to be worked out.
3.	The possibility of amending the LTO and other relevant legislation to enable LT to include as part of an award, the employee's contribution under the MPFSO, and to order the amount to be paid out of the Tribunal to MPFA as if MPFA is a party to the claim before the Tribunal should be explored with all interested parties including the MPFA and LD.	The legislative amendment should be introduced as soon as possible.	Discussions with MPFA on the legislative amendment are in progress. The timetable for finalizing the amendment has yet to be worked out.
4.	Attempts at settlement should continue to be undertaken in the Tribunal: Where the parties wish, the Tribunal should assist the parties to resolve their disputes by settlement.	Where the Labour Relations Division (LRD) of LD has attempted conciliation, further attempt at settlement at the call-over hearing in LT would delay the disposal of the case. The role of LT should be confined to adjudication instead of conciliation.	LT is required under LTO to attempt settlement of a case prior to adjudication. Attempts at settlement are beneficial to both parties.
5.	After a claim is filed in the Tribunal, except in those cases where the parties had not previously sought the assistance of the LRD, there should only be one attempt by the Tribunal at settlement at the call-over hearing.	Regardless of whether LRD has attempted conciliation, there should not be more than one attempt at settlement at the call-over hearing conducted by the PO.	The Working Party's recommendation represented a desirable and balanced approach. The views of the Working Party are set out in *paragraphs 5.40 to 5.44* in its Report. The recommendation is implemented.

6.	Where the LRD has attempted conciliation before the claim is brought in the Tribunal, the Tribunal Officer (TO) dealing with inquiry of claims will not attempt settlement with the parties.	—	The recommendation is implemented.
7.	Where the LRD has not attempted conciliation before the claim is brought in the Tribunal, the Settlement TO will assist the parties to attempt settlement if the parties wish to do so before the call-over hearing.	—	The recommendation is implemented.
8.	At the call-over hearing, the PO would explain the option of settlement and where the parties wish, assist them to reach settlement or in appropriate cases, refer them to the Settlement TO for assistance.	—	The recommendation is implemented.
9.	A TO who is involved in the inquiry of the claim should not be involved in assisting the PO in settling a claim.	—	The recommendation is implemented.
10.	A PO who has attempted settlement at the call-over hearing of a claim should not preside over the trial of it.	—	The recommendation is implemented.
11.	The appointment system should be maintained.	—	No action is required.
12.	The Tribunal should keep under constant review the target waiting time for the appointment system to see if any revision should be made having regard to all relevant factors.	—	The recommendation is implemented. The waiting time is currently about five to six days.

13.	Measures enabling detailed background information to be supplied by the parties to the LRD and to be forwarded to the Tribunal should be implemented. The New Form and the referral arrangement under discussion between the LD and the Judiciary should be put in place as soon as practicable.	The new claim form to contain background information required by LRD and LT should be further revised to facilitate a claimant to supply all the relevant information at the stage of LRD so that it would not be necessary for him to provide further information and complete a "Statement by Claimant" at LT.	As the majority (more than 60%) of the cases handled by LRD were successfully settled and needed not be referred to LT, it would be a waste of time and resources if claimants were required to provide information or give statements which might not be used by LRD. The Working Party's recommendation is implemented.
14.	Pamphlets, leaflets or videos should be produced to give the parties clear guidance on the practice and procedure in the Tribunal, what they are expected to do to prepare for their case and for hearings and what they should know in attending before the PO, in enforcing an award and in lodging an appeal.	—	The recommendation is being pursued.
15.	Section 13(1) of LTO should be amended to provide that a claim shall be fixed for hearing not earlier than 20 days and not later than 45 days from the filing of the claim, unless the parties agree or the PO directs otherwise.	The recommendation is not acceptable, as this represents a retrogressive step in improving the efficiency and efficacy of LT.	The existing time limit (i.e. listing of the first hearing on a date not earlier than 10 days and not later than 30 days from the filing of claim) is unrealistic to enable a claim to be properly prepared for the first hearing. This has led to unnecessary adjournments and delays. The proposed amendment would in practice expedite the adjudication process. Legislative amendment will be introduced to implement the recommendation.
16.	Call-over cases should usually be listed separately in the morning and afternoon sessions. This arrangement should be reviewed on a regular basis.	Listing of call-over hearings should be increased from two separate sessions per day to four separate sessions per day to reduce the waiting time.	The Judiciary would consider the proposal to increase the listing of call-over hearings to four separate sessions per day.

17.	At the conclusion of the interviews with the TO and at the call-over hearing before the PO, a list should be given to the parties setting out: (a) The documents and information that they are required to provide to the Tribunal and the other parties; (b) The time within which they should provide the documents and information; and (c) A warning about the consequences if a party does not comply with the direction for exchange of documents and information.	—	The recommendation is implemented.
18.	The LTO and/or the Labour Tribunal (General) Rules should be amended to enable the PO to impose sanctions in appropriate cases for failure to comply with directions.	—	Legislative amendment will be introduced to implement the recommendation.
19.	The TO should, at the separate interviews with the parties, direct the parties to provide the Tribunal and serve on the other parties copies of all the relevant documents, his own statement and witness statements either before or the latest at the call-over hearing.	—	The recommendation is implemented.

20.	If the TO's direction on disclosure of documents and statements has not been complied with or if further disclosure is called for, the PO at the call-over hearing should give direction for such disclosure.	—	The recommendation is implemented.
21.	The parties should be warned of the consequences of failure to make full disclosure as directed.	—	The recommendation is implemented.
22.	The LTO or the Labour Tribunal (General Rules) should be amended to provide that a party is under a duty not to use the documents and information disclosed by another party in the claim, other than for the purpose of the Tribunal proceedings.	—	Legislative amendment will be introduced to implement the recommendation.
23.	POs should exercise more proactive case management in managing the hearings and the trial, and should move towards greater emphasis on due observance of directions and time limits.	—	The recommendation is implemented.
24.	In general, the parties and the witnesses should be encouraged to adopt their witness statements as evidence at the trial so that they can be taken as read.	—	The recommendation is implemented.

25.	Pre-trial hearings should be reduced. It should be dispensed with in simple claims. For claims that are not simple, one pre-trial hearing should be the norm. Further pre-trial hearings should only be conducted in exceptional cases involving large number of parties and documents or complex issues.	Pre-trial hearings should be avoided as far as possible as they would lengthen the adjudication process.	The purpose of pre-trial hearing is to examine, where necessary, the availability and completeness of evidence to decide whether the case is ready to proceed to trial. The Working Party's recommendation is implemented.
26.	If a trial overruns and has to be part heard, the Tribunal should endeavour to list the resumed hearing on an early date.	—	The recommendation is implemented.
27.	The power of the PO to order security upon adjournment should be extended by legislation to cases where the PO is satisfied that a party is guilty of delaying the process.	—	Legislative amendment will be introduced to implement the recommendation.
28.	The power of the PO to order payment into the Tribunal or to give security upon application for review should be extended by legislation to cases where the PO is satisfied that the application is devoid of merit and/or is made with a view to delaying the process.	—	Legislative amendment will be introduced to implement the recommendation.
29.	The Judiciary Administration should consider how the implementation of the package of Recommendations 4 to 28 above will benefit from the application of information technology and be supported by revised workflow and work practices in the Tribunal Registry.	—	The information systems in LT have been revamped to cope with the streamlined process. The TOs have been reorganised into teams for the purpose of work assignment. The revised arrangements will also promote collaborative efforts among team members and facilitate communication with the POs.

30.	The proposal to cap or limit the costs on appeal to the same kinds of costs as are recoverable in the Tribunal itself should not be introduced.	The high costs of appeal and the possibility of being ordered costs if unsuccessful in appeal cases have deterred many employees from pursuing their claims. The costs on appeal should be capped or limited.	The Working Party considers that there is no compelling justification to support the "Capped Costs" and "No Order as to Costs" proposals. The arguments for and against the proposals and the Working Party's position are detailed in *paragraphs 5.122 to 5.130* in the Working Party's Report.
31.	The proposal of not awarding costs against an unsuccessful party in a Tribunal appeal, except where that party has acted vexatiously, abusively, disruptively or unreasonably, or that the bringing or conducting of the appeal have been misconceived, should not be introduced.		
32.	Rule 12 of the Labour Tribunal (General) Rules should be repealed so that an award of the Tribunal may be registered and enforced within 6 years.	—	Legislative amendment will be introduced to implement the recommendation.
33.	The present practice on the selection and posting of judicial officers to act as POs in the Tribunal that aims at developing and maintaining a pool of POs competent and experienced in dealing with employment disputes in the Tribunal should be continued.	—	No action is required.

34.	Through the Judicial Studies Board, training on local employment conditions and common trade practices, trends and development in employment disputes resolution and employment law, pro-active case management and interpersonal skills should be provided to newly appointed and serving POs.	More intensive training to enhance the mediation and inter-personal skills of both POs and TOs, as well as their knowledge in employment and livelihood matters, should be provided so as to make attempts at settlement more effective and acceptable to the parties.	The Judicial Studies Board and the Judiciary Administration are organising relevant training courses for POs and TOs on a continuous basis. In July 2004, the Judicial Studies Board organised a seminar "From Mediation to Complaint – Sharing of Experience" in which POs (and potential ones) and TOs participated. Six TOs attended a two-day basic mediation course organised by the Hong Kong Baptist University in July 2004. Nine TOs attended an Advanced Training Course in Mediation Practice organised by the Chinese University of Hong Kong from October 2004.
35.	The Judiciary Administrator should be asked to consider introducing training and development programmes for TOs with a view to enhancing their skills in relation to investigation and in conducting settlement discussions.		
36.	The Judiciary Administrator should give consideration to developing tailor-made courses for Registry staff in the Tribunal that meet their specific needs.	—	The recommendation is being pursued on an on-going basis.
37.	LT should be relocated to a separate and purpose-built premises in a convenient location. The old South Kowloon Magistrates Court Building is a possible and suitable location that should be explored.	Relocation of LT should be considered having regard to factors such as convenience to the public and cost-effectiveness.	LT will be relocated to the old South Kowloon Magistrates Court Building which is conveniently located and more spacious. Funding has been obtained and plans are being drawn up to implement the relocation.

(Part II) **Other related issues**	
Views/suggestions	**Administration's response**
1. Role of the Labour Tribunal and the Labour Department in employment dispute resolution	
(a) The mode of operation of LT is moving more and more towards that of a formal court, contrary to the objective of setting up the Tribunal as a quick, cheap, simple and informal forum for resolving employment disputes. An assessment of whether the existing operation of LT is consistent with the original policy intent should be conducted.	—
(b) The Administration should undertake a review with a view to improving the overall employment dispute resolution mechanism, including the mechanism for conciliation and the role of the Minor Employment Claims Adjudication Board of LD.*	—
(c) A one-stop service should be provided by LD to assist employees to initiate proceedings in employer's insolvency cases to recover their legal entitlements and apply for ex-gratia payment from the Protection of Wages on Insolvency Fund.	—

* Given its composition and terms of reference, the Working Party on the Review of the Labour Tribunal focused primarily on the review of the practice and procedure of the Tribunal. It had not endeavoured to embark upon such wider issues as the practice and procedure in handling employment disputes before a claim is filed in the Tribunal including the role of conciliation, and the role of the Minor Employment Claims Adjudication Board in the overall mechanism of employment dispute resolution in Hong Kong (paragraph 1.12 of the Report of the Working Party).

2. Hearings and attempts at settlement	
(a) LT should set a target time limit for the disposal of certain cases.	Imposing a time limit for conclusion of cases by LT would give rise to the perception that the Tribunal is pressurizing the parties to settle. In fact, more than 80% of the cases in 2003 were concluded within three months from filing of the claims.
(b) Subject to certain conditions, e.g. with the consent of the parties concerned, certain cases may be concluded in one trial without an appeal.	—
(c) LT should not persuade the employees to accept terms of settlement which are less favourable than their legal entitlements.	In attempting settlement, the POs and TOs where appropriate, would assist the parties in analysing the issues and making an informed decision as to the best way to pursue their cases.
3. Enforcement of Tribunal awards	
(a) The procedure for claimants to apply for the Bailiff's service should be simplified. The deposit for the use of the service should be paid by the Government and recoverable from the defaulting party with an additional penalty payment. Other costs incurred from execution of awards should also be borne by the defaulting party.	—
(b) An independent review on measures to improve the existing mechanism for enforcement of award of LT should be conducted as soon as possible, instead of deferring the matter to an overall review of enforcement of court judgments generally as suggested by the Working Party (*Paragraph 5.137* of the Report). The Administration may consider the practicality of introducing measures similar to that adopted in New Zealand, where the Employment Court has substantive powers on enforcement of judgments (e.g. power to imprison defaulters for failure to comply with a compliance order, order payment of a fine or to have the person's property sequestered).	The introduction of new measures on enforcement of Tribunal awards involves policy considerations which need to be examined in the light of the possible impact on other non-employment related civil claims.

4. Review and appeal mechanism	
(a) The existing mechanism for the same PO to review the award or order and re-open or re-hear the case should be strengthened and improved. For example, the review and re-hearing could be done by two to three POs, including the most senior PO, of the Tribunal.	—
(b) A system similar to that in the United Kingdom, where there is an Employment Tribunal to adjudicate cases and a separate Employment Appeal Tribunal to handle appeals, may be considered.	—
5. Legal aid for employees	
(a) The Director of Legal Aid (DLA) should have the power to waive the means test on employees applying for legal aid to initiate proceedings for winding up employers who defaulted in the payment of wages and other related entitlements to the employees.	Before May 1997, the Legal Aid Department did not carry out means test on employees referred by LRD to apply for legal aid to take these proceedings as it considered that there would invariably be an employee qualifying for free legal aid among the affected employees. While such arrangement served to expedite the whole matter for the employees, it also caused confusion and misunderstanding as to whether DLA had the statutory power to waive the requirement of a means test. The conduct of means test in such cases resumed since May 1997.
(b) DLA should have the discretionary power to waive the means test for legal aid in respect of employees involved in appeals brought by their employers against the decisions of LT.	—
6. Miscellaneous	
(a) The meaning of "courts" under Article 35 of the Basic Law includes tribunals. Since litigants should have the right to legal representation in courts, the prohibition against legal representation in LT may be seen as a violation of such right.	—

(b) In cases involving claims for wages and statutory entitlements with prima facie evidence to establish the claims, the PO should have the power to order the giving of security by the employer before adjudication, if he is satisfied that the employer is guilty of deliberately withholding the payment.	The proposal is not consistent with the operation of LT as a quick, cheap, simple and informal forum for resolving employment disputes.
(c) TOs should act more proactively in assisting claimants in preparing their cases for trial, obtaining relevant information and documents from the parties and making inspections at places of work to collect evidence where necessary.	—
(d) Some form of protection should be afforded to self-employed people such as small contractors. They should be allowed to pursue claims in LT provided that, for example, the amount of the claim involved does not exceed an upper limit.	—
(e) Written judgments of LT should be provided to the parties to facilitate their consideration of whether or not to appeal. The reasons for verdict should be published on the Judiciary's website for reference of the public.	—
(f) More manpower resources should be provided to LT at different levels.	—
(g) A separate waiting area within the court premises should be provided for the witnesses.	—

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