

立法會
Legislative Council

LC Paper No. CB(2)135/06-07(03)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

Background brief for meeting on 23 October 2006

Enforcement of court judgments in civil cases

Purpose

This paper provides information on the past discussions of Members of the Legislative Council (LegCo) on enforcement of court judgments in civil cases and related issues.

Background

2. In the 2003-2004 session, the Panel on Administration of Justice and Legal Service (AJLS Panel) and the Panel on Manpower held discussions with the Administration, the Judiciary Administration and deputations concerning the operation of the Labour Tribunal at a number of meetings. Major concerns brought to the attention of the two Panels were measures to improve the existing mechanism for enforcement of Tribunal awards and the effectiveness of the existing operation of the Tribunal as a quick, cheap, simple and informal forum for resolving employment disputes.

3. The Panels requested the Judiciary Administration to consider implementing short-term measures to improve the existing operation of the Labour Tribunal and conduct an overall review on the practice and procedure of the Labour Tribunal. In June 2003, the Chief Justice decided to set up an internal Working Party to conduct a review on the operation of the Labour Tribunal.

4. In May 2004, the Panels considered the Research Report on “The Operation of Labour Tribunals and Other Mechanisms for Resolving Labour Disputes in Hong Kong and Selected Places” prepared by the Research and Library Services Division of the LegCo Secretariat. The research covered Hong Kong, the United Kingdom (UK), New Zealand and Taiwan. Members noted that some overseas jurisdictions had

adopted more effective measures in resolving labour disputes and enforcement of court judgments to protect the interests of successful claimants. For example, in UK, on expiry of a fixed period of conciliation (which varied according to the nature of the case) for parties to settle their disputes, the conciliator would decide whether to continue with conciliation, or refer the case to the Employment Tribunal for a hearing. In New Zealand, the Employment Court had 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).

5. The Report of the Working Party on the Review of the Labour Tribunal was published in June 2004. As a working party comprising only members of the Judiciary and guided by its terms of reference, the Working Party had focused primarily on the review of the practice and procedure of the Tribunal. The Working Party did not consider it appropriate to embark upon such wider issues such 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. The two Panels discussed the implementation of the 31 recommendations in the Report and related issues at a number of meetings.

6. The two Panels subsequently agreed in March 2005 that issues relating to measures to improve the existing mechanism for enforcement of Labour Tribunal awards and the overall employment dispute resolution mechanism should more appropriately be taken up by the Panel on Manpower. The AJLS Panel would follow up issues relating to enforcement of judgments in civil cases separately.

Follow up action by AJLS Panel

7. The AJLS Panel was concerned about the effectiveness of the existing mechanism of enforcement of court judgments in civil cases, and considered that an overall review of the enforcement process might be necessary. As any changes or improvements to the existing mechanism would involve policy considerations, the Chairman, on behalf of the AJLS Panel, wrote to the Director of Administration on 11 March 2005 to request the Administration to –

- (a) assess the problems encountered in enforcement of court judgments in civil cases in general, and in labour and matrimonial cases in particular, as well as the extent of such problems;
- (b) provide the number of court judgments for which enforcement proceedings had been initiated in the past three years (with a breakdown in categories), the percentage of judgments which had not been successfully enforced and the reasons for failure to do so; and

- (c) advise whether the Administration intends to implement measures to improve the mechanism of enforcement of court judgments in civil cases in general, and in labour and matrimonial cases in particular; and whether consideration would be given to introducing legislative measures or referral of the matter to the Law Reform Commission for consideration.

8. The Director of Administration provided a reply which was circulated to the Panel vide LC Paper No. CB(2)3092/05-06 on 26 September 2006. At the Panel meeting on 12 October 2006, members agreed that the matter should be discussed at the coming meeting on 23 October 2006.

Council Business Division 2
Legislative Council Secretariat
20 October 2006