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Panel on Administration of Justice and Legal Services

Meeting on 28 January 2008

Background Brief on 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 required 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 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, to order payment of a fine, or to have the person's property sequestered).

5. The Report of the Judiciary's Working Party on the Review of the Labour Tribunal (the Working Party) 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.

6. The two Panels discussed the implementation of the 37 recommendations in the Report which had been accepted by the Chief Justice, and related issues at a number of meetings. The Panels noted that some of the recommended measures had already been implemented by administrative means and some required legislative amendment.

7. The two Panels subsequently agreed in March 2005 that -

- (a) issues relating to measures to improve the existing mechanism for enforcement of Labour Tribunal awards and the overall employment dispute resolution mechanism should be taken up by the Panel on Manpower; and
- (b) issues relating to enforcement of judgments in civil cases should be taken up by the AJLS Panel.

Discussion of the AJLS Panel

8. 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.

9. The Administration's response was discussed by the AJLS Panel at its meeting on 23 October 2006. The main issues discussed are summarized below.

Labour and matrimonial cases

10. Regarding labour and matrimonial cases, the Administration advised that -

- (a) issues relating to the enforcement of awards of the Labour Tribunal were discussed by the Panel on Manpower at its meeting on 16 February 2006. The Administration briefed the Panel on the problems encountered in enforcement, statistics on awards enforced, improvements recommended by the Working Party, and additional recommendations made by the Judiciary; and
- (b) appropriate measures had been introduced to address problems in the enforcement of maintenance orders in matrimonial cases, such as amendments to the law and improvements to the court procedures and administrative measures affecting maintenance payees.

Overall review of the mechanism for enforcement of civil judgments

11. A member pointed out that as the recommendations made by the Working Party were only applicable to Labour Tribunal awards, the Administration should conduct an overall review of the mechanism for enforcement of court judgments in civil cases. Measures to improve enforcement of court judgments in civil cases could be achieved by amending laws in specific policy areas such as matrimonial and labour laws, or amending statutory enforcement methods for money judgment in civil cases as provided in the High Court Ordinance and the District Court Ordinance.

12. The Administration explained that the general enforcement methods included writ of *fieri facias*, garnishee order, charging order, appointment of a receiver in equitable execution, and order of imprisonment following oral examination. These general enforcement methods were applicable to money judgments of all types of cases and were commonly adopted by many overseas common law jurisdictions. The statistics available in the Judiciary did not indicate that there was general inadequacy in the enforcement methods. Since Principal Officials were each responsible for specific policy portfolios, where there were problems in enforcement of court judgments in specific areas, it was more appropriate for the relevant bureaux to consider the need to introduce appropriate measures to address specific problems, taking account of policy and resources considerations.

Statistics on enforcement of civil judgments

13. The Administration advised that the Judiciary only kept statistics according to the enforcement methods each of which cut across different areas. It had no information on the number of civil judgments for which enforcement proceedings had been initiated in the past and the number of such judgments which had not been successfully enforced in specific policy areas. Hence, the Administration had no basis to assess the problems encountered in enforcement of civil judgments in specific policy areas, let alone the extent of such problems.

14. The Judiciary Administration advised that it would not be difficult to identify enforcement orders pertaining to matrimonial cases as they would be issued by the Family Court, and those relating to Labour Tribunal awards as the applicants would be required to obtain a certificate from the Labour Tribunal. However, as the High Court and the District Court handled many kinds of cases, it would be difficult to classify the enforcement orders issued by them according to the nature of cases.

15. In response to the request of the Panel, the Administration and the Judiciary Administration agreed to revert to the Panel on available statistics relating to enforcement of civil judgments.

Views of the legal professional bodies

16. To facilitate the AJLS Panel to further pursue the matter with the Administration, members agreed that the legal professional bodies be requested to provide information on the following -

- (a) problems encountered in enforcement of civil judgments in general or in specific areas, preferably substantiated by statistics of unsuccessful enforcement cases; and
- (b) whether, and if so, what measures should be proposed to improve the mechanism of enforcement of civil judgments in general or in specific policy areas.

17. The responses of the Law Society's Civil Litigation Committee and Family Law Committee and a solicitor's firm were issued to the Panel vide LC Paper No CB(2)1100/06-07 on 14 February 2007 and the Administration for comments.

Latest development

18. The Administration and the Judiciary Administration will revert to the Panel on the relevant issues at the meeting on 28 January 2008.

Relevant papers

19. A list of relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix**.

Council Business Division 2
Legislative Council Secretariat
24 January 2008

Enforcement of Court Judgments in Civil Cases

Relevant papers

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion Passed</u>
<p>Joint Panel on Administration of Justice and Legal Services and Panel on Manpower</p>	<p>24 May 2004</p>	<p>Research Report on "The Operation of Labour Tribunals and Other Mechanisms for Resolving Labour Disputes in Hong Kong and Selected Places" [RP06/03-04]</p> <p>Administration's paper on "Measures to improve referral of unsettled cases of labour disputes and claims from the Labour Department to the Labour Tribunal" [LC Paper No. CB(2)2424/03-04(01)]</p> <p>Judiciary Administration's letter dated 17 May 2004 on "Operation of the Labour Tribunal" [LC Paper No. CB(2)2424/03-04(02)]</p> <p>Judiciary Administration's paper on "Practice and Procedure in the Labour Tribunal" [LC Paper No. CB(2)1932/02-03(02)]</p> <p>Administration's paper on "Conciliation service provided by the Labour Department and the system of referring unsettled cases to the Labour Tribunal" [LC Paper No. CB(2)2527/02-03(01)]</p> <p>Judiciary Administration's letter dated 21 August 2003 [LC Paper No. CB(2)3025/02-03(01)]</p> <p>Minutes of meeting [LC Paper No. CB(2)3167/03-04]</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion Passed</u>
Panel on Administration of Justice	31 March 2005	Minutes of meeting [LC Paper No. CB(2)1590/04-05]
	23 October 2006	Background brief prepared by the LegCo Secretariat on "Enforcement of judgment in civil cases" [LC Paper No. CB(2)135/06-07(03)] Director of Administration's letter dated 19 September 2006 [LC Paper No. CB(2)3092/05-06(01)] Minutes of meeting [LC Paper No. CB(2)427/06-07]
	--	Comments received from the Law Society's Civil Litigation Committee and Family Law Committee and a solicitor's firm on "Enforcement of court judgments in civil cases" [LC Paper Nos. CB(2)1100/06-07(01) and (02)]