

立法會
Legislative Council

LC Paper No. CB(2)588/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/BC/10/08

Bills Committee on Employment (Amendment) Bill 2009

Minutes of meeting
held on Monday, 23 November 2009, at 10:45 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Alan LEONG Kah-kit, SC (Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun
- Members absent** : Hon LEUNG Kwok-hung
Hon WONG Sing-chi
Hon IP Kwok-him, GBS, JP
- Public Officers attending** : Mr Byron NG, JP
Assistant Commissioner for Labour (Labour Relations)
- Mr Ernest IP
Chief Labour Officer (Labour Relations)
Labour Department
- Miss Bonny WONG
Senior Labour Officer (Labour Relations) 1
Labour Department

Miss Betty CHEUNG
Senior Assistant Law Draftsman
Department of Justice

Miss Emma WONG
Senior Government Counsel
Department of Justice

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

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mrs Eleanor CHOW
Senior Council Secretary (2) 4

I. Meeting with the Administration

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

2. The Bills Committee requested the Administration to -
 - (a) consider providing a performance pledge or an administrative order on the time to be taken by the Commissioner for Labour (CL) to give a written consent under the proposed section 43S(1);
 - (b) provide information on the time required for CL to give a written consent under section 64 of the Employment Ordinance (Cap. 57) (EO) based on past experience;
 - (c) advise the impact of the proposed section 43Q on section 64B of EO following the enactment of the Bill, in particular whether prosecution would no longer be made under section 64B of EO after the enactment of the proposed section 43Q of the Bill;
 - (d) explain the need for the elements of "wilfulness" and "without reasonable excuse" in the proposed section 43P(1)(b) and to consider deleting the word(s) "wilfully" and/or "without reasonable excuse" from the provision;
 - (e) explain the need for the procedure that CL must hear the defaulting employer or give him an opportunity of being heard under the proposed section 43S(2); and

- (f) provide information on the existing manpower of the Prosecution Division and Investigation Division of the Labour Department and advise whether additional manpower was required to handle the additional workload after passage of the Bill.

II. Date of next meeting

- 3. The Bills Committee noted that the next meeting would be held on 9 December 2009 at 8:30 am.
- 4. The meeting ended at 12:50 pm.

Council Business Division 2
Legislative Council Secretariat
17 December 2009

**Proceedings of meeting of the
Bills Committee on Employment (Amendment) Bill 2009
on Monday, 23 November 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000137	Chairman	Opening remarks	
000138 - 001039	Chairman Admin	Briefing by the Administration on the procedures of investigation and institution of criminal proceedings against employers defaulting awards of the Labour Tribunal (LT) and Minor Employment Claims Adjudication Board (paragraphs 2-9 of and Annex A to LC Paper No. CB(2)80/09-10(01))	
001040 - 002217	Chairman Hon WONG Kwok-hing Admin	Reasons for requiring the Commissioner for Labour (CL) to give a written consent under the proposed section 43S(1); any mechanism for appeal if an employee was dissatisfied with CL's decision not to give a written consent; the time required to complete the process set out in the proposed section 43S; difference between civil and criminal proceedings; possibility of instituting criminal proceedings against an employer immediately after the default of a LT award; measures introduced by the Administration to expedite the procedures for instituting criminal proceedings against an employer under the Bill; factors considered by the Labour Department (LD) in instituting criminal proceedings	
002218 - 002938	Chairman Hon LI Fung-ying Admin	The time taken by an employee to obtain a LT award; the lengthy process to institute criminal proceedings; performance pledge of CL to give a written consent by a specified time; how to prevent limited companies from stalling payment of instalments; whether the burden of proof in the proposed section 43P should rest with the defence rather	The Administration to consider providing a performance pledge on the time to be taken by CL to give a written consent

Time marker	Speaker	Subject(s)	Action Required
		than the prosecution	
002939 - 003650	Chairman Hon WONG Ting-kwong Admin	Whether an employer convicted of section 43P offence had to pay the employee the defaulted LT award; how to distinguish scrupulous employers from unscrupulous employers	
003651 - 004444	Chairman Hon Jeffrey LAM Admin	Difficulty faced by employers during the financial tsunami; how to prevent netting in innocent employers; any grace period if an employer required more time to produce evidence to explain why he defaulted a LT award after 14 days from which the payment was due; opportunity provided to employers of being heard in proposed section 43S(2); power of the court to decide whether an excuse was reasonable; principles laid down by the Department of Justice (DoJ) for LD to institute criminal proceedings	
004445 - 005234	Chairman Hon LEE Cheuk-yan Admin	Lengthy process to institute criminal proceedings; performance pledge of CL to give a written consent; whether the proposed section 43S(2) was necessary when an employer already had the opportunity of being heard in court; manpower required by LD to implement the Bill; measures introduced by the Administration to expedite the procedures for instituting criminal proceedings against an employer under the Bill	The Administration to provide information on the existing manpower of the Prosecution Division and Investigation Division of LD and advise whether additional manpower was required to handle the additional workload after passage of the Bill
005235 - 005521	Chairman Hon Tommy CHEUNG Admin	Expressed support for the process to institute criminal proceedings so as to protect scrupulous employers; support for the proposed offence under which the burden of proof rested with the prosecution	

Time marker	Speaker	Subject(s)	Action Required
005522 - 010318	Chairman Admin	Impact of the proposed section 43Q on section 64B of the Employment Ordinance (EO) following the enactment of the Bill; time required by CL to give a written consent under section 64 of EO based on past data	The Administration to advise the impact of the proposed section 43Q on section 64B of EO following the enactment of the Bill and provide information on the time required for CL to give a written consent under section 64 of EO based on past experience
010319 - 010703	Chairman Hon WONG Kwok-hing Admin	How to ensure that the decision made by LD's Prosecution Division to institute criminal proceedings was impartial; whether an appeal could be lodged against the decision of CL to give a written consent; the need to impose a time limit for completing the procedures set out in the proposed section 43S; the need to seek legal advice on whether to institute criminal proceedings from DoJ if in doubt	
010704 - 011002	Chairman Hon LEE Cheuk-yan Admin	Whether the proposed section 43S(2) was necessary when an employer already had the opportunity of being heard in court; manpower required by LD to enforce the Bill; whether a director, partner, etc. would be liable to two counts of offence under section 64B of EO and the proposed section 43Q of the Bill	The Administration to consider the need for the proposed section 43S(2) and to explain whether prosecution would no longer be made under section 64B of EO after the enactment of the proposed section 43Q of the Bill
011003 - 011517	Chairman Hon Paul TSE Admin	Whether the evidence given by an employer under the proposed section 43S(2) was admissible in court	
011518 - 012339	Chairman Hon IP Wai-ming Admin	Whether the introduction of the proposed section 43S would make section 64B of EO difficult to enforce; whether DoJ could institute criminal proceedings against an employer if	

Time marker	Speaker	Subject(s)	Action Required
		CL did not give a written consent under the proposed section 43S	
012340 - 012422	Chairman Hon WONG Kwok-hing	Intention to move Committee Stage amendments (CSAs) to the Bill if CL did not provide a pledge for the proposed section 43S(1)	The Administration to consider providing a performance pledge for completing the procedure in the proposed section 43S(1) by an administrative order
012423 - 013819	Chairman Admin	Briefing by the Administration on listing all reasonable excuses in the proposed section 43P(1)(b) (paragraphs 10-16 of LC Paper No. CB(2)80/09-10(01) and paragraphs 2-8 of LC Paper No. CB(2)307/09-10(01))	
013820 - 014154	Chairman Hon WONG Kwok-hing Admin	Clarification that an employer who had defaulted payment of mandatory provident fund could be subject to civil and criminal sanctions	
014155 - 014714	Chairman Hon LI Fung-ying Admin	Why the burden of proof rested with the prosecution under the proposed section 43P(1)(b) when the employer had defaulted a LT award; whether an employer's default of LT payment per se already provided proof of wilfulness and no reasonable excuse to default payment; the need to allow employers who had defaulted payment wilfully the opportunity to give a reasonable excuse	
014715 - 015054	Chairman Hon LEE Cheuk-yan Admin	Discussion on the proposed section 43P(1)(b): whether "wilfulness" was necessary when there was already "reasonable excuse" for an employer to get away from the offence; intention to propose CSA to delete the word "wilfully"; reasons for the provision to provide more safeguards to employers; drafting of the provision on par with that of wage offence under EO; impact of	The Administration to consider deleting the word "wilfully" from the provision and to explain the need for the elements of "wilfulness" and "without reasonable excuse" in the proposed section

Time marker	Speaker	Subject(s)	Action Required
		amending the provision on section 64B of EO	43P(1)(b)
015055 - 015649	Chairman Hon LEUNG Yiu-chung Admin	Effectiveness of conciliation and enforcement actions taken by LD; consequences of breaching a settlement reached between an employer and an employee; the need to file the settlement in LT in order to be covered by the Bill; mandatory conciliation versus voluntary conciliation in a labour dispute	
015650 - 020159	Chairman Hon Ronny TONG Admin	Whether an employer's default of LT payment per se already provided proof of wilfulness and no reasonable excuse to default payment; proposal to delete "wilfully" and "without reasonable excuse" from the proposed section 43P(1)(b)	
020200 - 020454	Chairman Hon Paul TSE Hon Ronny TONG Hon WONG Ting-kwong	The need to provide more safeguards to the defaulting employers when non-payment of a LT award of civil nature had become a criminal offence	
020455 - 020511	Chairman	Closing remarks Date of next meeting	