

立法會
Legislative Council

LC Paper No. CB(2)807/09-10
(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 Tuesday, 22 December 2009, at 10:45 am
in Conference Room B of the Legislative Council Building

- Members present** : Hon Alan LEONG Kah-kit, SC (Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
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 LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun
- Members absent** : Hon LI Fung-ying, BBS, JP
Dr Hon LAM Tai-fai, BBS, JP
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

Miss Florence WONG
Senior Council Secretary (2) 5

Ms Camy YOONG
Clerical Assistant (2) 1

I. Meeting with the Administration

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

2. The Administration was requested to -
 - (a) consider providing a performance pledge or administrative order on the time within which the Commissioner for Labour (CL) should decide whether to give written consent under the proposed section 43S(1);
 - (b) advise whether requirements similar to those set out in the proposed section 43S were found in other ordinances;
 - (c) advise whether CL would consult or report to the Department of Justice regarding his or her decision of no prosecution and provide information on the related mechanism; and
 - (d) provide information on the initiation of criminal investigation or prosecution without waiting for civil proceedings.

II. Date of next meeting

3. The Bills Committee noted that the next meeting would be held on 13 January 2010, at 8:30 am.

4. The meeting ended at 12:15 pm.

Council Business Division 2
Legislative Council Secretariat
22 January 2010

**Proceedings of meeting of the
Bills Committee on
Employment (Amendment) Bill 2009
on Tuesday, 22 December 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000305	Chairman Admin	Opening remarks	
000306 - 002237	Admin	Briefing by the Administration on paragraphs 9 to 20 of LC Paper No. CB(2)307/09-10(01), LC Paper No. CB(2)307/09-10(02) and LC Paper No. CB(2)464/09-10(01)	
002238 - 002611	Chairman Hon LEE Cheuk-yan Admin	<p>Concern about the adequacy of manpower of Labour Department (LD) in handling the additional workload after the passage of the Bill</p> <p>Response of the Administration that it would review the manpower requirement upon the enactment of the Bill and, where necessary, bid resources for additional manpower in the subsequent resources allocation exercise</p> <p>Hon LEE Cheuk-yan expressed support for allocating additional resources needed by LD to implement the enacted legislation</p>	
002612 - 003551	Chairman Hon WONG Kwok-hing Admin ALA9	<p>View of Hon WONG Kwok-hing that the proposed section 43S might unduly delay the time taken to initiate prosecution against law-defying employers. The Administration should consider imposing a time limit for completing the procedures set out in the proposed section 43S(1)</p> <p>Response of the Administration that the statutory requirement under the proposed section 43S was similar to section 64 of the Employment Ordinance (Cap. 57) (EO). While it might not be practicable to provide a time limit for completing the procedures under the proposed section 43S(1), it would consider members' views and revert to the Bills Committee</p>	The Administration to consider providing a performance pledge or an administrative order on the time within which the Commissioner for Labour (CL) should decide whether to give written consent under the proposed section 43S(1)

Time marker	Speaker	Subject(s)	Action Required
003552 - 003730	Chairman Hon Tommy CHEUNG	View of Hon Tommy CHEUNG that the enactment of the Bill did not necessarily give rise to prosecution of all cases and the Administration should critically examine whether there was a genuine need to increase manpower provision after the passage of the Bill	
003731 - 004819	Chairman Hon IP Wai-ming Admin ALA9	View of Hon IP Wai-ming that the Administration should consider combining civil and criminal proceedings in enforcing employment related awards Response of the Administration that - (a) it was a basic principle under common law that civil and criminal proceedings were separate and distinct. Changes to this might have read-across implications. The ramifications of breaching this principle went far beyond EO and must therefore be duly considered; and (b) since July 2008, the Administration had put in place measures to enhance the enforcement of awards. Among others, LD had introduced the Award Enforcement Support Service to provide one-stop assistance to employees who failed to obtain payment of the awarded sum	The Administration to provide information on the initiation of criminal investigation or prosecution without waiting for civil proceedings
004820 - 005138	Chairman Hon Andrew LEUNG Admin	Hon Andrew LEUNG objected to the suggestion of combining civil and criminal proceedings as it would undermine the legal principle under common law. In his view, justification for criminalization of non-payment of Labour Tribunal (LT) awards had been borderline in view of its possible ramifications for other types of civil awards	
005139 - 005450	Chairman Hon Paul TSE Admin	Views of Hon Paul TSE that - (a) taking into account that civil and criminal liabilities of non-payment of LT awards were two different issues,	

Time marker	Speaker	Subject(s)	Action Required
		<p>there was a need to retain the proposed section 43S, bearing in mind that conviction of defaulting an LT award would result in criminal sanction; and</p> <p>(b) civil and criminal proceedings, where the latter required more stringent standard of proof, should not be combined in the light of the two distinct systems under the legal principle of common law</p>	
005451 - 005715	Chairman Hon WONG Ting-kwong Admin	Hon WONG Ting-kwong did not support the suggestion of combining civil and criminal proceedings	
005716 - 010052	Chairman Hon LEE Cheuk-yan Admin	<p>Views of Hon LEE Cheuk-yan that -</p> <p>(a) it was foreseeable that additional manpower for LD would be required for conducting investigations and prosecutions against defaults of LT awards after passage of the Bill; and</p> <p>(b) the proposed section 43S was redundant given that investigation and sufficiency of evidence were required before instituting prosecution even without the proposed section 43S</p> <p>Response of the Administration that the proposed section 43S was in line with present requirements in respect of wage offences under section 64 of EO. In the light of members' concerns about the issue, it would make reference to existing offences under EO and other ordinances on similar requirements set out in the proposed section 43S</p>	The Administration to advise whether requirements similar to those set out in the proposed section 43S were found in other ordinances
010053 - 010352	Chairman Hon WONG Kwok-hing Hon Paul TSE Admin	<p>Further discussion on the possibility of providing a time limit for completing the procedures under the proposed section 43S(1)</p> <p>Response of the Administration that it might not be practicable to provide a time limit for CL's consent for prosecution taking into consideration that the length of</p>	

Time marker	Speaker	Subject(s)	Action Required
		time for parties concerned to provide statement and information varied from case to case and was outside the control of LD	
010353 - 010643	Chairman Hon Tommy CHEUNG Admin	Hon Tommy CHEUNG opposed the suggestion of combining civil and criminal proceedings in the light of its read-across implications. As regards the suggestion of imposing a time limit for completing the procedures set out in the proposed section 43S(1), he accepted the Administration's explanation and considered that a time limit might render evidence insufficient	
010644 - 011811	Chairman Hon Ronny TONG Admin	<p>Concerns about -</p> <p>(a) the delineation of powers of LD and Department of Justice (DoJ) in respect of the prosecution of offences under the proposed section 43S; and</p> <p>(b) CL's criteria for deciding not to prosecute</p> <p>Response of the Administration that CL was empowered to make prosecution decisions. LD would prudently assess the sufficiency of evidence in every prosecution case in accordance with the guidelines issued by DoJ and, when necessary, DoJ would be consulted. The proposed section 43S(4) clearly stated that section 43S did not derogate from the powers of Secretary for Justice in respect of the prosecution of criminal offences</p>	The Administration to advise whether CL would consult or report to DoJ regarding his or her decision not to prosecute and to provide information on the related mechanism
011812 - 012528	Chairman Hon LEUNG Kwok-hung Admin	<p>Concern about the possible loophole arising from the delegation of powers from DoJ to LD in respect of the prosecution of an offence under the proposed section 43P</p> <p>Response of the Administration that there were well-established mechanisms through which parties concerned could lodge complaints if they were not satisfied with the decisions made by LD in respect</p>	

Time marker	Speaker	Subject(s)	Action Required
		of whether to prosecute	
012529 - 012926	Chairman Hon Paul TSE	Hon Paul TSE reiterated that there was a need to retain the proposed section 43S with a view to providing sufficient safeguards to the accused in the light of the criminalization of non-payment of LT awards and considered it not necessary for LD to consult or report to DoJ in every case	
012927 - 013127	Chairman	Date of next meeting	

Council Business Division 2
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