

立法會
Legislative Council

LC Paper No. CB(2)830/09-10
(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 Wednesday, 13 January 2010, at 8:30 am
in Conference Room B of the Legislative Council Building

- Members present** : Hon Alan LEONG Kah-kit, SC (Chairman)
Hon LEE Cheuk-yan
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
Dr Hon LAM Tai-fai, BBS, JP
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun
- Members absent** : Hon LEUNG Yiu-chung
Hon LEUNG Kwok-hung
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon WONG Sing-chi
- 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 issuing internal guidelines or providing a performance pledge on the time for completing procedures under the proposed section 43S of the Employment (Amendment) Bill 2009 (the Bill);
 - (b) consider including in the proposed section 43N(1) of the Bill compensation under section 32P and terminal payment under section 32O of the Employment Ordinance (Cap. 57) (EO) arising from unlawful dismissal; and
 - (c) consider reviewing the effectiveness of the proposed offence under the Bill on the deterrence of LT defaults one year after its commencement and report the results to the Panel on Manpower.

II. Date of next meeting

3. The Bills Committee agreed that the next meeting would be held on 4 February 2010 at 4:30 pm.

4. The meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
26 January 2010

**Proceedings of meeting of the
Bills Committee on
Employment (Amendment) Bill 2009
on Wednesday, 13 January 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000721	Chairman	Opening remarks	
000722 - 002802	Chairman Admin	Administration's response to issues raised by members at the meetings held on 23 November, 9 and 22 December 2009 [LC Paper No. CB(2)706/09-10(01)]	
002803 - 004323	Chairman Hon LI Fung-ying Admin	<p>Views of Hon LI Fung-ying that -</p> <p>(a) there was a need for a time limit for completing the procedures set out in the proposed section 43S to prevent irresponsible employers from wilfully delaying the initiation of prosecution; and</p> <p>(b) it should be the responsibility of the defendant to defend himself regarding the default of Labour Tribunal (LT) award within a time limit</p> <p>Response of the Administration that -</p> <p>(a) it was not practicable to provide a definite time limit for completing procedures under the proposed section 43S as the length of time for collecting evidence from the defendant varied from case to case; and</p> <p>(b) the requirement under the proposed section 43S was modeled on section 64 of the Employment Ordinance (EO). Under the existing arrangements, if the defendant did not respond to a notice of hearing issued by the Labour Department (LD) served on him within a time limit, he would be regarded as having been given the opportunity of being heard. Where there was sufficient evidence, LD would initiate prosecution by</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>laying summonses against the defaulting employer without waiting further. Some 1 300 summonses for wage offences were convicted in 2009, representing an increase of near 10 times over the number of summonses in 2002</p>	
004324 - 010007	<p>Chairman Hon WONG Kwok-hing Admin</p>	<p>Performance pledge or administrative guideline on the time to institute prosecution against default of LT awards and administrative arrangements to expedite the process</p> <p>The Administration's response that -</p> <p>(a) prosecution should be instituted within six months of the offence day. For continuing offence, such as defaults of LT awarded sum, the offence continued to run as payment was not made;</p> <p>(b) individual division of LD would activate investigation within seven days upon receipt of a complaint and closely monitor the progress of the cases. Under section 64 of EO, LD would arrange hearings for the defendant. If sufficient evidence was revealed, the authorized officer would without delay give consent in writing on behalf of the Commissioner for Labour (CL) to commence prosecution. The same procedures would be applied to the proposed section 43S of the Bill; and</p> <p>(c) if a suspected breach of EO was detected, LD would take out prosecution upon sufficient evidence irrespective of the progress of the employee's civil claim in LT if any. LD could prosecute an employer for non-payment of an LT award even if the employer had been prosecuted for non-payment of wage or other statutory entitlements before the award was made by LT</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Hon WONG Kwok-hing indicated that after considering the Administration's response, he would not insist the introduction of amendments to the proposed section 43S of the Bill</p>	
<p>010008 - 011329</p>	<p>Chairman Hon LEE Cheuk-yan Admin</p>	<p>Views of Hon LEE Cheuk-yan that the Administration should consider -</p> <ul style="list-style-type: none"> (a) reviewing section 64 of EO and the proposed section 43S of the Bill in one go, among others, the need for CL's written consent before instituting prosecution; (b) providing a performance pledge or issuing internal guidelines for completing procedures under the proposed section 43S of the Bill; and (c) including compensation under section 32P of EO in the proposed section 43N(1) of the Bill <p>Response of the Administration that -</p> <ul style="list-style-type: none"> (a) there was a need for CL's consent before instituting prosecution. Similar requirements of consent were found in other ordinances; (b) the time needed for completing procedures under the proposed 43S might vary from case to case. If there was insufficient or conflicting evidence, prosecution might not be instituted. LD was obliged to assess prudently the sufficiency of evidence in accordance with the guidelines issued by the Department of Justice in performing the prosecution function; and (c) it would prudently consider members' suggestion of including compensation under section 32P of EO in the proposed section 43N(1) with regard to all factors and circumstances, as well as the objective of the Bill 	<p>The Administration to provide a response</p>

Time marker	Speaker	Subject(s)	Action Required
011330 - 013323	Chairman Hon WONG Ting-kwong Admin	<p>Elaboration of introducing criminalization of non-payment of LT awards as an enhancement measure to achieve deterrence</p> <p>Whether the court would order the employer to pay outstanding wages if he was convicted of an offence under section 23 in accordance with section 65 of EO</p> <p>Hon WONG Ting-kwong was of the view that flexibility on the time for LD to complete procedures under the proposed section 43S should be allowed</p>	
013324 - 013725	Chairman Hon Andrew LEUNG Admin	<p>While considering unnecessary for a pledge on the time for LD to complete procedures under the proposed section 43S, Hon Andrew LEUNG urged the Administration to undertake to expedite the investigation and prosecution process, and review the effectiveness of the proposed offence under the Bill one year after its commencement and report the results to the Panel on Manpower</p> <p>Responding to Hon LEUNG's concern about the difficulties in conducting investigation against defaulting shell corporations, the Administration advised that the Financial Services and the Treasury Bureau was reviewing the Companies Ordinance (Cap. 32), and LD had made suggestions regarding the updating of Directors' information</p>	The Administration to consider reviewing the effectiveness of the proposed offence under the Bill on the deterrence of LT defaults one year after its commencement and report the results to the Panel on Manpower
013726 - 014306	Chairman Hon IP Wai-ming Admin	<p>Request for -</p> <p>(a) issuing guidelines or providing a performance pledge on the time limit for initiating investigation and prosecution against LT defaults; and</p> <p>(b) covering terminal payment under 32O of EO arising from unlawful dismissal under the proposed section 43N(1)</p> <p>The Administration responded that it would prudently consider members' views in consultation with stakeholders</p>	The Administration to provide a response

Time marker	Speaker	Subject(s)	Action Required
014307 - 014613	Chairman Hon Tommy CHEUNG Admin	View of Hon Tommy CHEUNG that in considering whether there was a need to propose amendments to the Bill, the Administration should prudently assess the read-across implications to other ordinances	
014614 - 015019	Chairman	<p>The Administration was requested to consider -</p> <p>(a) issuing internal guidelines or providing a performance pledge on the time for completing procedures under the proposed section 43S; and</p> <p>(b) including compensation under section 32P of EO in the proposed section 43N(1).</p> <p>The Chairman said that members did not appear to insist on the introduction of other amendments to the Bill</p>	The Administration to provide a response
015020 - 015311	Chairman Hon WONG Kwok-hing Admin	<p>Whether employees would be informed of the right to pursue prosecution against employers for criminal offences under EO</p> <p>The Administration responded that upon receipt of a complaint by an employee on non-payment of wage, LD, apart from arranging conciliation, would provide the employee concerned related booklets, such as a Guide on Civil and Criminal Proceedings Related to EO, and invite him or her to be the prosecution witness if the employer concerned was detected breaching of EO. LD would further step up publications in this respect</p>	
015312 - 015454	Chairman Hon LI Fung-ying Admin Hon IP Wai-ming	Appeal to the Administration to seriously consider providing a performance pledge on the time for completing procedures under the proposed section 43S	
015455 - 020137	Chairman ALA9 Admin Hon LEE Cheuk-yan	Whether the criminal proceedings would be affected if the claimants received the payments awarded by LT through other civil proceedings for the enforcement of judgments (e.g. garnishee order or writ of fieri facias)	

Time marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that if an employer wilfully failed to pay an LT award within 14 days without reasonable excuse, the employer would have already committed an offence against the proposed section 43P. The mere fact that the employee concerned had received the payment thereafter through other civil enforcement proceedings would not relieve the employer of criminal liability for the offence already committed</p> <p>Hon LEE Cheuk-yan opined that the Administration should convey such a message to the employers</p>	
020138 - 020210	Chairman	Date of next meeting	
020211 - 020331	Hon Paul TSE Chairman Hon LEE Cheuk-yan	Procedures for election of Chairman when a vacancy arose	