

LEGISLATIVE COUNCIL BRIEF

LABOUR TRIBUNAL (AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 23 March 1999, the Council ADVISED and the Chief Executive ORDERED that the Labour Tribunal (Amendment) Bill 1999 should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2 The Labour Tribunal (“the Tribunal”) was established in 1973 to provide a quick, simple and informal method of settling some of the more common types of dispute between employers and individual employees. It has unlimited jurisdiction to hear employment claims exceeding \$8,000.

3 In February 1995, the Judiciary conducted a review on the operations of the Tribunal. The review covered the practices and procedures of the Tribunal, its staffing structure and the existing legislation. The review recommended that improvements should be made to the Labour Tribunal Ordinance in the following aspects -

- (a) Limitation period - section 9(1) of the Ordinance stipulates that the Tribunal shall not have jurisdiction to inquire into or determine a claim if the cause of action arises more than 12 months before the date on which the claim is filed. Individuals need to pursue their claims in the District Court or the Court of First Instance if they cannot comply with this limitation period;
- (b) Wasting of Tribunal’s time - the Tribunal’s time is sometimes wasted by litigants through non-attendance at the hearing, failure to produce the necessary documents, or failure to comply with certain orders made by the Presiding Officer. The Presiding Officer does not have sufficient power under the Ordinance to deter litigants from willfully wasting the Tribunal’s time; and
- (c) Transfer of cases - there is no provision to allow transfer of cases from the Tribunal to the Small Claims Tribunal where appropriate.

In addition to the above areas, the Judiciary also identified the need for improvements in various other areas to ensure smooth operation of the Tribunal.

THE BILL

4 The main provisions of the Bill are as follows -

- (a) to remove the limitation period precluding the Tribunal from inquiring into or determining a claim if the cause of action arises more than 12 months before the date on which the claim is filed (clause 3);
- (b) to provide for the transfer of proceedings from the Tribunal to the Small Claims Tribunal in addition to the present power of transfer to the District Court or the Court of First Instance (clause 4);
- (c) to allow legal representation in proceedings concerning insulting behaviour and to increase penalties against such behaviour (clauses 8 and 14);
- (d) to empower the Tribunal to adjourn the hearing of a claim on such terms as it thinks fit (clause 10); and
- (e) to increase the penalty for non-attendance of witness and non-production of documents (clauses 15 and 16).

A copy of the Bill is at the Annex.

LEGISLATIVE TIMETABLE

5 The legislative timetable is as follows -

Publication in the Gazette	9 April 1999
First Reading and commencement of Second Reading debate	21 April 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

HUMAN RIGHTS IMPLICATIONS

6 The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

7 The amendments do not affect the current binding effect of the Labour Tribunal Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

8 Abolition of the current 12-month limitation may slightly increase the caseload of the Tribunal. However, the other legislative amendments will rationalise the Tribunal's work and will, as a result, enhance its capacity and efficiency. The net impact on the resource requirements will be minimal. Additional resources, if required, will be absorbed from within the global allocation of the Judiciary Administrator.

PUBLIC CONSULTATION

9 The previous Legislative Council Panel on Administration of Justice and Legal Services was informed of the findings and recommendations of the Judiciary's review of the Tribunal in May 1995. We have informed the current Legislative Council in February 1999 that we would introduce the Labour Tribunal (Amendment) Bill 1999 in April 1999. The Law Society of Hong Kong and the Hong Kong Bar Association have been consulted on the Bill. The Law Society did not forward any comments to us, while the Bar Association raised several questions on some proposed amendments. We have adopted most of the Bar Association's comments, except its proposal to lower the proposed penalty level for insulting behaviour, non-attendance of witness and non-production of documents. Our proposal seeks to bring the penalty level in line with that for similar behaviour at the Minor Employment Claims Adjudication Board which handles labour claims below \$8,000.

PUBLICITY

10 A press release will be issued on 8 April 1999 and a spokesman will be available to handle media enquiries.

ENQUIRIES

11 For enquiries on the brief, please contact Ms Amy Wong, Assistant Secretary (Administration) at 2810 2783.

Administration Wing
Chief Secretary for Administration's Office
April 1999
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A BILL

To

Amend the Labour Tribunal Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Labour Tribunal (Amendment) Ordinance 1999.
- (2) This Ordinance shall come into operation on a day to be appointed by the Director of Administration by notice in the Gazette.

2. Interpretation

Section 2 of the Labour Tribunal Ordinance (Cap. 25) is amended -

- (a) in the definition of "claim", by repealing "means" and substituting "includes";
- (b) by adding -
““Small Claims Tribunal” (小額錢債審裁處) means the Small Claims Tribunal established by section 3 of the Small Claims Tribunal Ordinance (Cap. 338);”.

3. Limitation

Section 9 is repealed.

4. Declining Jurisdiction

Section 10(2) is amended by repealing “or the District Court” and substituting”, the District Court or the Small Claims Tribunal”.

5. Service of claim and notice of hearing

Section 13(2)(b) is amended -

- (a) in subparagraph (ii), by repealing “or” at the end;
- (b) by adding -
 - “(iia) by sending them by post addressed to him at his last known place of residence or at his place of business; or”.

6. Keeping of summary of evidence, etc.

Section 19 is amended by repealing “a summary” and substituting “or cause to be kept a summary, whether by means of shorthand notes or mechanical, electronic or optical means or otherwise.”.

7. Decision to be announced at conclusion of hearing if possible

Section 22(5) is amended -

- (a) in paragraph (b), by repealing “or” at the end;

(b) by adding -

“(ba) by sending it by post addressed to him at his last known place of residence or at his place of business; or”.

8. Right of audience

Section 23(2) is repealed and the following substituted -

“(2) A barrister or solicitor shall have a right of audience before the tribunal only if he is -

- (a) acting on his own behalf as a claimant or a defendant; or
- (b) appearing before the tribunal on behalf of an offender for the purpose of section 42.”.

9. Representative claims

Section 25(3)(g) is repealed.

10. Section added

The following is added -

“29A. Adjournment

- (1) The tribunal may at any time, either of its own motion or on the application of any party, adjourn the hearing of a claim on such terms as it thinks fit.
- (2) If any party fails to comply with the requirements of any term that may have been imposed on him under subsection (1), the tribunal may dismiss the claim, stay the

proceedings or enter judgment against him as the tribunal may think appropriate.”.

11. Giving security upon adjournment

Section 30 is amended by repealing “The” and substituting “Without prejudice to the generality of section 29A, the”.

12. Review of awards and orders

Section 31(1) is amended by repealing “其作出裁斷或命令的日期起計” and substituting “自其作出裁斷或命令的日期起計的”.

13. Interference with witness and perjury

Section 41(2) is amended by repealing “of \$5,000” and substituting “at level 2”.

14. Insulting behaviour

Section 42 is amended -

- (a) by renumbering it as section 42(1);
- (b) in subsection (1), by repealing “of \$500 and to imprisonment for 2 months” and substituting “at level 3 and to imprisonment for 6 months”;
- (c) by adding -

“(2) It is declared that section 50 of the High Court Ordinance (Cap. 4) applies in the case of any exercise by the presiding officer of his power under subsection (1).”.

15. Punishment of witness for non-attendance and of person for non-production of document

Section 43 is amended by repealing “of \$1,000” and substituting “at level 2”.

16. Punishment for refusal to comply with request by tribunal officer to produce document and for obstruction of tribunal officer

Section 44 is amended by repealing “of \$5,000” and substituting “at level 4”.

17. Chief Justice may make rules

Section 45(b) is amended by repealing “District Court or” and substituting “Small Claims Tribunal, the District Court or the”.

18. Section added

The following is added -

“47. Immunity

(1) A presiding officer has, in the performance of his powers or duties under this Ordinance, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.

(2) A witness before the tribunal shall be entitled to the same privileges and immunities as if he were a witness in civil proceedings in the Court of First Instance.”.

19. Consequential amendments

The enactments specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

[s. 19]

CONSEQUENTIAL AMENDMENTS

Labour Tribunal (General) Rules

1. Rule added

The Labour Tribunal (General) Rules (Cap. 25 sub. leg.) is amended by adding -

“4A. Keeping of Register of Claims, etc.

The Register of Claims maintained under rule 4 and the summary of evidence, submissions or statements and of any point of law and of the presiding officer's decision thereon kept under section 19 of the Ordinance may be kept -

- (a) in the form of a book;
- (b) in the form of a disc, card, tape, microchips, sound track or other device on or in which information or data is recorded or stored by mechanical, electronic, optical or other means; or
- (c) partly in the form referred to in paragraph (a) and partly in the form referred to in paragraph (b).”.

2. **Transfer of claim to Court of First Instance, District Court or Small Claims**

Tribunal

Rule 7 is amended -

- (a) in paragraph (1) -
 - (i) by repealing “or the District Court” and substituting”, the District Court or the Small Claims Tribunal”;
 - (ii) by adding “or of the Small Claims Tribunal” after “registrar of the court”;
- (b) in paragraph (2), by adding “or of the Small Claims Tribunal” after “registrar of the court”.

Labour Tribunal (Forms) Rules

3. **Schedule amended**

The Schedule to the Labour Tribunal (Forms) Rules (Cap. 25 sub. leg.) is amended, in

Form 5 -

- (a) by adding “/TRIBUNAL” after “COURT”;
- (b) by adding “/Small Claims Tribunal” after “Court of First Instance/District Court”;
- (c) by repealing “this Court” and substituting “*this Court/this Tribunal”;
- (d) by adding “/Small Claims Tribunal” after “High Court/District Court”.

Small Claims Tribunal Ordinance

4. Jurisdiction of Tribunal

The Schedule to the Small Claims Tribunal Ordinance (Cap. 338) is amended by

adding -

“1A. Notwithstanding subparagraph (d) of the proviso to paragraph 1, the tribunal shall have jurisdiction to hear and determine a claim transferred to the tribunal under section 10(2) of the Labour Tribunal Ordinance (Cap. 25).”.

Explanatory Memorandum

The principal purpose of this Bill is to amend the Labour Tribunal Ordinance (Cap. 25)

to -

- (a) remove the limitation period governing the filing of claims in the Labour Tribunal (“the tribunal”) (clause 3);
- (b) empower the tribunal to transfer claims to the Small Claims Tribunal (clause 4);
- (c) provide that service of claim, notice of hearing and decision can also be effected by post (clauses 5 and 7);
- (d) require the presiding officer to keep a summary of evidence, etc. by mechanical or other means (clause 6);
- (e) allow a barrister or solicitor to have right of audience before the tribunal in proceedings relating to insulting behaviour (clause 8);

- (f) empower the tribunal to adjourn the hearing of a claim on such terms as it thinks fit (clause 10);
 - (g) increase the punishment for offences relating to insulting behaviour, non-attendance, non-production of document, refusal to comply with request to produce document and obstruction of tribunal officer (clauses 14, 15 and 16);
 - (h) give immunity to the presiding officer and the witness before the tribunal (clause 18).
2. The Bill also makes consequential amendments to rules made under the Labour Tribunal Ordinance (Cap. 25) and to the Small Claims Tribunal Ordinance (Cap. 338).