

**立法會**  
**Legislative Council**

LC Paper No. CB(2)360/09-10  
(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, 12 October 2009, at 4:30 pm**  
**in the Chamber 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 WONG Sing-chi  
Hon IP Wai-ming, MH  
Hon IP Kwok-him, GBS, JP
- Members absent** : Hon LEUNG Kwok-hung  
Hon Paul TSE Wai-chun
- Public Officers attending** : Mr Byron NG, JP  
Assistant Commissioner for Labour (Labour Relations)
- Mr Ernest IP  
Chief Labour Officer (Labour Relations)
- Miss Bonny WONG  
Senior Labour Officer (Labour Relations) 1  
Labour Department

Mr Gilbert MO  
Deputy Law Draftsman (Bilingual Drafting & Adm)  
Department of Justice

Miss Emma WONG  
Senior Government Counsel  
Department of Justice

**Attendance** : The Hong Kong Federation of Trade Unions - Rights &  
**by invitation** Benefits Committee

Mr TSUI Sai-cheong  
Deputy Director

Hong Kong Confederation of Trade Unions

Mr YIU Chung-yiu  
Chairperson of Hong Kong Confederation of Trade  
Unions Labour Committee

Hong Kong & Kowloon Trades Union Council

Mr LEE Tat-ming  
General Secretary

Eating Establishment Employees General Union

Mr YUEN Fuk-wo  
Chairman

Hong Kong Construction Industry Employees General Union

Mr FUNG Kin-cho  
Secretary

Hong Kong Chamber of Small and Medium Business Ltd.

Mr Patrick LUK  
Vice President

Hong Kong Small and Medium Enterprises Association

Mr SHEA Kai-chuen  
Third-Vice Chairman

The Federation of Hong Kong and Kowloon Labour Unions

Mr LAM Chun-sing  
Director of Social Affairs Committee

Hong Kong Federation of Restaurants & Related Trades

Mr LOCK Kwok-on  
Chairman

Construction Site Workers General Union

Mr CHAN Pat-kan  
Chairman

Neighbourhood and Worker's Service Centre

Mr KWOK Ching-kuen  
Labour Affairs Organizer

Hong Kong Catholic Commission for Labour Affairs

Miss LAW Pui-shan  
Policy Research Officer

Salary Back Worker Concern Group

Ms Linda CHAU Ka-wai  
Group Member

Catholic Diocese of HK Diocesan Pastoral Centre for  
Workers (Kowloon)

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Mr HO Tin-lok  
Programme Officer

Catering and Hotels Industries Employees General Union

Ms LO Tang-king  
Vice Chairperson

**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

Miss Kiwi NG  
Legislative Assistant (2) 1

Ms Camy YOONG  
Clerical Assistant (2) 1

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## **I. Meeting with deputations and the Administration**

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

2. The Bills Committee received oral representations from 15 deputations and a total of 17 written submissions.
3. The Administration was requested to -
  - (a) provide a written response to the issues raised by members at the meeting on 16 July 2009;
  - (b) provide a written response to the issues raised by deputations;
  - (c) provide information on cases where shadow directors were convicted of defaulting employment-related payments;
  - (d) provide a written response on whether adequate protection was provided to workers who would appear before the court as witnesses; and
  - (e) provide a written response on why the payment in lieu of notice was not stipulated in the "specified entitlement" in the proposed section 43N(1)(a), and why the award of compensation provided in section 32P of the Employment Ordinance was not included in the "specified entitlement" in the proposed section 43N(1).

## **II. Date of next meeting**

4. The Bills Committee noted that the next meeting would be held on 27 October 2009 at 2:30 pm.

5. The meeting ended at 6:38 pm.

Council Business Division 2  
Legislative Council Secretariat  
24 November 2009

**Proceedings of meeting of the  
Bills Committee on Employment (Amendment) Bill 2009  
on Monday, 12 October 2009, at 4:30 pm  
in the Chamber of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000401	Chairman	Opening remarks	
000402 - 000817	Chairman The Hong Kong Federation of Trade Unions - Rights & Benefits Committee	Presentation of views (LC Paper No. CB(2)2591/08-09(01))	
000818 - 001351	Chairman Hong Kong Confederation of Trade Unions	Presentation of views (LC Paper No. CB(2)2591/08-09(02))	
001352 - 001630	Chairman Hong Kong & Kowloon Trades Union Council	Presentation of views (LC Paper No. CB(2)2591/08-09(03))	
001631 - 002047	Chairman Eating Establishment Employees General Union	Presentation of views (LC Paper No. CB(2)2591/08-09(04))	
002048 - 002408	Chairman Hong Kong Construction Industry Employees General Union	Presentation of views (LC Paper No. CB(2)2591/08-09(05))	
002409 - 002601	Chairman Hong Kong Chamber of Small and Medium Business Ltd.	Presentation of views	
002602 - 003138	Chairman Hong Kong Small and Medium Enterprises Association	Presentation of views (LC Paper No. CB(2)2591/08-09(07))	
003139 - 003515	Chairman The Federation of Hong Kong and Kowloon Labour Unions	Presentation of views (LC Paper No. CB(2)2591/08-09(08))	

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003516 - 003706	Chairman Hong Kong Federation of Restaurants & Related Trades	Presentation of views	
003707 - 004144	Chairman Construction Site Workers General Union	Presentation of views (LC Paper No. CB(2)2591/08-09(11))	
004145 - 004620	Chairman Neighbourhood and Worker's Service Centre	Presentation of views (LC Paper No. CB(2)2591/08-09(12))	
004621 - 005114	Chairman Hong Kong Catholic Commission for Labour Affairs	Presentation of views (LC Paper No. CB(2)2591/08-09(13))	
005115 - 005500	Chairman Salary Back Worker Concern Group	Presentation of views (LC Paper No. CB(2)2591/08-09(14))	
005501 - 005924	Chairman Catholic Diocese of HK Diocesan Pastoral Centre for Workers (Kowloon)	Presentation of views (LC Paper No. CB(2)2591/08-09(14))	
005925 - 010302	Chairman Catering and Hotels Industries Employees General Union	Presentation of views (LC Paper No. CB(2)2591/08-09(16))	
010303 - 010416	Chairman	Commencement of discussion session	The Administration was requested to provide a written response to the issues raised by deputations
010417 - 011007	Chairman Hon WONG Kwok-hing Admin	Issues raised by Hon WONG Kwok-hing -  (a) why the payment in lieu of notice was not included in the "specified entitlement" in the proposed section 43N(1)(a);	

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		<p>(b) whether the Labour Department (LD) would consider merging the civil proceedings for employment-related claims and criminal proceedings against an employer who had wilfully defaulted payment of certain awards made by the Labour Tribunal (LT) and Minor Employment Claims Adjudication Board (MECAB) so as to shorten the claiming process; and</p> <p>(c) whether the Companies Ordinance would be amended to allow employees to collectively apply for liquidation of the employer and to require at least one of the company directors to be a natural person so as to hold him culpable if the case warranted</p> <p>Response of the Administration that -</p> <p>(a) by virtue of section 25 of the Employment Ordinance (EO) and paragraph (a) of the definition of "specified entitlement" in the proposed section 43N(1), the proposed offence covered default of an LT/MECAB award comprising payment in lieu of notice;</p> <p>(b) since July 2008, an officer of the LD had also assumed the role of an Award Enforcement Support Officer in the Labour Relations Division branch office to provide necessary information and assistance to employees with defaulted LT awards, such as providing information on enforcement of awards, assisting in the procedures of application for ex gratia payment from the Protection of Wages on Insolvency Fund and making appropriate referrals to the Legal</p>	



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		<p>Aid Department and Social Welfare Department for assistance, and upon detection of suspected offences, conducted criminal investigation; and</p> <p>(c) the Companies Ordinance would be overhauled and LD had provided comments to the Financial Services and the Treasury Bureau for consideration</p>	
011008 - 011701	<p>Hon LEE Cheuk-yan Chairman Hong Kong Federation of Restaurants &amp; Related Trades Admin</p>	<p>Discussion on whether it was common in the catering industry to have the licensee, rather than the shadow director, to be liable for defaulting employment-related payments; and how to prevent an unscrupulous employer from transferring assets out of the company to make the company appear financially unable to pay LT awards</p> <p>Response of the Administration -</p> <p>(a) a director or responsible person proved to have given consent, connivance or been neglectful of the default by the body corporate could be liable for the like offence of section 43P;</p> <p>(b) LD had an inter-departmental working group with the Police, the Official Receiver's Office and the Legal Aid Department to deal with illegal transfer of company assets; and</p> <p>(c) some responsible persons not registered as directors had been convicted of defaulting wage payments</p>	<p>The Administration was requested to provide information on cases where shadow directors were convicted of defaulting employment-related payments</p>
011702 - 012215	<p>Hon LI Fung-ying Chairman Hong Kong Small and Medium Enterprises Association</p>	<p>Discussion on why the Bill would affect investment incentives, strain employer-employee relations, pose risk of criminal liability if the employer was law-abiding; and whether employers with cash flow</p>	

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		problem would accord priority to settling outstanding wages	
012216 - 012918	Hon LEUNG Yiu-chung Admin Chairman	<p>Issues raised by Hon LEUNG Yiu-chung -</p> <p>(a) whether the Bill was effective in catching the culpable employers; and</p> <p>(b) whether the Bill provided adequate protection to workers who would appear before the court as witnesses</p> <p>Response of the Administration -</p> <p>(a) the proposed section 43S gave defendants opportunity of being heard before prosecution was commenced and served to distinguish employers who were genuinely culpable from those who were not;</p> <p>(b) the proposed elements of "wilfully and without reasonable excuse" in the proposed section 43P(1) aimed to target at employers defaulting LT awards deliberately;</p> <p>(c) in case where the employer was a body corporate, default of an LT award would be entered against the corporate employer. If a body corporate was proved to have been committed the proposed offence with the consent or connivance of or to be attributable to any neglect on the part of director, or other similar officer of the body corporate, the director or other similar officer of the body corporate would be also criminally liable;</p> <p>(d) the proposed section 43R sought to streamline and simplify the prosecution process and to</p>	The Administration was requested to provide a written response to the issues raised by the member

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		<p>alleviate the burden of witnesses to adduce evidence;</p> <p>(e) to enhance deterrence, an employer committed an offence under the Bill was liable for a maximum penalty of \$350,000 and three years' imprisonment. In addition, LD had hired retired police officers to strengthen investigation and maintained close liaison with the Commercial Crime Bureau; and</p> <p>(f) under the existing criminal proceedings, if an employer pleaded guilty, the employee would not be required to act as prosecution witness; otherwise, it would be necessary for the employee to give evidence in court</p>	
012919 - 014022	Hon IP Wai-ming Chairman Admin	<p>Issues raised by Hon IP Wai-ming -</p> <p>(a) why the payment in lieu of notice was not stipulated in the "specified entitlement" in the proposed section 43N(1)(a); and</p> <p>(b) why the award of compensation provided in section 32P of EO was not included in the "specified entitlement" in the proposed section 43N(1)</p> <p>Response of the Administration -</p> <p>(a) the proposed section of 43N(1), in the definition of "specified entitlement", in paragraph (a) referred to "any sum under section 25 of EO", this covered payments due upon termination including payment in lieu of notice and, although there might be alternative way to draft, the present proposed section of the "specified entitlement" was clear;</p>	The Administration was requested to provide a written response to the issues raised by the member

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		<p>(b) the offence proposed in the Bill was limited to LT/MECAB awards comprising "specified entitlements" (i.e. wages and entitlements underpinned by criminal elements of EO) to distinguish the LT awarded sums under the proposed offence from judgment sums made by other civil courts;</p> <p>(c) the "specified entitlements" in the proposed section 43N(1) covered almost all EO entitlements, except remedies purely civil in nature. Compensation under section 32P of EO was civil in nature with no criminal liability in default; and</p> <p>(d) if the compensation under section 32P of EO was included in the Bill, there would be read-across implication on the enforcement of other civil judgments</p>	
014023 - 014508	Chairman Admin	<p>Issues raised by the Chairman -</p> <p>(a) entitlements of employees covered in EO but not in the proposed section 43N(1);</p> <p>(b) whether the Administration would consider including in the Bill the power of LT to order disclosure of the financial details of defaulting employers so as to expedite the litigation process and reduce the difficulty of witnesses in adducing evidence; and</p> <p>(c) whether LT and LD had established communication to ensures effective enforcement of LT awards</p> <p>Response of the Administration -</p> <p>(a) the "specified entitlements" in the proposed section 43N(1) covered almost all EO entitlements, except</p>	

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		<p>remedies purely civil in nature including compensation under section 32P and Part IXA of EO;</p> <p>(b) the Administration would attempt to strike a balance between streamlining the procedures for adducing evidence and catching the culpable employers. The proposed section 43R sought to simplify the proceedings for production of admissible evidence; and</p> <p>(c) LD had maintained communication with LT to ensure smooth operation. The Award Enforcement Support Officer provided one-stop service to provide necessary information and appropriate assistance to employees with defaulted LT awards</p>	
014509 - 015140	Chairman Hon LEE Cheuk-yan Admin	<p>Issues raised by Hon LEE Cheuk-yan -</p> <p>(a) how to determine whether an employer had genuine financial difficulty to pay LT awards;</p> <p>(b) why the Administration rarely invoked section 31 of EO to institute legal proceedings against an employer who continued an employment contract although he had financial hardship; and</p> <p>(c) given that an employer had not complied with the LT judgment and 14 days had lapsed after the LT award was due, whether financial hardship could still be regarded as a reasonable excuse under the proposed section 43P</p> <p>Response of the Administration -</p> <p>(a) the Administration rarely invoked section 31 of EO because sections</p>	

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		<p>23, 24 and 25 of EO carried higher penalty and could achieve higher deterrence; and</p> <p>(b) whether an excuse was reasonable would depend on the circumstances of individual case</p>	
015141 - 015520	Chairman Representative of Hong Kong Small and Medium Enterprises Association	Practical difficulties and unforeseeable problems faced by employers in running business, circumstances under which an employer would face cash flow problem; whether scrupulous employers should be encouraged to continue their business and preserve employment during the economic downturn; whether an employer who anticipated an adverse economy should dismiss a long-service employee; and the importance of the Bill to distinguish employers with genuine financial hardship from unscrupulous employers who were financially able but unwilling to pay defaulted LT awards	
015521 - 015721	Chairman Catholic Diocese of HK Diocesan Pastoral Centre for Workers (Kowloon)	Criteria for LD to institute criminal proceedings against employers on employment-related offence; and the role of the Award Enforcement Support Officer	
015722 - 015908	Chairman Hong Kong Chamber of Small and Medium Business Ltd.	Employers and employees relations under the financial tsunami; and the need for an employer with cash flow problem to accord priority to wage payment	
015909 - 020157	Chairman Admin	<p>Response of the Administration to the views of the deputations -</p> <p>(a) deputations in general supported the proposal to make non-payment of LT/MECAB awards a criminal offence;</p> <p>(b) the Administration would make the best endeavour to strike a pragmatic and reasonable balance</p>	

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		<p>between the importance attached by employees on effectiveness in catching the culpable employers and the employers' concern about netting in innocent businessmen;</p> <p>(c) the enforcement action on wage defaults had been effective in the past few years; and</p> <p>(d) LD would proactively provide necessary information and appropriate assistance to employees with defaulted LT awards</p>	
020158 - 020306	Chairman	<p>Date of next meeting</p> <p>Closing remarks</p>	<p>The Administration was requested to provide a written response to the issues raised by members at the last meeting</p>