

立法會
Legislative Council

LC Paper No. CB(2)1328/11-12(04)

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**Background brief prepared by the Legislative Council Secretariat
for the meeting on 15 March 2012**

Implementation of the Employment (Amendment) Ordinance 2010

Purpose

This paper provides information on the discussions by the Bills Committee on Employment (Amendment) Bill 2009 ("the Bills Committee"). The Bill was enacted on 28 April 2010 to become the Employment (Amendment) Ordinance 2010 ("E(A)O 2010").

Background

2. The Labour Tribunal ("LT") was set up in 1973 under the Labour Tribunal Ordinance (Cap. 25) with an exclusive jurisdiction to adjudicate employment-related civil claims. While LT provides a speedy, inexpensive and informal forum for the adjudication of employment claims, the modes of execution of LT awards are no different from the enforcement of any other civil judgments in respect of which the successful party bears the responsibility of enforcing the judgment if it is not complied with. There has been increasing concern in the community over some employers' failure in effecting payment to their employees even after LT had so awarded. A measure strongly favoured by stakeholders is to make non-payment of LT awards a criminal offence so as to achieve additional deterrence against defaulting employers.

3. The Minor Employment Claims Adjudication Board ("MECAB") is a board established under the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) to adjudicate minor employment claims involving not more than 10 claimants for a sum not exceeding \$8,000 per claimant.

The Bill

4. Introduced into the Legislative Council on 26 June 2009, the Bill sought to amend the Employment Ordinance (Cap.57) ("EO") to create a new offence against employers failing to make payment under an award of LT or MECAB and to provide for matters including prosecution of the proposed offence, liability of directors, partners and responsible persons of the employers, and proof of certain matters in the relevant proceedings. The offence would apply to any LT or MECAB award comprising wages and entitlements underpinned by criminal elements under EO. An employer who wilfully and without reasonable excuse failed to pay any sum payable under such a LT or MECAB award within 14 days from the date on which the sum was due committed an offence. If an employer who was a body corporate was proved to have committed the offence (i.e. wilful default of an award without reasonable excuse) with the consent or connivance of its director or other responsible person, or if the commission of the offence was attributable to the neglect of its director or other responsible person, the director or other responsible person was liable for the same offence. A rebuttable presumption was proposed on the consent, connivance or neglect of a director or responsible person, if he was proved to be concerned in the management of the body corporate or knew or ought to have known about the award. Similar provisions were made in relation to a partner of a firm who was similarly involved in an offence of wilful default of an award without reasonable excuse.

Deliberations of the Bills Committee

5. A Bills Committee was formed at the House Committee meeting on 10 July 2009 to study the Bill in detail.

6. The issues of concern deliberated by the Bills Committee included justifications for criminalizing the non-payment of LT and MECAB awards; process of investigation and institution of criminal proceedings against defaulting employers; whether written consent of the Commissioner for Labour ("CL") should be required for instituting prosecution for the new offence and whether a time limit should be prescribed for the giving of such consent; coverage of specified entitlements under the Bill; liability of and safeguards to directors and partners; adequacy of the manpower in the Labour Department for conducting investigation and prosecution; and publicity work on the Bill, when enacted. The deliberations of the Bills Committee are detailed in its report at LC Paper No. CB(2)1297/09-10.

7. The Second Reading debate on the Bill was resumed at the Council meeting of 28 April 2010. The Committee Stage amendments moved by the Administration to include compensation and terminal payments arising from unreasonable and unlawful dismissal in the definition of specified entitlement were passed. The Bill was enacted as E(A)O 2010.

Employment (Amendment) Ordinance 2010

8. The E(A)O 2010 commenced operation on 29 October 2010. Under the Ordinance, an employer who wilfully and without reasonable excuse fails to pay the specified sum as awarded by LT or MECAB within 14 days after it becomes due is liable to prosecution and, upon conviction, to a fine of \$350,000 and imprisonment for three years.

Follow-up actions by the Administration

9. The Bills Committee had requested the Administration to -
- (a) keep records as far as practicable on the time required to complete the relevant procedures under the proposed section 43S concerning the requirements for the giving of written consent by CL before instituting prosecution and the suspect to have an opportunity of being heard;
 - (b) review the implementation of E(A)O 2010 one year after its commencement, including CL's consent for prosecution and other procedural requirements; and
 - (c) report to the Panel on Manpower.

Relevant papers

10. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

**Relevant papers on
the Employment (Amendment) Ordinance 2010**

Committee	Date of meeting	Paper
Bills Committee on Employment (Amendment) Bill 2009	---	<u>Report of the Bills Committee on Employment (Amendment) Bill 2009 to House Committee on 16 April 2010</u>
Legislative Council	28.4.2010 (Item III)	<u>Agenda</u> <u>Official Record of Proceedings</u>

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