

**Bills Committee on Administration of Justice  
(Miscellaneous Provisions) Bill 2014**

**Responses to Follow-up Actions arising from  
the Meeting on 24 July 2014**

**PURPOSE**

This paper responds to the questions and issues raised by Members at the second meeting on 24 July 2014.

**RESPONSES**

- (a) **Regarding the proposed amendment to align the time limitation on the enforcement of an award or order by the Labour Tribunal with that in other civil claims, Members would like to know if such an award or order would be affected by the bankruptcy of the employer. If a claim is still within the time limit, would the proposed amendment enable an employee apply for the enforcement of an award or order of the Labour Tribunal to claim wage in arrears from an employer who had served out a bankruptcy order after four years?**

2. Under the existing provisions, if an award or order of the Labour Tribunal is registered in the District Court within the 12-month limitation period, it will be enforceable as a District Court judgment, and may be enforced by writ of execution within 6 years from the date of the judgment without the leave of court. The proposed amendment under clause 17 of the Bill will not change the existing law regarding the 6-year time limit on the enforcement of an award or order of the Labour Tribunal that has been registered in the District Court. Hence, the position of an employee in respect of such enforcement will remain the same after the proposed amendment is introduced.

3. According to the Administration, the issue raised relates to the law of bankruptcy. Under section 30A of the Bankruptcy Ordinance (Cap. 6), a bankrupt is discharged from bankruptcy by the expiration of 4 years where the person has not previously been adjudged bankrupt, and 5 years where the person has been previously adjudged bankrupt, beginning with the commencement of the bankruptcy. The effect of an order of discharge is stipulated in section 32 of Cap. 6. Under section 32(2), a bankrupt is

released from all the bankruptcy debts when he is discharged unless section 32(2)(a) or (b) applies, or the debts fall within any of the categories set out in section 32(1) or section 32(3) to (8). If the wages in arrears are bankruptcy debts (see definition in section 2 of Cap. 6) and do not fall within any of the exceptions in section 32, section 32(2) of Cap. 6 will apply and release the employer from the liability when he is discharged from bankruptcy.

**(b) In relation to the proposed amendments relating to “security for awards and orders”, has the Labour Tribunal ever in any case required employees to make security payment? If so, how many cases have there been? Furthermore, what are the grounds and criteria upon which the Presiding Officers require the employees to make security payments?**

4. Under the existing Labour Tribunal Ordinance (Cap. 25), the Labour Tribunal has power to order payment into the Tribunal or the giving of security.

5. Firstly, under section 29A of Cap. 25 –

“(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.”

6. Secondly, section 30 of Cap. 25 provides that -

“Without prejudice to the generality of section 29A, the tribunal may, if it is of the opinion that an adjournment of the hearing of a claim may result in prejudice to a party because of the disposal or loss of control of assets by a defendant, grant an adjournment only on payment into the tribunal of such sum of money, or the giving of such other security for the payment of the amount of any award, as the tribunal may think sufficient.”

7. The Labour Tribunal has in the past, pursuant to the powers provided in sections 29A and 30, ordered an employee to give security. The Judiciary however does not compile or keep the related statistics.

8. The broad bases for ordering security are as set out in the above provisions. The specific reasons and circumstances leading to the making of an order for security, however, differ from case to case.

**(c) How would a case be dealt with if the employer or the employee is unable to make the security payments as required by the court? Has the Judiciary considered setting up an arbitration mechanism to allow the parties involved to appeal against an order to give security?**

9. As with the other orders of the Labour Tribunal, an order requiring a party to give security under the proposed amended section 30 or section 31(4) may be reviewed and/or appealed against. There is no need for any separate arbitration arrangements as proposed.

10. The financial means of a party to meet an order for security is one of the matters that the Labour Tribunal may have regard to in deciding whether to order security.

**(d) Reconsider the drafting of the proposed revised definition of “live television link” in section 79A of the Criminal Procedure Ordinance (“CPO”) (Cap. 221) to the effect that the Criminal Court Users’ Committee’s consent should be sought before any facilities, regardless of the technology used, could be introduced by the Judiciary in the evidence-taking process by live television links for criminal proceedings;**

11. At present, only closed circuit television systems are allowed, thereby limiting the number of court rooms that may be used for evidence-taking for vulnerable witnesses. With the legislative proposal in question, the Judiciary will not be subject to such restriction as other technologies may be used. This will facilitate the listing of court hearings involving evidence-taking for vulnerable witnesses.

12. The Judiciary is mindful of the importance of ensuring security of any proposed audio-visual facilities. As indicated in the response dated 13 June 2014 to the issues raised by the Assistant Legal Advisor of the Bills Committee, the Judiciary will ensure that any audio-visual facilities to be used (such as video-conferencing facilities) will be equipped with security protection features, including encryption features recommended by internationally recognized telecommunication standard organizations.

The Judiciary will also consult the Criminal Court Users' Committee<sup>1</sup> on the use of such technologies.

13. Given Members' suggestion for added assurance stipulated in the law, the Judiciary has examined similar legislative provisions in the other jurisdictions. Information available to us suggests that similar definitions of "live link", "audio link" and "audio visual link" in the UK, Australia and New Zealand do not generally provide for the security or reliability of the system in the law<sup>2</sup>. The Judiciary considers that such a legislative approach would provide for maximum flexibility as technology may be evolving.

14. Moreover, as the Criminal Court Users' Committee is a non-statutory committee, the Judiciary does not consider it appropriate to prescribe in the law its role relating to the choice of audio-visual facilities.

15. In the light of the above, the Judiciary proposes to amend the CPO to the effect that any facilities for the evidence-taking process by live television links for criminal proceedings should be approved by the Chief Justice. If necessary, we may indicate in the legislation that the Chief Justice in granting the approval would consider whether the audio-visual facilities are secure. Administratively, the Judiciary will seek views from the relevant parties, including the Criminal Court Users' Committee and others, for the Chief Justice's consideration before he grants the approval.

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<sup>1</sup> The Criminal Court Users' Committee is chaired by a Judge of the Court of First Instance of the High Court. The members include Judges and Judicial Officers of the High Court, District Court and Magistrates' Courts, a barrister and a solicitor nominated by their professional bodies, and representatives of the Duty Lawyer Service, the Department of Justice, the Legal Aid Department, the Independent Commission Against Corruption, the Police and the Correctional Services Department. Its terms of reference are to discuss matters of concern to users of the criminal courts, including the listing and the use of technology in the courts.

<sup>2</sup> Most jurisdictions only define the terms generally, while Victoria of Australia has a provision on the requirements of audio and audio visual links. In its Evidence (Miscellaneous Provisions) Act 1958, "audio link" and "audio visual link" are defined in section 42C. Section 42G provides for the technical requirements for the links in terms of their functions. Section 42G(1)(b) and (2)(b) indicates that requirements may be prescribed by rules of court with respect to the form of audio visual link and quality of communication etc., without any express reference to security or reliability.

16. This proposal seeks to strike a balance between ensuring security and allowing flexibility for the adoption of suitable advanced technologies.

17. Subject to further discussion by the Bills Committee, we will put forward specific legislative amendments for Members' consideration.

**(e) Consider aligning the two different renderings of the conjunction “and”, namely “和” and “並”, in the Chinese version of the proposed amendments to paragraphs (a)(i) and (ii) regarding the definition of “live television link” in the existing section 79A of the CPO.**

18. We understand that Members' major concern is the discrepancy between “和” and “並” in the Chinese text of paragraphs (a)(i) and (a)(ii) of the proposed revised definition of “live television link” and agree that the two words may be aligned. It is considered that the use of “並” in paragraph (a)(ii) can more clearly bring out the idea that “看見並聽到” together constitutes one option, while “聽到” is the alternative option. Hence, for the alignment, we propose to use “並” for both paragraphs (a)(i) and (a)(ii).

19. Moreover, the opportunity is taken to refine the drafting of the definition (as shown in revision mode) as follows -

““電視直播聯繫” (live television link) 指一套符合以下說明的系統：在該系統中，某法庭和與該法庭位於同一處所的另一房間裝設了一套視聽設施系統，並藉該系統聯繫，而 —

- (a) 該視聽設施系統能夠讓 —
  - (i) 讓該法庭內的人，看見和並聽到該房間內的人；及
  - (ii) 讓該房間內的人，聽到或看見並聽到該法庭內的人；及
- (b) 裝設該視聽設施系統的目的，是讓在該房間內的人，於在該法庭進行的法律程序中，提供證據，

並包括將裁判官根據第79E條錄取書面供詞所在的房間與該人為作出書面供詞而提供證據所在的另一房間聯繫的一套相類系統；”

- (f) **Consider aligning the textual difference between the Chinese version and the English version of paragraph (a) in the proposed revised definition of “live television link” in section 79A of the CPO, in that the conjunction “及” between paragraphs (a) and (b) in the Chinese version was non-existent in the English version, and review the Chinese and English versions of the whole revised definition of “live television link” in section 79A for any similar textual inconsistencies.**

20. In response to Members’ concerns, the bilingual versions of the revised definition of “live television link” have been reviewed. The following minor refinements (as shown in revision mode) to the English version are proposed to address the concerns and to improve the sentence structures of paragraphs (a) and (b) -

““live television link” (電視直播聯繫) means a system in which a courtroom and another room located in the same premises as the courtroom are equipped with, and linked by audio-visual facilities that-

- (a) ~~that~~ is capable of allowing-
- (i) persons in the courtroom to see and hear persons in the other room; and
  - (ii) persons in the other room to hear, or see and hear, persons in the courtroom; and
- (b) is for the purpose of allowing persons in the other room givingto give evidence in the proceedings taking place in the courtroom,

and includes a similar system linking a room in which a magistrate is taking a deposition in writing under section 79E with another room from which the person gives evidence for the purpose of the deposition;”

**(g) Setting out by way of Practice Direction the relevant factors that should be considered by District Judges when deciding whether they should deliver the reasons for the verdict orally or in writing under the proposed amendment to section 80 of the District Court Ordinance (“DCO”) (Cap. 336).**

21. We note the views of the Bills Committee. The Judiciary remains of the view that the proposed amendments would not in any way undermine the legal rights of the parties.

22. However, given Members’ preference and after careful consideration, the Judiciary agrees that it may try to set out by way of a Practice Direction the relevant broad factors that a District Judge may consider when deciding whether the reasons for the verdict should be delivered orally or in writing. The factors will only be for reference of the judges who would make a final decision on the most appropriate mode of delivery after taking into account all the relevant factors, including the parties’ wishes.

**(h) Consider stipulating in the proposed section 80(6) of the DCO section that the Court must make a copy of the reasons delivered in writing available for public inspection on the website of the Judiciary, and that the same should apply to the reasons delivered orally and reduced to writing within 21 days after the hearing or trial under proposed section 80(4).**

23. As we have explained to Members at the previous Bills Committee meetings, the Judiciary has been placing on its website the reasons for verdict reduced to writing for criminal cases in the District Court on an administrative basis. After the proposed legislative amendments, it is the Judiciary’s intention to place the reasons for verdict delivered in writing on the Judiciary’s website as well.

24. While the Judiciary does not consider it necessary to incorporate the above administrative arrangements into the law, given Members’ strong preference, the Judiciary does not object to the proposal of amending section 80 of the DCO to provide for this additional dissemination method, on top of those set out in the new section 80(6) of DCO.

25. Members have also suggested that the law be amended so that the dissemination methods for the reasons for verdict delivered in writing would also be applicable to the reasons for verdict reduced to writing after oral delivery. As we have also explained at the Bills Committee meeting, the Judiciary has been disseminating on an administrative basis the reasons for verdict reduced to writing along the means spelt out in the new section 80(6) of Cap. 336. There is in fact no need to prescribe such methods in the law. However, given Members' suggestion and for the sake of consistency with the reasons delivered in writing, the Judiciary agrees to set out in the law the dissemination methods for the reasons reduced to writing, including the placement of the reasons on the Judiciary's website.

26. We will put forward specific changes to the legislative amendments for Members' consideration.

**Administration Wing  
Chief Secretary for Administration's Office**

**Judiciary Administration**

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