Bills Committee on
Employment (Amendment) Bill 2014

Response to Submission from
The Law Society of Hong Kong

On 13 May 2014, The Law Society of Hong Kong ("Law Society") made a submission on the Employment (Amendment) Bill 2014 in LC Paper No. CB(2)1540/13-14(01). The Government's responses are at Annex.

Labour and Welfare Bureau
June 2014

The Government's responses to the submission from The Law Society of Hong Kong ("Law Society")

Law Society's Views	The Government's Responses
<u>Definition of "paternity leave" (PL)</u> According to section 2 of the Employment Ordinance (Cap. 57) (EO), maternity leave (ML) means *absence from work ... by a female employee because of her pregnancy or confinement*, whereas under the Employment (Amendment) Bill 2014 ("the Bill"), PL was proposed to be defined as "*the paternity leave provided for in Part IIIA*". Law Society requested the Government to clarify the difference in structure between the definition of ML and the proposed definition of PL in the Bill.	The proposed definition of PL is clear and concise. It is not necessary for the definition of PL to have the same structure as the existing definition of ML. It is also useful to note that the definition of annual leave in section 2 of EO* has the same structure as the proposed definition of PL. * *In section 2 of EO, "annual leave" means the annual leave provided for in Part VIIIA".*
<u>Meaning of the term"father"</u> For the purpose of the proposed section 15D(1)(a), a definition of the term "father" should be provided for under the Bill and the term could be defined with reference to the Parent and Child Ordinance (P&CO) (Cap. 429).	According to P&CO, a man shall be presumed to be the father of a child if he was married to the mother of the child or he has been registered as the father of the child on the child's birth certificate. According to the legislative proposal, an eligible male employee may take PL before the issuance of his child's birth certificate,

Law Society's Views	The Government's Responses
	and there is no restriction on whether a male employee is legally married to the child's mother for entitlement to PL. Defining the term "father" with reference to P&CO for the purpose of the proposed s.15D(1)(a) would deny an employee the right to take PL before the issuance of birth certificate unless he is married to the child's mother, which is against our policy intent. According to the Bill, for entitlement to PL pay, a "father" must be the legal father whose name is entered as the father of the child on the birth certificate.
<u>Notification requirement</u> The 3 months' notice period under the proposed s.15E(1)(a)(i) is suggested to be measured to the first day of PL instead of the expected date of confinement.	The exact date of PL to be taken by individual employees may hinge on various factors such as the family circumstances of the employee concerned and the physical conditions of the mother and/or the newborn child. The employee may not be able to decide on the first day of PL at the time when he gives the 3-month advance notification to his employer. The expected date of confinement, which is specified in the medical certificate of the child's mother, is available at the early stage of pregnancy. Using the expected date of confinement, rather than the first day of PL, as a reference point for notice

Law Society's Views	The Government's Responses
	would give both the employer and employee certainty in implementation of the PL regime.
<u>Written statement of the employee</u> The written statement proposed under the new section 15E(2), which specifies the notification requirements related to PL, should be made a mandatory condition of PL. The employee should produce such written statement at least on the first day of PL.	Having regard that (i) at present, most employers do not require their employees to make a written request when they need to take different kinds of leave; (ii) a female employee taking ML may give verbal notice of her pregnancy and is only required to produce a medical certificate if asked by her employer, the Bill proposes to adopt a simple and straightforward mechanism on the mode of giving notice by the employee of his intention to take PL to facilitate compliance by the employee and ease the administrative burden of the employer. Under the proposed s.15E(2), the employer is given the discretion on whether a written statement is required, and may ask the employee to provide it if considered necessary.
<u>Calculation of the average daily wages</u> The reason for the difference in the drafting of the proposed section 15H(3) on the calculation of the average daily wages and section 14(3B) of EO, which	There are two main differences in the structure between the proposed section 15H(3) and the existing section 14(3B). First, under the proposed s.15H(3), the average daily wages of an

Law Society's Views	The Government's Responses
is the equivalent provision on the calculation of ML pay. It appears that EO is moving away from "disregarded periods" to "excluded periods".	employee are to be calculated *without regard to* a certain period and the wages paid to an employee for that period, whereas under the existing section 14(3B), a certain period and the wages paid to an employee for that period *are to be disregarded*. Compared with the existing section 14(3B), the approach in the proposed s.15H(3) avoids the use of a sandwich clause. Second, under the proposed section 15H(3), the period to be disregarded is specified in paragraph (a)(with a tag-definition ***excluded period*** added), and the wages to be disregarded are wages paid to an employee *for the excluded period*, whereas under the existing section 14(3B), the period to be disregarded is specified in paragraph (a), and the wages to be disregarded are wages paid to an employee *for the period referred to in paragraph (a)*. The addition of a tag-definition ***excluded period*** in the proposed section 15H(3)(a) makes the proposed section 15H(3)(b) simpler and more concise. Despite a slightly modified structure, the method of calculating the average daily wages in relation to PL pay in the proposed section 15H(3) is exactly the same as that in the existing section 14(3B) in relation to the calculation of the average daily wages for ML pay.

Law Society's Views	The Government's Responses
<u>Amendment section (sickness allowance)</u> The proposed repeal of the Chinese text "《醫院、療養院及留產院登記條例》" is wrong as there is no such Chinese text in the existing section 33(6)(a) of EO.	The Chinese text "《醫院、療養院及留產院登記條例》" to be repealed is in the Chinese version of section 33(6)(a) of EO.