

立法會
Legislative Council

LC Paper No. LS68/14-15

**Paper for the House Committee Meeting
on 29 May 2015**

**Legal Service Division Report on
Special Holiday (3 September 2015) Bill**

I. SUMMARY

- 1. The Bill**

The Bill proposes to make 3 September 2015 on a one-off basis as an additional general holiday and an additional statutory holiday for the purposes of the General Holidays Ordinance (Cap. 149) and the Employment Ordinance (Cap. 57) respectively to celebrate the 70th anniversary of the victory of the Chinese people's war of resistance against Japanese aggression.
- 2. Public Consultation**

The Administration consulted the Labour Advisory Board at its meeting on 15 May 2015. The Board supported the proposal.
- 3. Consultation with LegCo Panel**

The Panel on Manpower was consulted on the legislative proposal on 19 May 2015, members raised no objection to the Administration's proposal.
- 4. Conclusion**

No difficulties relating to the legal and drafting aspects have been identified. Subject to Members' views, the Bill is ready for resumption of the Second Reading debate.

II. REPORT

The date of First Reading of the Bill is 27 May 2015. Members may refer to the LegCo Brief (File Ref.: LD LRD/12-1/1/12/4(C)) issued by Labour and Welfare Bureau on 13 May 2015 for further details.

Object of the Bill

2. The Bill proposes to make 3 September 2015 as an additional general holiday and an additional statutory holiday in 2015 for the purposes of the General Holidays Ordinance (Cap. 149) and the Employment Ordinance (Cap. 57) respectively.

Background

3. The general holidays and statutory holidays are two different sets of holidays having their respective purposes and legal consequences. Under section 39(1) of Cap. 57, an employee, irrespective of his/her length of service is entitled to 12 days of statutory holidays a year as specified under the provision. An employee is further entitled to holiday pay if he/she has been employed under a continuous contract¹ for three months or more immediately before a statutory holiday (section 40 of Cap. 57). Any employer who without reasonable excuse fails to grant any employee any statutory holiday or holiday pay which the employer is required to grant under sections 39² and 40 is an offence, with a fine at level 5, i.e. \$25,001 to \$50,000 (section 63(4) and (7) of Cap. 57). On the other hand, Cap. 149 specifies, in its Schedule, 17 days of general holidays in each year, in addition to Sundays, which are days kept as holidays by all banks, educational establishments, public offices and Government departments³. Currently, all 12 statutory holidays are general holidays and there are five days of general holidays which are not statutory holidays⁴. However, Cap. 149 does not oblige employers to grant their employees day-offs or holiday pay on general holidays.

¹ Section 3(1) of and the First Schedule to Cap. 57 provide that an employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

² Under section 39 of Cap. 57, in specified circumstances, an alternative holiday or substituted holiday may be granted instead of a statutory holiday.

³ Sections 2 and 3 of Cap. 149.

⁴ They are Good Friday, the day following Good Friday, Easter Monday, the Birthday of the Buddha, and the first weekday after Christmas Day.

4. Previous designations of specific dates on a one-off basis as both an additional general holiday and an additional statutory holiday were made in 1981, 1987 and 1997⁵.

5. According to paragraph 5 of the LegCo Brief, 3 September 2015 is designated by the Central People's Government as a National Holiday on a one-off basis to celebrate the 70th anniversary of the Chinese people's war of resistance against Japanese aggression. The Bill is proposed to facilitate community participation in the commemorative activities to be held in Hong Kong on 3 September 2015.

Provisions of the Bill

6. The Bill contains only two clauses. Clause 1 sets out the short title of the Bill. Clause 2 provides that the 3rd day of September 2015 is to be a general holiday as defined in, for the purposes of, Cap. 149 and a statutory holiday as defined in, and for the purpose of, Cap. 57, as if it were so specified in section 39(1) of Cap. 57.

7. The legal effect of making 3 September 2015 as a general holiday under Cap. 149 is that all banks, educational establishments⁶, public offices and Government departments and courts⁷ will not open on that day. Also, under section 5 of Cap. 149, subject to the requirement regarding computation of time of payment under section 14 of the Bills of Exchange Ordinance (Cap. 19), it will not be necessary for any person to make any payment or to do any other act relating to any negotiable instrument on that day and all obligations to make such payment or to do any such other act will apply to the next following day not being itself a general holiday. The designation of an additional general holiday will also have legal implications on computation of time in judicial proceedings⁸ and other commercial activities⁹ under the respective ordinances.

⁵ Public Holiday (Prince of Wales' Wedding) Ordinance (Ord. 39 of 1981) designated 29 July 1981 as a public holiday; Public Holiday (Royal Visit) Ordinance (Ord. 35 of 1986) designated 22 October 1986 as a public holiday; and Public Holiday (Special Holidays 1997) Ordinance (Ord. 84 of 1997) designated 1 and 2 July 1997 being the establishment day of the Hong Kong Special Administrative Region and the day following the establishment day as additional general holidays and statutory holidays.

⁶ Under section 85A of the Education Ordinance (Cap. 279) and section 13 of the Post Secondary Colleges Ordinance (Cap. 320) respectively, a registered school or provisionally registered school, or a College may conduct educational courses or give instructions on a general holiday notwithstanding anything in Cap. 149.

⁷ According to section 4 of Cap. 149, Government departments and courts may open or operate on a general holiday if the head of relevant Government departments and the Chief Justice respectively so requires or directs. Under section 7 of Cap. 149, magistrates may exercise all the jurisdiction and powers conferred on them by any enactment on any day whether a general holiday or not.

⁸ For example, in civil actions, a general holiday will be excluded from computing the relevant period for doing certain acts where such period in question is a period of seven days or less (Order 3, rule 2(5) of the Rules of the High Court (Cap. 4A) and Order 3, rule 2(5) of the Rules of the District Court (Cap. 336H)).

⁹ For example, a general holiday will be excluded from computing the time for the first allotment of shares and debentures of a company under sections 44A and 44B of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

8. The legal effect of making 3 September 2015 as a statutory holiday under Cap. 57 is that an employer will have to grant a holiday to employees on that day or on an alternative day and where an employee has been employed by his/her employer under a continuous contract for a period of three months immediately before that day, the employer will have to pay holiday pay to the employee (please see paragraph 3 above).

Commencement

9. There is no deferred commencement provision in the Bill. The Bill will therefore come into operation on the day of gazettal after its enactment.

Public Consultation

10. Paragraph 9 of the LegCo Brief stated that the Labour Advisory Board was going to discuss the legislative proposal at its meeting on 15 May 2015. Upon enquiry, the Administration informed Legal Service Division that the Board supported the proposal.

Consultation with LegCo Panel

11. The Panel on Manpower was briefed on the legislative proposal on 19 May 2015. While members did not raise objection to the proposal, they made enquiries on a number of issues, including the legislative timetable, rationale and need for designating 3 September 2015 on a one-off basis as both a statutory holiday and general holiday; the financial implications of the proposal; and the Administration's plan to align the number of statutory holidays with that of general holidays for employees. Most members called for an early enactment of the Bill such that the community at large could have more time to plan ahead for the extra day of holiday.

Conclusion

12. No difficulties relating to the legal and drafting aspects have been identified. Subject to Members' views, the Bill is ready for resumption of the Second Reading debate.

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27 May 2015