

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1941/15-16  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/3/15

**Bills Committee on Employment (Amendment) Bill 2016**

**Minutes of meeting**  
**held on Monday, 9 May 2016, at 8:30 am**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon LEUNG Yiu-chung  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Frankie YICK Chi-ming, JP  
Hon YIU Si-wing, BBS  
Hon Gary FAN Kwok-wai  
Hon SIN Chung-kai, SBS, JP  
Hon POON Siu-ping, BBS, MH  
Hon TANG Ka-piu, JP  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG Ngok-kiu

**Member attending** : Hon WU Chi-wai, MH

**Members absent** : Hon LEE Cheuk-yan  
Hon Cyd HO Sau-lan, JP  
Hon IP Kwok-him, GBS, JP  
Hon WONG Yuk-man  
Hon CHAN Yuen-han, SBS, JP  
Hon KWOK Wai-keung  
Hon IP Kin-yuen  
Dr Hon CHIANG Lai-wan, JP

**Public Officers : Item I  
attending**

Ms Melody LUK  
Assistant Commissioner for Labour  
(Labour Relations)

Mr Simon LI  
Chief Labour Officer (Labour Relations)  
Labour Department

Ms Cecilia CHAN  
Senior Labour Officer (Labour Relations)  
Labour Department

Ms Betty CHEUNG  
Senior Assistant Law Draftsman  
Department of Justice

Ms Selina LAU  
Senior Assistant Law Draftsman  
Department of Justice

**Clerk in : Miss Betty MA  
attendance Chief Council Secretary (2) 1**

**Staff in : Mr Alvin CHUI  
attendance Assistant Legal Adviser 3**

Ms Mina CHAN  
Council Secretary (2) 1

Ms Kiwi NG  
Legislative Assistant (2) 1

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**I. Meeting with the Administration**

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

Action

Committee stage amendments ("CSAs") proposed by members

2. Members considered Mr SIN Chung-kai's proposed CSAs to the proposed new section 32NA(1)(b) and the Administration's response [LC Paper Nos. CB(2)1368/15-16(01) and CB(2)1436/15-16(01)]. Members also noted that Mr LEUNG Yiu-chung had indicated his intention to propose amendments to the amount of the further sum, which was currently proposed in the Employment (Amendment) Bill 2016 ("the Bill") to be set at three times the employee's average monthly wages, subject to a maximum of \$50,000. Members agreed that the Chairman of the Bills Committee would not move any amendments to the Bill on behalf of the Bills Committee.

Follow-up actions required of the Administration

Admin

3. The Administration undertook to convey to the Labour Advisory Board ("LAB") the views and concerns raised by members at the meetings of the Bills Committee and provide a written response on its proposed way forward after consulting LAB. Members agreed that the Administration's response, once available, be issued for their reference by circulation.

**II. Any other business**

4. The Chairman concluded that, pending the Administration's provision of written response to the above issues, the Bills Committee had completed scrutiny of the Bill. Members agreed that there would be no need to hold the next meeting scheduled for 17 May 2016 to discuss the above response to be provided by the Administration unless warranted.

*(Post meeting note: With the concurrence of the Chairman, the next meeting scheduled for 17 May 2016 was cancelled pending the Administration's response to the issues raised at the meeting.)*

5. There being no other business, the meeting ended at 9:30am.

**Proceedings of meeting of the  
Bills Committee on Employment (Amendment) Bill 2016  
held on Monday, 9 May 2016, at 8:30 am  
in Conference Room 1 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
000000 - 000709	Chairman	Opening remarks	
000710 - 001247	Chairman Admin	The Administration's response to the issues raised at the meeting on 11 April 2016, which was set out in LC Paper No. CB(2)1384/15-16(01)	
001248 - 001254	Chairman	Continuation of clause-by-clause examination of the Employment (Amendment) Bill 2016 ("the Bill")	
001255- 001507	Chairman Admin	<u>Clause 7</u>  Members raised no further question.	
001508 - 002525	Admin ALA3 Chairman Mr LEUNG Yiu-chung	<u>Clause 8</u>  <i>Proposed new section 32PC</i>  ALA3's concern and the Administration's explanation regarding the meaning of "a change of circumstances" in the proposed new section 32PC(3)(b) [LC Paper Nos. CB(2)1185/15-16(01) and (02)].  The Chairman's enquiry and the Government's explanation regarding the circumstances under which the employer might make an application to the court or Labour Tribunal ("LT") for relief from the liability to pay the proposed further sum to the employee if he/she was unable to reinstate or re-engage the employee as ordered by the court or LT for an unreasonable and unlawful dismissal case  Mr LEUNG Yiu-chung's question, the Administration's response and ALA3's advice regarding the factors to be taken into account by the court or LT in determining the employer's application for relief from paying the proposed further sum to the employee concerned.	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
002526 - 002734	Chairman Admin	<u>Clauses 9 to 12</u>  Members raised no question.	
002735 - 002940	Admin Chairman ALA3	<u>Clause 13</u>  Members raised no question.  <u>Clause 14</u>  <i>Proposed new section 30A(6) and (7)</i>  Views of ALA3 and the Administration regarding whether the courts had inherent jurisdiction to order a stay of execution of the original reinstatement or re-engagement order. <i>[LC Paper Nos. CB(2)1185/15-16(01) and (02), CB(2)1234/15-16(01) and CB(2)1357/15-16(01)]</i>	
002941 - 003059	Admin Chairman	<u>Clauses 15 to 18</u>  Members raised no question.	
003100 - 003107	Chairman	Completion of clause-by-clause examination of the Bill.	
003108 - 003215	Chairman	Discussion on the Committee stage amendments ("CSAs") proposed by individual members.	
003216 - 003255	Chairman Mr LEUNG Yiu-chung	Mr LEUNG Yiu-chung indicated his intention to propose CSAs to the amount of the further sum, which was currently proposed in the Bill to be set at three times the employee's average monthly wages, subject to a maximum of \$50,000.	
003256 - 003614	Chairman Mr SIN Chung-kai	Briefing by Mr SIN Chung-kai on his proposed CSAs to the Bill, which were set out in LC Paper No. CB(2)1368/15-16(01).	
003615 - 003721	Chairman Mr LEUNG Yiu-chung	Mr LEUNG Yiu-chung reiterated his reservations about Mr SIN Chung-kai's proposed CSAs, which, in his view, failed to protect grassroots employees whose three months' wages were usually lower than \$50,000.	

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003722 - 003822	Chairman	The Chairman cast doubt about Mr SIN Chung-kai's proposed CSAs, which sought to remove the proposed cap on the amount of the further sum, as the proposal departed from the usual practice of stipulating a cap on remedies in the legislation.	
003823 - 004117	Chairman Mr POON Siu-ping	<p>Mr POON Siu-ping shared Mr LEUNG Yiu-chung's view that the amount of the further sum should be adjusted upward to reflect the wage increase over the years and better protect the low-paid employees.</p> <p>The Administration considered that the proposed further sum should be subject to a ceiling, given that it was an amount in addition to the terminal payments and compensation which might be up to \$150,000 payable to the employee concerned. The Administration reiterated that the amount of the further sum proposed in the Bill was a hard-earned consensus reached by the Labour Advisory Board ("LAB") following rounds of discussion.</p>	
004118 - 004314	Chairman Admin	In response to the Chairman's enquiry, the Administration advised that the next meeting of LAB would be held shortly and all the views expressed by members on the Bill, including those regarding the proposed amount of the further sum, would be conveyed to LAB for consideration. Subject to the further deliberation of LAB, the Administration would consider the way forward on the Bill.	
004315 - 004550	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing reiterated his view that a cap should be imposed on the amount of the further sum having regard to the affordability of employers, particularly those of small and medium-sized enterprises ("SMEs"). While it was considered reasonable to make adjustment in the amount of the further sum in the light of the wage increase over the years, any consensus reached by LAB should be respected.</p> <p>The Administration took note of Mr YIU's concern and would relay it to LAB.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
004551 - 004738	Chairman Mr SIN Chung-kai	Mr SIN Chung-kai considered that his proposed CSAs would not bring significant impact on SMEs given that making reinstatement or re-engagement orders were not common. On the other hand, his proposed CSAs would enhance the deterrence effect against non-compliance with the reinstatement or re-engagement order by the employer in an unreasonable and unlawful dismissal case.	
004739 - 004959	Chairman Mr Andrew LEUNG Admin	Mr Andrew LEUNG was concerned that the Bill could not be passed within the current legislative session if LAB was unable to reach a consensus on any revised proposals right away. He asked whether the Administration would consider withdrawing the Bill if it did not agree to the CSAs proposed by members.  The Administration responded that it would relay members' views and concerns regarding the Bill to LAB for consideration. The time required for LAB to deliberate the issues would depend on the relevant circumstances.	
005000 - 005225	Chairman Mr LEUNG Yiu-chung	Given that the court or LT had already taken into account various factors when making an order for reinstatement or re-engagement, Mr LEUNG Yiu-chung considered that an employer who failed to comply with such an order should be liable to higher penalties so as to enhance the deterrence effect and provide greater employment protection for grassroots employees. In his view, the amount of the further sum should be increased to at least six times the employee's monthly wages up to a maximum of \$100,000.	
005226 - 005419	Chairman Mr CHUNG Kwok-pan	Mr CHUNG Kwok-pan reiterated his concern about the practicability of compliance with the reinstatement or re-engagement order by the employer having regard to the strained relations between the employer and employee concerned. Given that it was not easy to reach consensus among members of LAB on the matter and the proposed further sum would inevitably impose additional financial burden on SMEs, he considered the proposed amount of the further sum in the Bill an appropriate starting point.	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
005420 - 005604	Chairman Mr LEUNG Yiu-chung Admin	The Chairman requested the Administration to convey to LAB the views and concerns raised by members and provide a written response in this regard after reverting to LAB.	<b>Admin</b>
005605 - 010002	Chairman Admin	Legislative timetable.	

Council Business Division 2  
Legislative Council Secretariat  
27 July 2016