

**Information on prosecution of wage offences
under the Employment Ordinance**

Background

At the LegCo Panel on Manpower meeting held on 31 October 2002, the Administration was requested to provide information on the prosecution action taken, whether successful or not, for offences in relation to arrears of wages as well as the difficulties encountered in taking out such prosecutions. This note provides the relevant prosecution figures for 2002 and sets out the practical issues involved.

Prosecution statistics for wage offences

2. Figures on the summonses heard, convicted, dismissed or withdrawn for late payment or non-payment of wages under the Employment Ordinance in 2002 are as follows:

	2002
Summonses heard	198
Summonses convicted	139
Summonses dismissed/ offered no evidence *	32
Summonses withdrawn	27

Note: * There were incidences in which the prosecution offered no evidence on summonses issued after the defendant took plea in court. Reasons generally included the employee withdrew his willingness to testify at court or the defendant was wound up or bankrupt.

3. For the year 2001, the number of summonses convicted for late payment or non-payment of wages was 75. The figures in paragraph 2 above demonstrate that our more intensive efforts in prosecuting wage offences have resulted in an 85% increase in convictions in 2002 as compared to that in 2001.

Resolute prosecution policy

4. The Labour Department is committed to protecting the statutory rights and benefits of employees. We take a serious view on wage offences under the Employment Ordinance and will take out prosecution whenever there is sufficient evidence to establish an offence.

5. However, we face practical difficulties and factors that are beyond our control in prosecuting wage offences under the Employment Ordinance.

6. Specifically, for wage offences, requirement on the prosecution has to prove the employer-employee relationship and the wages due to the employee. Given that such cases often involve an one-to-one situation, the employee will have to serve as a witness to testify in court the employment relationship and the wages owed. Where the employee refuses or changes his mind to serve as a witness for the prosecution, the case cannot proceed.

7. In a criminal prosecution, the standard of proof is very high and the prosecution has to prove every element of an offence beyond reasonable doubt. If the court accepts that the employer has a reasonable excuse or his wilfulness cannot be established, or the credibility of the evidence given by the prosecution witness is in doubt, the wage offence cannot be established beyond reasonable doubt and the court will dismiss the summonses.

8. Furthermore, there are incidences in which we have to offer no evidence after a court has ordered the winding up of the company concerned. Under section 186 of the Companies Ordinance, no prosecution action should be proceeded with against the company once the court has made a winding-up order.

9. There are also cases in which the summonses could not be served on the employer both by mail and by personal service as arranged by court. In such cases, we have attempted the address provided by the employee, the information as recorded in the Companies Registry and any other lawful source that is relevant to the case, but to no avail.

10. Despite the above, we are determined to prosecute employers who fail to pay wages according to the law if there is sufficient evidence. We will continue to educate employers that late payment or non-payment of wages is a serious criminal offence punishable by a maximum fine of \$200,000 and one-year imprisonment under the Employment Ordinance.