

**LegCo Panel on Manpower
(Meeting on 21 November 2002)**

Problem of Arrears of Wages in Construction Industry

Purpose

This paper briefs Members on the Administration's measures to tackle the problem of arrears of wages in the construction industry.

Conciliation procedure for cases of non-payment of wages

2. The Administration is fully committed to protecting the statutory rights and benefits of employees and takes a serious view on the non-payment of wages by employers. If a construction worker has problem in recovering wages or when there are disputes over non-payment of wages, the Labour Department (LD) will render conciliation service to the workers and their employers to resolve their differences. The conciliation procedures are informal, time-saving and relatively simple. At the conciliation meeting, the conciliation officer plays the role of a neutral intermediary to help the parties reach a mutually acceptable settlement. Most cases can be settled through conciliation. If settlement cannot be reached, the workers may have their case referred to the Labour Tribunal (LT) or the Minor Employment Claims Adjudication Board, depending on the claim amount and the number of claimants, for adjudication.

3. Under the Employment Ordinance, if an employee is employed by a subcontractor engaged in building and construction works and is owed wages, the principal contractor and all superior subcontractors have the vicarious liability to pay the first two months' unpaid wages to the employee. As such, the principal contractor and superior subcontractors will be involved in the conciliation and subsequent adjudication process in wage claims and disputes of construction workers.

The Administration's response to Yau Tong incident

4. Following the Yau Tong incident on 19 July 2002 which involved the non-payment of wages to construction workers by a sub-contractor, the Labour Branch of the Economic Development and Labour Bureau (EDLB) and LD conducted an urgent tripartite meeting on 22 July 2002 with the Hong Kong Construction Association (HKCA), the Hong Kong Construction Industry Employees General Union and the Construction Site Workers General Union to map out ways to resolve the problem of arrears of wages in the construction industry.

5. The tripartite meeting reached a consensus on adopting six immediate measures to address the situation and these have been fully implemented. The measures are:

- (a) LD to produce radio and television announcements to remind employers and employees of the importance of keeping wage and attendance records and their statutory obligations and protection with respect to wage payments;
- (b) LD to produce posters for display at construction sites listing the telephone numbers of LD, the principal contractor and the person responsible at the site for the information of workers;
- (c) The principal contractors to strengthen their supervision of subcontractors to ensure the prompt payment of wages;
- (d) The trade association to appeal to their members to ensure that wages are paid on time;
- (e) LD to set up a communication channel to gather intelligence from trade unions on incidents of non-payment of wages; and
- (f) LD to monitor closely construction sites nearing completion to ensure that employees' rights and benefits are protected. If circumstances warrant, LD will take resolute action in instituting

prosecution. Trade unions in the industry will appeal to their members to come forward as prosecution witnesses.

6. All the above measures have been implemented. For (a) and (b), we have in early August 2002 produced Announcements in the Public Interest for broadcasting on television and radio to remind employers and employees of the importance of maintaining wage and attendance records. We have also prepared posters and leaflets for distribution to trade unions, the HKCA and at construction sites. We have sustained our appeal to construction workers and unions on the importance of making early report on non-payment of wages.

7. With regard to (c) and (d), the trade association and principal contractors had in the past three months strengthened their supervision of sub-contractors to ensure prompt payment of wages. The HKCA has also distributed a Guideline on Recording System for the Attendance of Construction Works to its members. It helps contractors maintain attendance record of employees and reduce the chances of dispute.

8. As regards (e), with the establishment of the intelligence system with the trade unions, the LD and HKCA have by end-October 2002 received nine referrals involving 162 workers from trade unions. Follow-up action to these referrals had been taken swiftly. Some cases were resolved after conciliation; others are undergoing conciliation or have been referred to the LT for adjudication.

9. In respect of (f), LD launched a special campaign in August 2002 to inspect all 2,515 active construction sites in Hong Kong to ascertain whether workers encountered non-payment or late payment of wages and to educate them on how best to protect their statutory rights. Among them, 600 were construction projects that would be completed in six months' time. A total of 59 workers from 22 construction sites made allegation over unpaid wages. Immediate follow-up action has been made by LD with the following results :

- in two of the cases workers and employers resolved the problem between themselves immediately after the inspection visit;

- in 13 of the cases workers indicated that they would prefer settling the matter in private with their employers;
- in four of the cases, as workers did not provide their contact means, LD had followed up with the employers/contractors concerned to give advice;
- in one case, the worker withdrew his claim; and
- for the remaining two cases, one was referred to LT for adjudication and the other was partially settled with some workers reaching settlement at conciliation and the cases of the other workers referred to LT.

To send a clear signal to contractors and workers in the construction industry that government takes a serious view of non-payment of wages in the industry, LD will continue to ascertain from workers if they have problems in getting prompt payment of wages in the course of inspections to construction sites.

10. Apart from the afore-mentioned measures, LD has stepped up prosecution on non-payment of wages under the Employment Ordinance. The number of summons taken out in the first 10 months of 2002 was 156. For comparison, there were 50 and 95 summons in 1999 and 2001 respectively. Summons taken out in the construction industry also recorded a correspondingly marked increase between 1999 and 2001. The figures were eight in 1999, 10 in 2000 and 25 in 2001. For the first 10 months of this year, the number was 27. As successful prosecution relies on the readiness of workers to be witnesses, it is important for workers to collaborate with LD on this front.

11. With the concerted efforts of unions and trade associations in implementing the six agreed measures and with the LD stepping up prosecution, there is an enhanced awareness of the problem of non-payment of wages among principal contractors, sub-contractors and employees in the construction industry. The situation of non-payment of wages in the industry has since improved markedly.

Long-term measures

12. We recognize that non-productive multi-layered sub-contracting is a key factor contributing to the problem of arrears of wages in the construction industry. In this connection, the Construction Industry Review Committee (CIRC) has set out in its report a number of reform measures aimed to improve the quality of subcontracting and to raise the performance standard of subcontractors. These measures include the setting up of a voluntary subcontractor registration scheme administered by the industry itself, provision of training to enhance the skills and competence of subcontractors, exercise of more effective control over the performance and management of subcontractors, as well as assistance rendered by contractors in raising the performance standards of subcontractors. We believe that these measures aimed at improving the management of subcontracting should help address the problem of arrears of wages of construction employees.

13. The Provisional Construction Industry Co-ordination Board (PCICB) was formed in September 2001 to spearhead the above measures in collaboration with the Government and other industry stakeholders.

Voluntary Subcontractor Registration Scheme [CIRC item 9]

14. As a pragmatic way forward, the PCICB intends to implement the voluntary subcontractor registration scheme in two phases starting with a Primary Register with minimal entry barriers and followed by a Premier Register with grading on capability and specialty. This approach seeks to generate at the outset a critical mass of registered subcontractors so that there will be a sound basis for structured professional training and systematic regulation.

15. Details of the voluntary registration scheme are being finalized and should be ready for consultation with the industry by the end of this year, with a view to launching the Primary Register in the first half of 2003. It is hoped that a sound registration system can help marginalize

the unscrupulous subcontractors who purposely owe wages to the employees.

Training for Subcontractors [CIRC Item 10]

16. The Construction Industry Training Authority (CITA) is already offering a number of training courses for managerial and supervisory staff, including those engaged by subcontractors. To ensure a better focus of such efforts, the PCICB has established a dialogue with subcontractor trade associations to solicit their input on how to improve the skills upgrading programme to cope with changing needs of the industry.

More Effective Control over Subcontractors [CIRC Item 11]

17. To achieve more effective control, the Government has carried out extensive consultation with the industry and will introduce by the end of this year a new requirement for main contractors to prepare a subcontractor management plan (SMP) when they tender for public works projects. The main objective of SMP is to enable Government works departments to strengthen control over contractors through enhancing the transparency of their monitoring of subcontractors and their accountability to the Government.

18. To augment the existing provisions prohibiting contractors from total subletting, special conditions will be included in public works contracts to make it an explicit commitment of the main contractors to prohibit further total subletting of works assigned to their subcontractors and to directly employ staff to supervise the subcontracting works.

Assistance by Contractors [CIRC item 12]

19. To assist industry stakeholders in enhancing the performance standards of subcontractors, the PCICB will issue a set of guidelines on good industry practice on procurement and management of subcontracts. These guidelines are meant for industry-wide adoption and stress clear contractual responsibilities, equitable payment terms, fair selection process, transparent management framework, effective collaboration and willingness to pursue continuing improvement. The PCICB will take

into account the views of the industry and finalize the guidelines for promulgation in early 2003. An improved system of management of subcontractors should help prevent non-payment of wages.

Construction Workers Registration Scheme [CIRC item 52]

20. Separately, a bill will be introduced into the Legislative Council in early 2003 to establish a registration system for construction workers. This will enhance works quality and provide more reliable data for manpower planning. Since workers will in future be required to make use of smart cards when entering and leaving construction sites, this new system should help to provide attendance records and reduce the incidence of wage disputes.

Conclusion

21. Non-payment of wages resulting from multi-layered subcontracting has long been seen as a perennial problem in the construction industry. To combat this, the Administration will continue to encourage employees to report non-payment of wages at an early stage, and step up prosecution on wage offences. Together with the various measures to reform and better regulate the construction industry, the situation should improve significantly over time.