

立法會
Legislative Council

LC Paper No. LS15/05-06

**Paper for the House Committee Meeting
on 16 December 2005**

**Legal Service Division Report on
Employment (Increase in Penalty for Offences under Section 63C) Bill 2005**

I. SUMMARY

- 1. Object of the Bill** To amend the Employment Ordinance (Cap. 57) (“EO”) to increase the maximum penalty for offences relating to wage defaults under sections 23, 24 and 25 of EO.
- 2. Comments** Sections 23, 24 and 25 of EO govern the time for payment of wages under different circumstances. Section 63C provides that any employer who willfully and without reasonable excuse contravenes section 23, 24 or 25 commits an offence and is liable to a fine of \$200,000 and to imprisonment for 1 year. The Administration considers it necessary to raise the relevant maximum penalty to \$350,000 and 3 years respectively in order to combat wage defaults and to ensure that EO provides effective sanctions against these offences.
- 3. Public Consultation** The Labour Advisory Board endorsed the relevant proposal at its meeting on 6 October 2005.
- 4. Consultation with LegCo Panel** At its meeting on 17 November 2005, members of the Panel on Manpower supported the Administration’s proposal. However, a member was concerned about the fact that directors of limited companies were not personally liable for the offences under section 63C. He suggested that section 64B be amended to the effect that a director who had no reasonable excuse would be liable for an offence committed by his limited company under section 63C.
- 5. Conclusion** The member’s concern about corporate directors’ liability is being considered by the Administration, which will deal with the issue in a separate exercise. The proposal in the Bill simply imposes a substantial increase in the penalty of offences relating to wage defaults. It does not intend otherwise to make any policy change. The drafting of the Bill presents no difficulty. It is for members to consider whether a Bills Committee is necessary.

II. REPORT

Object of the Bill

To amend the Employment Ordinance (Cap. 57) (“EO”) to increase the maximum penalty for offences relating to wage defaults under sections 23, 24 and 25 of EO.

LegCo Brief Reference

2. LD CR 84/706.

Date of First Reading

3. 14 December 2005.

Comments

4. Sections 23, 24 and 25 of EO govern the time for payment of wages. Under section 23, wages shall become due on the expiry of the last day of the wage period and shall be paid as soon as is practicable but in any case not later than 7 days thereafter. Under section 24, on completion of an employee’s contract of employment, wages of the employee and any other sum payable in respect of his contract shall be due to him on the day of the completion of the contract and shall be paid as soon as is practicable but in any case not later than 7 days thereafter. Where a contract of employment is terminated, any sum due to the employee shall be paid to him as soon as is practicable and in any case not later than 7 days after the day of termination (section 25(1)).

5. Section 63C of EO provides that any employer who willfully and without reasonable excuse contravenes section 23, 24 or 25 commits an offence and is liable to a fine of \$200,000 and to imprisonment for 1 year.

6. According to the Administration, wage defaults (including non-payments and under-payments) by employers have increasingly become a significant cause for labour disputes and claims handled by the Labour Department (para. 2 of LegCo Brief). The Administration considers it necessary to raise the relevant maximum penalty in order to combat wage defaults and to ensure that EO provides effective sanctions against wage offences (para. 4 of LegCo Brief).

7. The Bill seeks to amend section 63C of EO to raise the penalty for wages offences under sections 23, 24 and 25 to a fine of \$350,000 (from \$200,000)

and imprisonment for 3 years (from 1 year).

Public Consultation

8. The Labour Advisory Board endorsed the proposal at its meeting on 6 October 2005 (para. 9 of LegCo Brief).

Consultation with LegCo Panel

9. At its meeting on 17 November 2005, the Panel on Manpower was consulted on the Administration's proposal to increase the maximum penalty for wage offences under section 63C of EO from the existing fine of \$200,000 and imprisonment for 1 year to a fine of \$350,000 and imprisonment for 3 years.

10. Members supported the Administration's proposal. In addition, some members suggested that the Labour Department proactively take enforcement actions against employers who contravened wage provisions under EO and summon employees to testify before the court. They also suggested that the Administration offer awards to employees who were willing to serve as witnesses before the court.

11. A member welcomed the Administration's proposal to increase the maximum penalty for wage offences but was concerned about the fact that directors of limited companies were not personally liable for offences under section 63C of EO. He suggested that section 64B of EO be amended to the effect that a director who had no reasonable excuse would be liable for an offence committed by his limited company under section 63C of EO and witnesses be summoned to testify before the court.

12. Section 64B of EO governs the liability of partners of firms and directors, managers, secretaries or other similar officers of body corporate where an offence under section 63C committed by a firm or body corporate is proved to have been with the consent or connivance of, or to be attributable to any neglect on the part of such persons, they shall be guilty of the like offence under section 63C.

13. The Administration noted the member's suggestion and explained that apart from prosecuting employers for wage offences, the Labour Department had also prosecuted directors and other responsible persons of limited companies under section 64B of EO. The Administration was also considering the feasibility of amending the relevant section and was seeking advice of the Department of Justice in this respect. In this regard, the Legal Service Division has written to the Administration and the Administration has confirmed that it is reviewing section 64B and will separately deal with the issue in another legislative exercise if necessary (Appendix).

Conclusion

14. The member's concern about corporate directors' liability is being considered by the Administration. The proposal in the Bill simply imposes a substantial increase in the penalty of offences relating to wage defaults. It does not intend otherwise to make any policy change. The drafting of the Bill presents no difficulty. It is for members to consider whether a Bills Committee is necessary.

Encl

Prepared by

Kitty Cheng
Assistant Legal Adviser
Legislative Council Secretariat
12 December 2005



Labour Department (Headquarters)

勞工處 (總處)

Your reference 來函編號 : LS/B/4/05-06

Our reference 本處檔案編號 LD CR 84/706 Pt. 2

Tel. number 電話號碼 : 2852 4099

Fax number 傳真機號碼 : 2544 3271

By fax (2877 5029) and by post

13 December 2005

Miss Kitty Cheng
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Miss Cheng,

Employment (Increase in Penalty for Offences under section 63C) Bill 2005

I refer to your letter of 10 December 2005 and our subsequent telephone conversation. As indicated at the meeting of the LegCo Panel on Manpower held on 17 November 2005, the Administration is conducting a review of section 64B of the Employment Ordinance (EO) and, pending the findings of the review, will consider whether and if so how that section should be amended. I wish to confirm that the review of section 64B of the EO is a separate exercise and that the proposed amendment, if any, to section 64B of the EO will be separately dealt with in another legislative exercise.

Yours sincerely,

(Alan Wong)

for Permanent Secretary for Economic Development and
Labour (Labour) / Commissioner for Labour



LS/B/4/05-06
2869 9457
2877 5029

Mr Alan Wong
Asst Comr (Labour Relations)
Labour Department
16/F, Harbour Building
38 Pier Road, Central
Hong Kong

By Fax (2117 0875) and By Post

10 December 2005

Dear Mr Wong,

Employment (Increase in Penalty for Offences under section 63C) Bill 2005

You may recall that at the meeting of the LegCo Panel on Manpower held on 17 November 2005, Hon Lee Cheuk-yan expressed his concern about the fact that directors of limited companies were not personally liable for the wage offences under section 63C of the Employment Ordinance (Cap. 57). The Administration in response indicated that it was considering the feasibility of amending section 64B of EO and was seeking advice of the Department of Justice in this respect. Please kindly advise that whether the proposed amendment, if any, to section 64B of EO will be separately dealt with in another legislative exercise.

I would be grateful for your reply in bilingual form on or before 13 December 2005.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

c.c. LA