



Labour Department (Headquarters)

勞工處 (總處)

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17 July 2008

Mr Raymond LAM
Clerk to Panel/Chief Council Secretary (2)1
Council Business Division 2
Legislative Council Secretariat
3rd floor, Citibank Tower
3 Garden Road
Hong Kong

Dear Mr LAM,

**Panel on Manpower
Enforcement of Labour Tribunal awards**

At the meeting held on 24 April 2008, the Panel passed a motion requesting the Administration to put forward practicable options for improving the enforcement of the Labour Tribunal (LT) awards before the end of this legislative session. Moreover, the Administration was requested to seek legal advice on whether under the existing Protection of Wages on Insolvency Ordinance (PWIO), the Protection of Wages on Insolvency Fund Board (PWIF Board) could exercise subrogation right to present winding up or bankruptcy petition against employers of the PWIF applicants and upon presentation of the petition, grant ex-gratia payment to the applicants (see item 19 of the Panel's List of follow-up actions, position as at 13 June 2008). Our response is as follows.

Measures for improving the enforcement of LT awards

We briefed Members at the Panel meeting of 8 July 2008 on the three enhancement measures which the Administration has identified to be viable and effective, namely (i) making non-compliance with LT awards a criminal offence; (ii) empowering the LT to order defaulting employers to pay

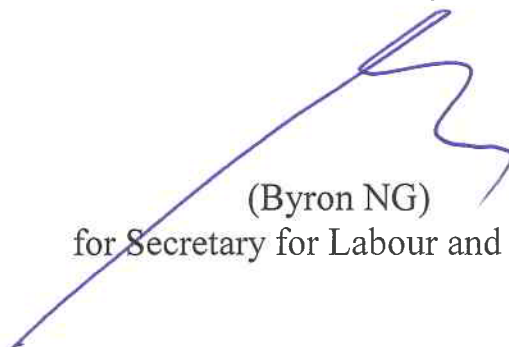
additional sums to the employees; and (iii) empowering the LT to order disclosure of the financial details of defaulting employers. All three proposals involve legislative changes and possibly changes to some established procedures. The Labour and Welfare Bureau and Labour Department will continue to work in earnest with relevant bureaux and departments with a view to introducing the above measures as soon as practicable.

Subrogation right of the PWIF Board

We have sought advice from the Department of Justice. Under section 16 of the PWIO, ex-gratia payment may be made to an applicant if a winding-up or bankruptcy petition has been presented against the employer. Section 24 provides that after payment under section 16 has been made, the rights and remedies of the employee, to the extent of the amount of payment made, shall be transferred to and vested in the PWIF Board. It is only then that the PWIF Board may take steps to enforce its subrogation rights. Before payment is made, the PWIF Board does not have any standing to present a bankruptcy or winding-up petition against the employer.

Section 16(1)(a)(ii) of the PWIO provides an exception where payment under section 16 may be made to the employee(s) without a bankruptcy petition, in case an employer is not a company and he would, but for the existence of section 6(2)(a) of the Bankruptcy Ordinance (Cap. 6) (i.e. the aggregate amount of the debts is equal to or exceeds the prescribed amount of \$10,000), be liable to have a bankruptcy petition against him. However, the PWIF Board cannot present bankruptcy petition against the employer if the requirement under section 6(2)(a) of Cap. 6 is not satisfied.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Byron NG', written over a diagonal line that extends from the bottom left towards the top right.

(Byron NG)
for Secretary for Labour and Welfare