



By Fax: 2509 0775

Labour Department (Headquarters)

勞工處 (總處)

Your reference 來函編號 : CB2/PL/MP
Our reference 本處檔案編號 : LD/CR 814/1
Tel. number 電話號碼 : 2852 4099
Fax number 傳真機號碼 : 2544 3271

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
Review of section 64B of the Employment Ordinance**

At the meeting held on 20 December 2007, the Panel passed a motion requesting the Administration to amend section 64B of the Employment Ordinance (Cap. 57) (EO) for better protection of employees' lawful rights and interests. Moreover, the Administration was requested to provide further information relating to the review of section 64B of the EO (see item 15 of the Panel's List of follow-up actions, position as at 13 June 2008). Our response is as follows.

Review of section 64B of the EO

The Labour Department (LD) has conducted a review of section 64B of the EO. The advice of the Department of Justice has also been sought. The legal advice is that the addition of the two offence elements as proposed by some labour groups, i.e., "act without reasonable excuse", or "failure to act without reasonable excuse", would not in any way lessen the burden of proof on the prosecution for invoking section 64B to prosecute the responsible persons of a body corporate. The elements of offences in the existing provisions namely "consent", "connivance" or "neglect" of responsible persons already cover all scenarios under which wage offences committed by a body corporate could be attributable to the unreasonable acts of its responsible persons. In other words, it would be redundant to add the two additional elements. This is because "consent" and "connivance" should have adequately dealt with the scenarios where the responsible persons' acts were "without reasonable excuse", whereas "neglect" should have already covered the scenarios

where such persons “failed to act without reasonable excuse”. Legal advice further suggests that removal of the existing elements of offences, i.e. “consent”, “connivance” or “neglect” is also not feasible, as the amendment would likely be in conflict with the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Basic Law.

Meanwhile, LD has revised its investigation strategies and deployed more resources to target enforcement action against responsible persons of the body corporate for wage offences. First, we have stepped up publicity not only to encourage employees to be prosecution witnesses in section 64B cases, but also to alert the responsible persons to the relevant penalty clauses. Second, LD has employed ex-police officers to strengthen its capability in evidence collection and intelligence gathering. Especially with respect to section 64B, where possible, proactive investigations are conducted at an early stage.

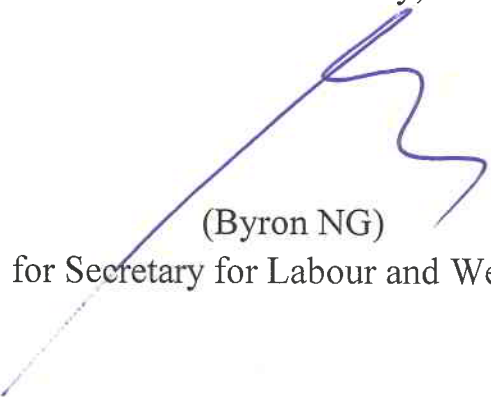
As a result of such measures, the number of convictions has increased sharply. In 2007, there were 126 convicted summonses on wage offences against the responsible persons, an increase of 83% over 69 in 2006. Moreover, five company directors were given jail or suspended jail sentence in 2007.

The encouraging outcome indicates that changes in enforcement strategy could greatly enhance the efficacy of section 64B. LD would continue to take vigorous enforcement action and monitor the situation closely.

Provision of further information

The relevant information is set out at the Annex for Members’ reference.

Yours sincerely,



(Byron NG)
for Secretary for Labour and Welfare

Encl.

Panel on Manpower
Review of section 64B of the Employment Ordinance

List of Follow-up Actions (Item 15)

Item 15(a): Information on the sentencing imposed on company directors who were given jail/ suspended jail sentence/ community service order

Date	Trade	Sentence
2006		
Apr 2006	Catering	one-month imprisonment, suspended for two years
Dec 2006	Printing	three-month imprisonment, suspended for 18 months
2007		
Mar 2007	Tourism	four-month imprisonment, suspended for two years
May 2007	Catering	14-day imprisonment
Jun 2007	Transport	four-week imprisonment, suspended for 18 months
Sep 2007	Property Management	four-week imprisonment, suspended for 18 months
Nov 2007	Catering	14-day imprisonment, suspended for one year
Nov 2007	Manufacturing	160 hours community service order
Dec 2007	Catering	160 hours community service order

Item 15(b)(i): Information on the number of summonses convicted and its proportion to the actual number of wage offence cases

The Labour Department has kept statistics on the number of summonses convicted for wage offences but has not compiled statistics on the number of wage offence cases. Therefore, the proportion of such convicted summonses to the actual number of wage offence cases is not available.

Item 15(b)(ii): Information on the number of summonses convicted and its proportion to the total number of summonses heard

	Total no. of summonses heard on wage offences #	Total no. of summonses convicted on wage offences #
2006	1 043	785
2007	1 225	960

The figures include summonses against employers being proprietors, partners and body corporates as well as the responsible persons of body corporates.

The figures on the total number of summonses heard on wage offences include alternate summonses. It would not be meaningful to compare the number of summonses heard with the number of convicted summonses as the former might have included alternate summonses of the same offence according to individual circumstances in some prosecution cases.