



Hong Kong General Chamber of Commerce  
香港總商會 1861

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5 October 2009

The Honourable Alan Leong Kah-kit, SC  
Chairman  
Bills Committee on Employment (Amendment) Bill 2009  
Legislative Council Secretariat  
3/F Citibank Tower  
3 Garden Road  
Central  
Hong Kong

Dear Mr Leong,

**Employment (Amendment) Bill 2009**

The Hong Kong General Chamber of Commerce (the Chamber) is pleased to submit its comments on the captioned Bill.

We would like to emphasize that the scope of the Bill should be clearly defined in two aspects:

- The offence created in the Bill should be restricted to non-payment of Labour Tribunal (LT) or Minor Employment Claims Adjudication Board (MECAB) awards comprising wages and entitlements for which non-payment already constitutes a criminal offence under the Employment Ordinance.
- The new offence should focus only on those who wilfully or without reasonable excuse default on LT or MECAB awards, rather than those with genuine financial difficulties.

There is a need to build safeguards into the investigation and prosecution procedures in order to ensure only those who are culpable are held liable.

**Requirement to Hear Defences**

The Chamber maintains that it is essential to retain the requirement of hearing the accused's defences, if any, before prosecution can be initiated, so that if there is no reasonable prospect to establish the accused's consent, connivance or neglect, no prosecution will be taken out.

### Rebuttable Presumption

In cases where the employer is a body corporate, the Bill provides that a rebuttable presumption of committing the offence will be triggered if the prosecution can prove that:

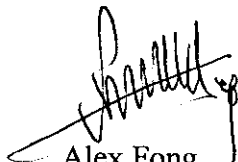
- the accused is concerned in the management of the body corporate at the time of default, or
- the accused has knowledge of the award while the default lingers.

We are mindful that the meaning of knowledge in the Bill includes constructive knowledge, which means that the prosecution only has to prove that the accused ought to have known about the award in question. Once the rebuttable presumption is established, which is not a difficult hurdle for the prosecution, the onus will be on the accused to defend himself or herself.

The rebuttable presumption helps achieve a balance between ensuring effectiveness in holding culpable persons liable and avoiding netting those who have no part to play at all in the default. The Administration should not contemplate removing the rebuttable presumption and turning the offence into a strict liability as was suggested in some discussions.

Criminalisation of non-payment of LT awards is a major step in providing additional deterrence against wilful defaults by employers. It is however necessary that the right legal framework is put in place in order to achieve the policy objective and protect the rights of innocent parties.

Yours sincerely,



Alex Fong  
CEO