

For information on  
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## **Legislative Council Panel on Manpower**

### **Liability to pay wages of employees of subcontractors in building and construction works under the Employment Ordinance**

#### **Introduction**

This paper briefs Members of wage protection afforded to employees engaged in the building and construction works industry (“construction industry”) under the Employment Ordinance (Cap. 57)(“EO”), including vicarious liability of the principal contractors (“PCs”) and superior subcontractors (“SSCs”) to pay wages, and related matters.

#### **Relevant Requirements of EO**

2. Section 43C of EO stipulates that a PC and SSC(s) engaged in the construction industry are liable to pay the arrears of wages of an employee who is employed by a subcontractor under their supervision (“SC”). If an employee of the construction industry is owed wages by the SC, and his/ her employment relates wholly to the work of the PC and whose place of employment is wholly on the site of the building works, the PC and every SSC (if applicable) should jointly and severally pay the wages owed to the employee. Such vicarious liability confines to wages only and is limited to the first two months of the period in respect of which the wages are due.

3. EO also stipulates that an employee of the construction industry being owed wages must serve a written notice with details of the wage default<sup>1</sup> to the PC within 60 days (or an additional period of 90 days permitted by the Commissioner for Labour) after the wages become due. The PC should serve a copy of the notice on every SSC to that SC within 14 days. The PC should pay wages to the employee within 30 days after receiving the notice and may request every SSC to share out the liability. Since the PC and/or SSC(s) settled the outstanding wages on behalf of the SC, the sum shall be a debt due by the SC to

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<sup>1</sup> The details include the name and address of the employee; the name and address of the direct employer (i.e. the SC); the address of the place of employment; the particulars of the work in respect of which the wages are due; and the amount of wages due and the period to which they relate.

the PC and/or SSC(s), who are entitled to recover the sum through civil proceedings.

### **Work of the Labour Department in Handling Wage Default Cases of the Construction Industry**

4. The Labour Department (“LD”) has been adopting a multi-pronged strategy in striving to safeguard the statutory rights and benefits of the employees of the construction industry.

#### ***Maintaining Close Liaison with the Stakeholders***

5. The Labour Relations Division (“LRD”) of LD maintains close communication with trade unions of the construction industry to gather intelligence on non-payment of wages, so as to promptly liaise with the PC, every SSCs and the SC concerned to look into the situation and offer appropriate assistance, including the arrangement of conciliation service. LRD also maintains close contact with major PCs to share experience on good human resource management practices and subcontracting management, and establish direct communication channels with relevant management for speedy intervention as needed. Besides, LD has set up a tripartite committee for the construction industry comprising representatives of trade unions, employer organisations and LD to discuss matters of common concern including the labour relations scene in the industry. The above measures are conducive to detecting and resolving potential labour relations issues at an early stage.

#### ***Conciliation Service***

6. LRD provides voluntary conciliation service to assist employers and employees in organisations outside the government sector to resolve labour disputes and claims arising from EO and the contracts of employment. If no settlement can be reached between both parties after conciliation, the case will be referred to, depending on the number of claimants and claim amount, the Labour Tribunal or the Minor Employment Claims Adjudication Board for adjudication.

7. In 2018, 2019 and 2020, LD handled 917, 892 and 552 disputes of the construction industry and claims involving vicarious liability to pay wages respectively. According to our experience, through LD’s conciliation service, the PCs and SSCs discharged the vicarious liability under EO to pay wages on their SCs’ behalf in most wage default cases of the construction industry.

### ***Enforcement Work***

8. According to EO, an employer shall pay wages to the employee not later than seven days after the expiry of the wage period, expiry of the contract or date of termination of employment. An employer who willfully and without reasonable excuse fails to pay wages to an employee is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.

9. LD has been sparing no effort in safeguarding the statutory rights and benefits of employees through rigorous law enforcement. Labour inspectors actively conduct inspections of workplaces of various industries (including construction sites) to check employers' compliance with relevant labour laws. Suspected breaches of labour laws will be promptly investigated upon detection and prosecution will be instituted against offending employers when there is sufficient evidence. LD also widely publicises its complaint hotline (2815 2200) and encourages prompt reporting of breaches of EO so that speedy follow-up actions can be taken. In 2018, 2019 and 2020, the number of convicted summonses against employers in the construction industry for wage offences were 72, 161 and 82 respectively.

### ***Protection of Wages on Insolvency Fund***

10. The Protection of Wages on Insolvency Fund ("PWIF") provides timely financial relief to employees (including employees of the construction industry) affected by the cessation of business or insolvency of their employers. Ex gratia payment granted from PWIF covers arrears of wages and other statutory entitlements as stipulated in the Protection of Wages on Insolvency Ordinance (Cap. 380). All along, PWIF serves as a reliable safety net to provide a certain level of protection to employees who are owed wages.

### ***Publicity and Promotional Work***

11. Through various channels, LD publicises among contractors, employers and employees in the construction industry about the relevant provisions under EO on wage protection for construction workers, including the requirement of wage payment and statutory obligations of contractors, as well as good human resource and worksite management practices. LD also disseminates the relevant information through publishing and distributing booklets and leaflets through different means. Besides, LD places advertisements regularly at the journals of major employers' associations and trade union federations to remind the contractors/ SCs of the statutory obligation of wage payment and vicarious liability to pay wages.

## **Conclusion**

12. The construction industry has all along been adopting a unique mode of subcontracting, in which a PC contracts out various works projects to individual subcontractors, so as to maintain agility of the industry. Generally speaking, the mutual responsibilities of a PC and other subcontractors of the construction industry are relatively clear, and that the PC also has substantial control over its SC in relation to relevant building works and employment arrangements made by the SC. The stipulation of provisions of EO on vicarious liability of the PCs and SSCs of the construction industry to pay wages owed by SCs is founded on such unique mode of subcontracting of the construction industry, hence the scope of application of section 43C and relevant provisions of EO specifically target at and cater for handling the subcontracting arrangement of this industry sector. Nonetheless, any employee who is owed wages, no matter whether from the construction industry or not, should approach LD as soon as possible without delay. Through effective conciliation service, stringent enforcement work and the safety net rendered by PWIF, LD will continue with our dedicated efforts to provide appropriate assistance to employees being owed wages.

13. Members are invited to note the content of this paper.

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