

執行勞資審裁處的裁斷

Enforcement of
Labour Tribunal Awards

法庭服務簡介

Guide to Court Services

勞資審裁處
Labour Tribunal



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引言

如獲判款項的與訟一方（「勝訴一方」）未有收到判決款項，勝訴一方可申請執行判決。請注意，執行判決並不保證一定成功，勝訴一方亦不一定能取回全數判決款項。倘若執行不成功，執行判決的費用將由勝訴一方承擔。因此，申請執行判決前應慎重考慮。

申請執行判決前的考慮事項

執行所涉及的費用

勝訴一方申請執行判決時，須繳付按金以支付執達主任的費用。執行判決所涉的費用視乎執達主任採用的執行方式而定，金額可能非常龐大。除非能成功執行判決及所扣押資產能足以抵償有關費用，否則或不能從敗訴一方討回該等開支。如執行不成功，嘗試執行判決時所涉及的費用會由勝訴一方承擔。因此，在申請執行判決前，勝訴一方必須考慮敗訴一方是否有任何資產以抵償判決款項。

破產欠薪保障基金提供的資金

如判決款項屬於破產欠薪保障基金¹（「該基金」）的特惠款項涵蓋之類別，勝訴一方可向勞工處處長申請從該基金撥款支付。然而，並非所有由審裁處作出判決的項目均符合獲得特惠款項的資格，而且該基金撥出的金額具法定上限²，與訟雙方應向勞工處查詢該基金的進一步詳情。

執行判決的不同方式

勝訴一方可採取不同的方式執行判決，最常用於執行判決的執行令狀是扣押債務人財產令狀（以下簡稱「封票」）。勝訴一方還可以申請其他命令，例如「押記令」（針對敗訴一方的物業登記載斷／命令）、「第三債務人命令」（凍結敗訴一方的銀行戶口）等等。勝訴一方應索取獨立的法律意見，以選擇就其情況而言最有效及適當的執行方式。

如需其他執行方式的更多資訊，可到訪無律師代表訴訟人資源中心（地址：香港金鐘道38號高等法院大樓低層一樓LG105室；電話：2825 0586 傳真：2825 0588）或參閱執達事務組有關執行法庭判決的小冊子：

http://www.judiciary.hk/en/crt_services/pphlt/pdf/bailiff.pdf

¹ 參見香港法例第380章《破產欠薪保障條例》第15條。

² 參見香港法例第380章《破產欠薪保障條例》第16條。

以封票執行判決

擬執行判決的勝訴一方可於區域法院登記處或透過勞資審裁處登記處申請扣押債務人財產令狀（「封票」）。

勝訴一方須首先申請裁斷／命令證明書（即表格17），並繳付法定費用。勝訴一方可親身提交申請，亦可透過電話（2625 0020）、傳真（2625 0556）或電郵（labourtribunal@judiciary.hk）遞交。

如勝訴一方有意執行判決，應向區域法院登記裁斷，登記手續亦可透過勞資審裁處登記處辦理。

勝訴一方必須填妥申請表格（稱為「便箋」），以及一張封票列明敗訴一方的資料和追討的數額。填妥文件之後，勝訴一方須繳付下列費用：

- (1) 執行令狀的存檔費用；
- (2) 支付執達主任交通費的按金；及
- (3) 護衛員費用的按金，以8天服務為上限。

封票經法庭授權人員簽發之後，將轉交執達主任辦事處執行。

勝訴一方如屬意指派法律代表處理執行判決的申請，應於收到判決後盡快諮詢其律師。

執程序

在執行當日，一名執達主任與一名護衛員會到訪敗訴一方的處所。如執達主任認為處所內的資產足以抵償封票的估計費用，執達主任便會進行扣押。所扣押資產的總值一般不超過封票所載金額與執行封票所需估計費用的總額。執達主任會列出一份被扣押資產的清單，然後把一份該清單的副本交給護衛員。護衛員負責看守物品，確保它們不受干擾或遭非法移走。

根據現行做法，敗訴一方有5個工作天的寬限期清繳債項，如未能於寬限期內繳納，執達主任會透過公開拍賣出售被扣押物品，拍賣所得的收益在扣除護衛員費用及附帶開支後，會支付予勝訴一方。拍賣收益餘款可於法庭會計處領取，屆時勝訴一方將獲通知。

執達主任如未能找到足夠的資產抵償封票的估計費用，主任不會執行封票。勝訴一方須在執行當日起計14日內，向執達主任辦事處提出進一步的書面指示。

勝訴一方如陪同執達主任到訪處所，主任會在場即時向勝訴一方索取指示。勝訴一方必須事前向執達主任預約，方可於執行封票期間陪同執達主任。

注意事項

- 勝訴一方必須向執達主任辦事處提供敗訴一方的正確地址以執行封票。
- 每次由執達主任執行封票的嘗試均涉及費用。
- 如執行成功，執行所涉及的費用會從拍賣收益中扣取，而按金會退還勝訴一方。如執行不成功，嘗試執行時所涉及的費用會從按金扣除，餘款會退回勝訴一方。
- 如勝訴一方要求執達主任進行多次嘗試，勝訴一方或需繳付額外按金。
- 嘗試執行判決可能涉及龐大費用，勝訴一方應慎重考慮才提出申請。如勝訴一方知道敗訴一方沒有充足資產或沒有任何資產可供扣押，即使已執行判決，勝訴一方仍極有可能不能討回判決款項。
- 執行封票時，執達主任無權破門進入住宅處所，所以封票無法在以下情況成功執行：
 - 無人應門；或
 - 佔用人拒絕讓執達主任進入相關的處所；或
 - 難以確認處所內的財物和貨物是否屬於敗訴一方。

在上述情況下，勝訴一方應尋求法律意見，以考慮其他執行裁斷／命令的方法。

查詢

有關執行判決的一般查詢或有關執行進度的查詢，勝訴一方可致電執達事務組（2802 7510）或以下的執達主任辦事處：

灣仔政府大樓 2582 3081

觀塘法院大樓 2772 9263

西九龍法院大樓 3916 6501

此文件只供一般參考用途，不應被視為完整及具權威性的法律陳述或法庭常規。司法機構並不承擔此文件的任何法律責任。

司法機構

二〇一八年一月

(第三版)

Enforcement of Labour Tribunal Awards

Introduction

If the party in whose favour the award is made (“the winning party”) does not receive the judgment sum, he may apply for enforcement of the judgment.

It is important to note there is no guarantee an attempt for enforcement will be successful or that the winning party will recover the judgment sum in full. If enforcement is unsuccessful, the expenses of enforcement are borne by the winning party. Therefore, any application for enforcement should be made after careful consideration.

Things to consider before applying for enforcement of a judgment

Costs

When the winning party makes an application for enforcement, he is required to pay a deposit to cover the bailiff’s expenses. Subject to the method of execution adopted by the bailiff, the expenses incurred could be substantial. The expenses may be recoverable from the losing party only if execution is successful and the assets seized are sufficient to cover the costs. If the execution fails, the winning party will have to bear the costs arising from attempts to execute the judgment. Therefore, the winning party must consider whether the losing party has any assets to satisfy the judgment sum before applying for execution.

Funds available through the Protection of Wages on Insolvency Fund

If the judgment sum falls within the categories of ex-gratia payment covered by the Protection of Wages on Insolvency Fund¹(“the Fund”), the winning party may make an application to the Commission for Labour for payment from the Fund. However, not all sums awarded by the Tribunal are eligible for payment. Furthermore, there is a statutory limit on the amount to be paid out from the Fund². Parties should approach the Labour Department for further details on the Fund.

Different ways to enforce a judgment

There are a number of different ways a winning party could enforce a judgment. The most common writ of execution used to enforce a judgment is the Writ of Fieri Facias (also known as the Writ of Fi Fa). There are also other orders a winning party could apply for to enforce the judgment; for example, a Charging Order (registering the award/order against the losing party’s property) and a Garnishee Order (freezing the losing party’s bank account). The winning party should seek independent legal advice to determine which mode of enforcement is the most effective and appropriate one in his case.

For more information on other methods of enforcement, you may visit the Resource Centre for Unrepresented Litigants at Room LG105, Lower Ground Floor 1, High Court Building, 38 Queensway, Hong Kong (Telephone: 2825 0586 Fax: 2825 0588) or view the pamphlet issued by the Bailiff Section on enforcement at:

http://www.judiciary.hk/en/crt_services/pphlt/pdf/bailiff.pdf

¹ See section 15 of Cap.380 Protection of Wages on Insolvency Ordinance, Laws of Hong Kong.

² See section 16 of Cap.380 Protection of Wages on Insolvency Ordinance, Laws of Hong Kong.

Enforcement of the judgment by way of a Writ of Fi Fa

A winning party wishing to enforce a judgment may apply for a Writ of Fi Fa (“the Writ”) at the Registry of the District Court or through the Labour Tribunal Registry.

The winning party should first apply for a Certificate of Award/Order, namely Form 17, and pay the prescribed fee. The application may be made in person, by phone (2625 0020), by fax (2625 0556) or by e-mail (labourtribunal@judiciary.hk).

If the winning party intends to execute the judgment, the award should be registered in the District Court. Such registration can be done through the Labour Tribunal Registry.

The winning party must then fill in an application form (known as the “praecipe”) and a Writ of Fi Fa setting out the particulars of the losing party and the sum to be recovered. Once the documents are completed, the winning party is required to pay the following sums:

- (1) the fee of filing a writ of execution;
- (2) a deposit for payment of the bailiffs’ travelling expenses; and
- (3) a deposit for security guard fee for a maximum of 8 days’ service.

After the issue of the Writ has been approved by an authorised officer of the court, the Writ will be passed to the Bailiff’s office for execution.

If the winning party prefers to instruct legal representatives to handle the application for enforcement, he should consult his lawyers soon after he receives the judgment.

Execution Process

On the date of execution, a bailiff and a security guard will visit the losing party's premises. If the bailiff finds there are sufficient assets on the premises to justify a seizure, the bailiff will proceed with the seizure. The total worth of the assets seized usually will be no more than the aggregate of the amount endorsed on the Writ and the estimated fees for execution. The bailiff will take an inventory of all the assets seized and will give a copy to the security guard who is responsible for keeping watch over the items to ensure that they will not be tampered with or removed unlawfully.

The existing practice is to give the losing party a grace period of 5 working days to settle the debt. If the losing party fails to settle the debt within the grace period, the bailiff will conduct a sale of the items seized by way of a public auction. The proceeds of sale will be paid to the winning party after deducting the security guard's fees and incidental expenses. The winning party will be notified once the remaining balance of the sale proceeds is ready for collection at the Accounts Office of the court.

If the bailiff is unable to find sufficient assets to justify a seizure, the bailiff will not proceed with execution. The winning party should then write back to the Bailiff's office within 14 days from execution to give further instructions.

If the winning party accompanies the bailiff on the visit, the bailiff will obtain instructions from the winning party immediately on the spot. The winning party must make an appointment in advance with the bailiff if he wishes to accompany the bailiff during the execution of the Writ.

Points to Note

- The winning party must provide the correct address of the losing party to the Bailiff's office for the execution of the Writ.
- Costs are incurred each time the bailiff attempts to execute the Writ.
- If execution is successful, the costs will be defrayed from the proceeds of sale and the deposit will be returned to the winning party. If the execution is unsuccessful, the cost of the attempt(s) will be deducted from the deposit and the balance returned to the winning party.
- If the winning party asks the bailiff to make several attempts, he may be required to pay an additional deposit.
- The cost of trying to enforce a judgment can be substantial. The winning party should think carefully before submitting an application. If the winning party knows the losing party has insufficient or no assets to be seized, it is highly likely the judgment will remain unsatisfied even after the execution process.
- In the execution of the Writ, the bailiff has no power to break into domestic premises. Therefore, the attempt for execution would fail if:
 - there is no one to answer the door; or
 - the occupier refuses to let the bailiffs enter the premises in question; or
 - there is difficulty in confirming whether the property and goods in the premises belong to the losing party.

Under such circumstances, the winning party should seek legal advice so as to consider possible alternative enforcement action.

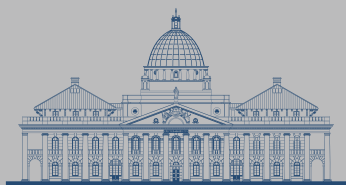
Enquiries

For general enquiries on execution of a judgment or enquiries about the progress of execution, the winning party may call the Bailiff Section at 2802 7510 or one of the following Bailiff offices:

Wanchai Tower	2582 3081
Kwun Tong Law Courts Building	2772 9263
West Kowloon Law Courts Building	3916 6501

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香港特別行政區政府新聞處設計封面
政府物流服務署印

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