

Immigration (Amendment) Bill
Illegal Workers on Construction Sites

(a) Average penalty imposed on employers of the illegal workers

Usual Sentence of Employers of Illegal Workers				
Usual Sentence	S.89, Cap 221 & S.41, Cap 115	S.17I	S.17J	S.17K
1996	Fine of HK\$2,500 - \$3,000	Fine of HK\$4,500+ suspended sentence of 1 - 6 months' imprisonment	Fine of HK\$3,500	Fine of HK\$2,500
1997	Fine of HK\$3,500 - \$3,800	Fine of HK\$5,000 + suspended sentence of 1 - 12 months' imprisonment	Fine of HK\$3,200 - \$3,500	Fine of HK\$3,000
1998 (Jan - Aug)	Fine of HK\$3,500 - \$5,000 + suspended sentence of 2 - 4 months' imprisonment	Fine of HK\$3,000 - \$5,000+ suspended sentence of 3 - 6 months' imprisonment	Fine of HK\$3,500	Fine of HK\$3,500 - \$4,000

In more serious cases, the employers of illegal workers are given immediate custodial sentences. The relevant statistics are as follows:

Immediate Custodial Sentences Imposed on Employers of Illegal Workers						
	1996		1997		1998 (Jan - Aug)	
	No. of Cases	Range of Sentence	No. of Cases	Range of Sentence	No. of Cases	Range of Sentence
S.89, Cap 221 & S.41, Cap 115	1	4 months	0	-	5	1 - 3 months
S.17I	14	1 - 6 months	35	2 - 12 months	49	3 - 12 months
S.17J	0	-	0	-	0	-
S.17K	0	-	0	-	0	-

(b) Penalty system adopted by the works department in respect of contractors who have employed illegal immigrants on their sites

With effect from 26 April 1993, contractors having had more than two convictions under the Immigration Ordinance, Cap 115 for employing illegal immigrants or having illegal immigrants on sites under their control, in respect of separate incidents, in a rolling 12-month period, shall be suspended from tendering for public works for six months. The suspension shall take effect from the date of the last conviction and convictions in respect of all public and private construction sites shall be counted.

(c) Number of site controllers who were not prosecuted despite illegal workers were arrested on the site, together with the reasons for not instituting prosecutions

Year	1995	1996	1997	1998 (Jan - May)
No. of I.I. Arrested on Construction Site	100	150	271	30
No. of Site Controller Prosecuted Under S.38A	9	5	5	0

The relatively low prosecution figure of construction site controllers may be attributed to the following factors:

- (a) Some construction site controllers can prove that they have taken all practicable steps to prevent the IIs from being on the construction site;
- (b) The number of IIs arrested on construction sites dropped significantly in the first five months in 1998;
- (c) Irrespective of the number of IIs found on a construction site, only one site controller would be prosecuted.

Statistics on number of site controllers who were not prosecuted are not kept.

(d) Number of Two-way Permit Holders (TWPHs) arrested on construction sites between 1995 and May 1998 who were prosecuted and the number of employers of these TWPHs who were identified and charged subsequently

	1995	1996	1997	1998 (Jan - May)	1998 (Jun - Aug)
TWPHs arrested on construction sites	755	422	651	700	275
[Prosecuted]	[No statistics]	[251]	[527]	[562]	[144]
Prosecution Rate (%)	-	59.5	81	80	52
Employers of TWPHs illegal workers arrested on construction site	No statistics	No statistics	No statistics	48	38
[Prosecuted]				[20]	[15]
Prosecution Rate (%)				42	39

e) Number of employers of the 705 TWPHs (arrested at places of work other than construction sites) who were prosecuted under section 17I of the Immigration Ordinance

	1998 (Jan - May)	1998 (Jun - Aug)	Total
No. of TWPHs arrested at other places of employment	705	277	982
No. of prosecution (under S.17I) of employers of TWPHs arrested at other places of employment	54	36	90