

LEGISLATIVE COUNCIL BRIEF

REVIEW OF THE POLICY ON FOREIGN DOMESTIC HELPERS

INTRODUCTION

At the meeting of the Executive Council on 25 February 2003, the Council ADVISED and the Chief Executive ORDERED that :

- (a) an Employees Retraining Levy (the levy) of \$400 per month for each foreign domestic helper (FDH) be imposed on employers of FDHs with effect from 1 October 2003. The levy will be paid either in a lump sum for the standard contract period of 24 months before visas are granted for the FDHs or by four equal instalments with the first instalment paid before visas are granted. The importation of FDHs should be designated as a labour importation scheme under the Employees Retraining Ordinance (ERO) so that the levy will be used for the training and retraining of the local workforce; and
- (b) the minimum allowable wage (MAW) of FDHs be reduced by \$400 from the current \$3,670 to \$3, 270 per month with effect from 1 April 2003.

The Council also endorsed that the terms and conditions of the standard contract of employment for FDHs should be rationalized and strictly enforced.

JUSTIFICATIONS

2. As part of its remit, the Task Force on Population Policy has included a review of the FDH policy as FDHs account for the bulk of our transient population. The review seeks to ensure that this policy matches the aspirations of our society and meets the needs of Hong Kong's long-term development. Our conclusion is that there is a case for imposing a levy on employers of FDHs, thereby bringing them on par with employers of other imported workers under the Supplementary Labour Scheme in Hong Kong. At the same time, the prevailing local economic indexes have shown significant downward adjustment since the MAW was last revised in February 1999. The MAW should thus be adjusted accordingly, in line with past practice.

The Levy

3. The imposition of a levy on employers of imported workers to augment the funding provision for the training and retraining of the local workforce was approved by the Executive Council in January 1992. To this end, the Employees Retraining Fund (ERF) was established under the ERO. Since then, the levy from three importation of labour schemes - the General Labour Importation Scheme, the Special Labour Importation Scheme for the New Airport and Related Projects and the Supplementary Labour Scheme - have been channeled into the ERF for the retraining of local workers under the Employees Retraining Board (ERB).

4. Only the Supplementary Labour Scheme (SLS) is still in operation. It was approved by the then Governor in Council in 1996 as a labour importation scheme under the ERO whereby employers who have a proven need to engage imported workers at the technician level or below would be allowed to import labour, subject to the payment of a levy towards the retraining of the local workforce.

5. In the case of SLS, the Labour Department requires employers to go through the procedures for recruiting local employees, and if necessary,

organize retraining programmes, before approval for importing employees is given. As regards FDHs, according to a survey commissioned by the Education and Manpower Bureau in 2000, there was an insufficient supply of local people willing to work as full-time live-in domestic helpers. The situation has remained unchanged. This justifies the continued importation of FDHs. Both SLS and the importation of FDHs therefore operate on the same principle i.e. employers should be allowed to import employees to fill vacancies where there are insufficient suitable and available local candidates. Hence, there is a case to bring the admission of FDHs on par with the SLS. Given that employers of FDHs are enjoying services offered by foreign workers, it is reasonable that they contribute towards the training and retraining of the local workforce and promotion of job opportunities for local employees.

6. In drawing up the levy proposal, we have borne in mind the international obligations we have entered into, such as the International Labour Conventions (ILC) and other international treaties on human rights. The Department of Justice has advised that the proposal to impose a levy on FDH employers on the ground that the payments collected will be used for the training and retraining of local employees would be legitimate and would not infringe the human rights provisions on equality and non-discrimination guaranteed under the Basic Law; the International Covenant on Civil and Political Rights and the Hong Kong Bill of Rights. Besides, our levy proposal is also in compliance with the Migration for Employment Convention (Revised) 1949 (ILC 97) of the International Labour Organisation.

7. In the light of this, it is decided that, **with effect from 1 October 2003**, all employers (including those renewing contracts) of FDHs will be required to pay a levy in order to be eligible to apply for visas for their FDHs. The levy will be payable upfront or in four equal instalments for the standard contract period of 24 months. The money generated from the levy will be directed to the training and retraining of the local workforce.

8. The Chief Executive in Council has designated the importation of FDH as a labour importation scheme under the ERO. Section 14 of the ERO provides that the Chief Executive in Council may, from time to time, approve a labour importation scheme, under which a levy will be payable by the employers to the Director of Immigration (D of Imm) in respect of each imported worker to be employed. The levy will be set at \$400 per month for each FDH in accordance with Schedule 3 of the ERO which applies to all imported employees. In other words, for each 2-year employment contract with a FDH, employers are required to pay a lump sum of \$9,600 (= \$400 x 24 months) or in four equal instalments (each instalment is \$2,400, i.e. \$400 x 6 months). Under s 15 of the ERO, should the imported employees fail to arrive in Hong Kong having been granted visas or having arrived fail to complete their contracts of employment, there will be no refund of the levy paid, but D of Imm shall take into account the relevant balance if a fresh application for an imported employee is submitted by the employer within four months.

MAW

9. FDH employers in Hong Kong are required to pay a wage not less than the MAW stipulated by the Government. The objectives of the MAW are twofold: to protect local employees against competition from cheap foreign labour and to guard against exploitation of FDHs. In setting the MAW, the Administration takes account of the general economic and employment situation of Hong Kong, as reflected by a host of economic indicators including the relevant pay trend and change in the consumer price index, unemployment rate and labour market situation.

10. The MAW is subject to regular review and was last revised in February 1999 when it was adjusted downwards by \$190 (or 4.9%) from \$3,860 to \$3,670. Since then, and particularly over the course of 2001 and early 2002, the local economic indexes have shown significant downward adjustment. For instance, since early 1999, the Consumer Price Index (A) has fallen by around 10%. The median monthly employment earning of service workers has also dropped by around 10% and that of workers in

elementary occupations by around 16%. It is considered reasonable to adjust FDHs' pay to reflect the economic and labour market conditions. Accordingly, it is decided that a cut of \$ 400, amounting to about 11%, be made to the MAW. The revised MAW would then become \$3,270. This will take effect on **1 April 2003**. In line with the existing practice, the new MAW will only apply to new contracts or renewal of existing contracts.

Rationalize and strictly enforce the terms and conditions of the standard contract of employment for FDH

Undertaking to the Government

11. To improve the existing mechanism for admitting FDHs, the major terms and conditions of the standard employment contract, including the live-in requirement and MAW, will be strictly enforced by requiring both employers and FDHs to give an undertaking to the Government. If they are found to be in breach of the undertaking, the employers concerned may not be permitted to employ FDH for a period of time whilst the FDH may not be allowed to work in Hong Kong for a period of time.

Medical Coverage on Vacation Leave Outside Hong Kong

12. The current standard employment contract provides that the employer is responsible for the medical coverage for the FDH, including their non-work related injuries without specifying when and where the helper becomes ill. In effect, this covers treatment for any illness or injury during the FDH's vacation leave outside Hong Kong. Since the FDH's conduct whilst on leave outside Hong Kong is beyond the employer's control, for the avoidance of doubt and for equity reasons, we will amend the standard employment contract to make it clear that employers are not responsible for the medical expenses incurred by their FDHs whilst the latter are on vacation leave outside Hong Kong.

Underpayment of Wages

13. As for the problem of underpayment of wages, given the wide disparity in the wage level between Hong Kong and the FDH exporting countries and the “satisfied customer syndrome”, it is difficult to secure sufficient evidence to bring criminal proceedings against employers. Notwithstanding this, the Labour Department has recently re-deployed resources to set up the Employment Claims Investigation Unit to investigate offences under the Employment Ordinance, including wage offences.

14. We have also been in contact with FDH representatives and the relevant Non-Government Organizations to establish a reporting system, whereby information concerning underpayment of wages could be referred to a designated officer in the Labour Department so that investigation and prosecution could be conducted swiftly. To combat underpayment of wages and illegal practices of the employment agencies on overcharging of commission on FDHs, an inter-departmental taskforce comprising the Labour Department, Immigration Department and the Police has recently been set up.

Illegal Employment of FDHs

15. It is extremely difficult to stamp out illegal employment of FDHs in domestic dwellings, i.e. FDHs illegally working part-time for other employers in the latter’s home. It is necessary to rely on intelligence from the public. We have strengthened our publicity and public education efforts to warn employers against such illegal employment. To protect local employment opportunities, we have stepped up enforcement action to crack down on illegal employment in non-domestic work. In 2002, law enforcement departments carried out more than 3,500 operations with over 11,900 arrests made and among them, 220 were FDHs.

16. To reinforce our message on countering underpayment of wages and illegal employment/deployment, we will insert suitable warnings in the

standard employment contracts.

OTHER OPTIONS

17. Apart from a levy, there have been suggestions to limit the number of FDHs by imposing an upper ceiling/needs assessment for admitting FDHs. Our considered view is that there is a genuine need for Hong Kong to continue to import FDHs, given the inadequate supply of full-time live-in LDHs. It would not be right to deny local families the freedom of choice.

18. Furthermore, any upper ceiling/needs assessment system to limit the number of FDHs is fraught with problems. First, it is impossible to establish a set of “fair criteria” for the allocation of places under a ceiling. Second, any such system will create a waiting list which will in turn give rise to complaints and disputes. Third, a needs assessment system will require a sizeable bureaucracy to administer. Lastly, a ceiling system with allocation of places carries a high risk of abuses (i.e. buying and selling of places). On balance, we prefer keeping the door open to FDHs.

IMPLICATIONS OF THE PROPOSAL

Economic, Financial, Staffing and Civil Service Implications

Annex 19. The proposal has economic, financial, staffing and civil service implications as set out at Annex.

Basic Law, Human Rights, Productivity, Sustainability and Environmental Implications

20. The proposal is in conformity with the Basic Law, including those provisions concerning human rights. It has no productivity and environmental implications. As regards sustainability implications, it is noteworthy that the revenue generated by the proposal would be used for the training and retraining of the local workforce. This should enhance

their competitiveness and quality, and is in line with the sustainability principle of enabling present and future individuals to contribute to society and fulfill their potential by providing access to educational opportunities.

PUBLIC CONSULTATION

21. The twin issues of imposing a levy and reduction of the MAW have been widely debated within the community and in the media in recent months. We have received submissions from FDH groups and representatives of FDH-exporting countries, including the Philippines, Indonesia, Thailand, Nepal and Sri Lanka. We have also received views from FDH organisations, employers, political parties and Legislative Council members through various channels, including during the 2003-04 Budget consultation exercise.

PUBLICITY

22. We will brief LegCo and the relevant Consulates on the proposal.

BACKGROUND

23. The practice of Hong Kong families hiring domestic helpers from South East Asia dates back to the mid-1970s. The population of FDHs has grown sharply from 1,350 in 1975 to 237,104 by end-2002. Of these, 62.6% are Filipinos, 33% Indonesians and 4.4% others.

24. The policy on the admission of FDHs has by and large remained intact since the 1970s. The key features of the policy are: -

- no upper ceiling on the number of FDHs to be admitted;
- a MAW (\$3,670 per month since February 1999) to protect local workers against unfair competition by FDHs and to protect FDHs from exploitation;

- FDHs enjoy the same employment protection and benefits as local workers; and
- A standard employment contract which requires the employer, among other things, to provide free accommodation and medical treatment for the FDH.

25. FDHs now make up 7% of our workforce and 3.6% of the total population. Despite the economic downturn in recent years, the number of FDHs grew by 23,090 in 2000, 18,484 in 2001 and 1,830 in 2002. The increase is particularly notable for Indonesian FDHs.

26. As the policy has been in place for nearly 30 years, the time has come for a comprehensive review.

ENQUIRIES

27. Enquiries on the brief should be made to Ms Christine Leong on telephone number 2852 4124.

Economic Development and Labour Bureau (Labour Branch)
26 February 2003

Economic, Financial, Staffing and Civil Service Implications

Economic Implications

The imposition of a levy on FDH employers will place the employment of FDHs on the same basis as other imported employees. By directing the levy income so collected to the training and retraining of local workers, it will meet the objective of re-equipping and enhancing the skills of local workers amidst the current economic restructuring and high unemployment of Hong Kong.

Financial and Civil Service Implications

2. An annual income of \$1.14 billion (= 237,000 FDHs x \$400 x 12 months) will be generated as a result of the imposition of the levy, assuming that the number of FDHs will not be affected by the new measure and that the number of new/renewed FDH contracts is evenly distributed across the years. Depending on the details of the eventually finalised processing procedures, the Immigration Department has advised that a maximum additional annual expenditure of \$7.6 million in terms of NAMS value and a maximum of \$14.6 million in terms of staff cost would be required for handling the levy and other relevant requirements arising from the ERO. This means that the net amount of levy income available for training and retraining would stand at \$1.125 billion per annum. The Immigration Department will actively consider cutting down the resources required.

3. As the ERO will be used to impose the levy, funds collected in 2003-04 will be injected into the Employees Retraining Fund (ERF). Assuming that all employers will opt for the half-yearly payment method instead of a lump sum, the income from the levy for 2003-04 is estimated to be around \$142.2 million (= 237,000 FDHs ÷ 4 x \$400 x 6), assuming that half of the existing 237,000 FDH contracts are to be replaced/renewed in

2003-04 and that half of these replacements/renewals are to take place in the latter half of the year. Deducting Immigration Department's expenditure, (\$7.3 million for 6 months) the net income would be around \$134.9 million.

4. The Education and Manpower Bureau will review with parties concerned how to make best use of the levy to support and enhance the provision of training and retraining activities for local workers. In particular, considerations would be given to :

- (i) strengthening the training and employability of local domestic helpers; and
- (ii) sustaining the existing training and retraining activities of publicly subvented training bodies and government departments.

Civil Service Implications

5. Immigration Department will need additional staff to handle the collection of levy. Besides, the Department will step up enforcement action against possible abuse on the employment of FDHs. As a result, the Department will need to create an additional 27 civil service posts, comprising Immigration officer, Immigration Assistant and Clerical grades, to cope with the increased workload. The annual staff cost is estimated to be about \$14.6 million.