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Paper for the House Committee meeting on 28 November 2008

**Report of the Subcommittee on Employees Retraining Ordinance
(Amendment of Schedule 3) (No. 2) Notice 2008**

Purpose

This paper reports on the deliberations of the Subcommittee on Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008 (the No. 2 Amendment Notice).

Background

2. Since the commencement of the Employees Retraining Ordinance (Cap. 423) (ERO) in 1992, all employers of labour imported under the labour importation schemes designated under ERO (the designated schemes) have been required under ERO to pay an Employees Retraining Levy (the Levy) of \$400 for each imported employee for each month of service. The Levy is remitted to the Employees Retraining Fund (ERF), which is administered by the Employees Retraining Board (ERB), for providing training and retraining to local workers.

3. In February 2003, the Chief Executive in Council approved the recommendation in the Report of the Task Force on Population Policy that, as with employers of imported labour under the designated schemes, employers of foreign domestic helpers (FDHs) should also be required to pay the Levy with effect from 1 October 2003. The minimum allowable wage (MAW) of FDHs was reduced by \$400 with effect from 1 April 2003.

4. After the imposition of the Levy on employers of FDHs, an application for judicial review against the imposition of the Levy was made by some FDHs. ERB was advised to withhold the use of the Levy collected from FDH employers from October 2003. The application for judicial review was dismissed by the Court of First Instance in January 2005. In July 2006, the Court of Appeal upheld the decision of the Court of First Instance. As at 31 July 2008, there were about 252 200 FDHs and 1 330 other imported labour such as care workers and farm workers working in Hong Kong

under the Supplementary Labour Scheme (SLS). As at 14 September 2008, the Levy collected and the interest accrued have accumulated to over \$4.9 billion.

5. During the Chief Executive's Question and Answer Session on 16 July 2008, the Chief Executive announced that the Levy would be suspended with effect from September 2008 for two years to relieve the burden on middle-income families hiring FDHs. The Administration subsequently announced that the Levy suspension was expected to take effect from 1 September 2008 subject to the approval of the Chief Executive in Council. It was then reported in the media that some employers with pre-existing FDH contracts had terminated or planned to terminate their contracts with FDHs prematurely in order to enjoy the Levy suspension as soon as possible. On 21 July 2008, the Administration indicated that the implementation of the proposal to suspend the collection of the Levy would be advanced from 1 September 2008 to 1 August 2008, subject to the approval of the Executive Council. On 30 July 2008, the Chief Executive in Council approved the suspension of the obligation of employers of all imported labour, including FDHs, to pay the Levy for a period of two years with effect from 1 August 2008. The Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008 (the Amendment Notice), which was published in the Gazette on 1 August 2008 (L.N. 208 of 2008). A subcommittee (the former Subcommittee) was formed under the House Committee on 10 October 2008 to study the Amendment Notice. On 11 November 2008, the Chief Executive in Council made the No. 2 Amendment Notice (L.N. 244 of 2008), which was published in the Gazette on the same day and tabled at the Council meeting on 12 November 2008 for negative vetting. Both the Amendment Notice and the No. 2 Amendment Notice had taken effect immediately upon gazettal.

The No. 2 Amendment Notice

6. Section 14(1) of ERO makes it a mandatory requirement for an employer of imported labour under the designated schemes to pay the Levy to the Director of Immigration. The Levy shall be the sum specified in Schedule 3 to ERO, which can be amended by the Chief Executive in Council under section 31(1) of ERO. The No. 2 Amendment Notice seeks to provide for the reinstatement of the sum specified in Schedule 3 to ERO, which was reduced to \$0 with effect from 1 August 2008 by the Amendment Notice, to \$400 with effect from 1 August 2013 and to repeal the Amendment Notice.

The Subcommittee

7. At the House Committee meeting on 14 November 2008, Members formed a subcommittee to study the No. 2 Amendment Notice. The membership list of the Subcommittee is in **Appendix I**. Under the chairmanship of Hon Mrs Regina IP, the Subcommittee has held one meeting with the Administration.

Deliberations of the Subcommittee

Length and scope of Levy suspension

8. The No. 2 Amendment Notice suspends the obligation of employers of FDHs and all other employers of labour imported under designated schemes to pay the Levy of \$400 per month for a period of five years up to 31 July 2013. The Levy suspension applies to employers of FDHs and employers of labour imported under SLS. Employers will benefit from the Levy suspension when they renew the contracts of the imported labour/FDHs or hire a new imported labour/FDH who is granted a visa by the Director of Immigration at any time during the five-year suspension period.

9. Some members including Hon Mrs Regina IP, Hon LEE Cheuk-yan, Hon LEUNG Yiu-chung, Hon Miriam LAU, Hon Emily LAU, Hon LEUNG Kwok-hung, Hon Ronny TONG and members of the Democratic Party take the view that the Levy on employers of FDHs should be abolished. While these members support the retraining of employees, they consider that this should be a responsibility of the Government rather than the employers of FDHs. They take the view that funding for employees retraining should be provided by the Government. Hon Ronny TONG and Hon Miriam LAU have pointed out that opinion polls conducted respectively by the Civic Party and Liberal Party indicated that over 60% of the respondents supported abolition of the Levy.

10. Some other members including Hon LI Fung-ying, Hon WONG Kwok-kin and Hon IP Wai-ming object to abolishing the Levy on employers of FDHs, especially given that the Levy is applicable also to employers of labour imported under SLS. While they do not object to the introduction of a temporary measure to provide relief to the middle class, they consider that the interest of local workers should be protected and employers of non-skilled imported labour, including FDHs, should be required to pay the Levy. Hon IP Wai-ming has stressed that the Hong Kong Federation of Trade Unions would not object to the abolition of the Levy on employers of FDHs, if the abolition is accompanied by an increase of \$400 per month in MAW of FDHs whereby the total cost for employing a FDH would remain unchanged.

11. Hon IP Kwok-him has expressed support for the Administration's proposed suspension of the Levy for five years. He points out that the accumulated Levy collected from employers of FDHs and the interest earned have reached \$4.9 billion in September 2008, which should be sufficient for meeting the expenditure of ERB in the next five to seven years. He considers that the five-year suspension period would allow sufficient time for further discussion in the Legislative Council (LegCo) on the source of funding for ERB.

12. The Administration has responded that it is the Government's established policy that employers hiring low-skilled imported labour should contribute towards the training and retraining of the local workforce. In line with this policy, all employers of imported labour under the designated schemes are required under ERO to pay the Levy.

It is the legislative intent of ERO that ERF should mainly derive its income from the Levy. Collection of the Levy is essential to the steady provision of sufficient financial resources for ERB. The Administration has stressed that the No. 2 Amendment Notice seeks to strike the right balance between providing continued relief to the middle class and meeting the demands of local workers for training and retraining. In the long run, collection of the Levy is essential in ensuring steady and sufficient financial resources for ERB to enhance the employability of the local workforce so as to maintain the economic competitiveness of Hong Kong.

13. At the Subcommittee meeting on 25 November 2008, the majority of members present agreed that the proposed amendment of the former Subcommittee to suspend the Levy on employers of FDHs indefinitely should be adopted as the proposed amendment of the Subcommittee.

14. The Administration has advised that, as explained at meetings of the former Subcommittee, the amendment proposed by the Subcommittee is an amendment within the meaning of "the object or effect of which may be to dispose of or charge any part of the revenue or other public moneys of Hong Kong" in Rule 31(1) of the Rules of Procedure of LegCo.

Annual expenditure of ERB

15. Some members including Hon LEE Wing-tat have expressed concern about ERB's sharp increase in annual expenditure from about \$400 million in the past few years to about \$900 million in 2008-2009, which represents an increase of about 125%. Hon LEE Wing-tat has also expressed concern about the lack of an independent body for monitoring the expenditure of ERB.

16. The Administration has explained that the overall expenditure of ERB is estimated to increase from about \$393 million in 2007-2008 to about \$877 million in 2008-2009. About 66% of the overall expenditure (about \$582 million) will be used for provision of training and retraining courses, 13% (about \$113 million) for disbursement of retraining allowance, and the remaining 21% (about \$182 million) for supporting the development of new training and employment support schemes or enhancement of existing schemes, payment of administrative charges to the Immigration Department for collection of the Levy, general administrative and operating costs of ERB's Executive Office, as well as installation and maintenance of information technology system and facilities, etc.

17. The Administration has advised that following the decision of the Chief Executive in Council, the eligibility criteria of the Employees Retraining Scheme have been relaxed with effect from 1 December 2007 to cover all eligible persons aged 15 or above with education level at sub-degree or below. With the expansion of its service targets, ERB remains committed to serving the low-skilled unemployed people, displaced workers and the disadvantaged in the society, including ethnic minorities, new arrivals, the disabled, occupational accident rehabilitants, and rehabilitated

offenders. ERB endeavours to provide multi-faceted placement-tied courses as well as generic skills courses to assist its trainees in acquiring vocational skills as well as recognised qualifications.

18. The Administration has stressed that ERB is a statutory body subject to close monitoring by the Administration. Besides government representatives, ERB comprises members from various sectors of the community, including employees' representatives, employers' representatives, and the vocational training, retraining or manpower planning sector.

19. The Administration has pointed out that in face of the financial tsunami and its adverse impact on local employment, the demand on ERB's service will increase substantially in the foreseeable future. The future roles and expenditure of ERB could be discussed in depth at future meetings of the Panel on Manpower.

20. Hon LEE Wing-tat remains of the view that there is inadequate monitoring on the expenditure of ERB. He points out that although the annual expenditure of ERB could be discussed by the Panel on Manpower, there is no requirement for the estimates of ERB to be approved by LegCo.

Proposed amendments

21. The Subcommittee agrees that the Chairman should move an amendment on behalf of the Subcommittee to the No. 2 Amendment Notice at the Council meeting on 10 December 2008 to extend the Levy suspension on employers of FDHs indefinitely (paragraph 13 above). The draft amendment is in **Appendix II**.

22. The Subcommittee notes that Hon LEE Wing-tat may move an amendment to the effect that the reinstatement of the sum specified in Schedule 3 to ERO from \$0 to \$400 with effect from 1 August 2013 would be subject to a resolution passed by LegCo.

Advice Sought

23. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on
Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008**

Membership list

Chairman Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Members
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon Ronny TONG Ka-wah, SC
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP

(Total : 16 Members)

Clerk Mr Raymond LAM

Legal Adviser Mr Kelvin LEE

Date 25 November 2008

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1))

EMPLOYEES RETRAINING ORDINANCE
(AMENDMENT OF SCHEDULE 3) (NO. 2) NOTICE 2008

RESOLVED that the Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008, published in the Gazette as Legal Notice No. 244 of 2008 and laid on the table of the Legislative Council on 12 November 2008, be amended by deleting section 2 and substituting -

"2. Amount of levy specified for the purposes of section 14(2)

Schedule 3 to the Employees Retraining Ordinance (Cap. 423) is amended by repealing "\$0" and substituting -

"\$0 (in respect of each imported employee to be employed by an employer under the "Scheme for Importation of Foreign Domestic Helpers" approved by the Chief Executive in Council on 25 February 2003 under section 14(3) of the Ordinance)

\$400 (in respect of each imported employee to be employed by an employer under any other labour importation scheme approved by the Chief Executive in Council under section 14(3) of the Ordinance)".