

立法會
Legislative Council

LC Paper No. CB(2)329/08-09(01)

Ref : CB2/SS/4/08

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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Employees Retraining Levy (the Levy).

The Employees Retraining Levy

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 per month for each imported employee. The Levy is remitted to the Employees Retraining Fund, which is administered by the Employees Retraining Board, 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. At the same time, the minimum allowable wage (MAW) of FDHs was also reduced by \$400.

Judicial Review on the imposition of the Employees Retraining Levy on employers of FDHs and the reduction of the minimum allowable wage for FDHs in 2003

4. In March 2003, five FDHs applied to the High Court for judicial review of the imposition of the Levy on employers of FDHs and the reduction of MAW of FDHs in 2003. The application for judicial review was dismissed by the High Court on 4 January 2005. In July 2006, the Court of Appeal upheld the decision of the Court of First Instance.

Motion at the Council meeting on 30 April 2008 urging the Government to cease the imposition of the Employees Retraining Levy

5. At the Council meeting on 30 April 2008, Hon Tommy CHEUNG moved a motion urging the Government to cease the imposition of the Levy on employers of FDHs. The motion moved by Hon Tommy CHEUNG as amended by Hon LEE Cheuk-yan and Hon Andrew LEUNG was carried.

Suspension of the Employees Retraining Levy for a period of two years

6. During the Chief Executive's Question and Answer Session on 16 July 2008, the Chief Executive announced that the Levy would be suspended 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 announced that the implementation of the proposal to suspend the collection of the Levy would be advanced from 1 September 2008 to 1 August 2008. 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 gives effect to the suspension of the Levy, was published in the Gazette on 1 August 2008.

Subcommittee on Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008

7. At the House Committee meeting on 10 October 2008, Members formed a subcommittee to study the Amendment Notice. The Subcommittee has held five meetings with the Administration, including one meeting to receive public views. Members may wish to refer to the report of the Subcommittee in the **Appendix** for further details of the deliberations of the Subcommittee.

Suspension of the Employees Retraining Levy for a period of five years

8. On 11 November 2008, the Chief Executive-in-Council decided that the Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008 (the No. 2 Amendment Notice) should be made under 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, to \$400 with effect from 1 August 2013 and to repeal the Amendment Notice. The No. 2 Amendment Notice was published in the Gazette on 11 November 2008 and tabled at the Council meeting on 12 November 2008.

Council Business Division 2
Legislative Council Secretariat
21 November 2008

立法會
Legislative Council

LC Paper No. CB(2)264/08-09

Ref : CB2/SS/2/08

Paper for the House Committee meeting on 14 November 2008

**Report of the Subcommittee on Employees Retraining Ordinance
(Amendment of Schedule 3) Notice 2008**

Purpose

This paper reports on the deliberations of the Subcommittee on Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008 (the 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. At the same time, the minimum allowable wage (MAW) of FDHs was also reduced by \$400.

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 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 announced that the implementation of the proposal to suspend the collection of the Levy would be advanced from 1 September 2008 to 1 August 2008. 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 Amendment Notice, which gives effect to the suspension of the Levy, was published in the Gazette on 1 August 2008.

The 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 Amendment Notice seeks to reduce the sum specified in Schedule 3 to ERO to \$0 with effect from 1 August 2008, and to provide for the reinstatement of the sum to \$400 with effect from 1 August 2010. 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).

The Subcommittee

7. At the House Committee meeting on 10 October 2008, Members formed a subcommittee to study the Amendment Notice. The membership list of the Subcommittee is in **Appendix I**.

8. Under the chairmanship of Hon Mrs Regina IP, the Subcommittee has held five meetings with the Administration, including one meeting to receive public views. The list of organizations and individuals who have provided views to the Subcommittee is in **Appendix II**.

9. To allow more time for the Subcommittee to study the Amendment Notice, the scrutiny period of the Amendment Notice has been extended from 5 November 2008 to 26 November 2008 by a resolution of the Council passed on 5 November 2008.

Deliberations of the Subcommittee

Length and scope of Levy suspension

10. Some members including Hon Mrs Regina IP, Hon LEE Cheuk-yan, Hon LEUNG Yiu-chung, Hon Miriam LAU, Hon Emily LAU, Hon Andrew LEUNG, Hon LEUNG Kwok-hung, members of the Civil Party 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 have pointed out that there was no public consultation before the imposition of the Levy on employers of FDHs. They take the view that the Levy should not have been imposed on employers of FDHs since 2003 and the Government should provide funding for employees retraining.

11. 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 oppose 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. Measures should be introduced to encourage employers to hire local domestic helpers. Hon WONG Kwok-kin has further said that the suspension of the Levy on employers of FDHs could be supported, if it is accompanied by an increase of \$400 per month in MAW of FDHs whereby the total cost for employing a FDH would remain unchanged.

12. Hon IP Kwok-him takes the view that the Levy should be suspended for five years until the accumulated Levy income and the interest earned are nearly depleted. He considers that the question of whether the Levy should be resumed and the source of income for ERB should be further discussed before the expiry of the five-year suspension period.

13. 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 suggested that members should support the Amendment Notice to give effect to the suspension of the Levy for a two-year period, and the question of whether employers of FDHs should be required to pay the Levy in

the future and the source of funding for ERB could be further discussed in the Legislative Council (LegCo) during the two-year suspension period.

14. The Subcommittee has considered amendments proposed by Members to the Amendment Notice. The Subcommittee notes that Hon Mrs Regina IP's proposed amendments seek to suspend the Levy indefinitely, while the amendments proposed by Hon WONG Sing-chi, Hon LEE Wing-tat and Hon IP Kwok-him seek to extend the Levy suspension to 31 July 2047, 31 July 2018 and 31 July 2013 respectively. Hon Mrs Regina IP has explained that her proposed amendments seek to suspend permanently the Levy. Hon WONG Sing-chi has pointed out that his proposed amendment has a similar effect to that proposed by Hon Mrs Regina IP. Hon IP Kwok-him has explained that with the suspension of the Levy and ERB's annual expenditure of about \$900 million from 2008-2009 onwards, the accumulated Levy collected from employers of FDHs and the interest earned will be nearly depleted in five years' time. He has thus proposed an amendment to extend the Levy suspension period to five years. Hon LEE Wing-tat has also explained that with the suspension of the Levy and ERB's annual expenditure of about \$400 million in 2007-2008, the accumulated Levy collected from employers of FDHs and the interest earned will be nearly depleted in about 10 years' time. He has thus proposed an amendment to extend the Levy suspension period to 10 years. The draft amendments proposed by Mrs IP, Mr WONG, Mr LEE and Mr IP are in **Appendices III, IV, V and VI** respectively.

15. At the Subcommittee meeting on 6 November 2008, the majority of members present agreed that the proposed amendments of Hon Mrs Regina IP to suspend the Levy on employers of FDHs indefinitely should be adopted as the proposed amendments of the Subcommittee.

16. The Levy suspension applies to employers of FDHs and employers of other labour imported under the designated schemes. Members take the view that the indefinite extension of Levy suspension should be confined to employers of FDHs only. According to the legal adviser to the Subcommittee, an amendment may be drafted in such a way that would only apply to the labour importation scheme concerning FDHs. As the Levy is only payable by employers of a designated labour importation scheme, suspension of the Levy on employers of FDHs is unlikely to be inconsistent with the power to make the Amendment Notice. Members have agreed that the Subcommittee should also move an amendment to the effect that the indefinite extension of Levy suspension will apply to employers of FDHs only. The draft amendment proposed by the Subcommittee is in **Appendix VII**.

Whether amendments to extend the Levy suspension period will have a charging effect on general revenue

17. The Administration has advised that each of the amendments proposed by Members 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 (RoP31(1)) because -

- (a) the assets of ERF, into which the Levy is remitted, falls within the broad description of "revenue or other public moneys" having regard to the nature and purpose of ERF. ERB is there to carry out a facet of public policy (i.e. to provide training and retraining services to eligible local workers to assist them in acquiring new or enhanced vocational skills so that they can adjust to changes in the economic environment), and ERF is there to facilitate that public purpose. Whether sourced from employers by way of the Levy, or by subvention out of general revenue, the assets of ERF can only be regarded as public (not private) moneys; and
- (b) Members' proposed amendments would deprive ERF from 1 August 2010 of an important source of income as enacted by section 14 of ERO, leading to the inevitable consequence of the Government having to provide subvention to top up ERF to make good the loss of the revenue stream from the Levy so as to ensure continued support by ERF in the provision of training and retraining of eligible persons.

18. Some members including Hon Mrs Regina IP and Hon LEE Cheuk-yan take the view that the Levy is not a form of Government revenue and thus a motion to extend the Levy suspension period should not have a charging effect on general revenue. Members have sought the views of the legal adviser to the Subcommittee as to whether deleting sections 1(2) and 2(2) of the Amendment Notice or extending the Levy suspension will have any charging effect on general revenue.

19. According to the legal adviser to the Subcommittee, the effect of the Amendment Notice is similar to a motion sought to be moved by Hon LEE Cheuk-yan in July 1998 to raise the compensation for bereavement under section 5A of the Pneumoconiosis (Compensation) Ordinance (Cap. 360) from \$70,000 to \$150,000, as against the Administration's proposed increase of the compensation to \$100,000. The Administration opposed the admission of the amendment for consideration by LegCo, arguing that the amendment of Hon LEE Cheuk-yan might result in an increase in levy and thus the Government might be required to incur additional expenditure. The Administration further argued that the amendment might result in a depletion of the Pneumoconiosis Compensation Fund (PCF), leaving the Government with no choice but to inject money into it. The then President rejected the Administration's arguments and ruled that, among other things, PCF was a statutory fund and not revenue to the Government. Any consequence on PCF, incidental or direct, would not have any charging effect on general revenue.

20. The legal adviser to the Subcommittee has explained that ERF, like PCF, is vested in a statutory body corporate. Money may be paid out from both funds for specific statutory purposes and they are maintained and managed by the statutory body

corporate concerned. Similar to PCF, ERF may not be regarded as "revenue or other public moneys" of Hong Kong. In the light of the aforesaid ruling, an amendment in respect of the Levy which has a consequence on ERF should likewise have no charging effect on general revenue under RoP31. The legal adviser to the Subcommittee has pointed out that RoP31 provides that the opinion as to whether an amendment has charging effect has to be formed by the President of LegCo. It is the established practice that before forming his opinion, the President will seek the views of the Administration and the Member concerned, as well as Counsel to the legislature.

21. The Administration has responded that the subject matter of the then President's ruling in 1998 is distinguishable from the present case. The object or effect of Members' proposed amendments would reduce the income to and therefore the assets of ERF. The 1998 amendment was different as it affected out-goings from the statutory fund by raising compensation levels. Furthermore, the Government had not given any funding support to PCF in the past other than the initial loan facility in 1980 which was already repaid in full in 1983.

22. The Administration has advised that the proposed deletion of sections 1(2) and 2(2) of the Amendment Notice would be a de facto repeal of the levy provision of section 14 of ERO and therefore ultra vires. The Chief Executive in Council has no power under section 31(1) of ERO to do this, and this could only be achieved by way of an amendment ordinance. It therefore goes beyond the power of LegCo conferred by section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) (IGCO), which provides that "subsidiary legislation shall be amended in any manner whatsoever consistent with the power to make such subsidiary legislation".

23. The Administration has also advised that the proposed deletion of sections 1(2) and 2(2) of the Amendment Notice in relation to FDHs only (or deletion of section 2(2) in relation to FDHs only while leaving section 1(2) intact) is also ultra vires section 31(1) of ERO, which only empowers the Chief Executive in Council to amend Schedule 3, i.e. the "amount of levy specified for the purposes of section 14(2)". Section 31(1) of ERO does not empower the Chief Executive in Council to specify different sums for the purposes of section 14(2) of ERO in relation to different classes of imported employees or in respect of different schemes approved under section 14(3). It therefore goes beyond the power of LegCo conferred by section 34(2) of IGCO to make the proposed deletion of sections 1(2) and 2(2) of the Amendment Notice (or deletion of section 2(2) in relation to FDHs only while leaving section 1(2) intact) in relation to FDHs only.

Impact of the Levy suspension on the rights of FDHs

24. The 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 two years. Employers will benefit from the Levy suspension when they renew the contracts of the imported labour/FDHs or hire a new imported labour/FDH at any time during the two-year suspension period. Hon LEE Cheuk-yan

and Hon Emily LAU have expressed concern about the possible impact of the advanced renewal of contracts arising from the Levy suspension on the rights of FDHs. They consider that the advanced contract renewal arrangements have provided a channel for employers to terminate the contracts of FDHs, and this would have a negative impact on employer-employee relations.

25. The Administration has advised that the advanced contract renewal arrangement is devised to protect the rights of FDHs. An employer who wishes to apply for advanced contract renewal with the same FDH is required to sign an undertaking to confirm the termination of the existing contract and the effective date of the termination, and to commit himself/herself to the continuity of employment relationship under the old and new contracts. The FDH is also required to sign the undertaking to indicate acceptance of the arrangement. FDHs will benefit from advanced contract renewal since they will be entitled to free air passage provided by the employer and a salary increase of \$100 per month (the MAW of FDHs was increased from \$3,480 to \$3,580 on 10 July 2008).

26. Members have enquired whether the number of cases of advanced termination of FDH contracts has increased since the announcement of the Levy suspension.

27. The Administration has pointed out that the number of such cases during the period from July to September 2008 is slightly lower than that for the corresponding period in 2007. Since the Levy suspension came into force on 1 August 2008, only 22 000 out of a total of 64 000 visas issued as at mid-October 2008 belong to cases of advanced termination of contract.

Minimum allowable wage of FDHs

28. Some members including Hon LEE Cheuk-yan and Hon LEUNG Kwok-hung have pointed out that the MAW of FDHs should not have been reduced by \$400 per month in 2003 when the Levy on employers of FDHs was imposed. These members take the view that the MAW of FDHs should be increased by \$400 per month upon the Levy suspension.

29. The Administration has responded that the imposition of the Levy on employers of FDHs in 2003 and the adjustment of the MAW of FDHs in the same year were two separate issues. There has been an established mechanism in place for years for regular adjustment of the MAW of FDHs. For some 30 years in the past, the MAW of FDHs has been increased 21 times and reduced twice. Although the MAW of FDHs was reduced from \$3,670 to \$3,270 in October 2003, it has been increased a few times in the past few years to the present level of \$3,580 per month.

Expenses incurred by employers in terminating and renewing contracts for FDHs

30. The Levy suspension is applicable to all employment contracts for which visas for the imported labour/FDH concerned are issued between 1 August 2008 and 31 July 2010. As employers of FDHs with visas granted before 1 August 2008 are required to pay the Levy until the pre-existing contract expires, members have enquired about the actual savings achievable by a FDH employer who renews his contract with the FDH in advance.

31. The Administration has explained that employers who opt for advanced contract renewal have to honour the contractual obligations under the pre-existing contract as well as the new contract, and bear certain costs which would vary according to the circumstances of each case, including -

- (a) providing free passage to the FDH's place of origin under the pre-existing contract, and free passage from the FDH's place of origin to Hong Kong under the new contract;
- (b) paying a FDH MAW of \$3,580 per month, which has been increased by \$100 per month since 10 July 2008;
- (c) paying the FDH a month's wage or a proportionate portion to fulfill the contractual obligation of giving one-month's termination notice, where insufficient notice is given;
- (d) payment of an application fee of \$160 for an employment visa issued by the Immigration Department;
- (e) paying fees for notarisation of the new employment contract by the relevant consulates; and
- (f) payment of agency fees in case of engagement of an employment agent.

Annual Expenditure of ERB

32. Members have noted that the accumulated Levy collected from employers of FDHs and the interest earned as at 14 September 2008 is about \$4.9 billion. The annual expenditure of ERB is estimated to be about \$900 million in 2008-2009 and is expected to increase further when the recommendations of the strategic review conducted by ERB are fully implemented beyond 2008-2009. Members are disappointed that the Administration has not undertaken to provide sufficient recurrent subvention to ERB, if the Levy is to be suspended indefinitely.

33. The Administration has responded that it is the Government's overall policy for the operating expenses of ERB to be met primarily by the Levy income and for

employers hiring low-skilled imported labour to contribute towards the training and retraining of the local workforce. In the long run, collection of the Levy, which is about \$1.1 billion per year prior to the Levy suspension, 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.

34. Some members including Hon LEE Wing-tat and Hon Andrew LEUNG 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 and the increase in the number of training places from 87 000 in 2007-2008 to 120 000 in 2008-2009. They have also expressed concern about the lack of an independent body for monitoring ERB's expenditure.

35. 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.

36. The Administration has stressed that ERB is subject to close monitoring by the Administration. ERB mainly comprises non-official members from various sectors of the community, including employees' representatives, employers' representatives, and the vocational training, retraining or manpower planning sector. Two senior government officials, namely, the Permanent Secretary for Labour and Welfare and the Commissioner for Labour, are the government representatives in ERB. Furthermore, the incumbent Executive Director of ERB is a seconded civil servant who is a former Principal Assistant Secretary for Education and Manpower.

Role of ERB in training and retraining

37. Hon LEE Wing-tat, Hon Miriam LAU, Hon Ronny TONG and Hon WONG Sing-chi have expressed concern about ERB's relaxation of eligibility criteria to cover persons aged between 15 and 29. They consider that with such relaxation, ERB's role would cover both training and retraining. Hon LEE Wing-tat and Hon Andrew LEUNG are concerned about possible overlapping between the work of ERB and that of other training providers such as the Vocational Training Council.

38. The Administration has advised that following the decision of the Chief Executive in Council, the eligibility criteria of the Employees Retraining Scheme were 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. It will also introduce an element of "sustainability" into its training programmes with a view to enhancing trainees' employability and competitiveness. ERB, being a funding and co-ordinating body, has a distinct role from that of training providers.

39. 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 Administration has consulted the Panel on Manpower on the future directions of ERB. It will report to the Panel on Manpower the results of ERB's strategic review on the future roles and responsibilities of ERB.

Arrangements for implementation of the Levy suspension

40. Members are concerned about the measures adopted by the Administration to cope with the surge in visa applications from FDHs arising from the Levy suspension. The Administration has advised that since the implementation of the Levy suspension from 1 August 2008, the Immigration Department has redeployed additional resources and, where necessary, extended its operating hours in order to cope with the surge in visa applications from FDHs. To ensure that applications received will be processed before the expiry of the Levy suspension, the Immigration Department will set a cut-off date for employers' submission of visa applications for advanced contract renewal, where part of the contract period falls after the Levy suspension period. The Administration has also advised that the Immigration Department will work out the exact cut-off date, in the light of operational experience, and announce the application deadline and other detailed arrangements. Employers will also be reminded that visa applications received by the Immigration Department after the cut-off date will not be approved in time for them to enjoy the Levy suspension.

Latest development

41. At the Subcommittee meeting on 11 November 2008, the Administration informed members that the Chief Executive in Council had made the Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008 (the No. 2 Amendment Notice) earlier that morning. The No. 2 Amendment Notice would be published in the Gazette in the same afternoon and tabled at the Council meeting on 12 November 2008 for negative vetting. 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, to \$400 with effect from 1 August 2013 and to repeal the Amendment Notice.

42. Some members including Hon LEE Cheuk-yan, Hon Emily LAU, Hon Audrey EU and Hon IP Kwok-him have queried why the Administration has not chosen to propose amendments to the Amendment Notice to extend the Levy suspension period to five years, but has repealed the Amendment Notice and has made the No. 2 Amendment Notice.

43. The Administration has advised that it has noted from the Subcommittee's meeting to receive public views that there are diverse views in the community on the Levy suspension period and source of income for ERB. As such, the making of the No. 2 Amendment Notice will allow more flexibility and sufficient time for Members' scrutiny, if they consider it necessary. The Administration has stressed that the five-year Levy suspension period as proposed in the No. 2 Amendment Notice seeks to strike the right balance between providing continued relief to the middle class and meeting local workers' demand for training and retraining services.

Advice Sought

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

Council Business Division 2
Legislative Council Secretariat
13 November 2008

**Subcommittee on
Employees Retraining Ordinance (Amendment of Schedule 3) 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 21 October 2008

**Subcommittee on
Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008**

A. Organizations which have given oral representation to the Subcommittee

1. YMCA of Hong Kong
2. Baptist Oi Kwan Social Service
3. 外傭僱主義工隊
4. Civic Party
5. Hong Kong Human Rights Monitor
6. Hong Kong Unison
7. Hong Kong Employers of Domestic Helpers Association
8. Asian Migrants' Coordinating Body
9. Heung To College of Professional Studies
10. Concern Alliance on Training & Retraining
11. The Democratic Party
12. Commercial Organization and Domicile Services Employees Association
13. The Lion Rock Institute

B. Organizations/individuals who have provided written submissions only

1. KP NGAI
2. Mrs YEUNG Suet-ha
3. a member of the public

4. Ms Anny KWAN
5. TANG
6. Hong Kong Federation of Women
7. Hong Kong Employment Development Service
8. Kandi SOLA
9. Mr YIP Chee-tim, Kowloon City District Council member
10. Mr Joseph ZENG
11. KL

Draft

Resolution to be moved by Honourable Regina IP LAU Suk Yee

Resolution

Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008

Resolved that the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008, published in the Gazette as Legal Notice No. 208 of 2008 and laid on the table of the Legislation Council on 8 October 2008, be amended-

(a.) by deleting Section 1(2); and

(b.) by deleting Section 2(2).

擬稿

葉劉淑儀議員的決議案

決議

〈2008年僱員再培訓修例(修訂附表3公告)〉

議決修訂於2008年10月8日提交立法會會議省覽的《2008年僱員再培訓修例(修訂附表3)公告》(即刊發於憲報的2008年第208號法律公告)-

(a) 刪除第1(2)條；

(b) 刪除第2(2)條。

Hon Wong Sing Chi's proposed resolution

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) NOTICE 2008

RESOLVED that the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008, published in the Gazette as Legal Notice No. 208 of 2008 and laid on the table of the Legislative Council on 8 October 2008, be amended by deleting section 1(2), and substituting –

"(2) section 2(2) shall come into operation on 1 August 2047."

Hon LEE Wing Tat's proposed resolution

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) NOTICE 2008

RESOLVED that the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008, published in the Gazette as Legal Notice No. 208 of 2008 and laid on the table of the Legislative Council on 8 October 2008, be amended by deleting section 1(2), and substituting –

"(2) section 2(2) shall come into operation on 1 August 2018."

Appendix VI

Resolution to be moved by Honourable IP Kwok-him

Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008

RESOLVED that the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008, published in the Gazette as Legal Notice No. 208 and laid on the table of the Legislative Council on 8 October 2008, be amended –

“By deleting Section 2(2) and substituting “Section 2(2) shall come in operation on 1 August 2013”.”.

Draft resolution proposed by the Subcommittee

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) NOTICE 2008

RESOLVED that the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008, published in the Gazette as Legal Notice No. 208 of 2008 and laid on the table of the Legislative Council on 8 October 2008, be amended by deleting section 2(2) and substituting -

"(2) Schedule 3 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)".