

LEGISLATIVE COUNCIL BRIEF

Employees Retraining Ordinance (Cap. 423)

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

INTRODUCTION

At the meeting of the Executive Council on 11 November 2008, the Council ADVISED and the Chief Executive ORDERED that the Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008 (the No. 2 Amendment Notice), at **Annex**, should be made under section 31(1) of the Employees Retraining Ordinance (ERO) (Cap. 423), with the effect to suspend, for a period of five years with effect from 1 August 2008, the obligation on employers of all imported labour, including foreign domestic helpers (FDHs), to pay the Employees Retraining Levy (levy), up to 31 July 2013.

JUSTIFICATIONS

Two-year Levy Suspension with effect from August 2008

2. To help mitigate the impact of rising inflation, the Chief Executive announced on 16 July 2008 an \$11 billion relief package comprising ten initiatives. A key initiative in the package that targets the middle class is the suspension of the levy payable by employers of FDHs and other imported labour. At the meeting held on 30 July 2008, in view of the inflationary pressure on the middle class and the financial condition of the Employees Retraining Fund (ERF), the Chief Executive-in-Council made the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008 (the Amendment Notice) to suspend the collection of the levy for two years with effect from 1 August 2008. The two-year levy suspension is meant as a temporary anti-inflationary measure to help alleviate the financial burden of the middle class.

3. The Amendment Notice was tabled at the Legislative Council (LegCo) on 8 October 2008 for negative vetting and a Subcommittee comprising 16 Members was formed to scrutinise it. During the scrutiny period, there has been extensive discussion both at the Subcommittee and in the community about the policy principles underlining the imposition of the levy and the levy suspension as a temporary measure to relieve the financial pressure on the middle class. At a Subcommittee meeting held on 1 November 2008, deputations from various sectors and groups including FDHs, FDH employers, local domestic helpers, training providers, political parties and think tanks were invited to give their views on the matter. Diverse views were expressed as to whether the two-year levy suspension period should be extended having regard to the financial burden of the middle class on the one hand and the need to maintain steady and sufficient supply of financial resources to meet the increasing demands for training and retraining services provided by the Employees Retraining Board (ERB) on the other, particularly in view of the far-reaching impact of the global financial tsunami.

4. Since the making of the Amendment Notice by the Chief-Executive-in-Council in July 2008, the financial turmoil triggered by the United States' subprime crisis has continued to deteriorate. As a small, open economy and a global financial centre, Hong Kong is not immune to the impact of the financial tsunami. The middle class is inevitably affected and there have been calls on the Government to help further alleviate the financial burden of the middle class. Further extension of the levy suspension period should go some way towards meeting such aspiration.

Proposed Five-year Suspension of the Levy

5. The Government has given serious and thorough consideration to the request for levy suspension taking into account the financial position of the ERF and the annual budget of the ERB. As at 14 September 2008, the levy collected from employers of FDHs, which goes to the ERF, and the interest earned has accumulated to over \$4.9 billion. The annual expenditure of the ERB is estimated to be about \$900 million in 2008-09. Our assessment is that the existing balance of the ERF should be able to support the continued operation of the ERB for about five years. In other words, the ERB should be able to live with a five-year levy suspension without adversely affecting the provision of its training

and retraining services for the local workforce.

6. Taking into account the latest economic development, the public views and the financial condition of the ERF, the Chief Executive-in-Council decided to make the No. 2 Amendment Notice to extend the levy suspension, which took effect in August 2008, to end-July 2013, for a total of five years. In our view, the extension strikes the right balance between providing continued relief to the middle class and meeting our local workers' demands for training and retraining services. In practice, the levy suspension would apply to all employment contracts for which visas for the imported labour/FDH concerned are issued by the Director of Immigration between 1 August 2008 and 31 July 2013.

7. Notwithstanding this further extension in the levy suspension, the Government's overall policy that the operating expenses of the ERB should be primarily met by the levy income and that employers of low-skilled imported labour should contribute towards the training and retraining of the local workforce remains unchanged. In the long run, levy collection is essential in ensuring steady and sufficient financial resources for the ERB to enhance the employability of the local workforce so as to maintain Hong Kong's economic competitiveness.

THE AMENDMENT NOTICE

8. The No. 2 Amendment Notice at **Annex** seeks to provide for the re-instatement of the sum specified in Schedule 3 to the ERO for calculation of the levy, which was reduced to \$0 with effect from 1 August 2008, to \$400 with effect from 1 August 2013.

LEGISLATIVE TIMETABLE

9. The legislative timetable is as follows –

Publication in Gazette	11 November 2008
Tabling at the Legislative Council for negative vetting	12 November 2008

FINANCIAL AND LEGAL IMPLICATIONS OF THE PROPOSAL

10. As at 14 September 2008, the levy collected from employers of FDHs and the interest earned already accumulated to over \$4.9 billion in the ERF. Before the suspension, the levy income exceeded \$1.1 billion per year. Extending the suspension to 2013 would result in a total loss of levy income of over \$5.5 billion. As the levy has accumulated to a considerable amount in the ERF before the suspension, the ERB should be able to rely on the balance of the ERF to support its operation and services during the five-year suspension period. After the re-instatement of the levy in August 2013, the operation of the ERB would be funded by the annual levy income and investment return of the ERF and, on such basis, the long-term financial position of the ERB should not be unduly affected by the extended suspension.

11. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The amendment will not affect the current binding effect of the ERO.

PUBLIC CONSULTATION

12. The proposal has been formulated having regard to the views and suggestions made by various sectors of the community, including LegCo, employers' groups, think tanks, etc. on the need to provide continued relief to the middle class through an extension of the levy suspension period.

PUBLICITY

13. At its meeting held on 11 November 2008, the Secretary for Labour and Welfare informed the relevant LegCo Subcommittee on the Amendment Notice of the Chief Executive-in-Council's decision to extend the levy suspension to end-July 2013. A media session was held and a press release was issued on the same day.

BACKGROUND

14. 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 labour importation schemes designated under the ERO have since the commencement of the Ordinance in 1992 been required to pay the levy, which is specified at \$400 per month in Schedule 3 of the ERO. The levy goes to the ERF, which is administered by the ERB, for providing training and retraining to local workers.

ENQUIRY

15. Any enquiries on this brief should be addressed to Ms Karyn Chan, Principal Assistant Secretary for Labour and Welfare (Manpower) at 2810 3290.

Labour and Welfare Bureau
11 November 2008

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

(Made by the Chief Executive in Council under section 31(1) of the
Employees Retraining Ordinance (Cap. 423))

1. Commencement

(1) Section 2 shall come into operation on 1 August 2013.

(2) Section 3 shall come into operation on 11 November 2008.

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 “\$400”.

3. Repeal

The Employees Retraining Ordinance (Amendment of Schedule 3) Notice
2008 (L.N. 208 of 2008) is repealed.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

The object of this Notice is to amend the sum specified for calculation of the levy imposed by the Employees Retraining Ordinance (Cap. 423) to \$400 from 1 August 2013. The sum has been reduced to \$0 by the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008 (L.N. 208 of 2008) (“the earlier Notice”) until 31 July 2010.

2. This Notice has the effect of providing for a longer reduction period than that under the earlier Notice, which is now repealed.