



**Labour Department (Headquarters)**

**勞工處 (總處)**

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Our reference 本處檔案編號 : LD LRD 12-1/2-46 IX  
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Legislative Council Secretariat  
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[Fax: 2877 5029]

Dear Ms Cheng,

**Employment (Amendment) Bill 2006**

Thank you for your letter of 14 February 2007. Our reply to your questions is provided below.

2. Without seeing the actual wording of a Committee Stage Amendment (CSA), it is very difficult to give a definitive view. In determining whether a CSA is relevant to the subject matter of the Bill, reference should be made not only to the substantive clauses but also to the Long Title and to the Explanatory Memorandum.

3. Issue (a) would involve placing a ceiling on the amount of commission earned by an employee for the purpose of calculating his statutory entitlements under the Bill. "Commission" is not mentioned in the substance of the Bill nor in the Long Title. It is only mentioned in the Explanatory Memorandum. The Long Title clearly states that the objective of the Bill is to calculate the amount payable for the statutory entitlements **on the basis of**

**the average wages earned by the employee during a twelve month period.** This is reflected in the substantive clauses. ("Wages" is not defined in the Bill but is defined in the Employment Ordinance as including commission of a contractual nature). A CSA to place a ceiling on the amount of commission to be taken into account in the calculation so as to change the basis of calculation would be contrary to the objective and outside the scope of the Bill. It is worth noting that the proposal of setting a ceiling is a major substantive matter in itself and involves highly complex and controversial issues beyond the scope of this bill, as expressly pointed out in paragraph 11 of the Legislative Council Brief on the Bill.

4. Issue (b) which involves giving a choice to the employee to have his entitlement calculated either on the basis of the average wages earned over a twelve month period or on the basis of the last month's wages would be contrary to the objective stated in the Long Title and reflected in the substantive provisions that the amount payable for statutory entitlements is to be calculated **on the basis of the average wages earned by the employee during a twelve month period.** As such it would be outside the scope of the Bill.

Yours sincerely,



(Teresa Fong)

for Permanent Secretary for  
Economic Development and Labour  
(Labour)/Commissioner for Labour

c.c. Law Draftsman (Attn.: Ms Monica Law)