**COMMISSIONER FOR LABOUR**                                    勞 工 處 處 長 箋 札

Your reference 來函編號 :

Our reference 本處檔案編號 :    L/M (2) to DD/CF 3/602/2007

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14 December 2007

The Hon. LAU Chin-shek, JP
Chairman
Panel on Manpower
Legislative Council
(c/o Secretary, Panel on Manpower
    Legislative Council)
8 Jackson Road
Hong Kong

Dear Mr. Chairman,

### Decisions taken by the Labour Advisory Board

I attach for information a summary of decisions taken by the Labour Advisory Board at its meeting on 10 December 2007.

Yours sincerely,

(Mrs Cherry TSE)
Commissioner for Labour /
Chairman, Labour Advisory Board

# Decisions taken by the Labour Advisory Board
## at its meeting on 10 December 2007

**<u>Proposed amendment to the Employment Ordinance – modifying the provision on additional compensation for non-compliance with compulsory order of reinstatement or re-engagement</u>**

The Labour Advisory Board (LAB) endorsed previously a proposal to amend the reinstatement/re-engagement provisions of the Employment Ordinance (EO) to the effect that where an employee has been found to have been unreasonably and unlawfully dismissed and he makes a claim for reinstatement or re-engagement, the Labour Tribunal (LT) may, without securing the agreement of the employer, make an order of reinstatement or re-engagement if the LT considers such an order appropriate and reasonably practicable.   In case the employer fails to comply with the proposed compulsory order of reinstatement or re-engagement, he shall pay an additional compensation of up to $50,000.

The Administration proposes that instead of a variable amount, the additional compensation should be in the form of a further sum to be fixed with reference to the monthly wages of the employee concerned but should still be subject to a maximum of $50,000.   With this technical modification, the new provision would be in greater certainty in respect of this further sum.   This would also avoid the employee having to approach the LT again for seeking the award in the event of non-compliance by the employer.

The LAB endorsed at its meeting on 1 August 2007 the proposed technical modification, and agreed on 10 December 2007 that the further sum should be three times of the monthly wages of the employee concerned, subject to a maximum of $50,000.

**Review of Section 64B of the Employment Ordinance on the Criminal Liability of the Responsible Persons of a Body Corporate with regard to Wage Offences**

Under the existing section 64B of the EO, the responsible persons of a body corporate, including directors, managers and secretaries or other similar officers, would be held criminally liable if a wage offence committed by the body corporate is proved to have been committed with their consent, or connivance, or be attributable to their neglect.

At a meeting in early 2006, the LAB endorsed that a review of section 64B be conducted. The Labour Department (LD) has examined the feasibility of amending section 64B and has sought the advice of the Department of Justice. The review findings suggest that the elements of offences in the existing provisions can already cover all scenarios under which wage offences committed by a body corporate should be attributable to the unreasonable acts of its responsible persons. LD has revised its investigation strategies and deployed more resources to target enforcement action against the responsible persons for wage offences. As a result, there has been a sharp increase in the number of convicted summonses. The enforcement results suggest that section 64B in its present form is adequate in enabling LD to take out effective enforcement actions against the responsible persons of a body corporate. Legislative amendment is thus not necessary. LD will continue with its vigorous enforcement actions against the responsible persons of a body corporate in deserving cases.

LAB Members were informed of the review findings and strengthened enforcement actions at the meeting. They supported the review findings that there is no need to amend section 64B.