

LEGISLATIVE COUNCIL BRIEF

Employees Retraining Ordinance (Cap. 423)

**EMPLOYEES RETRAINING ORDINANCE
(AMENDMENT OF SCHEDULE 3) NOTICE 2008**

INTRODUCTION

At the meeting of the Executive Council on 30 July 2008, the Council ADVISED and the Chief Executive ORDERED that the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008, at **Annex A**, should be made under section 31(1) of the Employees Retraining Ordinance (ERO) (Cap. 423) to suspend, for a period of two 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).

JUSTIFICATIONS

Providing Relief to the Middle Class

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. To help alleviate as soon as possible the financial burden on the employers of all imported labour, including FDHs, who are mostly from the middle class, we have, with effect from 1 August 2008, suspended the collection of the levy for a period of two years. In practice, the levy suspension is applicable 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 2010.

3. 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. Their employers will benefit from the levy suspension when they renew the contracts of the imported labour/FDHs at any time during the two-year suspension period. All new employment contracts with visas granted during the period will also be eligible for the levy suspension.

4. For the relevant employers of FDHs, the proposed suspension generally represents a saving of \$400 per month, or a total saving of \$9,600 for a 24-month standard contract, for each FDH. The suspension, introduced quickly, represents a positive response from the Administration to calls from various political parties and certain groups in the community, including employers of FDHs, for an adjustment to the levy as a relief measure to alleviate the inflationary pressure on the middle class.

Financial condition of the Employees Retraining Fund

5. As at 5 July 2008, the levy collected from employers of FDHs, which goes to the Employees Retraining Fund (ERF), and the interest earned have accumulated to over \$4.7 billion. The Chief Executive-in-Council decided at its meeting on 23 October 2007 to relax the eligibility criteria of the Employees Retraining Scheme (ERS) to cover young people aged 15 to 29 and those with education up to the sub-degree level and the Employees Retraining Board (ERB) has since started to draw down the levy to support its operation and services. The Government has ceased its recurrent subvention to the ERB in 2008-09.

6. Following the relaxation of the eligibility criteria of the ERS in December 2007 and the recent completion of its strategic review, the ERB expects to take on a new strategic role and responsibilities and offer more comprehensive and diversified training and retraining services for upgrading the quality of the local workforce. The annual expenditure of the ERB is estimated to increase significantly from about \$400 million in the past to about \$900 million in 2008-09. The expenditure figure is expected to increase further when the recommendations of the strategic review are fully implemented beyond 2008-09. The ERB has planned to rely on the levy collected (estimated to be about \$1.1 billion per year before the suspension) together with the investment return of the ERF to generate sufficient funding for meeting the recurrent expenses of the ERB

and provision of the expanded training services.

7. In view of the healthy financial condition of the ERF, the temporary suspension for two years of the levy should not have any material impact on the operation of the ERB in 2008-09. The expansion of services in 2009-10 and beyond will be subject to the availability of the levy income after the two-year suspension period. As the fund that can be set aside for investment will become much less, the ERB has to review its investment strategy and a much lower return on investment is expected.

8. Notwithstanding this temporary 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. It is important to note that the role of the ERB is of paramount importance to Hong Kong. Apart from increasing the provision of training places, the ERB also plans to enrich the training content, enhance the quality assurance of its courses and develop new training programmes that are more diversified and geared towards market needs. Trainees will be able to obtain recognised qualifications for employment and progression. 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.

Implementation timetable

9. The Amendment Notice is subsidiary legislation. It will be tabled at the Legislative Council (LegCo) for negative vetting upon the commencement of the new LegCo term in October 2008. On the effective date of the Amendment Notice, bearing in mind the need to implement the levy suspension as soon as practicable to help alleviate the inflationary pressure on the middle class, we have brought the Amendment Notice into effect upon gazettal on 1 August 2008.

Implementation arrangements

10. Under the ERO, the legal obligation for employers of

imported labour/FDH to pay the levy arises when the visa for imported labour/FDH is granted by the Immigration Department. While, as a facilitating measure, we allow employers of FDHs the option of paying the levy in one go or through four instalments, the availability of the alternate levy payment method by instalments does not in any way alter the legal position that the liability for levy payment under the ERO is incurred upon the granting of a visa. Accordingly, employers of pre-existing contracts (i.e. contracts with visa granted before 1 August 2008) are required to continue to pay their levy as provided under the ERO in respect of the pre-existing contracts. That said, they would be able to enjoy levy suspension for the new contract period when visas for the renewal of the contracts of their serving FDHs or the hiring of a new FDH at any point in time during the two-year levy suspension period are granted.

11. On the part of FDHs, we note the FDH community's concerns about their position in the event that their contracts are terminated prematurely before having run their full two-year course. To protect the interests of FDHs and minimise the possible impact of premature termination of contracts on them, the Director of Immigration (Director) would, as a special arrangement, exercise discretion during the suspension period and allow the advanced renewal of FDHs' contracts with the same employers without requiring the FDHs to leave Hong Kong after the existing contracts have been terminated. In accordance with the established guidelines of the Immigration Department, if an employer has prematurely terminated his/her FDH, he/she is required to pay the instalment(s) covering the period of employment only. Employers would be reminded that the Director reserves the right to refuse visas for cases involving blatant manipulation.

12. Employers who wish to apply for advanced contract renewal with the same FDHs are required to sign an undertaking to confirm the termination of the existing contract and the effective date of the termination, and to commit on the continuity of employment relationship under the new and old contracts. This is to ensure that the length of service of the FDHs will not be affected or curtailed in reckoning their entitlements under the Employment Ordinance (Cap. 57) (e.g. annual leave, long service payment, etc.) and employment contract. The FDHs are also required to sign the undertaking to indicate their acceptance of the arrangement.

13. Also, employers of FDHs who opt for the advanced contract renewal arrangement would have to honour certain contractual obligations under the pre-existing and the new contracts, and bear the cost as in normal premature termination cases¹. Such contractual obligations have been in place for years for good policy considerations. They include –

- (a) providing, irrespective of whether the contract has been prematurely terminated or completed in full, free return passage to the FDH's place of origin; and free passage from the FDH's place of origin to Hong Kong, according to clause 7(a) of the standard employment contract for FDHs²;
- (b) paying the FDH, for the new contract period, the prevailing minimum allowable wage level, which was increased from \$3,480 to \$3,580 since 10 July 2008; and
- (c) shouldering fees for notarisation of the new employment contract by the relevant consulates in Hong Kong and for application for employment visa with the Immigration Department.

14. Since the implementation of the levy suspension from 1 August 2008, the Immigration Department has re-deployed additional resources and, where necessary, extended their operating hours in order to cope with the surge in applications for the grant of visa. Looking further ahead, to ensure that applications received could be properly processed for the grant of visa before the end date of the suspension (i.e. 31 July 2010), the Immigration Department would need to set a cut-off date for employers to submit visa applications for advanced renewal of contracts and new contracts, where part of the contract period falls after 31 July 2010. The Immigration Department would work out the exact cut-off date, in the light

¹ In normal premature termination cases, the FDH employer is required to pay termination payments to the FDH such as pro-rata annual leave pay, long service payment (where appropriate) in addition to the obligations at paragraph 13.

² Clause 7(a) of the standard employment contract stipulates that, “[t]he Employer shall provide the Helper with free passage from his/her place of origin to Hong Kong and on termination or expiry of this contract, free return passage to his/her place of origin.”

of operational experience, and announce the application deadline and other detailed arrangements. Employers would also be reminded that visa applications received by the Immigration Department after the application deadline will not be approved in time for them to enjoy the levy suspension.

THE AMENDMENT NOTICE

15. The Amendment Notice at **Annex A** seeks to reduce the sum specified in Schedule 3 to the ERO for calculation of the levy 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.

LEGISLATIVE TIMETABLE

16. The legislative timetable is as follows –

Publication in Gazette	1 August 2008
Tabling at the Legislative Council for negative vetting	8 October 2008

IMPLICATIONS OF THE PROPOSAL

17. The proposal has financial, civil service and economic implications as set out at **Annex B**.

18. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no environmental, productivity or sustainability implications. The amendment will not affect the current binding effect of the ERO.

PUBLIC CONSULTATION

19. 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 help alleviate the inflationary pressure on the middle class through an adjustment to the

levy.

PUBLICITY

20. A media session was held and a press release was issued on 30 July 2008 after the Executive Council meeting. Information on the suspension decision and related arrangements has been uploaded onto the internet for public information. Both the Immigration Department and Labour Department have set up hotlines for answering public enquiries.

BACKGROUND

21. The ERB is an independent statutory body established in 1992 under the ERO. Its main function is to provide training and retraining services to eligible local workers to assist them in acquiring new or enhanced skills so that they can adjust to changes in the economic environment. Following the relaxation of the eligibility criteria of the ERS with effect from December 2007, the service targets of the ERB now cover all eligible persons aged 15 or above with education level at sub-degree level or below.

22. 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 (the schemes) 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.

23. In February 2003, the Chief Executive-in-Council approved the recommendation of the report of the Task Force on Population Policy that, same as employers of imported labour under the schemes, employers of FDHs should also be required to pay a monthly levy of \$400 with effect from 1 October of that year. Employers of FDHs may choose to pay the levy in a lump sum for the standard contract period of 24 months or by four equal instalments whereas employers of imported labour are required

to make lump sum payment.

ENQUIRY

24. 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
30 September 2008

**EMPLOYEES RETRAINING ORDINANCE
(AMENDMENT OF SCHEDULE 3) 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(1) shall come into operation on 1 August 2008.
- (2) Section 2(2) shall come into operation on 1 August 2010.

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

- (1) Schedule 3 to the Employees Retraining Ordinance (Cap. 423)
is amended by repealing “\$400” and substituting “\$0”.
- (2) Schedule 3 is amended by repealing “\$0” and substituting
“\$400”.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

The object of this Notice is to reduce the sum specified for calculation of the levy imposed by the Employees Retraining Ordinance (Cap. 423) to \$0 from 1 August 2008 and to restore it to \$400 from 1 August 2010.

Implications of the Proposal

Financial Implications

From 2008-09 onwards, the Government has ceased its recurrent subvention to the Employees Retraining Board (ERB) which would henceforth meet its operating expenses from the levy. The annual expenditure of the ERB is estimated to be about \$900 million in 2008-09 and is expected to further increase when the recommendations of the strategic review are fully implemented beyond 2008-09. As at 5 July 2008, the levy collected from employers of foreign domestic helpers (FDHs) and the interest earned have accumulated to over \$4.7 billion in the Employees Retraining Fund (ERF). Before the suspension, the levy income exceeded \$1.1 billion per year. It is estimated that a two-year suspension of levy collection would result in a total loss of levy income of over \$2.2 billion. However, if some employers manage to enjoy a waiver of more than 24 months, the overall financial implications may well exceed \$2.2 billion. That said, since the levy would be reinstated upon expiry of the suspension period, the overall financial condition of the ERF and long-term financial position of the ERB would not be unduly affected. The ERB should be able to rely on the annual levy income and investment return of the ERF to support its operation and services in the long run.

Civil Service Implications

2. With the suspension in place, the processing time for visa applications may be slightly shortened. The workload in collecting outstanding levy instalment(s) of pre-existing contracts would gradually decrease because some employers might pursue advanced renewal of contracts. The suspension of levy collection should therefore result in some temporary staff savings for the Immigration Department. On the other hand, during the suspension period, there would be a considerable number of applications for advanced renewal of contracts and a substantial increase in levy-related enquiries, both concerning the new measures and arrangements for outstanding instalment(s) of pre-existing contracts. The levy suspension may also increase the incentive of prospective employers to employ FDHs, thereby boosting the upward trend of related applications. Having regard to the above considerations, the Civil Service Bureau and the Financial Services and the Treasury Bureau will work out with the Immigration Department the manpower implications involved and make the necessary adjustment.

Economic Implications

3. The proposal will help relieve the financial burden faced by the employers of imported labour, including in particular middle class households hiring FDHs, amid the rising inflation. It will also restrain consumer price inflation by lowering the cost of purchased housework services, although such impact is likely to be insignificant.