

For information on
25 June 2019

Legislative Council Panel on Manpower
Review of the Jurisdictional Limit of
the Minor Employment Claims Adjudication Board

Purpose

This paper seeks Members' views on a proposal for increasing the jurisdictional limit of the Minor Employment Claims Adjudication Board (MECAB).

Background

Work of MECAB

2. MECAB was established within the Labour Department (LD) in December 1994 under the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) (MECABO) to adjudicate employment claims arising from disputes of statutory or contractual right of employment. The purpose of setting up MECAB is to provide a simple, quick and inexpensive adjudication service which runs in parallel with the Labour Tribunal (LT). MECAB's work is largely similar to that of LT except that it has a lower jurisdictional limit. MECAB is tasked to adjudicate claims with a lower amount to supplement that of LT, so that LT is to adjudicate more complicated claims, including claims of a higher amount and employment protection claims under Part VIA of the Employment Ordinance (Cap. 57) (EO)¹ of which LT has exclusive jurisdiction.

¹ Part VIA of EO provides that an employee may claim remedies against an employer for unreasonable dismissal, unreasonable variation of terms of the employment contract, and unreasonable and unlawful dismissal. Remedies for employment protection may include an order of reinstatement or re-engagement, or an award of terminal payments, and/or, in the case of unreasonable and unlawful dismissal, an award of compensation.

Jurisdictional limit of MECAB

3. According to section 5 and the Schedule of MECABO, MECAB has jurisdiction to handle claims with a claim amount not exceeding \$8,000 per claimant and made by not more than 10 claimants. Any employment claims with the claim amount or number of claimants higher than the jurisdictional limit of MECAB will be adjudicated by LT. The current jurisdictional limit of MECAB has been adopted since June 1997 having regard to the operation of MECAB and the need to further reduce the waiting time for claims to be filed and heard at LT. The first jurisdictional limit of MECAB was set in 1994 at \$5,000 per claimant and claims made by not more than five claimants.

The Proposal

4. In 2018, a review was conducted on the jurisdictional limit of MECAB. Having considered the increase in wage levels in the labour market in the past two decades, the caseload of MECAB and changes in the jurisdictional limits of courts of the Judiciary, it is considered appropriate to adjust the jurisdictional limit of MECAB from \$8,000 per claimant to \$12,000 per claimant, while retaining the maximum number of claimants per claim at 10.

Justifications

Increase in wage levels over the past years

5. Since June 1997 when the jurisdictional limit of MECAB was last raised, labour earnings in Hong Kong have gone through significant increase. Between the second quarter of 1997 and the fourth quarter of 2018, the median monthly employment earnings² of all employees increased by 70.0%. The increase in wage levels can be attributed to many factors including, for example, changes in economic and business conditions, the implementation of Statutory Minimum Wage and a tight labour market over the years.

² The monthly employment earnings statistics is compiled from the Census and Statistics Department's General Household Survey which is household-based.

Caseload of MECAB

6. In parallel, the number of claims lodged with MECAB has shown a gradual decline. For the past five years, the number of cases filed at MECAB witnessed a drop from 1 162 cases in 2014 to 607 cases in 2018, representing a decrease of 47.8%. Having regard to the current caseload position, there is room for MECAB to take up more cases. With an increase in the jurisdictional limit, MECAB will be able to take up more employment claim cases at the lower bound of claim amounts. This would in turn enable LT to concentrate on handling employment claims of higher complexity.

7. We do not recommend any change to the maximum number of claimants per claim, i.e. 10 claimants, as employment claims with more than 10 claimants with each of them claiming a low amount are rare.

8. The proposed change to the jurisdictional limit of MECAB will not affect the rights of employers and employees in seeking adjudication of their employment claims. Both MECAB and LT strive to provide a relatively quick and less costly avenue for litigants to resolve employment disputes, and adopt a more informal approach in hearing claim cases. The rules and procedures of both MECAB and LT are less strict than those in most other courts, and no legal representation is allowed.

Increase in the jurisdictional limits of other functions of the Judiciary

9. The Judiciary reviews the civil jurisdictional limits of its courts from time to time. Taking the Small Claims Tribunal (SCT) as an example, the jurisdictional limit of SCT was raised from \$50,000 to \$75,000 starting from December 2018 having regard to a number of factors, including the cumulative inflation rate since the last review of its limit in 2003. SCT is a tribunal which adopts a more informal approach to proceedings, its rules and procedures are less strict than those in most other courts and tribunals, and no legal representation is allowed. It provides a relatively quick and less costly avenue for litigants to resolve civil disputes involving lower claim amounts.

Projections on caseload impact

10. We have carried out some analyses and indicative projections using the data gathered from 1995 to 2018 to estimate the likely impact of the proposed adjustment to its jurisdictional limit on the caseload of MECAB. While it is difficult to be exact

on the likely impact as other factors like economic conditions may also come into play, based on the figures of the past three years, increasing the jurisdictional limit of MECAB from \$8,000 per claimant to \$12,000 per claimant would probably entail some 500 additional claims annually, which MECAB should be able to take up with its existing resources.

Consultation

11. LD has sought the views of the Judiciary on the proposed increase in the jurisdictional limit of MECAB. The Judiciary has raised no objection to the proposal.

12. LD consulted the Labour Advisory Board on the proposal on 15 May 2019. The employer and employee representatives were on the whole supportive of the proposal. The employee representatives asked for more regular review of the jurisdictional limit of MECAB in future, to which we agree.

Implementation

13. The proposed change to the jurisdictional limit of MECAB will have to be effected by notice in the Gazette according to section 6 of MECABO. The Government would proceed with the drafting of the enabling legal instrument for submission to the Legislative Council in late 2019.

Advice sought

14. Members are invited to give views on the proposal as set out in paragraph 4 above.

Labour and Welfare Bureau
Labour Department
June 2019