

## LEGISLATIVE COUNCIL BRIEF

### Minor Employment Claims Adjudication Board Ordinance (Cap. 453)

#### MINOR EMPLOYMENT CLAIMS ADJUDICATION BOARD ORDINANCE (AMENDMENT OF SCHEDULE) NOTICE 2021

#### INTRODUCTION

In accordance with section 6 of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) (MECABO), the Commissioner for Labour has made the Minor Employment Claims Adjudication Board Ordinance (Amendment of Schedule) Notice (Amendment Notice) to adjust upwards the jurisdictional limit of the Minor Employment Claims Adjudication Board (MECAB). The Amendment Notice is at [Annex](#).

#### JUSTIFICATIONS

2. 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 claim amount or number of claimants higher than the jurisdictional limit of MECAB will be adjudicated by the Labour Tribunal (LT). The mechanism has been operating effectively.

3. The current jurisdictional limit of MECAB has been adopted since 25 June 1997. Having examined the increase in employment earnings of employees over the past two decades or so, the caseload of MECAB, etc., it is considered appropriate to adjust upwards the jurisdictional limit of MECAB in respect of the claim amount to \$15,000 per claimant, while retaining the maximum number of claimants per claim at 10.

4. According to figures provided by the Census and Statistics Department, the median monthly employment earnings of all employees increased by 80.0% from the second quarter of 1997 to the third quarter of 2020. The upward adjustment of the jurisdictional limit of MECAB from \$8,000 to \$15,000, representing an increase of 87.5%, is roughly similar to the abovementioned rate

of increase in the employment earnings of employees. With reference to some 560 claims received by MECAB in 2019<sup>1</sup>, it is crudely projected that if MECAB's jurisdictional limit is increased to \$15,000 per claimant, the estimated number of claims to be received by MECAB will double, meaning a total of some 1 200 claims will be received annually. The additional caseload can be accommodated within existing resources. We consider it appropriate to increase the limit of claim amount to \$15,000 per claimant.

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

## **THE PROPOSAL**

6. We propose to increase the jurisdictional limit of MECAB from not exceeding \$8,000 per claimant to not exceeding \$15,000 per claimant, while retaining the maximum number of claimants per claim at 10. The Labour Department (LD) has sought the views of the Judiciary on the proposal and the Judiciary has raised no objection to it.

## **LEGISLATIVE TIMETABLE**

7. Pursuant to the tentative legislative timetable below, we propose that the revised jurisdictional limit of MECAB shall come into effect on 17 September 2021.

Publication in the Gazette	9 July 2021
Tabling at the Legislative Council (for negative vetting)	14 July 2021

## **IMPLICATIONS OF THE PROPOSAL**

### **Financial and staffing implications for the Government**

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<sup>1</sup> As affected by the COVID-19 pandemic, the Government implemented special work arrangements for government employees during certain periods in 2020, rendering the number of claims received by MECAB in 2020 lower than expected. The projection is therefore based on the number of claims received in 2019.

8. Since the projected increase in caseload of MECAB can be accommodated within the existing resources of LD, the proposal has no additional financial and staffing implications for the Government.

### **Other implications**

9. 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. Under the existing mechanism, any employment claims exceeding the jurisdictional limit of MECAB will be adjudicated by LT. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of MECABO. It has no economic, environmental, sustainability, gender or family implications.

### **PUBLIC CONSULTATION**

10. The proposal was discussed at the meeting of the Labour Advisory Board held on 25 November 2020. All Members present unanimously supported the proposal.

11. We consulted the Legislative Council Panel on Manpower on the proposal at the meeting on 19 January 2021. Members had no objection to our proposal.

### **BACKGROUND**

12. MECAB was established within LD in December 1994 under MECABO to adjudicate employment claims arising from disputes of statutory or contractual rights of employment. The purpose of setting up MECAB is to provide a simple, quick and inexpensive adjudication service which runs in parallel with LT. MECAB's work is largely similar to that of LT except that both have different jurisdiction.

### **PUBLICITY**

13. A press release will be issued after the publication in the Gazette. A spokesperson will be available for answering media enquiries.

## **ENQUIRIES**

14. Enquiries on this brief can be addressed to Mr Raymond Liang, Assistant Commissioner for Labour (Labour Relations), at 2852 4097 or Mr Worky Wu, Registrar, MECAB, at 2927 8007.

Labour and Welfare Bureau  
Labour Department  
July 2021

**Minor Employment Claims Adjudication Board  
Ordinance (Amendment of Schedule) Notice 2021**

(Made by the Commissioner for Labour under section 6 of the Minor  
Employment Claims Adjudication Board Ordinance (Cap. 453))

1. **Commencement**  
This Notice comes into operation on 17 September 2021.
2. **Minor Employment Claims Adjudication Board Ordinance amended**  
The Minor Employment Claims Adjudication Board Ordinance (Cap. 453) is amended as set out in section 3.
3. **Schedule amended (jurisdiction of the Minor Employment Claims Adjudication Board)**
  - (1) The Schedule, paragraph (a)(iii)—  
**Repeal**  
“the provisions of”.
  - (2) The Schedule, English text, paragraph (a)(v)—  
**Repeal**  
“his”  
**Substitute**  
“the employee’s”.
  - (3) The Schedule, paragraph (a)(v)—  
**Repeal**  
“; or”  
**Substitute a semicolon.**

- (4) The Schedule, paragraph (b)—  
**Repeal**  
“on or after 25 June 1997, or partly before and partly on or after that date”  
**Substitute**  
“wholly before 17 September 2021 (but not wholly before 25 June 1997)”.
- (5) The Schedule, paragraph (b)(i) and (ii)—  
**Repeal**  
“(if relevant)”  
**Substitute**  
“(if applicable)”.
- (6) The Schedule, paragraph (b)(iii)—  
**Repeal**  
“the provisions of”.
- (7) The Schedule, English text, paragraph (b)(v)—  
**Repeal**  
“his”  
**Substitute**  
“the employee’s”.
- (8) The Schedule, paragraph (b)(v)—  
**Repeal**  
“payment.”  
**Substitute**  
“payment; or”.
- (9) The Schedule, after paragraph (b)—

**Add**

- “(c) the right of action of which arose on or after 17 September 2021, or not wholly before that date, and made by not more than 10 claimants for a sum of money not exceeding \$15,000 per claimant, which arises from—
- (i) the breach of a term, whether express or implied or (if applicable) arising by force of section 10(1) of the Minimum Wage Ordinance (Cap. 608), of a contract of employment, whether for performance in Hong Kong or under a contract to which the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78) applies;
  - (ii) the breach of a term, whether express or implied or (if applicable) arising by force of section 10(1) of the Minimum Wage Ordinance (Cap. 608), of a contract of apprenticeship;
  - (iii) the failure of a person to comply with the Employment Ordinance (Cap. 57), the Minimum Wage Ordinance (Cap. 608) or the Apprenticeship Ordinance (Cap. 47);
  - (iv) any question as to the right of an employee to a severance payment under Part VA of the Employment Ordinance (Cap. 57) or the amount of such payment; or
  - (v) any question as to the right of an employee to payment of wages by a person other than the employee’s employer under Part IXA of the Employment Ordinance (Cap. 57) or the amount of such payment.”.



Commissioner for Labour

29 June 2021

**Explanatory Note**

This Notice amends the Schedule to the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) to expand the jurisdiction of the Minor Employment Claims Adjudication Board.