

For discussion
on 7 December 2004

LegCo Panel on Security
Measures to Combat Illegal Employment

Introduction

The Government has been sparing no effort in combating illegal employment so as to protect job opportunities for the local workforce. This paper gives an account of the measures taken.

Background

2. The number of illegal workers arrested increased from 2 681 in 2001 to 3 534 in 2002 and 5 317 in 2003, representing an average annual increase of 41%. The number of arrestees in the first ten months of 2004 stood at 4 575, or an increase of about 3.6% over the corresponding period last year. Of them, about 94% were visitors from the Mainland.

3. The increase in illegal workers from the Mainland should be viewed against a backdrop of hefty rises in the number of Mainland visitors over the same period. The number of Mainland visitors increased from about 4.4 million in 2001 to about 6.7 million in 2002 and 8.4 million in 2003, representing an average annual increase of 39%. The number of Mainland visitors in the first ten months of 2004 stood at 9.95 million, showing an increase of about 54% over the corresponding period last year. It is noteworthy that the

number of Mainland visitors arrested for working illegally increased at the much slower rate of 8.8% over this period. Accordingly, out of every 10 000 Mainland visitors coming to Hong Kong in the first ten months of 2004, only about 4 visitors were arrested for working illegally. This was an improvement over the corresponding period last year when the ratio of arrestees stood at about 6 out of every 10 000 Mainland visitors.

4. The statistics indicate that the overwhelming majority of Mainland visitors are law-abiding. For Mainland visitors entering Hong Kong under the Individual Visit Scheme which was launched in July 2003, the ratio of arrestees is even lower. In the first ten months of 2004, a total of 3.4 million Mainland visitors came to Hong Kong under the Scheme, and 623 were arrested for working illegally, translating into a ratio of less than 2 arrestees out of every 10 000 visitors.

5. The above notwithstanding, the absolute increase in the number of Mainland visitors found working illegally in Hong Kong remains a cause of concern. The community expects the law enforcement departments to take vigorous measures against the problem. The Government is accordingly taking a three-pronged approach to combat illegal employment through tackling the problem at source, ensuring effective law enforcement and stepping up publicity and education.

Tackling the Problem at Source

6. The law enforcement departments are in close liaison and

cooperation with their Mainland counterparts to exchange intelligence so as to prevent Mainland visitors from entering Hong Kong for illegal employment. Particulars of Mainland visitors found or suspected of having worked illegally in Hong Kong are passed to Mainland authorities so that their subsequent applications to visit Hong Kong can be subject to closer scrutiny. Where the situation warrants, Mainland authorities may reject an application for a period of two to five years. As a further measure to prevent possible abuse, Mainland authorities have tightened up the issuing of endorsements for business visits and visiting relatives which may enable a visitor to come to Hong Kong at a higher frequency or stay for a longer period than some other endorsements. Since February 2004, residents of Guangdong (except those who are above the age of 60 or below 16) intending to visit close relatives¹ in Hong Kong have been asked to apply for endorsement under the Individual Visit Scheme which allows a stay of up to 7 days in Hong Kong upon each entry. Guangdong authorities also introduced in March 2004 a new endorsement for business visits which only allows a single entry and restricts the holder's stay in Hong Kong to up to 7 days.

7. The frontline officers of ImmD at various control points, while striving to facilitate the entry of Mainland and foreign visitors, keep a watchful eye on suspicious visitors. Close examination is conducted when necessary to prevent any person with dubious intention from entering Hong Kong. In 2003, 15 681 Mainland visitors and 3 247 foreign visitors were refused entry for

¹ Close relatives include siblings, uncles, aunties, nephews, nieces and their spouse. The new arrangement does not affect Mainland residents visiting direct relatives in Hong Kong which include the applicant's spouse, parents (and parents-in-law), children and their spouse, grand-parents, grand-children and their spouse, and great grand-parents.

doubtful purpose of visit. In addition, ImmD will introduce in the near future a pilot Facial Recognition System, which provides an ancillary tool to facilitate immigration officers to verify the identity of visitors seeking to circumvent immigration control and enter Hong Kong through taking advantage of different, and often false identities. With the system in place, officers who doubt a particular visitor's identity may scan the photograph of the visitor in his travel document to see if it matches the facial features information held in the System on persons with previous conviction or other adverse records.

Ensuring Effective Law Enforcement

8. In order to better focus and co-ordinate efforts to combat illegal employment, an Inter-departmental Task Force was set up in April 2003 to devise specific strategies, coordinate joint operations amongst various departments and enhance the gathering and exchange of intelligence. The Task Force is chaired by the Deputy Commissioner of Police (Operations). Its membership includes the Security Bureau, ImmD, Labour Department, Customs and Excise Department, Correctional Services Department and other departments concerned.

9. In 2003, ImmD conducted 5 739 operations against illegal workers (an increase of 60% when compared to the 3 580 operations conducted in 2002), including 98 joint operations with the Police and Labour Department, during which over 5 000 illegal workers and 1 000 employers were arrested. In the first ten months of 2004, ImmD conducted 6 659 operations, including 73 joint operations with other relevant departments, and apprehended 4 575 illegal

workers and 1 143 employers.

10. In addition to ImmD, the Labour Department conducts checks on establishments of different economic sectors and inspects the proof of identity of employees as well as the employment records kept by the employers in order to prevent the employment of illegal workers. In the first ten months of 2004, Labour Department conducted 105 733 checks and inspected the proof of identity of 168 241 employees, detecting a total of 601 suspected illegal workers.

11. Special operations are conducted for target areas causing particular concerns to the community. Since mid-January 2003, ImmD has carried out a series of operations codenamed “Contribute” to crackdown on illegal workers engaging in interior renovation and building maintenance works as well as on their employers. The scope of these operations also covers small houses under construction and on-site maintenance works. From January 2003 and up to end October 2004, ImmD has conducted a total of 582 “Contribute” operations and arrested 439 illegal workers and 55 suspected employers. The Labour Department also conducts frequently checks on construction sites. In the first ten months of 2004, the Labour Department conducted 525 such checks, inspected the proof of identity of 4 806 employees and referred 14 suspected cases of illegal employment to the ImmD/Police for follow-up investigation.

12. To apprehend Mainland cross-boundary drivers taking up unapproved driving duties in Hong Kong, ImmD conducted joint operation code-named “Castleland” with the Police and Labour Department. In the past 3 years, 12 Mainland cross-boundary drivers were arrested and subsequently convicted of breach of condition of stay. They were sentenced to imprisonment

for 2 to 4 months. A total of 6 suspected employers were also apprehended. Among them, 4 were not prosecuted due to insufficient evidence whilst one was prosecuted with hearing adjourned to December 2004. The remaining one is still under investigation. In the first ten months of 2004, the Labour Department conducted 89 visits to container depots, mostly in Yuen Long and Tuen Mun, and checked the proof of identity of 459 employees including container drivers and transportation workers. As a result, 27 suspected illegal workers, including 3 Mainland drivers, were intercepted and referred to the ImmD for investigation.

13. As part of its efforts to combat illegal employment and the use of forged Hong Kong identity cards, ImmD conducted 4 operations codenamed “Breakthrough” between July and October 2004. In these operations, immigration officers, acting on intelligence, raided over 280 target premises throughout the territory, including restaurants, cooked food stalls, markets, construction sites, hair salons, unlicensed cooked food factories and flats under renovation. A total of 252 illegal workers and 69 employers were apprehended. The operations also resulted in the seizure of 31 suspected forged Hong Kong identity cards and the recovery of 2 Hong Kong identity cards that had been reported lost.

14. Apart from arresting lawbreakers on-the-spot at workplaces, the law enforcement departments also collect intelligence and conduct raids on the hideouts and places frequented by illegal workers. From January 2003 to October 2004, ImmD and the Police conducted 22 joint operations codenamed “TAGUS” against illegal workers in suspected gathering places in Yuen Long,

Sheung Shui, Tin Shui Wai, Causeway Bay and Tai Hang. In those operations, 1 142 Mainlanders suspected of working illegally were arrested.

Government Service Contracts and Licensing Systems

15. In respect of tendering for services, Government departments adopt an assessment scheme under which one of the criteria is whether the employers have any past record of hiring illegal workers. For instance, the Food and Environmental Hygiene Department (FEHD) and the Leisure and Cultural Services Department (LCSD), which tender a large number of the service contracts, adopt a marking scheme for evaluating tenders in which one of the assessment criteria is whether the tenderer has contravened the Immigration Ordinance relating to the employment of illegal workers. Past conviction record of employing illegal workers will have a bearing on the assessment and may eventually lead to rejection of the tender. A tender offer will not be considered if, during the 12-month period prior to the tender closing date, the tenderer has had a total of 3 or more convictions relating to illegal employment offences.

16. Furthermore, it is expressly stipulated in the general conditions of FEHD and LCSD service contracts that if contractors are found to have employed persons not lawfully employable in the performance of the contract and subsequently convicted for breaching the concerned provisions of the Immigration Ordinance, the convictions can be construed as a serious breach of contract which may result in immediate termination.

17. The Government will review existing deterrent measures as and when necessary. The Security Bureau is consulting other relevant Bureaux and Departments on the feasibility of incorporating suitable provisions in the licensing conditions of different Government licences to deter illegal employment.

Stepping up Publicity and Education

18. Apart from intensifying law enforcement, ImmD and the Labour Department have stepped up publicity and education against illegal employment. Announcements in the Public Interest (APIs) are made to urge employers not to employ illegal workers and to remind different sectors of the public, including foreign workers, not to engage in unlawful work or in aiding or abetting such activities. The public is encouraged to report suspected illegal employment cases to ImmD through its 24-hour hotline (2824 1551), by fax (2824 1166), by correspondence or via e-mail at anti_crime@immd.gov.hk. Since November 2003, Labour Department has distributed leaflets to over 170 000 households and shops in residential buildings, as well as to contractors of minor demolition works and drainage maintenance projects. The leaflets quote actual cases of imprisonment of employers of illegal workers to generate deterrent effect. In October 2004, another leaflet was also produced for distribution to households in large housing estates to warn against employment of illegal domestic helpers. Furthermore, Labour Department maintains close liaison with various labour unions and encourages them to provide information on illegal workers. Briefs on latest imprisonment cases and the results of the efforts of related Government departments in combating illegal employment are reported in periodicals

published by the department. Labour Department also operates a 24-hour complaint hotline (2815 2200) to encourage the public to report on illegal workers.

19. Sector-specific efforts are also a main focus. After consulting the property management sector, ImmD has prepared a set of guidelines on how to prevent illegal workers from taking up decoration works in housing estates. Management offices of housing estates are requested to issue workers with permits bearing the seal of the office and the photograph of the worker. Since the implementation of this measure, the number of complaints and illegal workers found engaging in decoration works in large housing estates has decreased. ImmD is seeking to progressively extend this measure to single-block buildings. With the assistance of the Home Affairs Department, ImmD has held seminars for, and distributed guidelines to, owners' corporations and property management companies to enhance record keeping of flats under renovation and the particulars of the owners, contractors and workers. Furthermore, ImmD has briefed safety officers and sub-contractors of construction companies about the security features of identity cards so as to prevent illegal workers from seeking employment in construction sites with forged identity cards.

Sentencing of Illegal Workers and Their Employers

20. In the first ten months of 2004, 3 008 illegal workers were sentenced to jail for up to 10 months, representing a two-fold increase over the 1 012 illegal workers imprisoned in the corresponding period in 2003. As regards

employers of illegal workers, 201 were sentenced to imprisonment for up to 15 months in the same period, representing a three-fold increase over the 49 recorded in the corresponding period in 2003.

21. In September 2004, the Court of Appeal laid down a sentencing guideline which prescribes that, in the absence of any aggravating or mitigating circumstances, a first time offender who employs one illegal worker on a casual basis should be sentenced to 3-month immediate custodial sentence. Furthermore, the judgment states that the presence of aggravating features, such as exploitation, multiple employment or repeated offences, will in most cases substantially increase the guideline sentence. The judgment also makes it clear that employing a relative or clansman is by itself not a mitigating factor. The Government will continue to closely monitor the sentences received by employers of illegal workers, and will consider the lodging of appeals in cases where the court may have deviated from the guideline.

Statistics

22. Statistics on the number of operations and breakdown of the illegal workers and employers arrested, prosecuted and convicted in the past 3 years are shown at Annex.

**Security Bureau
December 2004**

(A) Number of Anti-Illegal Employment Operations Conducted

	2001	2002	2003	2004*
No. of Operations	2 896 (61)	3 580 (73)	5 739 (98)	6 659 (73)

* up to October 2004

() Number of joint operation included.

(B) Statistics of Illegal Workers Arrested/Prosecuted/Convicted
(excluding those involved in prostitution)

	2001			2002			2003			2004 (up to Oct)		
	A	P	C	A	P	C	A	P	C	A	P	C
Mainland Visitors	2210 (82%)	1317 (83%)	1236 (95%)	3031 (86%)	1995 (86%)	1878 (95%)	4830 (91%)	2781 (89%)	2 659 (96%)	4300 (94%)	3007 (93.5%)	2969 (96.2%)
Mainland I.L.s	156 (6%)	150 (9%)	#	87 (2%)	85 (4%)	#	122 (2%)	106 (4%)	#	13 (0.3%)	9 (0.3%)	#
Foreign Visitors	46 (2%)	27 (2%)	26 (2%)	62 (2%)	33 (1%)	29 (1%)	47 (1%)	32 (1%)	29 (1%)	39 (0.9%)	39 (1.2%)	39 (1.3%)
FDHs	196 (7%)	33 (2%)	32 (3%)	220 (6%)	83 (4%)	72 (4%)	183 (3%)	72 (2%)	68 (3%)	134 (2.9%)	86 (2.7%)	78 (2.5%)
Illegal Hawkers, etc	73 (3%)	56 (4%)	@	134 (4%)	126 (5%)	@	135 (3%)	129 (4%)	@	89 (1.9%)	76 (2.3%)	@
Total	2681 (100%)	1583 (100%)	1294 (100%)	3534 (100%)	2322 (100%)	1979 (100%)	5317 (100%)	3120 (100%)	2757 (100%)	4575 (100%)	3217 (100%)	3086 (100%)

A: Arrested P: Prosecuted C: Convicted

I.L.s: Illegal Immigrants FDHs: Foreign Domestic Helpers

No statistics are available from the Police on the number of illegal immigrants convicted

@ No statistics are available from FEHD on the number of convicted illegal hawkers

(C) Type of Travel Documents held by Mainland Visitors Arrested for Illegal Employment

Types of Travel Document Held		2001	2002	2003	2004 (up to Oct)
Ext-Entry Permit	Visiting Relatives	1598	1279	1831	2336
	Business	483	1552	2823	989
	Sightseeing	85	98	76	201
	Individual Visits	-	-	10*	623
	Sub-total	2166 (98%)	2929 (97%)	4740 (98%)	4149 (96.5%)
Others (including PRC passport holders transiting HK)		44 (2%)	102 (3%)	90 (2%)	151 (3.5%)
Total		2210 (100%)	3031 (100%)	4830 (100%)	4300 (100%)

* Individual Visit Scheme was introduced in July 2003

** Similar breakdowns for Mainland visitors prosecuted and convicted are not available

(D) Statistics of Employers of Illegal Workers Arrested/Prosecuted/ Convicted

	2001	2002	2003	2004*
No. of suspected Employers Arrested	968	918	1078	1143
No. of Employers Prosecuted	310	383	445	409
No. of Employers Convicted	277	303	365	326

* up to October