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Panel on Manpower

**Background brief prepared by the
Legislative Council Secretariat for the meeting on 16 June 2015**

Employment of foreign domestic helpers

Purpose

This paper gives an account of the past discussions by the Panel on Manpower ("the Panel") on issues relating to the employment of foreign domestic helpers ("FDHs") and regulation of employment agencies ("EAs") placing FDHs.

Background

2. According to the Administration, as at end-January 2014, there were about 323 400 FDHs in Hong Kong. They mainly came from the Philippines (51.4%) and Indonesia (46.3%), with the rest from Thailand, India and Sri Lanka, etc. While there is no legal requirement in Hong Kong that FDHs must be recruited through the intermediary service of an EA, EAs are the most common channel through which employers in Hong Kong recruit FDHs.

Regulation of EAs

3. EAs in Hong Kong, including those placing FDHs, are regulated under the Employment Ordinance (Cap. 57) and the Employment Agency Regulations (Cap. 57A) ("EAR"). Under the existing regulatory regime, all EAs are required to apply for a licence from the Labour Department ("LD") before undertaking any job placement business. EAs are only allowed to receive from FDHs the prescribed commission specified in the Second Schedule of EAR, which is no more than 10% of the latter's first

month's salary for successful job placement service. The Employment Agencies Administration ("EAA") of LD is responsible for regulating the operation of EAs providing FDH placement service through licensing, both regular and surprise inspections, complaints investigation and prosecution to ensure that they are operating in compliance with the law.

4. According to the Administration, the service charges collected from employers by EAs are not regulated under the existing regulatory regime. For employers who consider the services provided by EAs unsatisfactory or do not match with the service agreements, they can lodge a complaint with the Consumer Council and seek advice and assistance as appropriate. Furthermore, the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012, which prohibits specified unfair trade practices such as false trade descriptions of services or misleading omissions, applies to the services provided by EAs to FDH employers.

Deliberations of the Panel

Entry arrangement for FDHs

5. Given a great demand for live-in domestic workers and that FDHs had been imported to Hong Kong over the years primarily from the Philippines and Indonesia, some members expressed concern about the restrictions on the entry arrangement for FDHs from other countries such as Nepal and Vietnam as well as residents of the Mainland. Enquiries were raised about the rationale of the policy consideration, and whether the Administration would review the arrangement.

6. According to the Administration, the entry arrangement for FDHs was applicable to applicants from most countries and regions except a few, namely Afghanistan, Cambodia, Cuba, Laos, the Democratic People's Republic of Korea, Nepal and Vietnam because of immigration and security considerations. Owing to immigration control reasons, the FDH policy was not applicable to Chinese residents of the Mainland, Macao and Taiwan, whose entry must comply with the relevant immigration policies. The Immigration Department ("ImmD") regularly reviewed the visa policies, including the entry arrangement for FDHs, and introduced changes when circumstances so warranted to ensure that the policies continue to meet social needs.

7. In the light of the considerable FDH workforce in Hong Kong, some members enquired whether the Administration would consider

conducting a comprehensive review of the policy on FDHs, including imposing a quota on the importation of FDHs, with a view to safeguarding the employment opportunities of local domestic helpers. The Administration advised that no prescribed limit had been set for the importation of FDHs. On the impact of FDHs on local domestic helpers, there was no conflict between the two types of employment. As specified in the "Employment Contract (for a domestic helper recruited from abroad)" (the standard employment contract) ("SEC"), FDHs were required to work and reside in their employers' residence, whereas there was no similar requirement for local domestic helpers. Besides, both employers and FDHs were required to give an undertaking on the live-in requirement in the employment visa application form.

Overcharging of intermediary charges

8. Members expressed grave concern that some FDHs, particularly those from Indonesia, had incurred huge debts in order to meet the high level of fees and commissions charged by the intermediaries in the home countries of FDHs. Upon arrival in Hong Kong, these FDHs had to make monthly repayment for the huge debts through the local EAs. Members took the view that the Administration should draw the problem to the attention of the relevant Consulates General ("CGs") of the FDH-exporting countries in Hong Kong and urge them to bring up the matter to their respective governments for follow-up action. Some members also expressed grave concern that some FDHs' passports were allegedly withheld by EAs so as to force them to make loan repayment.

9. The Administration advised that while there was no legal requirement in Hong Kong that FDHs must be recruited through the intermediary service of an EA, such requirements were imposed by many of the FDH-exporting countries and these requirements varied from country to country. For instance, the Philippine Government did not allow direct hiring for first-time FDHs, while the Indonesian Government only allowed hiring through accredited EAs. Given that the Hong Kong Special Administrative Region Government did not have any jurisdiction on overseas operations of EAs, the Administration had, through its regular contacts with the relevant CGs in Hong Kong, brought the concern about "bonded labour" to the latter's attention and urged them to draw the problem to the attention of their respective governments so as to tackle the issue at source for protecting the interests of employers and FDHs. According to Hong Kong law, charging of commission exceeding the prescribed amount and money-lending activities were regulated under EAR and the Money Lenders Ordinance (Cap. 163) respectively. FDHs could file claims with LD, so that LD would

effectively conduct investigation upon receipt of the overcharging or malpractices complaints. In 2012, EAA received 44 complaints against overcharging by 37 EAs.

10. The Administration further advised that an EA or any other person withholding a FDH's passport without the latter's consent would have committed an offence under the Theft Ordinance (Cap. 210). Whenever such malpractice was detected by officers of EAA during their inspections to EAs, they would take appropriate enforcement action and refer the case to the Hong Kong Police Force for follow-up. EAA, the Police and ImmD would regularly conduct joint operations to ensure that EAs were operating in compliance with the law.

Regulation of EAs

11. Members were concerned about the specific measures to strengthen the regulation of EAs and how improvement could be made to the service quality of EAs. Some members considered that the Administration should adopt a more stringent licensing scheme for EAs and draw up a code of practice for the operation of EAs. There was a view that the Administration should make reference to Singaporean experience of regulating EAs under a licensing scheme with demerit points system.

12. Members were advised that LD planned to increase its manpower so as to strengthen the monitoring of and inspection to EAs. LD was considering how best to strengthen the present licensing mechanism with a view to introducing appropriate licensing conditions for EAs to comply in order to better safeguard the interests of both employers and FDHs while not hindering the operation of EAs. For instance, EAs might be required to maintain contact with the newly-arrived FDHs for a certain period of time and barred from engaging in loan and financial arrangements of FDHs. The Administration was working on the proposals and would consult the relevant stakeholders on the implementation details. It would revert to the Panel on the concrete proposals in due course.

Arrangements for FDHs whose employment contracts were prematurely terminated

13. Some members expressed concern that there were cases in which the newly employed FDHs had deliberately used various tactics to make their employers terminate the employment contracts with them, so as to get one month's wages in lieu of termination notice and free passage back to their places of domicile. However, FDHs concerned had not returned

to their places of domicile but merely departed for Macao and took up another employment in Hong Kong within a short period of time. To protect the interests of FDH employers and prevent job-hopping of FDHs, some members held a strong view that the Administration should strictly enforce the requirement of FDHs' returning to their places of domicile within two weeks of the termination or expiry of employment contracts (i.e. the "two-week rule") before they could submit fresh employment visa applications. Some other members, however, considered that the "two-week rule" had deterred FDHs from lodging claims when they were mistreated or abused by their employers. Given that there was no such restriction on the professionals and skilled labour admitted to Hong Kong under other admission schemes, they considered that the "two-week rule" was discriminatory against FDHs.

14. The Administration pointed out that it administered various admission schemes for professionals and skilled labour under the immigration policy and there were different objectives and rationale behind. According to the Administration, the main purpose of the "two-week rule" was to allow sufficient time for FDHs to prepare for their departure; and it was not to facilitate them to find new employers. Under exceptional circumstances where the employer was unable to continue with the contract, owing to, for example, the employer's external transfer, migration, death or economic difficulty, or where there was evidence that the FDH had been abused or exploited, FDHs could apply for change of employer in Hong Kong without first returning to their places of origin. The Administration stressed that the "two-week rule" was necessary for maintaining effective immigration control and it helped prevent FDHs from job-hopping and taking up illegal work in Hong Kong after contract termination. As a measure to facilitate both parties, ImmD adopted a flexible approach in handling the requirement imposed on FDHs that they had to return to their places of domicile upon termination of their contract.

15. Members were assured that ImmD was concerned about possible abuse of premature contract termination arrangement by FDHs, and had adopted a corresponding measure to address the issue by fortifying the assessment of employment visa applications of FDHs who changed employers repeatedly. Under the new measure, ImmD would, in assessing employment visa applications of FDHs, closely scrutinise their case details, such as the number of and reasons for premature contract termination within 12 months, with a view to detecting any abuse of the arrangements for premature contract termination. ImmD would refuse an application in case of suspected abuse. Also, if it was discovered that the premature contract termination was due to the employer's

non-compliance with contractual terms or abuse/exploitation of FDHs, future applications for employment of FDHs from these employers would be refused.

16. In respect of some members' concern as to whether FDH employers were obliged to provide free passage to FDHs for returning to their places of domicile upon termination or expiry of contracts, the Administration advised that as stipulated under Clause 7 of SEC, FDH employers were required to do so. The rationale behind was that as it was the employers who hired FDHs to work in Hong Kong, they had the responsibility to ensure FDHs' smooth return to their home countries upon completion or premature termination of contracts. While employers and their FDHs could agree mutually on whether to provide cash or air ticket for the latter to return from Hong Kong to their places of domicile upon termination or expiry of the contract, employers were encouraged to provide an air ticket to the FDH concerned as far as practicable. Both contracting parties were required to comply with the terms of SEC, and any agreements to vary the contract terms which might affect the employment rights and benefits of either party would not be effected. The Administration had no plan to change the policy.

Employees' rights of and protection for FDHs

17. In face of several cases of FDHs being allegedly abused by their employers which had aroused wide public concern, members were concerned about the employment protection for FDHs. The Administration advised that FDHs enjoyed the same protection and rights under the labour laws as local employees. It would implement various short, medium and long-term measures to protect the interests of FDHs and employers, as well as to ensure EAs placing FDHs were operating in compliance with the law. These included strengthening the promotional and educational efforts to ensure that FDHs were aware of their own rights through different channels. LD was also considering requiring those FDHs, who came to Hong Kong for the first time, to attend a briefing to facilitate their understanding of rights and benefits (including leave entitlements and channels for seeking redress) while working in Hong Kong. For FDH employers, LD would enhance, through announcements in the public interest on television, understanding of their obligations under EO and also appeal to them to treat FDHs well and not to withhold or deduct FDHs' wages for paying intermediary and training fees.

Relevant papers

18. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant papers on foreign domestic helpers

Committee	Date of meeting	Paper
Panel on Manpower	18.6.2013 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower		<u>LC Paper No. CB(2)1851/12-13(01)</u>
Legislative Council	3.7.2013	<u>Official Record of Proceedings</u> <u>(Question 6)</u> <u>(Question 18)</u>
Legislative Council	12.2.2014	<u>Official Record of Proceedings</u> <u>(Question 17)</u>
Panel on Manpower	27.2.2014 (Item I)	<u>Agenda</u> <u>Minutes</u>

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