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Panel on Manpower

**Background brief prepared by the
Legislative Council Secretariat for the meeting on 19 April 2016**

Regulation of employment agencies placing foreign domestic helpers

Purpose

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

Background

2. According to the Administration, as at end-April 2015, there were over 335 500 FDHs in Hong Kong. The majority of them came from the Philippines (175 859 or 52%) and Indonesia (151 482 or 45%), with the rest from Thailand, India, Sri Lanka and Bangladesh, 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. There were 2 753 EAs in Hong Kong as at end-April 2015, including 1 320 undertaking job placement business for FDHs.

3. EAs in Hong Kong, including those placing FDHs, are regulated under the Employment Ordinance (Cap. 57) ("EO") 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, including those 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. The service charges collected from employers by EAs are, however, 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

Overcharging of FDHs by EAs

5. Members expressed grave concern that some FDHs, particularly those from Indonesia, had incurred huge debts in order to meet the high intermediary fees and training fees charged by EAs in their home countries prior to working in Hong Kong. Upon arrival in Hong Kong, these FDHs had to make monthly repayment for the huge debts through the local EAs. Some FDHs' passports were allegedly withheld by EAs so as to force them to make loan repayment.

6. The Administration advised that 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 conduct investigation upon receipt of the overcharging or malpractices complaints. 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 Police for follow-up. EAA, the Police and ImmD would regularly conduct joint operations to ensure that EAs were operating in compliance with the law. The Commissioner for Labour would also consider revoking or refusing to renew EAs' licences if they were convicted of criminal offences.

7. Some members asked whether the Administration would verify the accreditation status of the intermediaries in FDH-sending countries so as to

facilitate the taking of enforcement actions. Some members considered that arrangement could be made for FDHs to receive job training in Hong Kong so as to alleviate their burden arising from the high level of fees for attending the relevant training in their home countries.

8. The Administration explained 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-sending countries and these requirements varied from country to country. For instance, the Philippine Government did not allow direct hiring of first-time FDHs, while the Indonesian Government only allowed hiring FDHs through accredited EAs. The Administration pointed out that it was the national laws and practices of individual FDH-sending countries that FDHs be required to undergo relevant training in their home countries. The Hong Kong Government did not have any jurisdiction on the operation of overseas intermediaries and training institutes.

9. The Administration further advised that while the existing legislation did not require accreditation by other governments as a prerequisite for obtaining an EA licence in Hong Kong, all EAs, regardless of whether they were accredited by the relevant FDH-sending governments, were subject to the regulation of EO and EAR.

10. Members were also advised that the Administration had, through its regular contacts with the relevant Consulates General ("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 both employers and FDHs. Members were further advised that LD had since 2014 intensified collaboration with CGs of major FDH-sending countries in Hong Kong by participating in briefings for newly-arrived FDHs and cultural events organised by these CGs from time to time to promote among FDHs the important information on employment rights and ways to seek redress from various channels. In addition, an inter-departmental regular liaison mechanism with both the Indonesian and Philippines CGs respectively had been set up since 2014 for information sharing and coordination of FDH-related matters. The Administration considered that with these enhanced efforts, more FDHs would be willing to come forward to report their cases, and it could facilitate the initiation of enforcement action against law-defying EAs.

Regulatory measures for EAs

11. Members strongly called on the Administration to put in place specific measures to strengthen the regulation of EAs, particularly those involved in

arranging FDHs to take loans from financial intermediaries. Some members considered that the Administration should adopt a more stringent licensing scheme for EAs and draw up a Code of Practice ("CoP") for operation of EAs. There was a view that the Administration should make reference to the Singaporean experience of regulating EAs under a licensing scheme with demerit points system.

12. At the Panel meeting on 16 June 2015, members were advised that the Administration was preparing a CoP for the industry to strengthen the regulation of EAs. The draft CoP would spell out which acts that were permissible and those that should be avoided by EAs. LD would suitably consult the relevant stakeholders on the draft CoP. Members expressed concern about the binding effect of and the areas of concern to be covered in CoP, in particular whether it would address issues relating to money-lending activities of intermediaries and the unscrupulous operation of EAs.

13. The Administration advised that the draft CoP would define the roles and obligations of an EA during its dealings with job seekers and employers so that each party would know clearly what to expect from EAs. It applied to all licensed EAs providing FDH placement services, irrespective of whether or not they were accredited EAs by the FDH-sending governments. It would also illustrate best practices for EAs, for example, not getting involved in the financial or loan affairs of FDHs. In light of the implementation of CoP, the Administration would review the need for making compliance with CoP a statutory requirement and introducing other regulatory measures. The Administration did not rule out the options of introducing legislative amendments, including raising the maximum penalty, to tighten the regulation of EAs.

Latest development

14. The Administration will brief the Panel on the draft CoP for EAs at the meeting on 19 April 2016.

Relevant papers

15. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Appendix

Relevant papers on the regulation of employment agencies placing foreign domestic helpers

Committee	Date of meeting	Paper
Legislative Council	4.7.2012	Official Record of Proceedings (Question 16)
Panel on Manpower	18.6.2013 (Item IV)	Agenda Minutes LC Paper No. CB(2)1851/12-13(01)
Legislative Council	3.7.2013	Official Record of Proceedings (Question 6) (Question 18)
Legislative Council	16.10.2013	Official Record of Proceedings (Question 13)
Legislative Council	12.2.2014	Official Record of Proceedings (Question 17)
Panel on Manpower	27.2.2014 (Item I)	Agenda Minutes
Legislative Council	6.5.2015	Official Record of Proceedings (Question 7)
Panel on Manpower	16.6.2015 (Item V)	Agenda Minutes
Legislative Council	8.7.2015	Official Record of Proceedings (Question 21)
Legislative Council	4.11.2015	Official Record of Proceedings (Question 15)

Committee	Date of meeting	Paper
Legislative Council	6.1.2016	Official Record of Proceedings (Question 3) (Question 11)

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