



# Policy review on enhanced protection of independent workers in selected places

IN06/18-19

## 1. Introduction

1.1 On the back of robust penetration of online platforms in matching demand for and supply of service jobs in a very short duration, it has become easier for practitioners in certain occupations (e.g. courier delivery, driving and freelancing) to work independently as self-employed persons, instead of being hired as employees.<sup>1</sup> According to a global survey, some 15% of independent workers now find work through such platforms.<sup>2</sup> In Hong Kong, there are concerns that self-employed persons are not entitled to statutory employment benefits available only to employees (e.g. rest days, paid annual leave, paid statutory holidays, paid sick leave, paid maternity leave, severance payment and long service payment) under the Employment Ordinance ("EO").<sup>3</sup> Moreover, it is alleged that some self-employed persons have little say on the contractual terms or work conditions which are largely dictated by the clients or platform companies, giving rise to additional concerns of "false self-employment".<sup>4</sup>

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<sup>1</sup> Independent workers refer to those individuals providing services to clients directly. As they do not have employment contracts with the clients, they are classified as self-employed persons in most places. In this note, "self-employed persons" and "independent workers" are used interchangeably in this context. For details, see International Labour Organization (2017).

<sup>2</sup> This is based on a survey conducted in six advanced places in mid-2016. See McKinsey Global Institute (2016).

<sup>3</sup> Under EO, an employee working for the same employer (a) for four weeks or more and (b) for 18 hours or more per week is legally in "employment under a continuous contract" and entitled to a range of statutory benefits as discussed in the main text, subject to further qualifying requirements for specific benefits. See Legislative Council Secretariat (2017).

<sup>4</sup> It is alleged that some enterprises hire independent workers to perform the same functions of employees, avoiding the cost of providing statutory employment benefits. Some labour groups refer to these workers as "falsely self-employed" or "dependent contractors", but there are so far no universally accepted criteria to operationalize and quantify the magnitude of such "false self-employment". See International Labour Organization (2017).

1.2 Against this backdrop, there are suggestions that the Government should review the labour legislation and offer more protection to independent workers, following the practice seen in some advanced places.<sup>5</sup> Most recently, the government of the United Kingdom ("UK") undertook at end-2018 to make legislative amendments to provide additional protection to independent workers after a series of policy reviews and public consultations, while the Singaporean government has been enhancing protection for such workers after a dedicated policy review completed in February 2018.

1.3 At the request of Hon POON Siu-ping, the Research Office has conducted a study on policy reviews on protection for independent workers recently conducted in selected places. The UK and Singapore are selected for further study because (a) both places witnessed a visible growth in self-employment during 1997-2017; (b) both governments have conducted policy reviews on protection of self-employment most recently; and (c) the labour protection regimes in both places are rather light-touch and deemed to have more reference value for Hong Kong.<sup>6</sup> This information note begins with an overview of global developments and regulatory trends of self-employment in recent years, followed by discussion over self-employment in Hong Kong. It then switches to the policy reviews in the two selected places, along with a comparative table for easy reference (**Appendix**).

## 2. Recent global trends in self-employment

2.1 A new model of work arrangements has emerged across the globe in recent years, upon increasing application of information technology in digitised societies. Under this model, independent workers sign contracts with platform companies to provide various types of services to clients matched by these platforms on a task (or "gig") basis.<sup>7</sup> While this form of work arrangements can give greater flexibility to both service users and workers themselves, there are also issues of concerns. **First**, the self-employed tend to face more financial insecurity because their work income is more volatile

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<sup>5</sup> GovHK (2011) and (2018).

<sup>6</sup> According to some global studies, employment protection in both the UK and Singapore is regarded as less stringent than many leading countries in the world. See World Bank (2014) and Organisation for Economic Co-operation and Development (2018b).

<sup>7</sup> This sort of temporary jobs arranged through online platforms are getting popular in a so-called "gig economy" or "sharing economy". Jobs become more fragmented and flexible, resulting in more casual and part-time jobs taken by self-employed persons. See De Stefano (2016).

and lower than that of regular employees. For instance, median employment earnings of self-employed workforce in major European countries were just about two-thirds of employees' income or less.<sup>8</sup> **Secondly**, the self-employed workforce is largely ineligible for labour benefits (e.g. maximum working time, paid leave and sick leave, contributory protection linked to employment like pension and medical insurance). **Thirdly**, the self-employed could face greater challenges in career progression due to usual engagement in casual jobs with very short durations and little recognition.

2.2 Regarding the size of the self-employed workforce, it has shown mixed developments in the world over the past two decades. For some western European countries (e.g. the Netherlands, France, the UK and Switzerland), self-employment has registered significant double-digit growth during 1997-2017 (**Figure 1**). On the other hand, decreases were seen in the United States ("US"), Japan, South Korea and the European Union ("EU"), in either absolute magnitude or relative share in total employment.<sup>9</sup> These declines seem to be at odds with the concurrent development of the platform economy, possibly due to the following reasons:

- (a) **Platform economy still small in size:** According to Eurofound, in spite of rapid growth in the sharing economy in recent years, platform-related employment still accounted for a very small share of just 0.5% in total employment of the United States and at most 1% for most countries in Europe by 2017;<sup>10</sup>
- (b) **Enlarged employee segment amidst robust economic recovery:** Globally, the size of self-employment tends to move in the opposite direction of economic cycles. For instance, when an economy is in the phase of downswing, employees generally face more difficulties in finding a job at times of corporate downsizing and some of them may have to work as independent workers; and vice versa. For instance, as the unemployment rate in

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<sup>8</sup> Institute for Public Policy Research (2015).

<sup>9</sup> For all the 28 member states taken together, the size of self-employed workforce in the EU increased by 10.5% to 24.3 million during 1997-2017. However its share in total employment of EU edged down from 10.9% to 10.6% over the same period. See International Labour Organization (2018a).

<sup>10</sup> The absolute numbers of workers taking on platform work as their main job were estimated to be around 750 000 in the US in 2015 and 325 000 in the UK in 2016. See National Bureau of Economic Research (2016), Chartered Institute of Personnel and Development (2017) and Eurofound (2018).

the US fell significantly from 9.6% to 4.4% during 2010-2017 upon recovery from the Global Financial Crisis (and so did the EU from 9.5% to 7.6%), many previously self-employed persons could have been absorbed as employees in recent years;<sup>11</sup> and

- (c) **Limitation of existing statistical surveys:** In most of the existing statistical surveys, respondents need to self-report their work status. Yet some of the platform workers may have mistaken themselves as employees of the platforms, resulting in a certain degree of mis-categorization. Moreover, as most official surveys focus on employment status of primary employment, they could not take full account of those undertaking self-employment as a secondary source of income.<sup>12</sup>

**Figure 1 – Size of self-employed workforce in selected places, 1997-2017**

	<u>Number of self-employed persons</u> (thousands)			<u>Proportion of self-employment</u> <u>in total employment</u>	
	1997	2017	Change	1997	2017
<b>European Union</b>	22 023	24 346	+10.5%	10.9%	10.6%
- United Kingdom	2 476	4 100	+65.6%	9.3%	12.6%
- France	1 549	1 938	+25.1%	6.6%	7.1%
- Netherlands	537	1 063	+98.0%	7.4%	12.4%
<b>Japan</b>	7 643	4 212	-44.9%	11.6%	6.5%
<b>South Korea</b>	5 868	5 306	-9.6%	26.8%	20.0%
<b>Switzerland</b>	276	333	+20.7%	7.3%	7.1%
<b>United States</b>	10 384	9 365	-9.8%	7.8%	6.0%

Source: International Labour Organization (2018a).

2.3 More specifically on "false self-employment", there have been reports that some corporate firms have outsourced jobs to their ex-employees since the 1980s. More recently, there have also been allegations that some platform companies actually play a decisive role in the contractual terms such as prices, working times, and details of service provision when engaging their workers.<sup>13</sup> As such, while the workers cannot benefit from work autonomy

<sup>11</sup> International Labour Organization (2018b).

<sup>12</sup> Brookings Institution (2018).

<sup>13</sup> De Stefano (2016) and Lords Library (2018).

and flexibility usually found in self-employment, the corporate firms or platform companies can achieve cost saving by shedding their obligations in labour protection. The International Labour Organization ("ILO") refers to this sort of "false self-employment" as "dependent self-employment", and estimated that nearly half of self-employment in the EU was "dependent self-employment" in 2015.<sup>14</sup> In the more recent years, independent workers in some advanced places (e.g. Australia, France, the UK and the US) have been suing platform companies for denying them the rights of employees, but with mixed success in court rulings. For those successful court cases, employers need to provide employment benefits to the independent workers as well.<sup>15</sup>

2.4 In the light of the above judicial cases and the evolving developments of the platform economy, some governments are deliberating how to offer better labour protection to independent workers, although none have offered a comprehensive solution yet.<sup>16</sup> In short, there are three major approaches to protection of independent workers, as outlined below:

- (a) **Laying down the statutory conditions of employment status:** To combat "false self-employment", some governments have sought to define employee status more clearly by law. In 2012, Belgium amended the Employment Relations Act, laying down nine criteria for status as employees. If the alleged "self-employed" meet at least five of them (e.g. not carrying financial risks or not having decision making power over hiring,

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<sup>14</sup> According to ILO, "dependent self-employment" covers those self-employed persons who meet one or more of the following criteria: (a) they have just one client; (b) they do not have the authority to hire staff; and/or (c) they do not have the authority to make important decisions about how to run the business. Based on the 2015 European Working Conditions Survey, it was estimated that while around 9% of the total employed in the EU were self-employed workers, 4.3% could be classified as "dependent self-employed". See International Labour Organization (2017).

<sup>15</sup> In these cases, while the platform companies defended that they were merely intermediaries matching service providers with clients (not service providers employing the individuals direct), the workers claimed that they were employees subject to supervision of the firms. Workers won in several cases in the UK, the US and France, mainly on the grounds that: (a) the firms had control over important aspects of work such as allocation of tasks, disciplinary procedures, performance tracking, pricing and client management; and (b) the workers were in a subordinate position as platform firms could amend contractual terms unilaterally. However, a driver platform won a case in Australia in 2017 as the Fair Work Commission ruled that although it had control over pricing, drivers had greater control over when and where they worked compared with traditional employees.

<sup>16</sup> The Hong Kong Government noted that "a more comprehensive and systematic mode of protection is yet to be developed" for self-employed persons in other places. See GovHK (2018).

purchasing and pricing), they will be presumed to be "employees" instead and thus entitled to a host of employment rights (e.g. minimum wage, various types of paid leave and employers' contributions to social security accounts);<sup>17</sup>

- (b) **Creating a new category for "independent workers" in labour legislation:** To differentiate from traditional self-employed persons, some governments (e.g. the UK, Portugal and Italy) introduced a new employment category for independent workers in their labour legislation, with some employees' rights. Taking Portugal as an example, if one firm accounts for at least 80% of the income of an independent worker, the latter will be deemed as "economically dependent", and the firm will have to make mandatory contributions to the social security account of the worker concerned starting from 2012. This threshold has been lowered to 50% since 2018;<sup>18</sup> and
- (c) **Providing more protection to self-employed workers:** Some governments attempt to provide additional protection to all independent workers through legislation. Taking Australia as an example, there has been statutory protection over self-employment against unfair contract terms since 2006.<sup>19</sup> Moreover, self-employed workers in New York can lodge complaints about late payments to a designated authority, instead of taking the case to the court at their own expense.<sup>20</sup> In France, a law was passed in 2016 to require platform firms to provide certain rights such as workers' compensation insurance and proof of work experience for the independent workers they engage.<sup>21</sup>

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<sup>17</sup> The nine criteria adopted in Belgium are: (a) absence of financial risks, (b) absence of control over the financial means, (c) absence of control over the purchasing policy, (d) absence of control over the pricing policy, (e) absence of obligation of work result, (f) guaranteed payment regardless of business results, (g) absence of control over hiring, (h) usually working for just one client or not acting as a company, and (i) not working in spaces or with tools owned by oneself. The criteria are only applicable to construction, security, transports, cleaning and agricultural sectors. See European Agency for Safety and Health at Work (2017).

<sup>18</sup> Organisation for Economic Co-operation and Development (2017) and PwC (2018).

<sup>19</sup> Department of Industry, Innovation and Science (2019).

<sup>20</sup> City of New York (2018).

<sup>21</sup> European Agency for Safety and Health at Work (2017).

### 3. Self-employment and policy developments in Hong Kong

3.1 Self-employed persons in Hong Kong are ineligible for the aforementioned statutory benefits under EO and employees' compensation in case of work accidents. Furthermore, they cannot seek assistance from the Labour Department ("LD") in case of late payment from service buyers, giving rise to public concerns that this segment of workforce is suffering from inadequate protection.

3.2 The size of local self-employed workforce has displayed volatility over the past two decades. According to dedicated statistics compiled by the Census and Statistics Department, it surged by 67% to a high of 230 700 during 1997-2002, reportedly due in part to corporate adjustment in workforce upon implementation of the Mandatory Provident Fund ("MPF") in December 2000 (**Figure 2**).<sup>22</sup> Yet it witnessed a modest decline of 8% in the next 15 years to 213 100 in 2017, along with absorption of some self-employed workers into conventional employment amidst sustained economic recovery in Hong Kong.<sup>23</sup> As a whole, the proportion of self-employed persons in total employment rose from 4.6% in 1997 to a peak of 7.6% in 2002, before easing back to 6.1% in 2017.<sup>24</sup> The median monthly employment income of the self-employed workforce was HK\$14,000 in 2017, lower than that of HK\$17,000 for the overall workforce. This could be attributable in part to lower median working hours (40 hours per week) in self-employment, compared with 43 hours in the overall workforce.<sup>25</sup>

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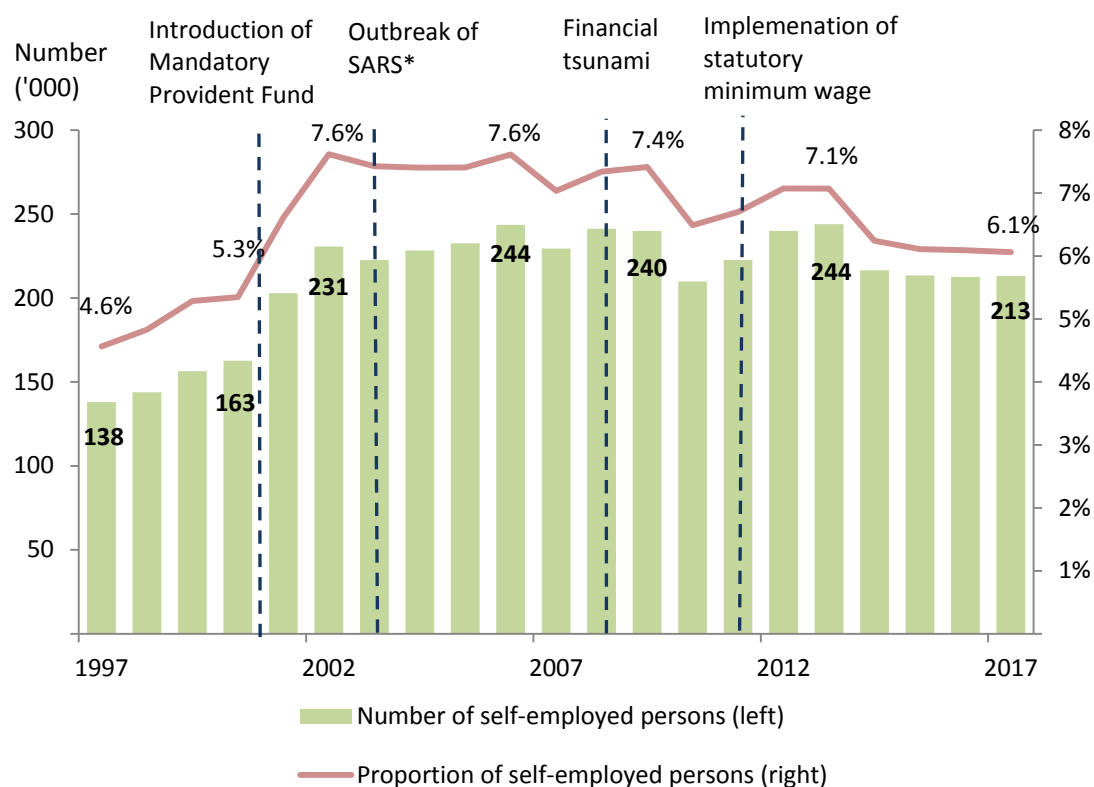
<sup>22</sup> Chiu et al. (2008).

<sup>23</sup> Improvement in the local labour market was manifested in a significant decline of the overall unemployment rate in Hong Kong during 2003-2017, from 7.9% to 3.1%. See also Economic Analysis and Business Facilitation Unit (2016).

<sup>24</sup> However, the ratio of self-employment for drivers in transport sector (as manifested by the occupation of "plant and machine operators") edged up from 36% in 1997 to 37% in 2017, possibly due in part to the development of platform economy.

<sup>25</sup> Figures in this paragraph exclude foreign domestic helpers.

**Figure 2 – Number of self-employed persons in Hong Kong, 1997-2017**



Note: (\*) Severe acute respiratory syndrome.

Source: Census and Statistics Department.

3.3 As regards "false self-employment", the annual number of such complaints lodged to LD increased from 4 cases in 2011 to 22 cases in 2017.<sup>26</sup> To combat false self-employment, LD explained that it adopted three major measures (i.e. enhancing public education, offering consultation or conciliation services for workers, and strengthening inspections and enforcement). Yet it rebutted the suggestion of taking a legislative approach in 2011, claiming that "to define self-employment by legislation is neither easy nor practical", or "may be counterproductive".<sup>27</sup> Most recently in June 2018, the Government reiterated that it "has no plan to expand the scope of EO" to cover self-employed persons.<sup>28</sup>

<sup>26</sup> The Government claimed that implementation of statutory minimum wage in May 2011 had little effect on false self-employment. See Legislative Council Secretariat (2018).

<sup>27</sup> GovHK (2011).

<sup>28</sup> GovHK (2018).



## 4. Review of policy on independent workers in the United Kingdom

4.1 Unlike the overall trend seen in the US and the EU, self-employment in the UK is more vibrant and has witnessed robust growth in recent years, possibly due in part to its development of creative economy and long history of entrepreneurship. The number of self-employed persons there increased significantly by 69% to 4.1 million during 2001-2017, along with a rise of its proportion in total employment from 8.7% to 12.6%.<sup>29</sup> Nonetheless, self-employed persons in the UK faced heightened financial insecurity, with more than half of them (56%) experiencing problems such as not having stable income, not enough savings, and losing income when falling ill as conveyed in an official survey conducted in 2015.<sup>30</sup> Besides that, some of them faced the problem of "false self-employment" predominantly in the construction sector, but it has also spread to other sectors upon the emergence of digital platforms in recent years.

4.2 As regards the existing labour protection regime, self-employed persons in the UK are ineligible for any employment rights at present. That said, a new employment category called "workers" was created in 1996 upon the enactment of the Employment Rights Act 1996, on top of "employees".<sup>31</sup> Put simply, "workers" include not just employees, but also those self-employed persons working "under a contract of personal service" for someone else's business (e.g. freelance workers).<sup>32</sup> As such, it puts a certain segment of self-employed workforce under protection, providing some statutory rights (e.g. minimum wage, working time regulation and

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<sup>29</sup> This information note does not use statistics on self-employment in the UK compiled by the Office for National Statistics as they include employers as well. Given that self-employment figures for the UK as compiled by ILO use a definition similar to that in Hong Kong (i.e. excluding employers), they are adopted for analysis in this information note. See International Labour Organization (2018a).

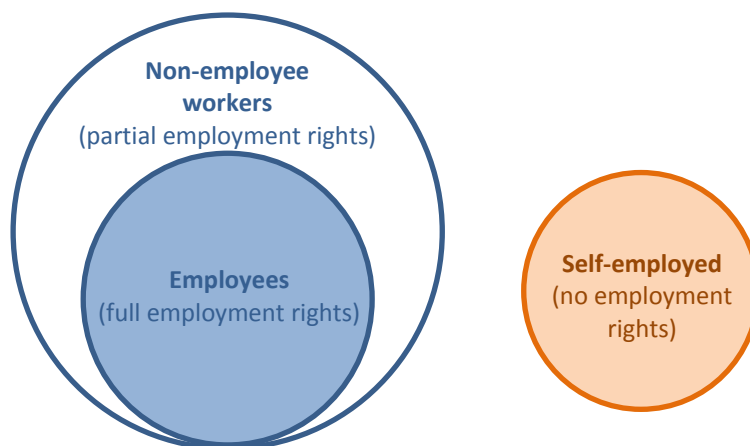
<sup>30</sup> Department for Business, Innovation and Skills (2016).

<sup>31</sup> The category "workers" was introduced in section 230(3)(b) of the Employment Rights Act 1996 to be differentiated from employees (i.e. workers who work under the contract of employment), initially aimed at protecting workers in non-standard forms of employment such as agency work and casual work. However, for statistical compilation purposes in the UK, independent workers are still categorized as self-employed.

<sup>32</sup> More specifically, a "worker" is someone who: (a) is not under a contract of employment; (b) has to perform work personally without the right to send a substitute; and (c) is not carrying out a business, which means the other party to the contract is not the client served. Unlike employees, "workers" are free to accept or reject any offer of work made to them but may need to supply work equipment by themselves. Unlike other self-employed persons such as sole traders and barristers, "workers" are doing the work as part of others' businesses.

annual leave), but such rights are still far fewer than those of employees.<sup>33</sup> For the other self-employed persons falling outside the scope of "workers", they are still not entitled to any employment rights (**Figure 3**).

**Figure 3 – Employment status under employment law in the UK**



Note: Independent workers may be classified as "workers" or "self-employed".

Source: Department for Business, Energy and Industrial Strategy (2018c).

4.3 The legal definitions of various types of employment status are rather vague in the UK, giving rise to occasional labour disputes which have largely been settled through ruling and interpretation in courts. Since 2012, some "self-employed" persons engaged in platform-related occupations (e.g. driving, food delivery and goods delivery) have tried to claim their rights as "workers" through courts.<sup>34</sup> While some managed to win in such court cases, court judgements on individual cases cannot be automatically applied to other cases even in similar situations. In other words, independent workers in the UK still face great uncertainty in their employment status.<sup>35</sup>

<sup>33</sup> Employees in the UK are also entitled to protection against unfair dismissal, statutory redundancy pay, statutory sick pay and employers' contributions to national insurance, etc. See GOV.UK (2018a).

<sup>34</sup> While the workers argued that the platform companies had control over important aspects of their work such as allocation of clients, these companies defended that they were just intermediaries assisting individuals as sole entrepreneurs to reach clients.

<sup>35</sup> For the case in 2012, the plumbing firm lost the court case because it required workers to work 40 hours per week. In some other cases, courts granted the status of "workers" because the companies exerted control over aspects such as dress code, choice of tools and pricing of services. However, a food delivery platform won a case in 2017 due to freedom of workers to pass on a particular job to a substitute. See Lords Library (2018).

4.4 In October 2016, the UK government commissioned Matthew Taylor (a former aide to the former Prime Minister Tony Blair) to lead an independent review on modern employment practices, in view of on-going legal disputes and with the policy objective to upgrade the job market as a part of the industrial strategy. Commonly known as "Taylor Review", while addressing issues and problems faced by all forms of employment, it also aimed to offer more protection to independent workers.<sup>36</sup> After 10 months of countrywide hearings, discussions with stakeholders and receipt of over a hundred written submissions, the review team put forward a final report on 11 July 2017.<sup>37</sup>

4.5 Key recommendations with respect to independent workers of the Taylor Review which have subsequently been endorsed in principle by the UK government are summarized below:

- (a) **Legislative status of "workers" reclassified as "dependent contractors"**: The review proposed legislative amendments so that clearer distinction can be made between "workers" and self-employed persons. More specifically, "workers" would be renamed as "dependent contractors", placing greater emphasis on control over work by the other party.<sup>38</sup> As such, more independent workers will be classified as such contractors (instead of "self-employed") later on. The review also recommended provision of a free online tool to help both individuals and employers to identify the employment status;
- (b) **Increasing contractual transparency for dependent contractors**: Under the existing legislation, all employers in the UK need to provide a "written statement of employment particulars" to their employees if the duration of employment exceeds one month. The Taylor Review recommended that the right to a written statement specifying certain rights should be provided to

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<sup>36</sup> The Taylor Review also covered many employment practices (like unequal pay between agency workers and direct hire employees), but they are beyond the scope of this note and hence will not be discussed. See Taylor (2017).

<sup>37</sup> Before the Taylor Review, the Department for Business, Innovation and Skills conducted an employment status review in 2015 and commissioned another review on self-employment in 2016. See Deane (2016) and Department for Business, Innovation and Skills (2015).

<sup>38</sup> See Department for Business, Energy and Industrial Strategy (2018b) and Taylor (2017).

"dependent contractors" as well, regardless of duration of employment;<sup>39</sup>

- (c) **More employment rights for dependent contractors:** The Taylor Review suggested granting "dependent contractors" the right to request a contract with guaranteed work hours after a certain period of continuous service in order to obtain greater job security. Moreover, temporary cessation of work allowed within the continuous service will be extended from one week to one month, making it easier for independent workers to qualify for the right.<sup>40</sup> In addition, dependent contractors should be entitled to employers' contributions to their national insurance accounts and statutory sick pay;<sup>41</sup>
- (d) **Stepping up law enforcement and increasing penalty:** In view of inadequate enforcement against the abuse of self-employment, the Taylor Review suggested stepping up enforcement and increasing penalties against offences, such as adopting a naming and shaming scheme for those employers who do not pay fines within a reasonable time and increasing aggravated breach penalties for repeated breaches; and
- (e) **Supporting genuinely self-employed workers:** The Taylor Review recommended the UK government to work with stakeholders to promote digital platforms which help self-employed persons to organize amongst themselves and increase their pension participation. The review also recommended encouraging gig platforms to let workers carry their verified approval rating across platforms so as to enhance their career continuity.

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<sup>39</sup> The written statement includes key contractual terms such as the method of payment, hours of work, holiday entitlement, the expected end date, notice period, grievance procedures and sick leave entitlement. See Department for Business, Energy and Industrial Strategy (2018a).

<sup>40</sup> In December 2018, the UK government announced that it would give "workers" rights to request a stable contract after 26 weeks of continuous service and extend the allowed break in service from one week to four weeks in counting the qualifying period of continuous service. See Department for Business, Energy and Industrial Strategy (2018a) and HM Government (2018).

<sup>41</sup> The UK government announced in February 2018 that it planned to include the statutory sick pay as a right for all "workers". See GOV.UK (2018b).

4.6 In November 2017, the multi-partisan House of Commons Work and Pensions and Business, Energy and Industrial Strategy Committees published a joint report, supporting most of the recommendations in the Taylor's Review. In February 2018, the UK government published its response to Taylor's report and accepted most of his recommendations in principle, along with a launch of public consultations on employment status, written statements and enhanced enforcement.<sup>42</sup>

4.7 In December 2018, the UK government announced its reform plans under the policy paper entitled "Good work plan", taking into account feedback received in public consultations.<sup>43</sup> It submitted secondary legislation to the Parliament in the same month to (a) extend the right to a written statement to all "workers" from 6 April 2020; and (b) raise the maximum limit of aggravated breach penalty from £5,000 (HK\$52,300) to £20,000 (HK\$209,200) from 6 April 2019.<sup>44</sup> The UK government has also pledged to follow up on other recommendations.

## 5. Review of policy on independent workers in Singapore

5.1 Similar to the UK, Singapore registered a strong growth in self-employment over the past two decades, by a total of 89% to 202 900 during 1997-2017. The proportion of self-employment in total employment also rose over the same period, from 7.2% to 9.3%.<sup>45</sup> More recently in 2017, there was a 59% upsurge in self-employed persons working as private hire car drivers (taking up 6% of self-employment), reflecting the growth of platform economy there (**Figure 4**).

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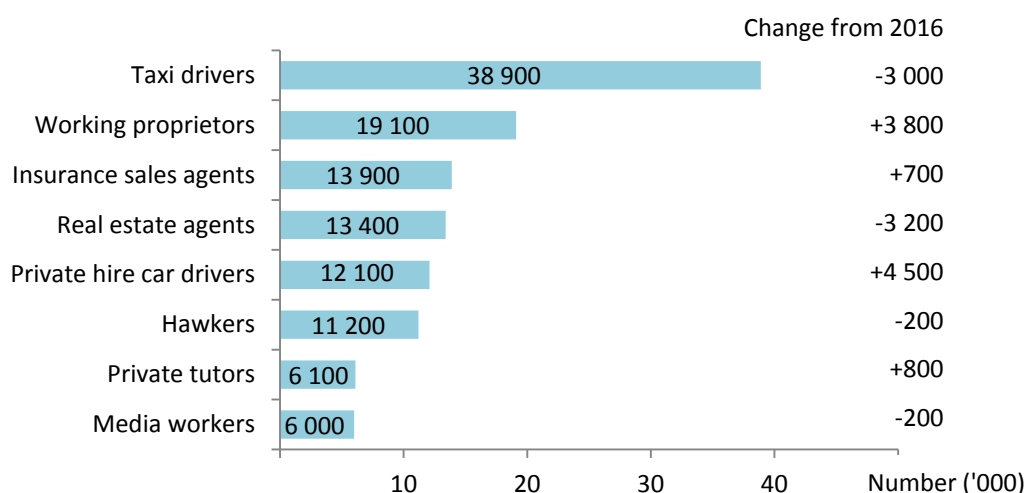
<sup>42</sup> More than 400 detailed responses were received before the end of the consultations in June 2018.

<sup>43</sup> It pledged to follow up on most recommendations with few minor exceptions. For example, the Taylor report recommended introducing a piece-rate minimum wage for platform workers. However, following advice from the parliamentary committee, the UK government will not be taking this forward.

<sup>44</sup> The two pieces of secondary legislation include the Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 and the Employment Rights (Miscellaneous Amendments) Regulations 2019.

<sup>45</sup> Ministry of Manpower (2018a).

**Figure 4 – Top occupations of self-employed workers in Singapore in 2017**



Source: Ministry of Manpower (2018c).

5.2 On existing labour protection regime in Singapore, self-employed persons are ineligible for statutory employment protection and have inadequate health and retirement protection, causing them much financial insecurity and psychological anxiety.<sup>46</sup> According to an official survey conducted in 2017, self-employed persons in Singapore are concerned about uncertainty of getting enough jobs (44%), healthcare expenditure (27%),<sup>47</sup> retirement saving (24%) and difficulties in obtaining payments (9%).<sup>48</sup> Workers as represented by the National Trades Union Congress ("NTUC") have thus been raising their concerns over the plight of independent workers through their representative in the Parliament since 2013.<sup>49</sup> NTUC also set up Freelancers and Self-Employed Unit to represent the segment of independent workers in 2014.

5.3 In view of the aforementioned concerns and in anticipation of further proliferation of independent work upon development of gig economy, the Singaporean government appointed a Tripartite Workgroup on Self-employed

<sup>46</sup> Besides, the Singaporean government acknowledged the presence of misclassification of employment status, with about 100 proven cases of misclassification as the self-employed by employers over the past three years. See TODAY (2018).

<sup>47</sup> While in principle self-employed persons are required to contribute to their medical saving accounts, many fail to do so due to difficulties in setting aside enough fund to contribute regularly.

<sup>48</sup> Ministry of Manpower (2018c).

<sup>49</sup> In Singapore, National Trades Union Congress is one of three key decision-makers in labour policy in the tripartite model, along with employers (as represented by the National Employers Federation) and the Singaporean government.

Persons in March 2017, comprising representatives of the government, workers and employers. After a public consultation conducted in November 2017, the Tripartite Workgroup submitted a final report to the Singaporean government in February 2018, with all of its recommendations on enhanced protection of self-employed persons accepted by the government in March 2018.

5.4 Unlike the legislative approach in the UK, the Tripartite Workgroup in Singapore went for a softer and voluntary approach, as it felt that "personal responsibility should remain the core principle" for enhancing the well-being of independent workers. Here are the major recommendations put forward by the Tripartite Workgroup:<sup>50</sup>

- (a) **Standard for contracting with self-employed persons:** To increase contractual transparency, service buyers engaging independent workers are encouraged to set out the terms in written form. The government-led Tripartite Alliance for Fair and Progressive Employment Practices has launched a standard on contracting for these buyers to follow, with specification of details such as outcome, duration of services, amount of payment and its due date;<sup>51</sup>
- (b) **Mediation services at times of disputes:** To help independent workers settle payment disputes without the need to go to court, advisory and mediation services are provided to self-employed persons through Tripartite Alliance for Dispute Management starting from March 2018.<sup>52</sup> Moreover, for sector-specific disputes, relevant government agencies (e.g. Land Transport Authority in transport sector) will also mediate between self-employed workers and companies concerned;
- (c) **Health and safety insurance coverage for selected occupations:** Self-employed persons are very concerned about loss of income upon prolonged illness and injury. The Workgroup thus suggested a tailor-made insurance policy for self-employed persons should be provided by the insurance companies on a voluntary basis, with daily cash benefits for hospitalisation

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<sup>50</sup> Ministry of Communications and Information (2018).

<sup>51</sup> Tripartite Workgroup on Self-employed Persons (2018).

<sup>52</sup> Ministry of Manpower (2018b).

episodes exceeding 1-3 days or prolonged medical leave exceeding 7-14 days. In March 2018, the Singaporean government pledged to work with the insurance sector to make such products available as from 2019.

For those high-risk occupations, the Workgroup felt that the government as service buyers should take the lead in procuring services provided by independent contractors covered by such insurance. The Ministry of Education agreed in principle to only engage those sports instructors with voluntary insurance coverage, of which the costs can be covered in their bids.<sup>53</sup> In November 2017, the Tripartite Standard on the Procurement of Services from Media Freelancers was launched to encourage companies to provide insurance to their media freelancers;<sup>54</sup>

- (d) **Occupation-specific competency assessment for career development:** As self-employed persons do not have certification of their skills in the absence of employers, they face more challenges in "career progression" and skill training. To provide a more sustainable career path for self-employed persons, some sectors (e.g. information and technology) have launched skills frameworks to provide information on career paths and the skills required in various jobs. The government and the tripartite partners will work with other sectors on such skills frameworks; and
- (e) **Facilitation for medical saving:** As self-employed persons face challenges in making regular contributions to their medical saving accounts, the Singaporean government as a service buyer has pledged to pilot "Contribute-As-You-Earn model" by 2020, in which the buyer deducts and transmits part of the payment to the self-employed person's medical saving account whenever it pays for their services. While service buyers in the private sector are not required to do so, the government will study ways to implement the model among platform companies and corporate service-buyers.<sup>55</sup>

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<sup>53</sup> Channel NewsAsia (2018).

<sup>54</sup> Tripartite Alliance for Fair and Progressive Employment Practices (2017).

<sup>55</sup> Some have called for mandatory co-contributions by intermediaries and corporate service buyers to independent workers' medical saving accounts. However, the government deemed it impracticable. See Tripartite Workgroup on Self-employed Persons (2018).



5.5 As the review recommendations have been implemented only since 2018, it is still too early to assess the effectiveness of the measures. Although the above measures are not mandatory, the market has put them into practice quite speedily, partly because of the tripartite nature of the recommendations. For example, as many as 473 companies have already signed up to adopt the standard contract in January 2019. That said, some parliamentary members in Singapore still felt that the reform was not far-reaching enough, as it could not protect those workers misclassified as self-employed persons.

## 6. Concluding remarks

6.1 Rapid development of online platforms for matching demand for and supply of service jobs makes it easier for certain occupations to be taken up by independent workers. Some governments have thus reviewed their labour legislation to enhance protection of independent workers, balancing it against other policy objectives like maintaining overall flexibility of the labour market and meeting the needs of the emerging sharing economy.

6.2 In the UK, the government announced at end-2018 that it would take a legislative approach through a refined employment classification of independent workers with increased statutory benefits. Yet the Singaporean government has taken a voluntary approach since 2018 through standardizing self-employment contracts and encouraging business establishments to provide medical and accident insurance to independent workers they engage.

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## Labour protection of independent workers in selected places

	Hong Kong	United Kingdom	Singapore
<b>1. Number of independent workers in 2017</b>	213 100	4.1 million	202 900
<b>2. Share in total employment</b>	6.1%	12.6%	9.3%
<b>3. Status under protection of employment law</b>			
<b>(a) Self-employed persons in general</b>	x	x	x
<b>(b) Special category of self-employed persons</b>	x	✓ <sup>(1)</sup> ("workers")	x
<b>4. Policy reviews conducted recently on independent workers</b>	x	✓ (2016-2017)	✓ (2017-2018)
<b>5. New measures for enhanced protection of independent workers after policy review</b>			
<b>New employment status in law</b>	Not applicable.	✓ <sup>(2)</sup>	x
<b>Written contract</b>	Not applicable.	✓ <sup>(3)</sup> (mandatory)	✓ (voluntary)
<b>Dedicated mechanism for dispute resolution</b>	Not applicable.	x	✓
<b>Provision of benefits by service buyers</b>	Not applicable.	✓ <sup>(3)</sup> (mandatory)	✓ (voluntary)
<b>Special arrangement for social security contributions</b>	Not applicable.	✓	✓
<b>Support for continued career development and labour organization</b>	Not applicable.	✓	✓

Notes: (1) A category "workers" with partial employment rights was introduced in 1996 to cover some self-employed workers.

(2) A new category "dependent contractors" will replace "workers" to cover more self-employed persons.

(3) For "dependent contractors" in the UK only.

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