

1. Introduction

1.1 In Hong Kong, the Government has permitted the inflow of foreign domestic helpers ("FDHs") since the 1970s to meet the shortage of live-in domestic helpers. There were about 391 600 FDHs in Hong Kong as at end-March 2019. While FDHs are given various labour protection such as minimum allowable wage and annual leave, FDHs often reportedly have to **work long hours with inadequate rest**. Moreover, under prevailing policy, change of employer is normally not approved,¹ and FDH is only allowed to stay in Hong Kong for 14 days upon termination of contract. This "**two-week rule**" is criticized for discouraging FDHs to terminate contract, even if they are under debt and/or being exploited.² As regards employment agencies for FDHs, there are often concerns about **malpractices and overcharging of FDHs**.³

1.2 At the request of Hon LEUNG Yiu-chung, the Research Office has completed a research task on policy protecting the rights of FDHs in those overseas places where better FDH protection than Hong Kong is provided in some form or another. Places under study are Canada, Italy, Singapore, and the United Kingdom ("UK"). The areas covered include basic rights, protection, and support; conditions of stay; and regulation of employment agencies. The relevant documents are organized into an information pack folder, with key features highlighted below.

2. Labour protection for FDHs in selected places

2.1 Over the years, the International Labour Organization ("ILO") has promulgated various conventions to safeguard the rights of migrant domestic workers. Among these, the Domestic Workers Convention, 2011 (No. 189) ("Convention 189")⁴ states that domestic workers are entitled to fair employment, decent living conditions, minimum wage coverage, overtime compensation, and protection from abuse by

¹ FDHs who wish to change their employers should return to their place of origin before re-applying.

² Several United Nations committees, including the Human Rights Committee, have recommended the Hong Kong Government to repeal the "two-week rule".

³ The prescribed commission is currently set at 10% of an FDH's first-month salary after successful placement.

⁴ The Convention came into force in 2013 and is currently ratified by 29 countries which are mainly FDH-exporting countries and FDH-importing countries in Europe (e.g. Italy). China is not a signatory to the Convention.

employment agencies. Convention 189 recommends that, in the event of termination of employment, FDHs should be given a reasonable period of time to seek new employment. Against this, the International Organisation of Employers observed that labour conventions should be based on a broad tripartite consensus, and with greater flexibility to respond to the needs of various signatories.

2.2 In **Canada**,⁵ FDHs are entitled to the **prevailing wage**,⁶ **standard working hours**⁷ and **overtime pay**. Under the latest visa programmes, FDHs are permitted to **change employers without having to obtain a new work permit**, and are eligible for **permanent residency** upon completion of 24 months of service.⁸ However, the visa programmes are **quota-based**,⁹ and there are relevant language, education and work requirements to meet. As a further safeguard, time-restricted open work permits¹⁰ are provided to abuse victims who can substantiate their claims. Employment agencies in Canada are subject to provincial regulation with employee safeguards such as prohibition of fee collection and/or unfair practices.¹¹

2.3 In **Italy**, there were 692 640 registered FDHs in 2014. The Italian government regulates the inflow of FDHs through an **annual quota system** on a first come, first served basis.¹² Upon entry, FDHs are required to sign an integration agreement committing to acquire knowledge on Italian language and culture, and assessment is required for permit renewal. In general, FDHs enjoy similar benefits as local domestic workers including **minimum wage**,¹³ **standard working hours**,¹⁴ **overtime pay**, and some **social security benefits**¹⁵. FDHs who have lost their job may **apply to extend their stay for not less than one year** to find a new job,¹⁶ with further extensions determined on a case by case basis. Italy is a signatory to ILO's Private Employment Agencies Convention, 1997 (No. 181),¹⁷ which, among others, **prohibits charging fees**

⁵ In Canada, federal caregiver programmes are largely compliant with Convention 189. However, since the regulation of working conditions is the responsibility of provincial and territorial governments, further legislative changes would be required to fully implement the Convention.

⁶ The prevailing wage refers to the median wage published on the government-maintained Job Bank.

⁷ Under the Canada Labour Code, the standard working hours for employees is 40 hours a week.

⁸ For FDHs who do not qualify for the programme, they may be admitted as temporary workers enjoying similar protection but without being eligible for permanent residency.

⁹ The quota for the visa programmes is capped at 5 500 per year.

¹⁰ Open work permit holders may work in Canada without occupation and/or employer restrictions.

¹¹ In some provinces, agreements have also been signed with the Philippines government defining a clear recruitment process and specifying that costs of recruitment should be borne by the employers.

¹² There are 12 850 work permit quotas for non-seasonal workers in 2019. Regularization has also been implemented occasionally to allow FDHs without a permit to stay to apply for an indefinite permit to stay.

¹³ Different minimum wage levels are stipulated for domestic workers based on their experience and job type.

¹⁴ In Italy, the standard working hours for live-in FDHs is 54 hours per week.

¹⁵ Social security for FDHs includes sick leave, maternity leave, and benefits for on-job accidents and illnesses.

¹⁶ See UN Refugee Agency (2014).

¹⁷ China is not a signatory to Convention 181.

on migrant workers. Moreover, since local governments provide professional training and job-matching services, employment agencies have a smaller role in Italy.

2.4 In **Singapore**, there were 253 800 FDHs as at December 2018. Labour benefits in Singapore are considered sub-optimal as FDHs are entitled to adequate boarding and statutory weekly rest day whereas other benefits are subject to contract negotiation.¹⁸ However, as a safeguard, the Ministry of Manpower conducts **mandatory interviews** with selected FDHs to ensure they are adapting well and provided with adequate rest. The Singapore government has also introduced **accreditation** and **demerit systems** to regulate employment agencies. Employment agencies that contravene relevant regulations/guidelines may receive demerit points, and accumulation beyond a threshold may result in surveillance, licence suspension and/or revocation.

2.5 In the **UK**, the policy has become more restrictive since 2012 as FDHs are only eligible to work if they accompany their overseas employers on a short-term visit of up to six months.¹⁹ Despite this, FDHs are covered by the UK employment law and are entitled to the **National Minimum Wage** and **standard rest hours**²⁰. As a mechanism to prevent abuse, FDHs found to be victims of trafficking and/or modern slavery are eligible for **discretionary leave** to remain for **up to two years** during which they may work as domestic workers. The Home Office has also piloted a scheme to inform domestic workers of their rights upon arrival in the UK. Compared to other places, employment agencies have a reduced role in the UK because FDH visas are tied to their overseas employers.

¹⁸ Domestic workers in Singapore are not covered by the Employment Act. As such, the recommended minimum salary for FDHs is set by respective embassies of the source countries, and granting of public holidays is based on terms stipulated in the employment contract.

¹⁹ Under the prevailing policy, overseas domestic worker visas are granted to FDHs for up to 6 months instead of the previous 6 to 12 months with possible extension. FDHs who enter the UK after April 2012 are no longer eligible to apply for indefinite leave to remain after working for five years in the UK. In 2018, 20 319 overseas domestic worker visas were issued.

²⁰ FDHs must be given at least 11 hours of rest between working days.

Policy protecting the rights of foreign domestic helpers in selected places

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