

For discussion
on 13 November 2003

LegCo Panel on Security
Measures to Combat Illegal Employment

Introduction

This paper sets out the measures taken by the Government to combat illegal employment.

Background

2. The number of illegal workers arrested in the past few years has increased. The number of arrestees increased from 2 317 in 2000 to 3 534 in 2002, representing an average annual increase of 26%. The number of arrestees for the first nine months in 2003 stood at 3 985, or an increase of about 61% over the corresponding period last year. Of them, about 90% were visitors from the Mainland.

3. Over the same period, the number of Mainland visitors has also been rising. Mainland visitors increased from about 3.7 million in 2000 to about 6.7 million in 2002, representing an average annual increase of almost 40%. The number of visitors for the first nine months in 2003 stood at 5.6 million, showing an increase of about 20% over the corresponding period last year.

4. The number of Mainland visitors arrested for working illegally in Hong Kong increased from 1 853 in 2000 to 3 031 in 2002, representing an average annual increase of about 32%. The figure for the first nine months this year stood at 3 536, showing an increase of about 70% over the corresponding

period last year. The number of foreign visitors arrested for working illegally in Hong Kong slightly increased from 57 in 2000 to 62 in 2002. The figure for the first nine months this year is 44, more or less the same as that of the corresponding period last year.

5. The above figures show that the number of Mainland visitors arrested for working illegally in Hong Kong has increased at a greater rate than the total number of visitors from the Mainland. We believe that, to some extent, these figures reflect the enhanced efforts by the Government to combat illegal employment in recent years. For example, the number of operations against illegal employment conducted by the Immigration Department (ImmD) increased from 2 080 in 2000 to 3 580 in 2002, representing an average annual increase of 36%. The number of such operations from January to September 2003 stood at 3 792, showing another 36% increase over the corresponding period last year.

6. We must, however, point out that the overwhelming majority of Mainland visitors are law-abiding. The figures for January to September 2003 show that the number of Mainland visitors arrested for working illegally only accounted for about 0.06% of the total number of Mainland visitors. It is noteworthy that the number of Mainland visitors entering under the Individual Visit Scheme launched near the end of July this year and arrested for working illegally only accounted for less than 0.002% of the total number of individual visitors admitted up to the end of September.

7. 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. In this connection, the Government has spared no efforts in drawing up and implementing a number of measures at various levels. They include tackling the problem at source by co-operating

and communicating with Mainland authorities to minimize the chance of entry of Mainlanders intending to work illegally in Hong Kong. The law enforcement departments have also stepped up their operations against illegal employment to deter and prevent employers from hiring illegal workers, and Mainland and foreign visitors from working illegally in Hong Kong.

Tackling the Problem at Source

8. Pursuant to the Basic Law Mainland residents from other parts of China must apply to public security authorities in the Mainland for approval for entry into the Hong Kong Special Administrative Region (HKSAR). ImmD thus maintains close liaison and exchanges intelligence with Mainland public security and border control authorities to more effectively curb illegal activities of Mainlanders in Hong Kong. ImmD regularly notifies these authorities of the particulars of the Mainland visitors who have worked illegally in Hong Kong so that they can conduct detailed investigations into and follow up the cases, and strengthen the examination of any subsequent applications of these Mainlanders to enter Hong Kong. This includes not allowing them to visit Hong Kong again for some time in appropriate cases.

9. The frontline officers of ImmD at various control points will, while striving to facilitate Mainland and foreign visitors, also keep a watchful eye on suspicious visitors. Close examination will be conducted as and when necessary to prevent any persons with dubious intentions from entering Hong Kong. In 2002, 7 788 Mainland visitors and 4 975 foreign visitors were refused entry for doubtful purpose of visit. In particular, to prevent Mainland visitors with criminal records in Hong Kong from seeking to enter Hong Kong again through another identity, ImmD exchanges intelligence with relevant Mainland authorities. Training for frontline officers at various control points has also been strengthened to enhance their alertness, interrogating skills and ability to detect forged documents (including those obtained unlawfully).

10. ImmD is also examining the possibility of introducing a photo identification system in which the photos of offenders could be stored. The picture of a visitor with doubtful identity could be scanned and compared with photos stored in the system. This should help to identify those attempting to enter Hong Kong again under a different identity. It must be emphasized that this is a very preliminary idea and ImmD has to thoroughly consider its feasibility, cost effectiveness and legal implications before putting forward more detailed proposals.

Enforcement in Hong Kong

11. As regards enforcement in Hong Kong, the Task Force of ImmD conducts inspections at factories, restaurants, business establishments and black spots of illegal employment from time to time. It also launches frequent inter-departmental operations with the Police and the Labour Department (LD) against black spots of illegal employment such as shops, public places and construction sites. Of the 3 792 anti-illegal employment operations mounted by the ImmD from January to September this year, 67 were jointly conducted with other departments. For each such operation, ImmD, the Police and LD would deploy their manpower according to operational needs. For instance, for massive joint operations, the number of officers mobilized ranges from 170 to 330 for the Police, 35 to 65 for the Task Force of ImmD and 20 to about 40 for LD.

12. The Government has put in place comprehensive legislation to deal with illegal workers and their employers. In accordance with Section 17J of the Immigration Ordinance (Cap 115), employers should first inspect the identity documents of prospective employees and keep a record of each after employing them. If they have any doubts about the identities of job seekers,

they may make enquiries through the ImmD hotline. Under Section 41 of the same Ordinance, any person who contravenes a condition of stay by working illegally in Hong Kong shall be guilty of an offence and liable on conviction to a fine up to \$50,000 and imprisonment up to two years. Any person who aids or abets someone to breach their condition of stay in Hong Kong is in contravention of Section 89 of the Criminal Procedure Ordinance (Cap 221) and Section 41 of the Immigration Ordinance. The maximum penalty is also a fine of \$50,000 and imprisonment for two years.

13. As regards employers, any person who employs a person not lawfully employable commits an offence and is liable on conviction to a fine up to \$350,000 and imprisonment up to three years under Section 17I of the Immigration Ordinance. The ImmD has always regarded employers of illegal workers as the root of the problem and deals with it seriously. Therefore, if there is sufficient evidence, actions will surely be taken against them to serve the deterrent effect. In the first nine months this year, 783 employers who were suspected of hiring illegal workers were arrested.

14. As regards sentencing, the court takes into account various factors in meting out sentences. Such factors include facts of the case, mitigating circumstances, previous sentencing guidelines, and whether the defendant pleads guilty and has any past criminal records. ImmD is very concerned over the adequacy of sentence imposed on employers convicted of employing illegal workers. If there are reasons to believe that the sentence in a case is clearly inadequate, ImmD will seek legal advice from the Department of Justice and consider whether an application for sentence review or the lodging of appeal should be made with a view to increasing the deterrent effect on employers.

Inter-departmental Co-ordination

15. To enhance co-ordination between various departments with a view to taking more effective actions against Mainlanders working illegally or engaging in other unlawful activities in Hong Kong, the Government formed an “Inter-departmental TaskForce” in April this year. The TaskForce is chaired by the Deputy Commissioner of Police (Operations) and comprises members from ImmD, Customs and Excise Department, Correctional Services Department, LD, Food and Environmental Hygiene Department (FEHD) and Lands Department etc. The TaskForce facilitates regular exchange of information between the departments and reviews as well as co-ordinates the enforcement work of different departments. It also takes proactive and preemptive strategies to identify black spots of illegal employment so as to combat the problem more effectively.

Outsourcing and Licensing System for Government Services

16. In outsourcing services through tenders, all Government departments now adopt an assessment scheme under which one of the criteria is whether the employers have any past record of hiring illegal workers. For instance, FEHD and the Leisure and Cultural Services Department (LCSD), which tender most of the service contracts, adopt a marking scheme for evaluating tenders. One of the assessment criteria is whether the tenderer has contravened the Immigration Ordinance. Any conviction record of employing illegal workers will have bearing on the assessment and may eventually lead to rejection of the tender.

17. Besides, FEHD and LCSD have expressly stipulated in the general conditions of all of their service contracts that if contractors are found to have employed persons not lawfully employable and subsequently convicted for breaching the provisions of the Immigration Ordinance, the convictions can be

construed as a serious breach of contract. FEHD and LCSD may immediately terminate the contract in accordance with the relevant conditions.

18. Regarding the licensing system, suspension or cancellation of licenses held by persons with records of employing illegal workers is a fairly serious penalty. It is usually meted out in accordance with the provisions of relevant legislation. If the relevant legal provisions do not have any stipulations relating to employing illegal workers, records of employing illegal workers do not constitute sufficient grounds for suspending or canceling the licenses. For instance, the Demerit Points System of FEHD is implemented for protecting food safety and environmental hygiene. Therefore, hiring illegal workers in itself does not lead to the suspension or cancellation of the license of a food establishment.

Publicity and Education

19. Apart from taking enforcement action, various departments have been actively carrying out publicity programmes against illegal employment. TV and Radio Announcements of Public Interest, ImmD's website, posters and leaflets are used to enhance public awareness of relevant legislation and to remind employers not to employ illegal workers. The Administration also encourages the public to report information on illegal employment to ImmD through its 24-hour hotline (2824 1551), fax (2824 1166), correspondence or e-mail (enquiry@immd.gov.hk). Based on the information collected, the departments concerned will carry out investigation and make arrest as soon as possible.

20. On the other hand, LD spares no efforts in educating and publicizing against illegal employment. Apart from attaching leaflets to the demand note for Government Rates to remind employers not to arrange foreign domestic helpers to carry out non-domestic duties or hire others' foreign domestic helpers,

LD also distributes leaflets to owners' corporations, mutual aid committees and small and medium enterprises (SMEs) to hammer home the message that employing illegal workers is liable to imprisonment. To combat illegal employment at construction sites and in businesses like interior decoration, LD has stepped up its contacts with contractors, distributed leaflets and invited contractors to share their experience of preventing the employment of illegal workers in their sites or workplaces in meetings of the Tripartite Committee for the Construction Industry.

21. Besides, the ImmD distributes notices to all incoming visitors, advising them to leave Hong Kong on or before the limit of stay and not to take up any paid or unpaid employment during their stay in Hong Kong. Anyone breaching the condition of stay is subject to prosecution.

Related Statistics

22. Statistics on illegal employment are at the Annex.

Security Bureau
November 2003

Statistics of Anti-Illegal Employment Operations Conducted by ImmD

1. Number of Anti-Illegal Employment Operations

	2000	2001	2002	2003 (Jan-Sept)
Number of Operations	2 080 (54)	2 896 (61)	3 580 (73)	3 792 (67)

() denotes the number of joint operation conducted by ImmD and other departments.

2. Statistics of Illegal Workers Arrested/Prosecuted/Convicted*

	2000			2001			2002			2003 (Jan-Sept)		
	Arrested	Prosecuted	Convicted	Arrested	Prosecuted	Convicted	Arrested	Prosecuted	Convicted	Arrested	Prosecuted	Convicted
Mainland visitors	1853 (80%)	1113 (81%)	1053 (93%)	2210 (82%)	1317 (83%)	1236 (95%)	3031 (86%)	1995 (86%)	1878 (95%)	3536 (89%)	2066 (87%)	2008 (97%)
Illegal immigrants from the Mainland	118 (5%)	116 (9%)	-#	156 (6%)	150 (9%)	-#	87 (2%)	85 (4%)	-#	119 (3%)	103 (4%)	-#
Other foreign visitors	57 (2%)	31 (2%)	26 (2%)	46 (2%)	27 (2%)	26 (2%)	62 (2%)	33 (1%)	29 (1%)	44 (1%)	25 (1%)	20 (1%)
Foreign domestic helpers	244 (11%)	83 (6%)	60 (5%)	196 (7%)	33 (2%)	32 (3%)	220 (6%)	83 (4%)	72 (4%)	151 (4%)	59 (3%)	50 (2%)
Illegal hawkers/ other illegal workers	45 (2%)	27 (2%)	-^	73 (3%)	56 (4%)	-^	134 (4%)	126 (5%)	-^	135 (3%)	127 (5%)	-^
Total	2317	1370	1139	2681	1583	1294	3534	2322	1979	3985	2380	2078

* excluding those involved in prostitution.

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

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

() denotes a percentage of the total.

Note : The statistics kept by ImmD cannot be broken down by nationality, age, sex or according to the premises in which the illegal workers were arrested or the types of business in which they were engaged. A sample analysis reveals that the arrestees were mainly employed as decorators, building maintenance workers, restaurant workers, food premises workers, salespersons, transportation labourers and cleaning workers.

3. Statistics of Illegal Immigrants from the Mainland and Mainland Visitors Holding Exit-Entry Permits Arrested at Construction Sites

	2000	2001	2002	2003 (Jan-Sept)
Number of illegal immigrants from the Mainland	89	101	20	1
Number of visitors holding Exit-Entry Permits	267	158	332	203
Total	356	259	352	204

4. Statistics of Employers Arrested/Prosecuted/Convicted for Employing Suspected Illegal Workers

	2000	2001	2002	2003 (Jan-Sept)
Number of employers arrested	712	968	918	783
Number of employers prosecuted	305	310	383	332
Number of employers convicted	264	277	303	287

5. Statistics of Exit-Entry Permit Overstayers Handled by ImmD

	2000	2001	2002	2003 (Jan-Sept)
Number of Exit-Entry Permit Overstayers	22 603	21 637	18 704	11 451

Note : Statistics kept by ImmD cannot be broken down to show the age and sex of the overstayers, period of overstaying and the province that they come from.

6. Statistics of Overstayers who have entered into Hong Kong under Individual Visit Scheme[#]

	Period of Overstaying			Total
	Less than one week	One week to one month	Over one month	
Number of overstayers still remaining in Hong Kong as at 30 September 2003	34	49	21	104

The Individual Visit Scheme was implemented on 28 July 2003.

As at 30 September 2003, a total of 125 647 Mainland visitors have come to Hong Kong under the Individual Visit Scheme. There were 209 cumulative records of overstayers of which 104 are still remaining in Hong Kong.