

立法會
Legislative Council

LC Paper No. CB(2)1762/12-13
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 18 June 2013, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex

- Members present** : Hon LEE Cheuk-yan (Chairman)
Hon WONG Kwok-kin, BBS (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
Hon Michael TIEN Puk-sun, BBS, JP
Hon CHAN Chi-chuen
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP
- Member attending** : Hon WONG Kwok-hing, MH
- Members absent** : Hon LEUNG Kwok-hung
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG

Public Officers attending : Item IV

Ms Queenie WONG Ting-chi
Acting Assistant Commissioner for Labour
(Policy Support)

Mr CHAN Chi-keung
Head of Trade Controls
Customs and Excise Department

Mr LAM Po-chuen
Head of Trade Descriptions Ordinance
Special Planning Group
Customs and Excise Department

Mr Daniel FONG Siu-wai
Assistant Secretary for Commerce and
Economic Development (Commerce and
Industry) Special Duties 1

Mr Pak Yuen-oug, IMSM
Principal Immigration Officer
(Visa Control) Operations

Item V

Mr CHEUK Wing-hing, JP
Commissioner for Labour

Mrs Tonia LEUNG SO Suk-ching, JP
Assistant Commissioner for Labour
(Employment Services)

Miss Grace CHAN Wing-han
Senior Labour Officer (Employment Services)
(Policy)

Attendance by invitation : Item IV

Hong Kong Catholic Commission for Labour Affairs

Miss LAW Pui-shan
Policy Research Officer

New People's Party

Mr KAM Man-fung
Youth Committee Chairperson

Helpers for Domestic Helpers (HDH)

Ms Holly Allan
Manager

United Filipinos in Hong Kong (UNIFIL-HK)

Ms Dolores Balladares
Chairperson

Amnesty International

Mr Robert Godden
Asia-Pacific Campaign Coordinator

United Indonesians in Hong Kong Against Overcharging
(PILAR-HK)

Miss Wiwin Warsiating
Committee Member

Filipino Migrant Workers' Union (FMWU)

Mr Emmanuel C. Villanueva
Vice Chairperson

Association of Indonesian Migrant Workers in Hong Kong
(ATKI)

Miss Ganika Diristiani
Chairperson

Indonesian Migrant Workers Union (IMWU)

Miss Sringatin
Vice Chairperson

Asia Pacific Mission For Migrants (APMM)

Mr Aaron Ceradoy
Program Coordinator

Mission For Migrant Workers (MFMW)

Ms Cynthia C.A. Tellez
General Manager

Asian Migrants' Coordinating Body (AMCB)

Ms Eni Lestari
Spokesperson

The Bethune House Migrant Women's Refuge

Ms Edwina A. Santoyo
Executive Director

自由黨外傭關注組

Miss Lian CHAN
Representative

Liberal Party

Mr Peter SHIU
Member

Thai Migrant Workers' Union

Ms Phobsuk Gasing
Chairperson

Union of Nepalese Domestic Workers in Hong Kong

Ms Chuni Thapa Magar
Chairperson

Hong Kong Confederation of Trade Union

Ms LAM Ying-hing
Organizing Coordinator

Support Group for HK Employers with Foreign Domestic Helper

Ms Joan TSUI
Convenor

Hong Kong Federation of Asian Domestic Workers Unions

Ms PO Lai-wan
Chairperson

Progressive Labor Union of Domestic Workers in Hong Kong (PLU)

Ms Luela A. Mirafuentes
Organizer / Education Officer

Alliance of Progressive Labor - HK (APL-HK)

Mr Rex Marlo Varona
Senior Researcher

Open Door

Ms Doris LEE

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Ms Ivy CHENG
Research Officer (2) 2

Ms Rita LAI
Senior Council Secretary (2) 1

Ms Mina CHAN
Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1316/12-13)

The minutes of the meeting held on 19 March 2013 were confirmed.

II. Information paper(s) issued since the last meeting

2. Members noted that the Administration's response to Mr TANG Ka-piu's letter dated 20 March 2013 concerning standby duties of employees had been issued since the last meeting.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1356/12-13(01) and (02))

Regular meeting in July 2013

3. The Chairman recapitulated that as agreed at the May meeting, the regular Panel meeting in July had been rescheduled for 31 July 2013 to receive an update from the Administration on the work progress of the Standard Working Hours Committee after the latter had held its second meeting on 24 July 2013.

4. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 10:45 am on 31 July 2013 -

- (a) Review of continuous contract requirement under the Employment Ordinance ("EO"); and
- (b) Progress of the work of the Standard Working Hours Committee.

IV. Intermediary charges for foreign domestic helpers
(LC Paper Nos. CB(2)1356/12-13(03) and FS30/12-13)

5. Members noted the fact sheet entitled "Employment agencies placing foreign domestic helpers" prepared by the Research Office of the Legislative Council ("LegCo") Secretariat.

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Views of deputations

6. At the invitation of the Chairman, 23 deputations presented their views on intermediary charges for foreign domestic helpers ("FDHs"). A summary of the views of deputations is in the **Annex**.

7. Members noted that the following organizations/individual not attending the meeting had provided the Panel with written submissions -

- (a) Christian Action;
- (b) Mr Anthony Desir; and
- (c) Justice and Peace Commission of the HK Catholic Diocese.

Discussion

8. In response to the views of deputations, Acting Assistant Commissioner for Labour (Policy Support) ("Ag AC for L(PS)") made the following points -

- (a) the Administration attached great importance to the regulation of the operation of employment agencies ("EAs") providing FDH placement services. The views from both employers and FDH were noted. The Administration would carefully examine the views in considering whether and how the regulation of EAs could be further refined. At present, the Employment Agencies Administration ("EAA") of the Labour Department ("LD") regulated the operation of EAs through licensing, regular and surprise inspections, complaints investigation and prosecution as well as through publicity and educational channels to ensure that they were operating in compliance with the law;
- (b) LD took a serious view of overcharging of commissions to job seekers, including FDHs. According to the law, EAs were only allowed to charge FDHs the commission as prescribed in the Second Schedule of the Employment Agency Regulations (Cap. 57A) ("EAR"), which was no more than 10% of the latter's first month's salary for successful job placement service. It was illegal for FDH employers to deduct their FDHs' wages and pay the deducted part to EAs or another party as settling FDHs' placement fees

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or loans. By doing so they would be liable on conviction to a maximum fine of \$100,000 and imprisonment for one year. Employers were reminded not to breach the law. FDHs were encouraged to report such cases to LD and come forward as prosecution witnesses. Where there was evidence that an EA aided and abetted an employer to hire a FDH at a wage level lower than the Minimum Allowable Wage provided in the contract, the Commissioner for Labour might, base on such evidence, refuse to renew or to revoke the licence of the EA concerned;

- (c) in 2012, EAA received 77 complaints against EAs, with 44 of them relating to overcharging of intermediary fees. Following investigations, the Administration revoked one EA's licence subsequent to its licensee's conviction of overcharging, and the FDH concerned could recover the overcharged commission fees. Prosecution had not been initiated against other cases due to insufficient evidence or unwillingness of the FDHs concerned to act as prosecution witnesses; and
- (d) there was no restriction under Hong Kong's law on the amount of fees that could be charged by EAs on employers for services provided. Just as other commercial businesses, the amount of fees charged was subject to the mutual agreement between the customers (i.e. FDH employers) and the service providers (i.e. EAs). Claims could be lodged with LD against EAs' non-compliance with the provisions under EO or EAR such as EA's unlicensed operation. For employers who considered the services provided by EAs unsatisfactory or did not match with the service agreements, they could lodge a complaint with the Consumer Council and seek advice and assistance as appropriate.

9. Assistant Secretary for Commerce and Economic Development (Commerce and Industry) Special Duties 1 said that in handling the disputes between FDH employers and EAs, the Consumer Council would provide conciliation service as necessary. The provision of services by EAs to FDH employers would also be regulated under the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012, which would come into operation on 19 July 2013. Under the Amendment Ordinance, an EA would commit an offence if it deployed specified unfair trade practices against FDH employers, including false

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trade descriptions of services or misleading omissions. FDH employers could lodge complaints with the Customs and Excise Department ("C&ED") against EAs suspected of breaching the Amendment Ordinance. Head of Trade Controls/C&ED supplemented that C&ED would be responsible for the enforcement of the Amendment Ordinance and would follow up complaints in the light of individual circumstances of each case.

10. Principal Immigration Officer (Visa Control) Operations ("PIO(VC)O") said that -

- (a) the "two-week rule" was required for maintaining effective immigration control and preventing job-hopping as well as imported workers working illegally after the termination of contracts. However, it did not preclude the workers concerned from working in Hong Kong again after returning to their places of domicile. Under some special circumstances such as the worker's previous employer being unable to continue with the contract because of migration, death or financial difficulty; or there was evidence that the worker had been abused or exploited, the Immigration Department ("ImmD") might allow the worker to change employer in Hong Kong without having to return to the place of domicile;
- (b) in respect of some FDHs' claims that the "two-week rule" prevented them from coming forward to lodge claims and following through the legal process for fear of losing their jobs and being forced to leave Hong Kong within two weeks of the termination or expiry of their contracts, ImmD would allow FDHs concerned to extend their stay on a case-by-case basis facilitating them to assist in the investigation, attend hearings or act as a prosecution witness; and
- (c) the existing entry arrangement for FDHs was applicable to applicants from most countries and regions. Owing to immigration and security considerations, the current arrangement did not apply to nationals from a few countries including Afghanistan, Cambodia, Cuba, Laos, the Democratic People's Republic of Korea, Nepal and Vietnam. The Administration would regularly review the immigration policies for importation of FDHs to ensure that such policies suit the actual circumstances and needs of Hong Kong.

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Admin 11. The Chairman requested the Administration to convey deputations' appeal to the Central Government to become a signatory of the Domestic Workers Convention, 2011 (No. 189) of the International Labour Organization so as to safeguard the rights of FDHs in Hong Kong.

Importation of FDHs

12. Mr SIN Chung-kai said that even though there was a great demand for live-in domestic workers, FDHs had been imported to Hong Kong over the years primarily from the Philippines and Indonesia. He expressed concern about the restrictions on the entry arrangement for FDHs from nationals of Nepal and residents of the Mainland. He enquired about the background and rationale of the policy consideration, and whether the Administration would review the arrangement. Mr Michael TIEN raised a similar concern. He understood that there had been an increasing call from EAs for importing FDHs from Vietnam and Nepal in the light of the dwindling of labour supply from the Philippines.

Admin 13. Responding to members' concern, PIO(VC)O said that the existing entry arrangement for FDHs was applicable to applicants from most countries and regions. As explained earlier, the current arrangement did not apply to some specific countries because of immigration and security considerations. Nor did it apply to residents of the Mainland, Macao SAR and Taiwan. The Chairman requested the Administration to provide members with further information, if any, on the policy consideration of the existing entry arrangement for FDHs.

14. Acknowledging the diverse views on importing live-in domestic workers from the Mainland, Mr SIN Chung-kai considered that the relevant policy warranted further discussion by the Panel. Mr SIN suggested and the Chairman agreed that the subject be included in the Panel's "List of outstanding items for discussion".

15. Expressing concern that FDHs had substantially increased over the years and there were more than 300 000 FDHs in Hong Kong, Mr POON Siu-ping 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 and establishing a licensing scheme for EAs.

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16. PIO(VC)O said that no prescribed limit had been set for the importation of FDHs. On the impact of FDHs on local domestic helpers, PIO(VC)O said that there was no conflict between the two types of employment. He pointed out 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.

17. Mr POON Siu-ping, however, expressed concern about some media reports that some FDHs did not reside in their employers' residence and thus making FDHs de facto local domestic helpers. Mr POON maintained the view that the Administration should conduct a comprehensive review on the policy on FDHs.

18. PIO(VC)O said that in addition to the provisions in SEC, both employers and FDHs were required to give an undertaking on the live-in requirement in the employment visa application form. Specifically, employers had to undertake to provide FDHs with decent accommodation and reasonable privacy and the FDHs concerned had to give assurance to reside in such residence. The cases as cited by Mr POON and reported by the media would constitute a breach of the contract conditions. ImmD would take into account adverse records or breaches of applicants when processing their future employment visa applications, i.e. when the employer concerned applied for hiring another FDH or from the FDH concerned to work for another employer.

Overcharging of intermediary charges and related issues

19. Mr SIN Chung-kai urged the Administration to give due consideration to the deputations' views and take appropriate actions to deter malpractices of EAs of overcharging FDHs' commission fees. In his view, 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. In addition, a mechanism should be put in place to regulate the operation of EAs providing FDH placement services.

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20. Mr TANG Ka-piu declared that he was the employer of a FDH. Mr TANG expressed concern about the high level of fees and commissions charged by the intermediaries in the home countries of FDHs. To his knowledge, a considerable number of Indonesian FDHs had been forced to sign loan documents with the recruiters in Indonesia prior to working in Hong Kong, but in many cases they had not received the money. Upon arrival in Hong Kong, these FDHs had to make monthly repayment for the huge debt through the local EAs. However, they refrained from lodging claims with LD for fear of being rejected by EAs to process their renewal of employment contracts. Mr TANG sought clarification on whether the debt repayment arrangement breached Hong Kong law and whether the Administration would take enforcement action as appropriate. The Chairman echoed that it was a common problem faced by most Indonesian FDHs. He asked about the measures taken by LD to address the problem.

21. Ag AC for L(PS) said 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. Ag AC for L(PS) added that charging of commission exceeding the prescribed amount and money-lending activities were regulated under EAR and the Money Lenders Ordinance (Cap. 163) respectively.

22. In response to the concern of the Chairman and representative of the Hong Kong Confederation of Trade Union about the alleged wage deduction from FDHs for loan repayment, Ag AC for L(PS) said that LD in collaboration with the Hong Kong Police Force ("the Police") would take appropriate enforcement action should evidence be established in cases on the interconnection and transfer of FHDs' wages between EAs and money-lending agencies.

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23. The Chairman expressed grave concern that some FDHs' passports were withheld by EAs so as to force them to make loan payment. He enquired whether LD would alone, or in collaboration with the Police, take enforcement action against such malpractices.

24. Ag AC for L(PS) 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 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.

25. In response to a further enquiry from the representative of Hong Kong Confederation of Trade Union, Ag AC for L(PS) said that it would be for the Department of Justice to determine whether there was sufficient evidence to support prosecution against cases of overcharging of intermediary charges or malpractices. She appealed to FDHs to file claims with LD, so that LD would effectively conduct investigation upon receipt of the overcharging or malpractices complaints.

26. Dr CHIANG Lai-wan noted with concern that following the Philippine Government's prohibition of collection of placement fees from FDHs in the Philippines, a significant portion of the placement fees had been passed on to the employers in Hong Kong. The Administration should enhance the regulation of the operation of EAs and combat such malpractices.

27. Noting that both employers and FDHs considered the overcharging of intermediary charges serious, Mr POON Siu-ping was concerned about the enforcement action taken by LD. In respect of the 1 328 inspections conducted in 2012 and the 44 overcharging complaints received in the same year, he sought information on the circumstances under which EAA would conduct inspections to EAs and the number of EAs involved in the overcharging complaints.

28. Ag AC for L(PS) said that officers of EAA made both regular and surprise inspections to EAs, conducted investigations upon receipt of overcharging or malpractices complaints, and took out prosecution where there was sufficient evidence. She did not have the information on hand regarding the number of EAs involved in overcharging complaints. The Chairman requested the Administration to provide the information after the meeting.

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Premature termination or expiry of employment contracts

29. Dr CHIANG Lai-wan expressed concern that the Consumer Council had been receiving an increasing number of complaints in relation to the services of EAs and FDHs in recent years. She was gravely concerned that of the 122 complaints received in the first four months of 2013, 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 notice and free passage back to their places of domicile. Dr CHIANG sought information on the number of such cases.

30. PIO(VC)O said that ImmD did not maintain statistics on such cases. Nonetheless, ImmD had been processing FDHs' employment visa applications in a serious manner. It had strengthened measures to closely scrutinize the applications with a view to preventing any job-hopping by FDHs. In assessing the applications, ImmD would examine the frequency and reasons of contract terminations of the applicants. As a matter of fact, ImmD had refused a number of employment visa applications from FDHs whose employment contracts were prematurely terminated.

31. Expressing support for the Philippine Government's policy of prohibiting the collection of placement fees from FDHs in the Philippines, Mr Michael TIEN held the view that it was equally important to protect the interests of FDH employers in Hong Kong. To his knowledge, while FDH employers considered passing on the placement fees to them unreasonable, they were particularly concerned about the expenses incurred from premature termination of employment contracts with FDHs, including provision of one month's wages in lieu of notice and free passage back to their places of domicile. This was because some FDHs concerned had not really 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. Mr TIEN expressed grave concern that there were cases in which FDHs had deliberately displayed bad working attitude to seek early termination of employment contracts. To protect the interests of FDH employers and prevent job-hopping of FDHs, he held a strong view that the Administration should strictly enforce the requirement of FDHs' returning to their places of domicile upon termination or expiry of employment contracts before they could submit fresh employment visa applications. Representative of the Support Group for HK Employers with FDH shared a similar view.

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32. PIO(VC)O said that ImmD often received requests from employers, who had dire need of domestic helpers, to expedite processing of the employment visa applications of their FDHs. On the other hand, FDHs whose contracts with their ex-employers had been terminated also wished to resume their employment soonest to earn their livelihood. According to the existing application requirement, FDHs who had pre-maturely terminated their contracts had to return to their places of domicile before submitting fresh entry applications. As a matter of facilitation to both parties, ImmD adopted a flexible approach in the application requirement concerned. PIO(VC)O reiterated that ImmD had stepped up control over the employment visa applications of FDHs and refused the applications where abuse was detected.

33. Mr Michael TIEN and the Chairman sought clarification 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, if the FDHs had merely departed for Macao and whether the passage could be paid in cash instead of an air ticket. Representative of the Support Group for HK Employers with FDH raised a similar concern.

34. Ag AC for L(PS) said that as stipulated under Clause 7a of SEC, FDH employers should provide their FDHs with free passage to return to their places of original on termination or expiry of contracts. The rationale behind was that as it was the employers who hired FDHs to work in Hong Kong, they had the responsibility for ensuring FDHs' smooth return to their home countries upon completion or premature termination of contracts by paying for the passages to the FDHs' places of domicile. Otherwise, FDHs concerned might be stranded in Hong Kong owing to the lack of means to travel. Ag AC for L(PS) explained that while the contract did not specify the means by which the return passage should be provided, i.e. employers and their FDHs could agree mutually on the arrangement for the provision of passage 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. To further protect their interests, employers should keep the payment receipt of the air ticket as documentary proof.

35. In response to the Chairman's enquiry about the change of employer arrangement for FDHs, PIO(VC)O said that FDHs were in principle not allowed to change employers in the course of their two-year contract. Should they terminate the employment contract, they were

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required to leave Hong Kong before submitting their new employment visa applications. Under some special circumstances as explained earlier, ImmD might allow FDHs to change their employers in Hong Kong without having to return to their places of domicile.

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36. Owing to time constraints, the Chairman requested the Administration to provide further information on the following -

- (a) whether FDHs whose employment contracts were prematurely terminated must leave Hong Kong and return to their places of domicile within two weeks of the termination of their contracts; and
- (b) in respect of FDH employers' obligation to provide free passage to their FDHs for returning to their places of domicile upon termination or expiry of employment contracts, whether such requirement could be waived in the event that it was mutually agreed between employers and the FDHs concerned that the latter would not return to their places of domicile, but merely depart for Macao.

37. In closing, the Chairman called on the Administration to maintain close liaison with relevant FDH-exporting governments through their CGs in Hong Kong as well as conduct consultation with the relevant employers' associations to address various issues of concern relating to intermediary charges for FDHs.

The Deputy Chairman took the chair during the absence of the Chairman.

V. Latest development of the employment services of the Labour Department

(LC Paper Nos. CB(2)1333/12-13(01) and CB(2)1356/12-13(18))

38. Commissioner for Labour ("C for L") briefed members on the latest development of the employment services provided by LD as detailed in the Administration's paper.

39. Members noted the background brief entitled "Employment services of the Labour Department" prepared by the LegCo Secretariat.

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40. Mr IP Kowk-him said that the Democratic Alliance for the Betterment and Progress of Hong Kong had all along supported that career development programmes should be provided to young people at schools. Noting that LD launched the "Career Get-Set-Go" in May 2013 to cater for the pre-employment training and employment needs of secondary school leavers, Mr IP considered that instead of providing students with such services upon their graduation, the Labour and Welfare Bureau should liaise with the Education Bureau with a view to providing career development support for secondary school students. This would facilitate secondary students to better understand the labour market and their own career aspirations at an early stage.

41. C for L said that LD had operated two Youth Employment Resource Centres, i.e. "Youth Employment Start" ("YES") at Mongkok and Kwai Fong since 2007 and 2008 respectively. YES offered personalised career advisory services, including career planning to young people aged between 15 and 29. LD had promoted the services of YES in schools and satisfactory responses were received. In both 2011 and 2012, around 74 000 young people made use of the services of YES each year.

42. Pointing out that the unemployment rate for young people aged 15 to 19 had reached 16.7%, Mr IP Kwok-him asked whether the Administration would review the existing career services for the youth and consider placing more emphasis on students rather than school graduates and young job seekers. C for L said that YES provided employment support services to the youth aged 15 to 29 and many users of YES were students. Apart from YES, LD also administered other specialized employment programmes to cater for the distinct needs of the youth, including the Youth Employment and Training Programme and "Action S5". Under "Action S5", non-governmental organizations ("NGOs") were commissioned to provide on-the-job training to young people with special employment difficulties owing to emotional/behavioural problems or learning difficulties. To support youth employment, the Social Welfare Department also commissioned NGOs to assist in providing employment assistance to young people, in particular the hidden youth, to help them find employment.

43. Referring to paragraph 20 of the Administration's paper, the Deputy Chairman asked whether the provision of employment advisory services at LD's job centres following the cessation of the Pilot Employment Navigator Programme ("ENP") was a new arrangement.

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44. C for L said that the employment advisory services provided by LD's job centres were newly introduced upon the cessation of the Pilot ENP. Job seekers could meet with employment officers to seek job search advice and/or undergo career aptitude assessments in accordance with their individual needs.

45. There being no other business, the meeting ended at 7:15 pm.

Council Business Division 2
Legislative Council Secretariat
4 September 2013

Panel on Manpower

Meeting on Tuesday, 18 June 2013, at 4:30 pm

Summary of views and concerns expressed by deputations on intermediary charges for foreign domestic helpers

No.	Name of deputation	Major views and concerns
1.	Hong Kong Catholic Commission for Labour Affairs	<ul style="list-style-type: none"> ● According to a survey on Indonesian foreign domestic helpers ("FDHs") conducted by the deputation in 2011, most of them had to pay placement fees up to \$21,000, which far exceeded the statutory level. ● The "two-week rule" prevented FDHs from lodging claims against employment agencies ("EAs") for overcharging of service fees or employers for wage deduction or underpayment and following through the legal process for fear of losing their jobs and being forced to return to their places of domicile. The Administration should consider abolishing the "two-week rule" and extending the stay of FDHs concerned till the conclusion of the relevant legal proceedings. ● The Administration should step up enforcement action against overcharging of fees by EAs and underpayment by employers.
2.	New People's Party	<ul style="list-style-type: none"> ● Following the Philippine Government's prohibition of collecting placement fees from FDHs in the Philippines, the placement fees of Filipino FDHs charged by EAs in the Philippines were now to be borne by FDH employers in Hong Kong, which amounted to some \$6,000 to \$8,000. ● The Administration should step up the monitoring of the operation of EAs so as to better safeguard the interests of FDH employers and help release local manpower to join the labour force. ● The Administration should consider stipulating a probation period for FDHs in the standard employment contract so as to better protect the interests of the employers.

No.	Name of deputation	Major views and concerns
3.	Helpers for Domestic Helpers (HDH) [LC Paper No. CB(2)1356/12-13(04)]	<ul style="list-style-type: none"> ● Of the average of 135 new cases lodged by FDHs to the deputation for assistance in each month, about 68% involved overcharging of agency commissions, i.e. exceeding the prescribed limit of 10% of FDHs' first month's salary for successful job placement service under the Employment Agency Regulations (Cap. 57A) ("EAR"). ● It was disappointing that the Labour Department ("LD") revoked only two EA licences in 2012 subsequent to the concerned licensee's conviction of overcharging. ● The US Department of State in the 2012 Trafficking in Persons Report highlighted the situation of FDHs in Hong Kong being subjected to debt bondage by EAs and classified it as a form of human trafficking and forced labour. The deputation called on the Administration to step up enforcement action to combat the problem and safeguard the rights of FDHs.
4.	United Filipinos in Hong Kong (UNIFIL-HK) [LC Paper No. CB(2)1356/12-13(05)]	<ul style="list-style-type: none"> ● A considerable number of Filipino FDHs paid a huge amount of service fees to EAs both in the Philippines and in Hong Kong, ranging from \$10,000 to \$15,000 and sometimes even up to \$24,000. The overcharging of service fees violated the prescribed commission under EAR. ● LD should initiate prosecution against EAs' overcharging FDHs and revoke the EA licences concerned. ● LD should initiate prosecution against those employers who sought to recover their expenditure on service fees charged by EAs by illegally deducting wages due to their FDHs.
5.	Amnesty International [LC Paper No. CB(2)1386/12-13(01)]	<ul style="list-style-type: none"> ● The Hong Kong and Indonesian governments should work together to set the maximum amount of agency fees for placing Indonesian FDHs in Hong Kong. The length of repayment schedule and interest rate should be regulated and administered by the governments. ● The Hong Kong and Indonesian governments should proactively take joint enforcement action and conduct investigation on suspected cases of overcharging by EAs. ● The Hong Kong Government should consider incorporating the International Labour Organization ("ILO") Domestic Workers Convention, 2011 (No. 189) in the local legislation and implement it in policies and practices.

No.	Name of deputation	Major views and concerns
6.	United Indonesians in Hong Kong Against Overcharging (PILAR-HK) [LC Paper No. CB(2)1356/12-13(06)]	<ul style="list-style-type: none"> ● Newly-arrived Indonesian FDHs were forced to take a loan, usually amounting to \$21,000, from financing agencies and were asked to repay \$3,000 each month for a period of seven months. As directed by EAs in Indonesia, their counterparts or employers in Hong Kong would illegally keep the personal documents, such as employment contracts or passports of these FDHs. ● The Government should review the effectiveness of the regulation of fees and commissions charged by EAs and enhance the monitoring of operation of EAs to ensure that they were operating in compliance with the law through licensing, inspection and complaints investigation. ● It was imperative for the governments of Hong Kong and FDHs' home countries to make joint efforts in combating the problem of overcharging placement fees, which should be regarded as labour trafficking.
7.	Filipino Migrant Workers' Union (FMWU) [LC Paper No. CB(2)1356/12-13(07)]	<ul style="list-style-type: none"> ● The problem of FDHs being overcharged by EAs in Hong Kong had not been effectively dealt with by the Employment Agencies Administration ("EAA") of LD. ● EAA should adopt a proactive approach to combat the malpractice of overcharging FDHs through inspections of EAs and investigations into all suspected cases, including those cases in which the FDHs concerned could not present receipts for placement fees to support their claims of overcharging. ● The deputation recommended that EAA should hold discussions with FDH associations and unions as well as non-governmental organizations ("NGOs") serving FDHs on ways to curb the illegal practice of overcharging FDHs by EAs.

No.	Name of deputation	Major views and concerns
8.	Association of Indonesian Migrant Workers in Hong Kong (ATKI) [LC Paper No. CB(2)1356/12-13(08)]	<ul style="list-style-type: none"> ● Many newly-arrived Indonesian FDHs were forced to sign loan documents, usually amounting to \$21,000, with financing agencies and were asked to repay \$3,000 monthly up to seven months. It was therefore difficult for these FDHs to support their families and themselves with a remaining wage of \$920 each month. ● As advised by EAs and agreed upon by their employers, many Indonesian FDHs received a monthly wage of around \$2,000 which was below the minimum allowable wage. ● The Administration should review the regulation of placement fees being charged on FDHs by EAs and enhance the monitoring of the operation of EAs. Appropriate action should be taken against those EAs breaching the law.
9.	Indonesian Migrant Workers Union (IMWU) [LC Paper No. CB(2)1356/12-13(09)]	<ul style="list-style-type: none"> ● Given that the Indonesian FDHs were forced to make loan repayment to EAs while working in Hong Kong, and would sometimes result in threatening and harassing both FDHs and their employers, the Administration should not take the view that overcharging and debt bondage of these workers were merely issues of concern to their home countries and own governments. ● It was high time for the Hong Kong Government to coordinate with its counterparts in Indonesia and in the Philippines in stepping up enforcement action to curb malpractices of overcharging of placement fees. ● It was recommended that the Mainland Government should sign ILO Domestic Workers Convention, 2011 (No. 189) so as to enforce the compliance with the international standards on decent work for FDHs in Hong Kong and Macao.
10.	Asia Pacific Mission For Migrants (APMM) [LC Paper No. CB(2)1356/12-13(10)]	<ul style="list-style-type: none"> ● According to a study jointly conducted by the Stanford University of USA and the University of Hong Kong, illegal collection of excessive agency fees and debt bondage arrangements among FDHs were long-lasting problems originating from FDHs' home countries and completing the process in Hong Kong. The Hong Kong Government should therefore enhance its enforcement action to tackle the problems. ● The Hong Kong Government should collaborate with NGOs serving FDHs and the relevant authorities in FDHs' home countries to tackle the problem of overcharging.

No.	Name of deputation	Major views and concerns
		<ul style="list-style-type: none"> It was recommended that the Mainland Government should sign the ILO Domestic Workers Convention, 2011 (No. 189) to ensure the application of international standards on safeguarding the fundamental rights of FDHs and regulation of EAs in Hong Kong.
11.	Mission For Migrant Workers (MFMW) [LC Paper No. CB(2)1356/12-13(11)]	<ul style="list-style-type: none"> FDHs encountered difficulties in lodging complaints against EAs with EAA, including producing supporting documents such as payment receipts and meeting the time limit of filing complaints within six months. It was disappointed that successful prosecution against EAs was yet to be seen in spite of numerous complaints filed with EAA. The Government should consider setting up a mechanism whereby EAA and organizations serving FDHs could communicate on issues of concern relating to the services of EAs.
12.	Asian Migrants' Coordinating Body (AMCB) [LC Paper No. CB(2)1356/12-13(12)]	<ul style="list-style-type: none"> FDHs were overcharged by EAs not only when they first arrived in Hong Kong but also when they renewed their contracts or changed employers. Given the withholding of FDHs' passports and employment contracts by EAs upon their arrival in Hong Kong for loan repayment arrangement, FDHs concerned became vulnerable and were discouraged from taking actions against EAs, financing agencies or employers. The Government should step up enforcement action against EAs and money-lending agencies involved in overcharging FDHs.
13.	The Bethune House Migrant Women's Refuge [LC Paper No. CB(2)1356/12-13(13)]	<ul style="list-style-type: none"> The Government should, upon completion of relevant investigations into complaints against EAs for charging service fees higher than the statutory level, strictly initiate prosecution against breaching EAs. It was recommended that FDHs, who were involved in legal proceedings in relation to overcharging of service fees, be provided with free legal services in particular when they needed legal representation.

No.	Name of deputation	Major views and concerns
14.	自由黨外傭關注組 [LC Paper No. CB(2)1433/12-13(01)]	<ul style="list-style-type: none"> ● Following the Philippine Government's prohibition of collecting placement fees from FDHs in the Philippines, such placements fees had been passed on to employers in Hong Kong. As a result, the intermediary charges had been drastically increased from some \$4,000 to the region of \$5,000 to \$10,000. ● The Government should collaborate with the relevant authorities in the Philippines in strengthening the regulatory efforts against overcharging of intermediary charges by EAs. ● Given the need of home care for the elderly and people with chronic illness in many families, it was recommended that the Government should study the viability of allowing Mainland residents, who spoke the same language and possessed same cultural background as most Hong Kong families, to carry out live-in domestic work in Hong Kong.
15.	Liberal Party [LC Paper No. CB(2)1433/12-13(02)]	<ul style="list-style-type: none"> ● FDHs had made a lot of contribution to releasing substantial labour force for the economic development in Hong Kong. ● It was unfair to FDH employers in Hong Kong to bear all intermediary charges, which was used to be equally shared with FDHs in the past, following the Philippine Government's prohibition of collecting placement fees from FDHs in the Philippines. ● The Government should consider allowing Mainland residents aged 45 or above to take up employment as live-in domestic workers in Hong Kong for a maximum period of six years so as to release the labour force from the low-middle income families.
16.	Thai Migrant Workers' Union	<ul style="list-style-type: none"> ● There were 2 000 odd Thai FDHs in Hong Kong. Similar to other FDHs, they had to pay more than \$10,000 intermediary charges prior to working in Hong Kong and many of them therefore incurred huge debt. Whenever these Thai FDHs changed employers in Hong Kong, they needed to pay some \$5,000 to \$8,000 to EAs. ● The deputation urged the Administration to regulate the operation of EAs and formulate policy on direct hiring of Thai FDHs in Hong Kong. ● The deputation strongly urged the Mainland Government to be a signatory of the ILO Domestic Workers Convention, 2011 (No. 189) so as to protect the interests of FDHs in Hong Kong.

No.	Name of deputation	Major views and concerns
17.	Union of Nepalese Domestic Workers in Hong Kong	<ul style="list-style-type: none"> ● There were 2 000 odd Nepalese FDHs in Hong Kong before the discontinuation of their entry arrangement from April 2005. Since then the number of these FDHs declined gradually. ● The Nepalese FDHs had to pay very high intermediary charges before working in Hong Kong and when they changed employers. Personal documents such as passports were withheld by EAs until they settled the debt so incurred because of the intermediary charges. ● The Government should enhance the regulation of EAs' operation and eliminate the malpractice of overcharging of intermediary charges.
18.	Hong Kong Confederation of Trade Union	<ul style="list-style-type: none"> ● Overcharging of intermediary charges by EAs was unfair to both employers and FDHs. Queries were raised about the effectiveness of the enforcement action, in particular inspections to EAs conducted by EAA. There was concern about the small number of successful prosecution cases i.e. revocation of only two EA licences in 2012. ● Difficulties had been encountered by FDHs, who had lodged claims against EAs, in producing payment receipts of excessive intermediary charges as they had not been issued with such by EAs. Also, there was concern about protection for these FDHs who might risk losing their jobs subsequent to filing claims with LD. ● It was recommended that a mechanism be set up to facilitate FDHs' recovery of the excessive intermediary charges.
19.	Support Group for HK Employers with Foreign Domestic Helper [LC Paper No. CB(2)1356/12-13(14)]	<ul style="list-style-type: none"> ● There were increasing complaints from FDH employers about the service quality of EAs and FDHs in recent years. ● A licensing scheme with merit and demerit points should be put in place to monitor and enhance the service quality of EAs. ● The intermediary charges should not be totally passed on to employers but to be shared among employers and FDHs.

No.	Name of deputation	Major views and concerns
20.	Hong Kong Federation of Asian Domestic Workers Union [LC Paper No. CB(2)1386/12-13(02)]	<ul style="list-style-type: none"> ● Both FDHs and their employers in Hong Kong were victimized by overcharging of intermediary charges. ● LD should strengthen the enforcement action against the malpractice of overcharging of intermediary charges and provide assistance to FDHs in making claims against EAs. ● The Hong Kong Government should reflect problems in relation to overcharging of intermediary charges to FDH-exporting countries.
21.	Progressive Labor Union of Domestic Workers in Hong Kong (PLU) [LC Paper No. CB(2)1356/12-13(15)]	<ul style="list-style-type: none"> ● The first phase of an action research, which was conducted by the two deputations on recruitment practices and problems confronted by Filipino FDHs, was completed in December 2012 and more than 1 500 Filipino FDHs had been interviewed. According to the survey findings, these FDHs were charged some \$14,000 and \$8,000 by EAs in the Philippines and in Hong Kong respectively. Such collection of fees was not only excessive and widespread but also breaching the laws in both places. ● The deputations had held meetings with relevant trade unions and government departments and liaised with the Consulate General of the Philippines in Hong Kong in respect of measures to be taken to tackle the problems. It was recommended that the relevant authorities in the Philippines and Hong Kong should strengthen their regulation of EAs' operation and combating efforts against overcharging and other illegal recruitment practices such as withholding personal documents of Filipino FDHs, and to review the definition of placement fees.
22.	Alliance of Progressive Labor - HK (APL-HK) [LC Paper No. CB(2)1356/12-13(15)]	
23.	Open Door [LC Paper No. CB(2)1365/12-13(01)]	<ul style="list-style-type: none"> ● The Government should monitor the operation of EAs and ensure their compliance with the law. Excessive placement fees should not be collected from either FDHs or employers. ● The Hong Kong Government should collaborate with its counterparts in FDH-exporting countries, including the Philippines and Indonesia, to take enforcement action against illegal acts committed by EAs.