

立法會
Legislative Council

LC Paper No. CB(2)870/13-14(02)

Ref : CB2/PL/MP

Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the special meeting on 21 February 2014**

Employment of foreign domestic helpers

Purpose

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

Background

2. According to the Administration, as at April 2013, there were about 315 000 FDHs in Hong Kong. Among these FDHs, about 50% came from the Philippines, 48% from Indonesia and the rest were from Thailand, India, Sri Lanka, Nepal and Pakistan, etc. While there is no legal requirement in Hong Kong that FDHs must be recruited through the intermediary service of an EA, EAs are the most common channel through which employers in Hong Kong recruit FDHs.

Regulation of EAs

3. EAs in Hong Kong, including those placing FDHs, are regulated under the Employment Ordinance (Cap. 57) and the Employment Agency Regulations (Cap. 57A) ("EAR"). Under the existing regulatory regime, all EAs are required to apply for a licence from the Labour Department ("LD") before undertaking any job placement business. EAs are only allowed to receive from FDHs the prescribed commission specified in the Second Schedule of EAR, which is no more than 10% of the latter's first month's salary for successful job

placement service. The Employment Agencies Administration ("EAA") of LD is responsible for regulating the operation of EAs providing FDH placement service through licensing, both regular and surprise inspections, complaints investigation and prosecution to ensure that they are operating in compliance with the law.

4. According to the Administration, the service charges collected from employers by EAs are not regulated under the existing regulatory regime. For employers who consider the services provided by EAs unsatisfactory or do not match with the service agreements, they can lodge a complaint with the Consumer Council and seek advice and assistance as appropriate. Furthermore, the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012, which prohibits specified unfair trade practices such as false trade descriptions of services or misleading omissions, applies to the services provided by EAs to FDH employers.

Deliberations of the Panel

Entry arrangement for FDHs

5. Given a great demand for live-in domestic workers and that FDHs had been imported to Hong Kong over the years primarily from the Philippines and Indonesia, some members expressed concern about the restrictions on the entry arrangement for FDHs from other countries such as Nepal and Vietnam as well as residents of the Mainland. Enquiries were raised about the rationale of the policy consideration, and whether the Administration would review the arrangement.

6. According to the Administration, the entry arrangement for FDHs was applicable to applicants from most countries and regions except a few, namely Afghanistan, Cambodia, Cuba, Laos, the Democratic People's Republic of Korea, Nepal and Vietnam because of immigration and security considerations. Owing to immigration control reasons, the FDH policy was not applicable to Chinese residents of the Mainland, Macao and Taiwan, whose entry must comply with the relevant immigration policies. The Immigration Department ("ImmD") regularly reviewed the visa policies, including the entry arrangement for FDHs, and introduced changes when circumstances so warranted to ensure that the policies continue to meet social needs.

7. In the light of the considerable FDH workforce in Hong Kong, some members 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.

8. The Administration advised that no prescribed limit had been set for the importation of FDHs. On the impact of FDHs on local domestic helpers, there was no conflict between the two types of employment. 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. Besides, both employers and FDHs were required to give an undertaking on the live-in requirement in the employment visa application form.

Overcharging of intermediary charges and regulation of EAs

9. Members expressed concern that some FDHs had incurred huge debts in order to meet the high level of fees and commissions charged by the intermediaries in the home countries of FDHs. Upon arrival in Hong Kong, these FDHs had to make monthly repayment for the huge debts through the local EAs. Members took the view that 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. Some members also expressed grave concern that some FDHs' passports were allegedly withheld by EAs so as to force them to make loan repayment.

10. The Administration advised 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. According to Hong Kong law, charging of commission exceeding the prescribed amount and money-lending activities were regulated under EAR and the Money Lenders Ordinance (Cap. 163) respectively. FDHs could file claims with LD, so that LD would effectively conduct investigation upon receipt of the

overcharging or malpractices complaints. In 2012, EAA received 44 complaints against overcharging by 37 EAs.

11. The Administration further 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 Hong Kong Police Force for follow-up. EAA, the Police and ImmD would regularly conduct joint operations to ensure that EAs were operating in compliance with the law.

Arrangements for FDHs whose employment contracts were prematurely terminated

12. Some members expressed concern that 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 termination notice and free passage back to their places of domicile. However, FDHs concerned had not 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. To protect the interests of FDH employers and prevent job-hopping of FDHs, some members held a strong view that the Administration should strictly enforce the requirement of FDHs' returning to their places of domicile within two weeks of the termination or expiry of employment contracts (i.e. the two-week rule) before they could submit fresh employment visa applications.

13. The Administration explained that under the existing policy, FDHs were required to leave Hong Kong upon completion of their contract or within two weeks from the date of termination of their contract, whichever was earlier. Application by FDHs for change of employer within their two-year contract in Hong Kong would not normally be approved except under exceptional circumstances, e.g., if the FDH's contract was terminated on grounds of the transfer, migration, death or financial reasons of the ex-employer, or if there was evidence suggesting that the FDH had been abused or exploited. If the FDH wished to enter into an employment contract with a new employer, he/she had to leave Hong Kong and submit a new employment visa application to ImmD. In assessing application for change of employer after premature contract termination, ImmD would ensure that the FDH concerned had departed Hong Kong before an employment visa would be issued. The Administration pointed out that in the light of the strong demand of local families for FDHs, ImmD often received employers' requests to expedite processing of their FDHs'

employment visas. On the other hand, FDHs whose previous contracts had been terminated owing to various reasons also wished to resume employment as soon as possible to make ends meet. As a measure to facilitate both parties, ImmD adopted a flexible approach in handling the requirement imposed on FDHs that they had to return to their places of domicile upon termination of their contract.

14. Members were assured that ImmD was concerned about possible abuse of premature contract termination arrangement by FDHs, and had adopted a corresponding measure to address the issue by fortifying the assessment of employment visa applications of FDHs who changed employers repeatedly. Under the new measure, ImmD would, in assessing employment visa applications of FDHs, closely scrutinise their case details, such as the number of and reasons for premature contract termination within 12 months, with a view to detecting any abuse of the arrangements for premature contract termination. ImmD would refuse an application in case of suspected abuse. Also, if it was discovered that the premature contract termination was due to the employer's non-compliance with contractual terms or abuse/exploitation of FDHs, future applications for employment of FDHs from these employers would be refused.

15. In respect of members' concern 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, the Administration advised that as stipulated under Clause 7 of SEC, FDH employers were required to provide their FDHs with free passage from Hong Kong to their places of origin 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 to ensure FDHs' smooth return to their home countries upon completion or premature termination of contracts. Otherwise, FDHs concerned might be stranded in Hong Kong owing to the lack of means to travel. Both contracting parties were required to comply with the terms of SEC, and any agreements to vary the contract terms which might affect the employment rights and benefits of either party would not be effected. The Administration had no plan to change the policy.

16. Members were further advised that the contract did not specify the means which the return passage should be provided, i.e. employers and their FDHs could agree mutually on whether to provide cash or air ticket for the latter to return from Hong Kong to their places of domicile upon termination or expiry of the contract. Employers were, however, encouraged to provide an air ticket to the FDH concerned as far as practicable. To further protect their interests, employers and FHDs should keep the payment receipt of the air ticket as documentary proof.

Relevant papers

17. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
14 February 2014

Appendix

Relevant papers on foreign domestic helpers

Committee	Date of meeting	Paper
Panel on Manpower	18.6.2013 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower		<u>LC Paper No. CB(2)1851/12-13(01)</u>
Legislative Council	3.7.2013	<u>Official Record of Proceedings</u> <u>(Question 6)</u> <u>(Question 18)</u>
Legislative Council	12.2.2014	<u>Official Record of Proceedings</u> <u>(Question 17)</u>

Council Business Division 2
Legislative Council Secretariat
14 February 2014