

## STUDENTS AGAINST FEES AND EXPLOITATION (S.A.F.E.)

### Submission by S.A.F.E to the Legislative Council Bills Committee on Employment (Amendment) (No.2) Bill 2017

#### INTRODUCTION

The proposed Employment (Amendment) No.2 Bill (**Amended EO**) is a welcomed and important step toward improving Hong Kong's tarnished international reputation. We at Students Against Fees and Exploitation (**S.A.F.E.**) applaud the Labour Department (**LD**) and Employment Agencies Administration (**EAA**) for increasing penalties against Employment Agencies (**EAs**) and creating the Code of Practice (**COP**) for the EA industry.

However, there has been a major oversight in the drafting of the Amended EO, which if not corrected would make the Amended EO and COP almost impossible to enforce. The Amended EO failed to include a specific time limit for legal claims against offending EAs. This is a major problem that must be remedied prior to approval of the Amended EO. ***Failure to remedy this would seriously jeopardize the enforceability of the Amended EO and COP, meaning a huge waste of HK taxpayer money, a huge waste of LD/EAA manpower and resources, and continued negative scrutiny from the international community.***

Claims against EAs based on violations of the Code of Practice, the Amended EO, or the terms of their EA licensing should carry time limitations. ***The EO (including the current draft of the Amended EO) does not include such a time limit provision, and as a result most claims against EAs are only allowed if submitted within 6 months from the time of the offense.*** This is not enough time for most claims. In fact the LD and EAA have identified this short time limit as one of the largest impediments to enforcing claims against illegal EA behavior.

We are submitting this proposal to help ensure that the Amended EO and COP are actually enforceable. Otherwise, there is little point to enacting them into law.

#### RECOMMENDATIONS

We recommend further amendments to the Amended EO as follows:

1. Including a time limit for claims against EAs for overcharging and other infractions against domestic workers; and
2. Granting the LD/EAA the authority to investigate EAs so that they can actually uncover and prosecute illegal EA behavior.

## **INTRODUCTION TO S.A.F.E.**

### **1.1 Introduction to S.A.F.E.<sup>1</sup>**

Students Against Fees and Exploitation is a student-run initiative that works to address illegal EA practices in Hong Kong. S.A.F.E. has been gathering evidence of illegal EA practices since October 2016 via undercover investigations. Over the past year, we have investigated hundreds of EAs in Hong Kong and have found that over 70% of agencies operate illegally. They do so by overcharging Foreign Domestic Workers (**FDWs**), withholding personal identity documents, or abusing the laissez faire regulatory environment through illegal loans, chop renting, undisclosed kickbacks, and other black-market activities.

### **1.2 Why students in HK are taking the time and effort to focus on this issue**

As young Hong Kongers, we are shocked and frustrated to learn that Hong Kong, as one of the most developed cities in Asia, is incapable of combating illegal EA practices. S.A.F.E. is genuinely concerned for the future of Hong Kong. Here are a few of the reasons we are particularly concerned:

- The EA industry in Hong Kong represents Hong Kong's **largest black market**. As such, it is responsible for more than **HK\$700,000,000** in stolen income every year. With over 1,200 in total, there are more FDW EAs in Hong Kong than there are *McDonald's, 7-11s, and Starbucks combined!* When surveyed, over 70% of Hong Kong people said they believe the EA industry should be regulated and monitored more strictly.
- **This is embarrassing** and damaging. HK's reputation for rule of law and justice is being severely tarnished. In the 2017 US Trafficking in Persons Report Hong Kong remained a tier 2 watch country,<sup>2</sup> one of the lowest categories. And in the 2016 Global Slavery Index<sup>3</sup> HK is ranked on par with North Korea and Iran! As young Hong Kongers, we do not want to be known worldwide as a slave state where human rights are disregarded.
- **HK's economic future** depends on ethical access to migrant workers. Our population is

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<sup>1</sup> For more information on S.A.F.E., please see [www.facebook.com/SafeHongKong2017](http://www.facebook.com/SafeHongKong2017) or [safehongkong.wixsite.com/safe](http://safehongkong.wixsite.com/safe)

<sup>2</sup> U.S. Department of State, 2017 Trafficking in Persons Report, (at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271202.htm>) (accessed 23 September 2017).

<sup>3</sup> Niall Fraser, "Hong Kong government spokesman rejects findings of modern slavery report," *South China Morning Post*, 31 May 2016, accessed 23 September 2017.

aging rapidly, and we need more workers to take care of our elderly. Domestic workers account for over 10% of Hong Kong's working population, and over 50% of HK's dual income families employ domestic workers. As a result, FDWs in Hong Kong account for a greater amount of HK's GDP than the food & beverage and construction industries combined. If we cannot find a stable supply of quality workers, Hong Kong's economy is going to crumble.

- **Hong Kong's middle class women** directly benefit from migrant workers. If we do not treat these workers fairly, it will have a devastating impact not only on HK's future economy but on the lives of millions of these Hong Kong women. We have a legitimate fear of losing access to these workers. Firstly as abuse has caused several countries to stop sending their workers here. Secondly, increased competition from other countries means that the best workers are going to stop coming to HK. For example, FDWs from the Philippines can now legally work in China's Tier 1 cities, where they earn more than double the minimum wage paid in HK. New laws have also legalized special care visas in Japan and New Zealand. If Hong Kong wants to continue to get quality care workers for an affordable rate, we have to regulate this industry much more strictly and actively. Accordingly, we need to enforce the existing laws that are in place in Hong Kong.
- Most importantly, **this is a very solvable problem**. The HK government has already taken several steps to improve the situation. With improved enforcement, and some slight amendments to existing laws, this problem could cease to exist in a very short amount of time. But it will require real, sustained commitment from the HK government.

### **S.A.F.E. INVESTIGATION RESULTS: OVER 70% OF AGENCIES IN HK ACTING ILLEGALLY**

2.1 S.A.F.E. conducted a series of undercover EA investigations over 7-months and found that **more than 70% of Hong Kong EAs overcharged FDWs** by up to 13 times of the statutory ceiling.<sup>4</sup> The investigation also revealed that these agencies also withhold passports or engage in other illegal practices.<sup>5</sup> So while we like to state that this is an overseas problem that we cannot control, the reality is that this is happening right here in Hong Kong.

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<sup>4</sup> Legislative Council, "LCQ21: Problems relating to foreign domestic helpers being debt-ridden and overcharged by intermediaries for foreign domestic helpers," 24 May 2017, accessed September 13, 2017, <http://www.info.gov.hk/gia/general/201705/24/P2017052400645.htm>.

<sup>5</sup> See n 2 above. See also "70% of employment agencies overcharge domestic helpers," *EJ Insight*, May 11, 2017, accessed September 13, 2017, <http://www.ejinsight.com/20170511-70-of-employment-agencies-overcharge-domestic-helpers/>.

2.2 According to the LD, the EAA conducted 1,816 EA inspections between January 2016 and May 2017. And yet, after using so much time and taxpayer resources, only 13 EAs were convicted and only five lost their licenses. The highest penalty against an EA during that period was a mere HK\$30,000,<sup>6</sup> with most fines being less than \$10,000. According to our research, no EA has ever been charged the current maximum penalty of \$50,000 for illegal behavior.

2.3 We find it both embarrassing and telling that our group of unsophisticated students could find so much illegal EA activity in just seven months. ***Although the staff at the EAA work very hard, their inspections are ineffective and do not uncover the rampant illegal behavior that exists in the majority of agencies in Hong Kong.*** In conducting our 7 month investigation, we learned that EAs are completely unafraid of the LD/EAA and are engaging in illegal behavior openly, without any fear of reprisal. They do not hide in the back or muffle their voices when asking for illegal fees; on the contrary, they sit at their desks within earshot of anyone in the room, demanding illegal fees. Yet, the LD, EAA, and other HK government entities merely waste their own time and millions of dollars in taxpayer resources, conducting perfunctory and administrative inspections rather than engaging in useful investigative practices.

This is embarrassing and must stop. If done correctly, the Hong Kong government **could have many times more impact with a fraction of the cost** if they coordinated their efforts and changed the way the EAA conducted its inspections.

## **CONCLUSION**

The Amended EO needs to contain a specific time limit concerning EA illegality, or it will largely be unenforceable. Before LegCo considers passing this amended bill, please consider correcting the LD's mistake and add a time limit to the bill. Without such a time limit, the new penalties against EAs are largely meaningless.

Students Against Fees and Exploitation (S.A.F.E.) has made this submission to the Legislative Council Bills Committee as we recognize the wealth of opportunities available to redefine the FDW industry in Hong Kong for the better. So we ask you - are you going to standby and allow

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<sup>6</sup> Raquel Carvalho, "Sevenfold increase in fines proposed for those overcharging domestic helpers in Hong Kong," *South China Morning Post*, June 25, 2017, accessed September 13, 2017, <http://www.scmp.com/news/hong-kong/law-crime/article/2099840/seven-fold-increase-fines-proposed-those-overcharging?edition=hong-kong>.

these issues to persist, to the detriment of our people, our economy, and our international reputation? Or are you going to take notice of this plague and make long-lasting changes for the better? It is now down to you, LegCo. We as Hong Kong people are waiting.

Prepared By:

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