

**立法會**  
**Legislative Council**

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LC Paper No. CB(2)2177/16-17  
(These minutes have been seen  
by the Administration)

**Bills Committee on Employment (Amendment) (No. 2) Bill 2017**

**Minutes of the first meeting  
held on Friday, 21 July 2017, at 4:30 pm  
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon KWOK Wai-keung, JP (Chairman)  
Hon Paul TSE Wai-chun, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon POON Siu-ping, BBS, MH  
Dr Hon CHIANG Lai-wan, JP  
Hon Andrew WAN Siu-kin  
Hon HO Kai-ming
- Members absent** : Hon WONG Ting-kwong, GBS, JP  
Dr Hon Elizabeth QUAT, BBS, JP  
Dr Hon Junius HO Kwan-yiu, JP
- Public Officers attending** : Ms Queenie WONG Ting-chi  
Assistant Commissioner for Labour (Policy Support)
- Ms Fronde LUI Wai-fong  
Senior Labour Officer (Employment Agencies  
Administration)  
Labour Department
- Ms Alice YEUNG Lai-shan  
Senior Administrative Officer (Policy Support)  
Labour Department
- Mr Alan CHONG Ka-ning  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Ms Joanne MAK  
Chief Council Secretary (2) 3

**Staff in attendance** : Mr Alvin CHUI  
Assistant Legal Adviser 3  
  
Ms Rita LAI  
Senior Council Secretary (2) 1  
  
Mrs Fanny TSANG  
Legislative Assistant (2) 3

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Action

**I. Election of Chairman**

Mr KWOK Wai-keung was elected Chairman of the Bills Committee. Members agreed that the election of Deputy Chairman was not necessary.

**II. Meeting with the Administration**

[LC Paper Nos. CB(3)689/16-17, LS84/16-17, CB(2)1939/16-17(01), CB(2)1940/16-17(02) and LDCR/5/15/706]

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration

Admin 3. The Administration was requested to provide written response to the following issues raised by members before the next meeting:

- (a) whether websites providing job referral service and which operated on the Internet only and were based outside Hong Kong were governed by Hong Kong laws;
- (b) to explain the meaning of the expression "other similar officer of the company" as set out in paragraph 7 of the Legislative Council brief on the Bill;
- (c) to provide information on the relevant enforcement guidelines to explain the approach for the enforcement work against non-compliance with the Code of Practice for Employment Agencies

("EAs"), particularly for cases of EAs withholding foreign domestic helpers' passports; and

- (d) to consider the need for specifying "婦女" in the existing section 53(1)(c)(ii) of the Employment Ordinance.

Invitation of public views

- Clerk 4. Members agreed to receive public views on the Bill at the next meeting to be held in October 2017. A notice to invite views from the public would be posted on the Legislative Council's website. In line with the usual practice, the 18 District Councils would also be invited to submit views.

*(Post-meeting note: The next meeting of the Bills Committee was subsequently scheduled for 13 October 2017 at 10:45 am.)*

**III. Any other business**

5. There being no other business, the meeting ended at 6:03 pm.

Council Business Division 2  
Legislative Council Secretariat  
6 October 2017

**Proceedings of the first meeting of the  
Bills Committee on Employment (Amendment) (No. 2) Bill 2017  
on Friday, 21 July 2017, at 4:30 pm  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
000455 - 000759	Mr KWOK Wai-keung Mr HO Kai-ming Mr POON Siu-ping Dr Fernando CHEUNG	Election of Chairman	
000800 - 001548	Chairman Administration	Opening remarks by the Chairman  Briefing by the Administration on the Employment (Amendment) (No.2) Bill 2017 ("the Bill").	
001549 - 002202	Chairman Mr POON Siu-ping Administration	<p>Mr POON Siu-ping supported the legislative proposals in principle. He enquired whether non-profit-making bodies, such as labour unions or training centres providing placement services were within the meaning of employment agencies ("EAs") for the purpose of the Bill.</p> <p>The Administration explained that the Bill was applicable to all EAs in Hong Kong as defined under section 50(1) of the Employment Ordinance (Cap. 57) ("EO") and non-profit-making bodies providing placement services which were operating with a certificate of exemption issued by the Commissioner for Labour ("C for L") pursuant to Part XII of EO and the Employment Agency Regulations ("Cap. 57A")("EAR"). As the relevant non-profit-making bodies would not charge job-seekers with commission, it was believed that the impact of the Bill on them would be minimal.</p> <p>Mr POON requested the Administration to explain the extension of the scope of the overcharging offence under section 57(a) of EO to certain persons associated with the licensee ("the associates").</p> <p>The Administration advised that the associates would include the management of EAs, that was to say, in the case of an EA being a company, any director, manager, secretary, or other similar officer of the company; or in the case of an EA being a partnership, any partner and any other person concerned in the management of the partnership. The persons employed by EAs would also be covered. The overcharging offence also covered a person purporting to act as a licensee or an associate of a licensee. The Administration advised that</p>	

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		<p>prosecution would be instituted against the licensee or associates concerned subject to whether there was sufficient evidence.</p>	
002203 - 002733	<p>Chairman Dr Fernando CHEUNG Administration</p>	<p>Dr Fernando CHEUNG welcomed the Bill which, in his view, had incorporated suggestions for amendments from relevant stakeholders.</p> <p>Dr CHEUNG expressed concern about the effectiveness of tackling EAs withholding passports of foreign domestic holders ("FDHs") under the Theft Ordinance (Cap. 210) ("TO"), having regard to the fact that a FDH might have given consent to an EA to keep her passport for processing necessary documents, but the latter subsequently did not return the passport to the FDH. In the circumstances, withholding of the passport by the EA might not be regarded as "theft" which was usually defined as obtaining personal belongings without the owner's consent. He called on the Administration to draw reference to the relevant legislation of Singapore which provided for a specific offence and penalty to cater for such malpractice of withholding FDHs' passports by EAs.</p> <p>The Administration responded that paragraph 3.11 of the Code of Practice for EAs ("the Code") stated that an EA or any other person withholding the personal property of FDHs, such as their passports, without their explicit consent might constitute an offence under TO. As provided by the Bill, non-compliance with the Code by the licensee and/or associates would be a ground which C for L could refuse to issue or renew, or revoke a licence under section 53(1)(c)(iva), (d)(iii) and (e)(ii) of EO. In addition, the Administration had stepped up publicity and educational efforts in relation to the employment of FDHs. For example, the Labour Department ("LD") had published a "Do's and Don'ts" leaflet for FDHs, employers and EAs on their respective rights and obligations under EO ("the Leaflet").</p>	
002734 - 003258	<p>Chairman Mr Andrew WAN Administration</p>	<p>Mr Andrew WAN expressed support for the Bill and the above suggestion of Dr Fernando CHEUNG. Mr WAN expressed worry that a FDH might be asked by an EA to sign a document authorizing the EA to withhold her passport for the purpose of borrowing money from financial institutions through the EA. Mr WAN expressed concern on how such malpractices could be addressed by the Code.</p> <p>The Administration advised that the Code already stated that EAs should avoid involving in financial affairs of job-seekers. They should not advise, arrange, encourage or force job-seekers to take out loans from any financial institutions or individuals. They should not help any other persons,</p>	

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		<p>organizations or companies (including recruiting agents or intermediaries located in or outside Hong Kong) to collect fees for arranging FDHs concerned to come to Hong Kong, or training fees for any local or overseas recruiters, agents or training centres, etc. Upon receipt of relevant complaints from FDHs, LD would initiate prompt investigation as appropriate. C for L might exercise his power to revoke an EA licence if he had reasonable grounds to be satisfied that the licensee failed to comply with the Code. As regards the suggestion of creating a specific offence to cater for the withholding of FDHs' passports by EAs, the Administration advised that this might entail other issues such as difficulty in producing evidence.</p> <p>In response to Mr WAN's enquiry, the Administration undertook that it would closely monitor the implementation of the Code and consider conducting a review about 18 months or two years after its implementation.</p>	
003259 - 003808	Chairman Dr CHIANG Lai-wan Administration	<p>Dr CHIANG Lai-wan expressed concern about the protection of rights of FDHs' employers such as against job-hopping of FDHs arranged by EAs. She asked whether the situation had improved following the implementation of the Code.</p> <p>The Administration advised that, as stated in the Code, for the purpose of protecting the interest of employers as well as EAs and to avoid misunderstanding on the services to be provided by EAs, it was necessary to draw up a service agreement between the EA and the employer, which should be agreed by both parties. The service agreement should list out the service terms and scope as well as the fees (if any) that would be charged by EAs for the services, including whether refund or change of FDH would be available in case the EA services were not fully delivered. FDHs' employers who considered the services provided by EAs unsatisfactory or failed to meet the requirements of the service agreements could lodge complaints with LD. C for L would consider revoking or refusing to renew licences of EAs concerned as appropriate. Furthermore, the Immigration Department had since 2013 strengthened the assessment of employment visa applications of FDHs who changed employers frequently so as to curb job-hopping of FDHs.</p> <p>Dr CHIANG further enquired whether Indonesian domestic helpers still had to pay a large amount of intermediary and training fees in Indonesia, thus incurring heavy debts before taking up employment in Hong Kong. The Administration responded that it had all along maintained contact with the Indonesian Government and would continue to convey the relevant concerns to the Indonesian Government.</p>	

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003809 - 004336	Chairman Administration	<p>The Chairman expressed concern that under the proposal of extending the scope of the offence of overcharging job-seekers to associates in addition to the licensee, an EA staff member might be arranged to stand in for the licensee as the culprit. The Administration explained that staff members concerned should come forward as prosecution witnesses for the overcharging behavior of the licensee. LD would collect evidence and consider whether to initiate prosecution against the licensee or the management instead of individual staff members, having regard to the evidence.</p> <p>The Chairman enquired how the Administration could raise FDHs' awareness of their rights and entitlements when working in Hong Kong as well as the contents of the Code.</p> <p>The Administration advised that LD had been organizing various publicity activities for FDHs with a view to raising the awareness of their rights and obligations, and the channels for seeking assistance where necessary. Information packs were distributed to newly-arrived FDHs through a non-governmental organization at the Airport to ensure that FDHs were aware of their rights right from their arrival. Information kiosks were staged at popular gathering places of FDHs including the Victoria Park during rest days, screening publicity videos and distributing information packs. Since June 2014, LD had joined the regular briefings organized by the Consulates General ("CG") of the FDH-sending countries for newly-arrived FDHs to provide them with information on their employment rights and channels for seeking redress while working in Hong Kong. LD had also launched a dedicated website for FDHs so that they could have access to employment-related information in the major mother languages of FDHs before they arrived in Hong Kong. To help the public gain access to information relating to regulation of EAs, LD launched a one-stop Employment Agencies Portal in January 2017. The Portal contained useful reference materials and publications, including the Code and press releases on cases of successful prosecutions, revocations and refusal of renewal of EAs licences, etc.</p>	
004337 - 004914	Chairman Mr Paul TSE Administration	<p>Mr Paul TSE enquired whether websites providing part-time domestic helper/casual worker referral service fell within the definition of an EA.</p> <p>The Administration advised that according to section 50(1) of EO, EA meant a person who operated a business which aimed at obtaining employment for another person, or supplying personnel to an employer and there existed an employer-employee relationship. LD staff would regularly conduct online checking, including mobile applications, as</p>	

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		<p>appropriate and remind relevant persons to comply with the legal requirements and apply for an EA licence from LD before they could operate any business of employment service in Hong Kong. Mr TSE requested the Administration to confirm in writing whether websites for job-seekers which operated on the Internet only and were based outside Hong Kong were governed by Hong Kong laws.</p>	<p><b>Admin</b> (paragraph 3 of minutes)</p>
004915 - 005749	<p>Chairman Dr Fernando CHEUNG Administration</p>	<p>Dr Fernando CHEUNG reiterated his concern about the effectiveness of tackling EAs withholding FDHs' passports under TO and that it would only be subject to C for L's discretion to revoke or refuse to renew licences of EAs concerned for non-compliance with the Code. He considered that creating a specific offence as suggested earlier could achieve a greater deterrent effect. He also enquired whether the Code was made available in the various mother languages of all FDHs in Hong Kong.</p> <p>The Administration responded that the Code was available bilingually for the reference mainly by EAs and employers while more easy-to-understand publicity materials would be prepared for FDHs. It would take note of Dr CHEUNG's suggestion of translating the Code into the various ethnic languages of FDHs and conduct a study on it as appropriate.</p> <p>Dr CHEUNG expressed concern that the Administration's efforts in enhancing FDHs' awareness of employees' rights and entitlements through participating in the briefings organized by relevant CG were inadequate as such briefings were mainly held for FDHs from the Philippines and Indonesia. He enquired whether the Administration would conduct its own similar briefings and target FDHs from other places of origin as well.</p> <p>The Administration responded that it had also approached other relevant CG to indicate its intention to participate in similar briefings if organized. In addition, the Administration had staged information kiosks for FDHs from Thailand. Moreover, the Administration had approached relevant CG for their assistance in the translation of employment-related information on the website for FDHs. FDHs could also call LD's 24-hour hotline for enquiries.</p>	
005750 - 010534	<p>Chairman Mr Andrew WAN Administration</p>	<p>Mr Andrew WAN expressed concern about the manpower resources necessary for taking more stringent enforcement action against EAs after passage of the Bill. The Administration advised that LD had since 2014-2015 increased manpower and conducted more inspections to EAs by increasing the target inspections of EAs per year from 1 300 to 1 800. LD would review the manpower</p>	



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		<p>requirements for the regulation of EAs from time to time and would bid additional resources as necessary.</p> <p>Mr WAN expressed concern on how stringent the enforcement work would be against withholding of FDHs' passports by EAs, e.g. whether the licence would be revoked once a complaint was substantiated. The Administration advised that if there was sufficient evidence that an EA deliberately withheld a FDH's passport in breach of the Code, it would not tolerate and would take stringent enforcement action. In this connection, LD had drawn up enforcement guidelines for staff's reference.</p>	
010535 - 011437	Chairman Dr CHIANG Lai-wan Administration	<p>Dr CHIANG Lai-wan enquired whether it would be feasible to require a licensee of an EA to operate the business in an individual capacity, having regard to the difficulties in taking out prosecution against a law-defying licensee or associates who could hide behind the veil of a limited company. Dr CHIANG considered that the licensee of an EA run as a limited company could argue that he/she was not in the know during the process of overcharging job-seekers.</p> <p>The Administration explained that according to regulation 7 of EAR, a company to which a licence was issued should notify C for L in writing of the name of the person appointed by the company to operate, manage, or assist in the management of, the EA to which the licence related. The person so appointed was referred to as "nominated operator", who had the responsibility and was fully accountable for the operation of his/her EA, and he/she was required to closely supervise all of his/her staff, or otherwise C for L might refuse to renew or revoke the licence of the concerned EA.</p>	
011438 - 011710	Chairman Mr Paul TSE Administration	<p>Mr Paul TSE sought clarification as to the meaning of "other similar officer of the company" in respect of the associates to be covered in the scope of the overcharging offence as set out in paragraph 7 of the Legislative Council brief on the Bill and enquired whether there were any relevant case examples illustrating the meaning of the term.</p> <p>The Administration explained that "other similar officer of the company" generally referred to persons performing management functions in a company, which was also used in section 64B of EO. As requested by Mr TSE, the Administration agreed to provide further explanation on the term.</p>	<b>Admin</b> (paragraph 3 of minutes)
011711 - 012045	Chairman Administration	At the request of the Chairman, the Administration agreed to provide information on the content of the enforcement guidelines to address members' concern about the enforcement approach.	<b>Admin</b> (paragraph 3 of minutes)

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012046 - 012714	Chairman Dr Fernando CHEUNG Administration	<p>Dr Fernando CHEUNG considered it imperative that FDHs should be provided with information on employees' rights and entitlements when working in Hong Kong. He suggested that the Administration should organize the relevant briefings for all FDHs.</p> <p>The Administration responded that it had stepped up the publicity and educational efforts in enhancing FDHs' awareness of their rights and entitlements when working in Hong Kong. These included participation in the briefings organized by relevant CG for FDHs, publication of the Leaflet and the setting up of a dedicated website for FDHs. As a matter of fact, LD also organized briefings for FDHs on employees' entitlement when working in Hong Kong. The Administration would continue its work in such direction.</p> <p>Dr CHEUNG enquired about the feasibility of prohibiting convicted licensee of EAs from taking part in the promotion, formation or management of another EA for a certain period of time. The Administration advised that, consequential to the extension of the scope of the overcharging offence to the associates of a licensee under the legislative proposals, if a licensee, a related person of the licensee or an individual employed by the licensee had contravened any provision of Part XII of EO, C for L might refuse to issue or renew a EA licence to him/her.</p>	
012715 - 013324	Chairman Dr CHIANG Lai-wan Administration	<p>Dr CHIANG Lai-wan enquired whether the legislative proposals could address the situation that EAs might collect various fees and charges, such as training fee, from FDHs other than commission for placement.</p> <p>The Administration responded that EAs had to strictly observe the requirements under section 57 of EO that EAs should not, directly or indirectly, receive from job-seekers, including FDHs, reward of any kind, or any payment or advantages in respect of expenses or otherwise, except the prescribed commission. In addition, the Code also set out that EAs should not be involved in financial affairs of job-seekers, including helping any other persons, organizations or companies (including recruiting agents or intermediaries located in or outside Hong Kong) to collect fees for arranging FDHs concerned to come to Hong Kong, or training fees for any local or overseas recruiters, agents or training centres, etc.</p> <p>Dr CHIANG enquired whether major shareholders of a company were regarded as associates under the Bill. The Administration explained that the objective of expanding the scope of the overcharging offence was to target personnel who might be involved in the management of the company.</p>	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s) / Discussion</b>	<b>Action required</b>
013325 - 013627	Chairman Mr Paul TSE Administration	With reference to clause 5 of the Bill, Mr Paul TSE requested the Administration to consider the need for specifying "婦女" under section 53(1)(c)(ii). The Administration agreed to consider Mr TSE's suggestion.	<b>Admin</b> (paragraph 3 of minutes)
013628 - 013648	Chairman	Invitation of public views on the Bill  Date of next meeting  Closing remarks	

Council Business Division 2  
Legislative Council Secretariat  
6 October 2017