

立法會
Legislative Council

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LC Paper No. CB(2)481/17-18
(These minutes have been seen
by the Administration)

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

**Minutes of the second meeting
held on Friday, 13 October 2017, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

- Members present** : Hon KWOK Wai-keung, JP (Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, BBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon Andrew WAN Siu-kin
Dr Hon Junius HO Kwan-yiu, JP
Hon Jeremy TAM Man-ho
- Members absent** : Hon Paul TSE Wai-chun, JP
Hon HO Kai-ming
- 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 CHEUNG Hoi-shan
Senior Administrative Officer (Policy Support)
Labour Department
- Mr Alan CHONG Ka-ning
Senior Government Counsel
Department of Justice

Mr Henry CHAN Ngai-him
Senior Government Counsel
Department of Justice

Attendance by Invitation : Democratic Alliance for the Betterment and Progress of Hong Kong

Mr NGAN Man-yu
Deputy Spokesperson on Manpower of DAB

The Civic Party

Mr Warren TAM Ka-chun
District Developer of the New Territories East

Justice Centre Hong Kong

Miss Annie LI Man
Research and Policy Officer

Labour Party

Mr KWOK Wing-kin
社區幹事

社區及院舍照顧員總工會

Ms CHUNG Wai-ling
Chairman

社會福利機構員工會

Mr CHENG Ching-fat
Representative

Mr David BISHOP

Thai Migrant Workers' Union

Mrs Parichat JAROENNON
Vice Chairperson

Hong Kong Federation of Asian Domestic Workers
Unions

Mr TANG Kin-wa
Organizing Secretary

LEFT21

Mr CHOW Nok-hang
Member

Fair Employment Agency

Mr Scott Andrew STILES
CEO & Co-Founder

Mission For Migrant Workers

Miss TONG Hiu-yan
Community Relations Officer

HELP for Domestic Workers

Ms Holly ALLAN

Students Against Fees And Exploitation

Miss Kathleen Mae MAGRAMO
Member

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

Action

I. Application for late membership

[LC Paper Nos. CB(2)2173/16-17(01) and CB(2)58/17-18(01)]

Members accepted the applications for late membership from Mr Jeremy TAM and Mr Dennis KWOK.

II. Meeting with deputations and the Administration

[LC Paper Nos. CB(2)2174/16-17(01) to (02), CB(2)1940/16-17(01), 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**).

3. The Bills Committee received oral representations from 14 deputations/individual attending the meeting. Members also noted that five organizations/individual not attending the meeting had provided the Bills Committee with written submissions. Major views of the deputations/individual are summarized below:

- (a) deputations/individual in general supported the legislative proposals to strengthen the regulation of employment agencies ("EAs"), including introduction of heavier penalties for overcharging job-seekers on commissions;
- (b) there was concern about the manpower resources necessary for taking more stringent enforcement action against EAs after the passage of the Bill;
- (c) consideration should be given to addressing certain malpractices of EAs under the legislative proposals, including withholding passports of foreign domestic helpers ("FDHs") for the purpose of borrowing money from financial institutions through EAs and EAs' involvement in financial affairs of job-seekers; and
- (d) at present, the offence of overcharging commissions from job-seekers was not an indictable offence but a summary offence. It was subject to a six-month time bar (hereafter referred to as "the time bar") under Section 26 of the Magistrates Ordinance (Cap. 227)("MO"). The Labour Department ("LD") could not handle complaints made by victims of overcharging upon the lapse of the time bar. It was recommended that the time bar should be removed.

4. In response to the views of deputations/individual, Assistant Commissioner for Labour (Policy Support) made the following points:
- (a) the Administration welcomed the support for the legislative proposals to strengthen the regulation of EAs, including imposing heavier penalties for overcharging commissions from job-seekers and expanding the scope of application of the overcharging offence. Regarding the concern on prosecution, based on past experience, it was more that prosecution had not been initiated against EAs owing to insufficient evidence or unwillingness of FDHs concerned to act as prosecution witnesses. There was also the restriction that only the licensee of EA could be held liable for the overcharging offence under the existing provisions but in practice it was the staff who would have money dealings with job-seekers. In other words, the licensee might argue that he/she was not in the know or had no gain during the process and escaped from criminal liability. To facilitate the prosecution work, the Administration proposed to extend the scope of the overcharging offence to cover certain persons associated with the licensee ("the associates") so as to enhance the deterrent effect;
 - (b) the Administration would continue to enhance the support and protection for FDHs with a view to maintaining Hong Kong as an attractive place for FDHs;
 - (c) 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 the Theft Ordinance (Cap. 210). As a matter of fact, the licence of an EA which was found withholding the passports of job-seekers without reasonable excuse had been revoked in 2017. This would be further reinforced under the Bill, where non-compliance with the Code by the licensee and/or the associates would be a ground which the Commissioner for Labour could refuse to issue or renew, or revoke a licence under the proposed section 53(1)(c)(iva), (d)(iii) and (e)(ii);
 - (d) in respect of safeguarding the rights of job-seekers and their employers, the Code stated that in their commercial practices, EAs must not deploy against consumers unfair trade practices prohibited by the Trade Descriptions Ordinance (Cap. 362). Moreover, as stated in the Code, for the purpose of protecting the interests of employers as well as job-seekers, EAs should draw up a service

agreement with job-seekers and their employers respectively. EAs should also provide receipts for any payments received from job-seekers and employers as soon as practicable. For ease of reference by job-seekers including FDHs and their employers, LD had provided some sample service agreements and payment receipts in the Appendices of the Code;

- (e) LD had since 2014-2015 increased manpower and conducted more inspections to EAs by increasing the number of target inspections of EAs per year. LD would continue to monitor the manpower requirements for the regulation of EAs and would bid additional resources as necessary; and
- (f) FDHs could lodge complaints against EAs in writing should they have difficulties in filing complaints in person. The Employment Agencies Administration of LD would duly follow up on the complaints.

Follow-up actions required of the Administration

- Admin 5. The Administration was requested to provide an overall summary of response to the views and issues raised at the meeting, including the following:
- (a) information on how the Administration could plug the loophole in respect of FDHs being arranged by EAs in Hong Kong to take out loans from financial institutions and making repayment of loans to relevant EAs in their home countries;
 - (b) given the proposal of imposing heavier penalties for overcharging job-seekers on commissions and the two-week rule of the immigration policy for FDHs,
 - (i) consideration be given to making the overcharging offence of EAs indictable. As a result, the time bar under MO (Section 26 of Cap. 227) would not apply to the prosecution of the overcharging offence;
 - (ii) explanation of the legal basis for providing a three-year imprisonment term under the summary offence of overcharging; and
 - (c) information on the proportion of EAs involving arrangement of local workers and workers from the Mainland to work in the residential care homes for the elderly ("RCHEs"); and how suspected cases of

false self-employment of care workers in RCHEs and overcharging of commissions could be addressed.

III. Any other business

6. Members noted that the next meeting of the Bills Committee would be held on 21 November 2017 at 10:45 am.

7. There being no other business, the meeting ended at 12:46 pm.

Council Business Division 2
Legislative Council Secretariat
7 December 2017

**Proceedings of the second meeting of the
Bills Committee on Employment (Amendment) (No. 2) Bill 2017
on Friday, 13 October 2017, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
000943 - 001623	Chairman	Opening remarks Acceptance of applications for late membership	
001624 - 001842	Democratic Alliance for the Betterment and Progress of Hong Kong	Presentation of views	
001843 - 002146	The Civic Party	Presentation of views [LC Paper No. CB(2)58/17-18(02)]	
002147 - 002455	Justice Centre Hong Kong	Presentation of views [LC Paper No. CB(2)17/17-18(01)]	
002456 - 002802	Labour Party	Presentation of views	
002803 - 003117	社區及院舍照顧員總工會	Presentation of views	
003118 - 003349	社會福利機構員工會	Presentation of views	
003350 - 003659	Mr David BISHOP	Presentation of views [LC Paper No. CB(2)2174/16-17(03)]	
003700 - 004127	Thai Migrant Workers' Union	Presentation of views	
004128 - 004533	Hong Kong Federation of Asian Domestic Workers Unions	Presentation of views [LC Paper No. CB(2)58/17-18(03)]	
004534 - 004844	LEFT21	Presentation of views	
004845 - 005129	Fair Employment Agency	Presentation of views [LC Paper No. CB(2)2174/16-17(04)]	
005130 - 005450	Mission For Migrant Workers	Presentation of views [LC Paper No. CB(2)2174/16-17(05)]	

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
005451 - 005827	HELP for Domestic Workers	Presentation of views [LC Paper No. CB(2)2174/16-17(06)]	
005828 - 010149	Students Against Fees And Exploitation	Presentation of views [LC Paper No. CB(2)2174/16-17(07)]	
010150 - 010213	Chairman Mission For Migrant Workers	In response to the Chairman's enquiry, representative of Mission For Migrant Workers clarified the number of cases involved in its 2016 Service Report.	
010214 - 011038	Chairman Administration	The Administration's consolidated response to the major views and concerns of deputations/individuals.	
011039 - 011523	Chairman Mr POON Siu-ping Administration	<p>Mr POON Siu-ping considered that the legislative proposal could enhance the deterrent effect against overcharging of commission on job-seekers by employment agencies ("EAs").</p> <p>Mr POON enquired whether, in the light of suggestion from deputations/individuals, consideration would be given to removing the six-month time bar for lodging complaints against EAs from the time when such complaints arose, which were categorized as summary offences under the Magistrates Ordinance (Section 26 of Cap. 227) ("MO") (hereafter referred to as "the time bar").</p> <p>The Administration advised that it would study the suggestion of removing the time bar. However, based on past experience, it was more that prosecution had not been initiated against EAs owing to insufficient evidence or unwillingness of the foreign domestic helpers ("FDHs") concerned to act as prosecution witnesses. There was also the restriction that only the licensee of EA could be held liable for the overcharging offence under the existing provisions and therefore if a job-seeker was overcharged by EA staff member or a partner in a firm who was not the licensee, the licensee might argue that he/she was not in the know or had no gain during the process. To facilitate the prosecution work, the Administration proposed to extend the scope of the overcharging offence to cover certain persons associated with the licensee ("the associates") in the Bill.</p> <p>Mr POON sought information on complaints against EAs involving in arranging workers to work in the residential care homes for the elderly ("RCHEs") and false self-employment of care workers in RCHEs.</p> <p>The Administration responded that according to section 50(1) of the Employment Ordinance (Cap. 57) ("EO"), EA referred to a person who operated a business which aimed at obtaining employment for another person, or supplying labour of</p>	

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		<p>another person to an employer and there existed an employer-employee relationship. EAs were only allowed to charge job-seekers the commission as prescribed in Part II of the Second Schedule to the Employment Agency Regulations ("EAR") (Cap. 57A), which was no more than 10% of the latter's first month's salary for successful job placement service. If the job-seeker being referred did not have an employer and employee relationship with the RCHE concerned (e.g. as service providers), such referral might not be bound by the regulation under Part XII of EO and EAR. The Labour Department ("LD") did not have breakdown statistics about complaints against EAs involved in arranging workers to work in RCHEs.</p> <p>As for the issue of false self-employment at RCHEs, it was not directly relevant to the legislative proposals of the Bill but LD had been following up on the issue separately.</p>	
011524 - 012108	Chairman Mr Jeremy TAM Administration	<p>Mr Jeremy TAM was concerned that FDHs were arranged by EAs in Hong Kong to take out loans from financial institutions and make repayment of loans to EAs in Hong Kong or in their home countries. He enquired how the Administration could plug the loophole in respect of FDHs being arranged by EAs in Hong Kong to take out loans from financial institutions and making repayment of loans to relevant EAs in their home countries. Mr TAM considered it ineffective that EAs' involvement in financial affairs of job-seekers would only be subject to revocation of their licences for non-compliance with the Code of Practice for EAs ("the Code"). He held the view that it should be included in the legislative proposals.</p> <p>The Administration advised that the Hong Kong Special Administrative Region Government did not have extra-territorial jurisdiction to regulate the activities of overseas EAs. Nevertheless, 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, 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. The Commissioner for Labour ("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. LD would also conduct criminal investigation upon</p>	Admin (paragraph 5(a) of minutes)

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		receipt of overcharging complaint against an EA and would initiate prosecution if there was sufficient evidence.	
012109 - 012716	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong echoed Mr Jeremy TAM's concern about the cross-boundary malpractice of EAs stated above. Mr WONG called on the Administration to collaborate with relevant authorities in FDH-sending countries so as to strengthen its enforcement work and deter such malpractice of EAs. Mr WONG further called on the Administration to strengthen its regulatory efforts of local EAs in respect of the selection of their business partners in FDHs' home countries, in particular intermediaries involved in money-lending activities, and to enhance the publicity efforts to arouse the awareness of FDHs.</p> <p>The Administration responded that the Government had been urging the FDH-sending countries to tackle the issue at source through liaising with the relevant Consulates General ("CGs") in Hong Kong so that FDHs would not incur heavy debt of training fees prior to working in Hong Kong. The Secretary for Labour and Welfare had also raised similar concern with the Cambodian Government during his duty visit to Cambodia in August 2017.</p> <p>In response to Mr WONG's concern about how the Administration could raise FDHs' awareness of their rights and entitlements when working in Hong Kong, the Administration advised that since June 2014, LD had joined the regular briefings organized by CGs of major 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.</p>	
012717 - 013225	Chairman Mr Dennis KWOK Administration	<p>Mr Dennis KWOK welcomed the legislative proposals. He suggested that the Administration should make reference to other countries, such as the United Kingdom, and consider introducing a specific piece of legislation for combating human trafficking and forced labour so as to address the cross-boundary malpractices of EAs.</p> <p>In response to Mr KWOK's enquiry, the Administration advised that the six-month time bar under MO (Section 26 of Cap. 227) applied to the prosecution of the offences under the proposed section 60(6) to (8) under the legislative proposals.</p> <p>Mr KWOK considered the six-month time bar too short in view of the proposed increase in the penalty level under the</p>	

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		<p>legislative proposals. He called on the Administration to consider extending the time limit for lodging complaints against EAs.</p> <p>The Administration responded that the suggestion would be studied. It appealed to FDHs to file claims with LD as soon as practicable, which would be handled by LD staff in an expeditious manner to meet the time limit.</p>	
013226 - 013750	Chairman Dr Fernando CHEUNG Administration	<p>Dr Fernando CHEUNG expressed grave concern about the two-week rule of the immigration policy for FDHs which had made it difficult for FDHs to lodge complaints against EAs. Dr CHEUNG enquired whether consideration would be given to making the overcharging offence of EAs indictable. As such, the six-month time bar for lodging complaint against EAs should be removed. The Administration agreed to further study Dr CHEUNG's suggestion.</p> <p>Dr CHEUNG sought information on the proportion of EAs involving arrangement of local workers and workers from the Mainland to work in RCHEs; and how suspected cases of false self-employment of care workers in RCHEs and overcharging of commission could be addressed.</p>	<p>Admin (paragraph 5(b)(i) of minutes)</p> <p>Admin (paragraph 5(c) of minutes)</p>
013751 - 014249	Chairman Mr Andrew WAN Administration	<p>Mr Andrew WAN echoed concerns about how the Administration could address EAs' malpractices of getting involved in financial affairs of job-seekers and the time-bar issue as raised above.</p> <p>Mr WAN anticipated that LD would need to strengthen its inspection and enforcement efforts after the passage of the Bill and enquired whether LD's manpower would be enhanced to cope with anticipated increase in workload arising from the implementation of the Code and the passage of the Bill. The Administration responded that LD would continue to monitor the manpower requirements for the regulation of EAs and would bid additional resources as necessary.</p> <p>Mr WAN queried the effectiveness of tackling EAs' withholding passports of FDHs for the purpose of borrowing money from financial institutions through EAs under the Theft Ordinance (Cap. 210) ("TO"), having regard to the fact that FDH might be asked by EA to sign a document authorizing the EA to withhold her passport. He called on the Administration to consider including in the legislative proposals 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 stated that EA or any other person withholding the personal property of FDHs, such as their passports, without</p>	

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
		<p>their explicit consent might constitute an offence under TO. LD would work with the Police and would initiate prosecution against EAs concerned when there was sufficient evidence. In addition, 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.</p>	
014250 - 014824	Chairman Administration	<p>The Chairman called on the Administration to respond to the views and concerns raised by deputations/individuals, including increase in manpower resources as necessary for taking more stringent enforcement work against EAs after the passage of the Bill, addressing malpractices of EAs other than the overcharging offence, such as arranging false self-employment of care workers in RCHEs, and prohibiting convicted licensee of EAs from taking part in the promotion, formation or management of another EA.</p> <p>The Administration responded that it would continue to strengthen the regulation of EAs after the passage of the Bill. 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 EA licence to him/her. As regards false self-employment at RCHEs, the Administration would continue to tackle the problem by enforcement action and publicity.</p>	
014825 - 015529	Chairman Dr Elizabeth QUAT Administration Hong Kong Federation of Asian Domestic Workers Unions	<p>Dr Elizabeth QUAT expressed support for the legislative proposals. She sought information on the Administration's publicity and educational efforts in respect of promoting FDHs' awareness of their rights and entitlements prior to working in Hong Kong, including whether publicity programmes would be launched in FDHs' home countries, so that they would not be subject to exploitation. 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. It would further study the suggestion of launching publicity programmes in FDH-sending countries.</p> <p>Representative of Hong Kong Federation of Asian Domestic Workers Unions suggested that the Administration should conduct briefings on their own for FDHs and extend the briefings to FDHs from places of origin other than the Philippines and Indonesia.</p>	

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		Dr QUAT echoed the suggestion of removing the time bar for handling claims against EAs under the summary offence.	
015530 - 015922	Chairman Justice Centre Hong Kong Administration	<p>In response to the enquiry of the representative of Justice Centre Hong Kong, the Administration affirmed the legal basis for providing a three-year imprisonment term for the summary offence of overcharging under MO. The Chairman requested the Administration to provide the explanation in writing after the meeting.</p> <p>The Administration supplemented that in addition to participating in the briefings organized by CGs of the Philippines and Indonesia for the purpose of raising FDHs' awareness of employees' rights and entitlements when working in Hong Kong, it had also approached other relevant CGs to indicate its intention to participate in similar briefings if organized. In addition, the Administration had staged information kiosks and attended events organized for FDHs from other countries such as Thailand. The Administration had also solicited assistance of non-governmental organizations in distributing information packs to newly-arrived FDHs at the Airport.</p>	Admin (paragraph 5(b)(ii) of minutes)
015923 - 020422	Chairman Mr David BISHOP Administration	<p>Mr David BISHOP sought clarification as to the imprisonment term under the summary offence given the imposition of heavier penalty after the passage of the Bill.</p> <p>Mr BISHOP considered that the time bar had deterred a considerable number of FDHs from lodging claims against EAs and that it should be removed.</p>	
020423 - 020503	Chairman	<p>The Chairman requested the Administration to provide an overall summary of response to the views and issues raised at the meeting.</p> <p>Date of next meeting</p> <p>Closing remarks</p>	