

**立法會**  
**Legislative Council**

Ref : CB2/BC/10/16

LC Paper No. CB(2)882/17-18  
(These minutes have been seen  
by the Administration)

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

**Minutes of the third meeting  
held on Tuesday, 21 November 2017, at 10:45 am  
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon KWOK Wai-keung, JP (Chairman)  
Hon WONG Ting-kwong, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Dennis KWOK Wing-hang  
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
- Members absent** : Dr Hon Fernando CHEUNG Chiu-hung  
Hon HO Kai-ming  
Hon Jeremy TAM Man-ho
- 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

**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 Fonny TSANG  
Legislative Assistant (2) 3

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Action

**I. Meeting with the Administration**

[LC Paper Nos. CB(2)336/17-18(01) and CB(2)1939/16-17(01)]

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

Committee stage amendment proposed by the Administration

2. The Bills Committee completed clause-by-clause examination of the Bill.
3. Members noted that the Administration intended to propose a Committee stage amendment ("CSA") to extend the statutory time limit from six months to 12 months for making a complaint or laying information in respect of the offence of overcharging of commission of an employment agency ("EA") from job-seekers as well as the offence of unlicensed operation of an EA from the time when the matter of such complaint or information respectively arose. As such, the six-month time bar for prosecuting summary offences under Section 26 of the Magistrates Ordinance (Cap. 227) would not apply to the prosecution of these offences.

Legislative timetable

4. The Chairman said that the Administration had yet to advise on the resumption date of the Second Reading debate on the Bill. Members agreed that subject to the proposed CSA to be provided by the Administration, the Bills Committee would report its deliberations to the House Committee in due course.

Admin 5. The Chairman concluded that, pending the Administration's provision of the proposed CSA for circulation to members, the Bills Committee had completed scrutiny of the Bill. Members agreed that there would be no need to hold another meeting to discuss the proposed CSA unless warranted.

**II. Any other business**

6. There being no other business, the meeting ended at 12:18 pm.

Council Business Division 2  
Legislative Council Secretariat  
14 February 2018

**Proceedings of the third meeting of the  
Bills Committee on Employment (Amendment) (No. 2) Bill 2017  
on Tuesday, 21 November 2017, at 10:45 am  
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
000619 - 000735	Chairman	Opening remarks by the Chairman	
000736 - 000928	Chairman Administration	<p>Briefing by the Administration on its response to issues raised at the last meeting on 13 October 2017 as set out in LC Paper No. CB(2)336/17-18(01).</p> <p>The Administration appealed to members' support for the legislative proposals, having regard to recent media reports on suspected referral of foreign domestic helpers ("FDHs") by employment agencies ("EAs") to work illegally outside Hong Kong and overcharging of placement fees.</p>	
000929 - 001727	Chairman Mr WONG Ting-kwong Administration	<p>In response to Mr WONG Ting-kwong's enquiry about overcharging of placement fees, the Administration advised that according to the law, EAs were not allowed to collect from job-seekers any fees or charges other than the prescribed commission, which was set at no more than 10% of the latter's first month's salary upon successful placement. The Government was concerned that some FDHs had reportedly been charged prior to their arrival in Hong Kong and that a huge sum of placement fees had been collected from the FDHs concerned.</p> <p>Mr WONG called on the Administration to step up its publicity and educational efforts in relation to FDHs' rights and benefits when working in Hong Kong. He also sought information on the Administration's enforcement approach to tackle various illegal conducts of EAs, including referring FDHs to work outside Hong Kong to fill a non-existent vacancy and charging excessive commission on FDHs for overseas job placement, and whether the Administration would proactively conduct investigation even if no claims were lodged by the FDHs concerned.</p> <p>The Administration responded that it had been adopting a multi-pronged strategy to safeguard the rights and benefits of FDHs. The Labour Department ("LD") would, upon receiving complaints from FDHs concerned or case referrals from the Consulates-General ("CGs"), take follow-up actions in respect of the overcharging offences or EAs suspected of referring FDHs to work in other places where in fact there</p>	

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		<p>was no such vacancy. At the same time, LD would refer the cases to the Police for follow-up in respect of EAs suspected of fraud or deception or involvement in other illegal activities. Prosecution would be initiated when there was sufficient evidence and/or prosecution witnesses were available.</p> <p>The Administration further advised that apart from criminal investigation, LD would also instigate investigation in respect of suspected contravention of the Code of Practice for EAs ("the Code") (such as item 4.4 requiring EAs to check the accuracy of the information of employers, etc.). If any contravention of the Code was detected, the Commissioner for Labour ("C for L") might consider revoking or refusing to renew the licence of the relevant EAs in accordance with existing mechanism. From 2013 to end-October 2017, LD revoked or refused to renew the licence of four EAs involved in illegal referral of job-seekers to work in other places. In addition, to prevent FDHs from falling into job-traps, LD would, through its publicity and educational efforts as well as co-operation with relevant CGs, promote to FDHs the issues that they needed to pay more attention to when using EAs' services.</p>	
001728 - 002033	Chairman Mr POON Siu-ping Administration	<p>Mr POON Siu-ping sought clarification as to the circumstances under which licences of EAs were revoked by C for L in the past.</p> <p>The Administration advised that the existing law specified the conditions that C for L might revoke, or refuse to renew, the licences of EAs, including conviction of the overcharging offence. As provided by the Bill, non-compliance with the Code by the licensee and/or associates would also be a ground upon 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 the Employment Ordinance ("EO"). In addition, C for L might exercise his power under section 53(1)(c)(v) of EO to revoke a licence if he had reasonable grounds to be satisfied that the licensee was not a fit and proper person to operate an EA. The Administration had revoked licences of unscrupulous EAs in the past. As regards the illegal conduct of referring FDHs to work in other places where in fact there were no such vacancies, LD would immediately conduct investigation upon receiving complaints from the FDHs concerned or case referrals from CGs. If warranted, C for L would consider exercising his power to revoke the licence of the EA concerned as appropriate.</p>	
002034 - 003005	Chairman Mr WONG Ting-kwong Administration	Mr WONG Ting-kwong sought clarification as to media reports on EAs' referral of FDHs to work in the Mainland with significantly higher wages as compared with working in	

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		<p>Hong Kong. Mr WONG was concerned that relevant FDHs would be required to pay a large amount of intermediary charges to EAs in the Mainland which might then provide kick-backs to related EAs in Hong Kong afterwards. Mr WONG asked whether the Administration had liaised with the relevant authorities in the Mainland to address such situation.</p> <p>The Administration advised that FDHs were not yet allowed to work in the Mainland according to the relevant authorities. It was therefore illegal for EAs in Hong Kong to make such job referrals. FDHs whose rights were infringed should file complaints with LD. LD would immediately conduct investigation upon receipt of complaints from FDHs concerned and take follow-up action in respect of overcharging of placement fees and EAs being suspected of fraud and involvement in illegal activities. The Government would take stringent enforcement action and initiate prosecution if there was sufficient evidence that the EAs in Hong Kong were the end receiver of any overcharged commission.</p> <p>In response to Mr WONG's further enquiry about FDHs working overseas or in the Mainland as required by their employers, the Administration advised that as stipulated in the Standard Employment Contract ("SEC"), a FDH should work and reside in the employer's residence in Hong Kong and should only perform domestic duties in the employer's residence in Hong Kong as set out in SEC. If employers breached their undertaking in SEC and the relevant application forms (e.g. requiring FDHs to work in places other than that set out in SEC), the Immigration Department would take their conduct into consideration in assessing the employers' future applications for employing FDHs, and might refuse such applications.</p>	
003006 - 003506	Chairman Mr Andrew WAN Chairman	With regard to the six-month time bar under Section 26 of the Magistrates Ordinance (Cap. 227) (hereafter referred to as "the time bar") which applied to the summary offence of overcharging, Mr Andrew WAN enquired whether the Administration would consider making the overcharging offence of EAs indictable so as to get rid of the six-month time limit for making a complaint or laying information, and to allow complainants and LD sufficient time to file complaints and to conduct prosecution. Alternatively, the Administration could consider extending the time bar for the overcharging offence to, say, two years, in the relevant provisions of the legislation.	

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		<p>The Administration provided its response as set out in paragraphs 6-10 of the Annex to LC Paper No. CB(2)336/17-18(01). The Administration added that it was considering to extend the time bar to 12 months for the overcharging and unlicensed operation offences having regard to the requirement under Section 56 of EO that a licensee of an EA had to maintain records containing particulars of all job applicants registered with his/her EA for a period of not less than 12 months after the expiration of each accounting year of the EA.</p>	
003507 - 004016	<p>Chairman Administration Assistant Legal Adviser ("ALA")</p>	<p>Clause-by-clause examination of the Bill</p> <p><u>Long title</u></p> <p>ALA sought clarification on the following as set out in Questions 1 and 2 of his letter dated 13 July 2017 to the Administration [LC Paper No. CB(2)1940/16-17(01)]:</p> <p>(a) it appeared that the legislative intent of Clause 4 [to amend section 51(1) of EO to allow more persons (i.e. an associate of the licensee or the certificate of exemption ("Certificate") holder) to operate, manage or assist in the management of an EA] was not expressly reflected in the long title of the Bill; and</p> <p>(b) the other existing offences in Part XII of EO with their scopes being sought to be expanded by the Bill.</p> <p>The Administration provided the clarifications as set out in its reply letter dated 4 October 2017 to ALA [paragraphs 2 - 5 of LC Paper No. CB(2)2174/16-17(02)].</p>	
004017 - 004035	<p>Chairman Administration</p>	<p><u>Part 1</u> <u>Clauses 1 and 2</u></p> <p>Members raised no question.</p>	
004036 - 004233	<p>Chairman Administration</p>	<p><u>Part 2</u> <u>Clause 3</u></p> <p>Members raised no question.</p>	
004234 - 004619	<p>Chairman Administration ALA</p>	<p><u>Clause 4</u> <i>Proposed section 51(1)</i></p> <p>ALA raised the question as to whether the same approach of allowing an unlicensed person to operate, manage or assist in the management of a place which was subject to a licensing</p>	

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		<p>scheme had been adopted in any other licensing scheme under any ordinance in Hong Kong [Question 3 (b) of LC Paper No. CB(2)1940/16-17(01)].</p> <p>The Administration provided its response as set out in paragraphs 6 - 7 of LC Paper No. CB(2)2174/16-17(02).</p> <p>ALA asked whether it was necessary to state clearly that the licence or the Certificate was "for the time being in force" [Question 4 of LC Paper No. CB(2)1940/16-17(01)].</p> <p>The Administration provided its response as set out in paragraph 8 of LC Paper No. CB(2)2174/16-17(02).</p>	
004620 - 004758	Chairman Administration	<p><u>Clause 5</u> <i>Proposed section 53(1)(c)</i></p> <p>Members raised no question.</p>	
004759 - 005322	Chairman Administration ALA	<p><u>Clause 5</u> <i>Proposed section 53(1)(d) and (e)</i></p> <p>ALA sought clarification as to whether the factors of undischarged bankrupt and furnishing false information should also be included in the proposed section 53(1)(d) and (e) [Question 6 of LC Paper No. CB(2)1940/16-17(01)].</p> <p>The Administration provided its response as set out in paragraphs 11 - 13 of LC Paper No. CB(2)2174/16-17(02).</p> <p>ALA sought further clarification as to whether certain offences committed by a licensee or a related person of the licensee, which was also a factor that C for L might take into consideration under section 53(1)(c) and the proposed section 53(1)(d), should also be included in the proposed section 53(1)(e) [Question 7 of LC Paper No. CB(2)1940/16-17(01)].</p> <p>The Administration provided its response as set out in paragraphs 14 - 16 of LC Paper No. CB(2)2174/16-17(02).</p>	
005323 - 011352	Chairman Administration ALA POON Siu-ping	<p><u>Clause 6</u> <i>Proposed section 57</i></p> <p>ALA sought clarification as to, in the context of a related person (such as a company director), if he/she was not involved in the daily operation of an EA, under what circumstances the related person would commit the overcharging offence [Question 8 of LC Paper No. CB(2)1940/16-17(01)].</p>	



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		<p>The Administration provided its response as set out in paragraphs 17 - 18 of LC Paper No. CB(2)2174/16-17(02).</p> <p>ALA sought further clarifications as to the liability of an employee under the following circumstances [Question 9 of LC Paper No. CB(2)1940/16-17(01)]:</p> <ul style="list-style-type: none"> <li>(a) whether an employee who was assigned the task of issuing invoices or receipts with the amount higher than the prescribed commission to job-seekers would be regarded as indirectly receiving excessive commission from job-seekers and committed an offence; and</li> <li>(b) whether an employee who was assigned the task of receiving excessive commission from job-seekers but without any authority to influence the decision of his employer be regarded as directly committed the overcharging offence.</li> </ul> <p>The Administration provided its response as set out in paragraphs 19 - 20 of LC Paper No. CB(2)2174/16-17(02).</p> <p>ALA drew reference to the provision of defence in specific provisions under the Human Reproductive Technology Ordinance (Cap. 561) and the Food Safety Ordinance (Cap. 612) and asked whether the Administration would consider providing a similar defence in specific provisions in the Bill for those employees who only carried out their duties in the course of their employment and were not in a position to influence the decision of their employers. Mr POON Siu-ping raised the same concerns.</p> <p>The Administration responded that the legislative proposals sought to, among others, combat overcharging job-seekers. The extension of the scope of the overcharging offence to associates in addition to the licensee was to plug the loophole of the existing legislation that only the licensee could be held liable for the overcharging offence. In considering whether to prosecute a person involved in overcharging, LD would carefully consider all relevant facts of each case, such as ascertaining whether the person was the end receiver of the overcharged commission. The person might also rely upon the common law defence by showing that he/she had an honest and reasonable belief in a state of facts which, if they existed, would make him/her innocent. It would defeat the purpose of the legislative proposals if the proposed defence was specifically provided in the Bill.</p> <p>The Administration advised that LD would also strictly follow established prosecution procedures, including consulting the</p>	

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		<p>Department of Justice ("DoJ") as appropriate, when considering whether to proceed with prosecution of a case. LD would conduct investigation of the overcharging cases and initiate prosecution in a prudent manner. Given such, the Administration considered that the proposed formulation of section 57(1) would afford sufficient protection to an innocent employee.</p> <p>The Administration added that EA employees concerned should have sufficient knowledge about labour laws (particularly those concerning placement services). The Administration stressed that EA employees should report overcharging cases to LD and serve as prosecution witnesses if their employers had overcharged job-seekers.</p>	
011353 - 011855	Chairman Administration	<p>The Chairman echoed the concern about protection of staff members of EA. The Chairman enquired how the Administration could ensure that EA staff members would have sufficient knowledge about overcharging offence after the passage of the Bill and whether they could be exempted from criminal liability by serving as prosecution witnesses.</p> <p>The Administration advised that as specified in the Code, the licensee of an EA should ensure that the EA staff members would have reasonable knowledge of the legal provisions relevant to the operation of EAs. At present, LD held regular briefings for EAs on the legal provisions relevant to the operation of EAs and would consider holding more such briefings for industry practitioners as necessary after the passage of the Bill. LD would step up its publicity and educational efforts and maintain close liaison with the industry in this regard.</p>	
011856 - 012146	Chairman Administration	<p><u>Clause 6</u> <i>Proposed section 57(1)(c)(i) &amp; (ii) and after section 57(1)</i></p> <p>Members raised no question.</p> <p><u>Clause 7</u> <i>Proposed section 60</i></p> <p>Members raised no question.</p> <p>The Administration advised that it intended to propose a Committee stage amendment ("CSA") in respect of extending the statutory time bar from six months to 12 months for the overcharging and unlicensed operation offences. The proposed CSA would be provided to the Secretariat after the meeting for circulation to members.</p>	<p><b>Admin</b> (paragraph 4 of minutes)</p>

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012147 - 012238	Administration Chairman	<u>Clause 8</u> <i>Proposed new section 62A</i>  Members raised no question.	
012239 - 012640	Administration Chairman ALA	<u>Part 3</u> <u>Clause 9</u>  ALA sought clarifications as to the following [Question 5 of LC Paper No. CB(2)1940/16-17(01)]:  (a) whether an associate of a corporate licensee, who had not been named in the written notification to C for L under regulation 7 of the Employment Agency Regulations (Cap. 57A) ("unnamed associate"), could still lawfully operate, manage or assist in the management of an EA under section 51 of EO; and  (b) whether there was criminal liability for omission of notifying C for L of an unnamed associate who operated, managed or assisted in the management of an EA.  The Administration provided its response as set out in paragraphs 9 - 10 of LC Paper No. CB(2)2174/16-17(02).	
012641 - 012741	Chairman Administration	<u>Clause 10</u>  Members raised no question.	
012742 - 013130	Chairman Dr Junius HO Administration	Dr Junius HO sought clarification as to whether there would be adverse impact on the time limit of lodging civil claims by job-seekers if the time bar was to be extended as proposed by the Administration. The Administration replied in the negative.	
013131 - 013200	Chairman ALA	In response to the Chairman's enquiry, ALA affirmed that there was no discrepancy between the Chinese and English versions of the Bill in respect of the legal and drafting aspects.	
013201 - 013246	Chairman Dr CHIANG Lai-wan	The Chairman responded to Dr CHIANG Lai-wan's enquiry about the legislative timetable.	
013247 - 013527	Chairman Administration ALA	The Chairman suggested and members agreed that the Administration's proposed CSA as mentioned above would be circulated to members for consideration. There was no need to hold another meeting to discuss the proposed CSA unless warranted.  Date of resumption of Second Reading debate on the Bill.	

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		ALA informed members that the Bill, if passed, would come into operation on the day on which the enacted Ordinance was to be published in the Gazette.	
013528 - 013719	Chairman Dr CHIANG Lai-wan	Dr CHIANG Lai-wan echoed concerns of Mr Wong Ting-kwong and Mr POON Siu-ping in respect of EAs' referral of FDHs to work illegally outside Hong Kong. She called on the Administration to strengthen the protection of FDHs.	
013720 - 013728	Chairman	Closing remarks	

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