



Labour Department (Headquarters)

勞工處（總部）

Your reference 來函編號 : LS/B/23/16-17
Our reference 本處檔案編號 : LD CR/5/15/706
Tel. number 電話號碼 : 2852 3633
Fax number 傳真機號碼 : 3101 1018

By Email and Fax (2877 5029)

9 January 2018

Legislative Council Secretariat
(Attn: Mr Alvin CHUI Ho-yin
Assistant Legal Adviser
Legal Services Division)
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr CHUI,

Employment (Amendment) (No. 2) Bill 2017

I refer to your letter of 3 January 2018 concerning the Government's draft Committee stage amendment ("CSA") which seeks to extend the time limit for prosecution of the offences of unlicensed operation of employment agencies ("EAs") and overcharging of commission by adding a new subsection to section 60 of the Employment Ordinance ("EO") (Cap. 57) under clause 7 of the captioned Bill.

The Government's proposed CSA provides a definitive period where the time limit for prosecution would be extended to 12 month "after the date of the commission of the offence". It has already struck a balance between allowing sufficient time for aggrieved job-seekers (including foreign domestic helpers ("FDHs")) to file complaints and at the same time encouraging job-seekers to file complaints as soon as possible after the date of the commission of the offence. The arrangement will address the concerns raised by Members at the Bills Committee meetings on 13 October and 21 November 2017 that unscrupulous EAs might escape from criminal liability due to the expiry of the existing six-month time limit under section 26 of the Magistrates Ordinance (Cap. 227), and will further enhance the deterrence against the overcharging and unlicensed operation acts by EAs, which is the primary aim of the captioned Bill.

In fact, as we explained to Members at the last Bills Committee meeting on 21 November 2017, it would be undesirable to unduly prolong the investigation process by further extending the statutory time limit as evidence and memory will fade along the lapse of time. It is important to start the investigation and evidence collection early as cases involving overcharging of job-seekers (including FDHs) rely heavily on evidence from victims and witnesses, such as documentary proof (e.g. payment receipt issued by EAs and placement record kept by EAs which section 56 of EO requires EAs to keep for a period of not less than 12 months after the expiration of each accounting year) and the statement provided by the aggrieved job-seekers. Beyond the 12-month record keeping period, it would be difficult for investigators to secure sufficient and reliable evidence for prosecution of the offence(s). Members noted the Government's aforementioned position and rationale of proposing to extend the statutory time limit to 12 months after the date of the commission of the offence and agreed that the Government's proposed CSA be circulated for Members' consideration.

The alternative form of wording, i.e. "12 months after the offence is discovered by, or comes to the notice of, the relevant authority", would mean that the 12-month limitation period for investigation and prosecution would start to run only when the case or complaint has been reported to the authority, even when the cases was reported to the authority after substantial delays in, for example, another 12 months after the commission of the offence. Such unlimited delays would not be conducive to effective follow-up actions for reasons explained above. Therefore, the Government's CSA would maintain its original form of wording as presented to the Bills Committee and we look forward to your kind understanding.

Yours sincerely,



(Ms Queenie WONG)
for Commissioner for Labour

c.c. Department of Justice
(Attn: Mr Henry CHAN, Senior Government Counsel)
Clerk to Bills Committee