



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 (2509 9055)

10 January 2018

Ms Joanne MAK
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Ms MAK,

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

I refer to your letter of 8 January 2018 enclosing a letter by Dr Hon Fernando Cheung on his views on the Government's draft Committee stage amendment ("CSA") to the captioned Bill. The Government's response to the issues raised therein is set out in ensuing paragraphs.

The Government's CSA seeks to extend the time limit for prosecution of the offences of unlicensed operation of employment agencies ("EAs") and overcharging of commission to 12 months after the date of the commission of the offence by adding a new subsection to section 60 of the Employment Ordinance ("EO") (Cap. 57) under clause 7 of the captioned Bill. 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 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.

We note Dr Hon Cheung's suggestion to further extend the time limit to two years (i.e. the duration of an FDH contract) so that FDHs could come forward to report the case without fear of losing their job. Nevertheless, 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). If an FDH only reports a case to the authority after two years of the date of the commission of the offence(s), such substantial delay will result in difficulties in investigation and evidence collection and would not be conducive to effective follow-up actions by the authority.

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.

As for Dr Hon Cheung's suggestion on amending section 56(3) of EO to the effect that EAs would be required to keep records of job applicants for a period of not less than 24 months after the expiration of each accounting year, it would impose an additional requirement on EAs which has not been deliberated by the Bills Committee before. Furthermore, contravention of the requirement in section 56(3) constitutes another offence under section 60(3), i.e. one that is separate from the offences under the proposed sections 60(6) to (8) of the captioned Bill. We do not consider it appropriate to take up the proposal before having fully considered the possible implications, and consulted the stakeholders on the additional liability arising from the proposed extension of the record keeping period.

Having regard to the above, the Government's CSA would maintain its original form of wording as presented to the Bills Committee and we look forward to Dr Hon Cheung's kind understanding.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Queenie Wong', written in a cursive style.

(Ms Queenie WONG)
for Commissioner for Labour

c.c. Legislative Council Secretariat
(Attn : Mr Alvin CHUI Ho-yin
Assistant Legal Advisor)

Department of Justice
(Attn: Mr Henry CHAN, Senior Government Counsel)