

Employment (Amendment) (No. 2) Bill 2017

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A BILL

To

Amend Part XII of the Employment Ordinance and the Employment Agency Regulations to increase the penalties for certain offences relating to employment agencies; to make certain existing offences applicable to persons associated with the holder of a licence to operate an employment agency and certain other persons; to amend the grounds for refusing to issue or renew, or for revoking, such a licence; to empower the Commissioner for Labour to issue codes of practice for employment agencies; and to provide for incidental and connected matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Employment (Amendment) (No. 2) Ordinance 2017.

2. Enactments amended

- (1) The Employment Ordinance (Cap. 57) is amended as set out in Part 2.
 - (2) The Employment Agency Regulations (Cap. 57 sub. leg. A) are amended as set out in Part 3.
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Part 2

Amendments to Employment Ordinance

3. Section 50 amended (interpretation and application of Part)

(1) Section 50(1), English text, definition of *licence*—

Repeal

“accordingly.”

Substitute

“accordingly;”.

(2) Section 50(1)—

Add in alphabetical order

“*associate* (相關人士), in relation to a person, means—

- (a) if the person is a company—
 - (i) a related person of the person; or
 - (ii) an individual employed by the person;
- (b) if the person is a partner in a partnership—
 - (i) a related person of the person; or
 - (ii) an individual employed by the person or by the partnership; or
- (c) in any other case—an individual employed by the person;

related person (有關連人士) means—

- (a) in relation to a company—a director, manager, secretary or other similar officer of the company; or
- (b) in relation to a partner in a partnership—
 - (i) another partner in the partnership; or

(ii) another person concerned in the management of the partnership.”.

4. Section 51 amended (prohibitions in respect of the operation of employment agencies)

Section 51—

Repeal subsection (1)

Substitute

“(1) A person must not operate, manage or assist in the management of an employment agency unless the person—

(a) is the holder of a licence or certificate of exemption issued in respect of the employment agency; or

(b) is an associate of the holder.”.

5. Section 53 amended (refusal to issue, or revocation of, licences)

(1) Section 53(1)(b)—

Repeal

“purposes; or”

Substitute

“purposes;”.

(2) Section 53(1)(c)—

Repeal

“person operating, or intending to operate, the employment agency”

Substitute

“licensee or the person intending to be the licensee”.

- (3) Section 53(1)(c)(ii), Chinese text—

Repeal

everything after “曾因”

Substitute

“以下罪行而被定罪：對兒童、青年或婦女犯了侵害人身罪，或犯了涉及身為三合會會員、欺詐、不誠實行為或勒索的罪行；”。

- (4) Section 53(1)(c)(iv)—

Repeal

“62; or”

Substitute

“62;”.

- (5) After section 53(1)(c)(iv)—

Add

“(iva) has not complied with a code of practice issued under section 62A(1); or”.

- (6) Section 53(1)(c)(v)—

Repeal

“agency.”

Substitute

“agency;”.

(7) After section 53(1)(c)—

Add

- “(d) (if the licensee or the person intending to be the licensee is a company or a partner in a partnership) that a related person of the licensee or person—
- (i) has, within the preceding 5 years, been convicted of an offence against the person of a child, young person or woman or of an offence involving membership of a triad society, fraud, dishonesty or extortion;
 - (ii) has contravened any provision of this Part or any regulation made under section 62; or
 - (iii) has not complied with a code of practice issued under section 62A(1); or
- (e) that an individual employed by the licensee or by the person intending to be the licensee—
- (i) has contravened any provision of this Part or any regulation made under section 62; or
 - (ii) has not complied with a code of practice issued under section 62A(1).”.

6. Section 57 amended (prohibited acts in respect of employment agencies)

(1) Section 57—

Renumber the section as section 57(1).

(2) Section 57(1)—

Repeal

“A licensee shall”

Substitute

“A licensee, or an associate of a licensee, in respect of an employment agency, or a person purporting to act as such a licensee or associate, must”.

- (3) Section 57(1)(b)—

Repeal

“his employment agency, the prescribed commission which he is permitted to charge and receive”

Substitute

“the employment agency, the prescribed commission”.

- (4) Section 57(1)(c)(i)—

Repeal

“licensee’s”.

- (5) Section 57(1)(c)(ii)—

Repeal

“licensee”

Substitute

“employment agency”.

- (6) After section 57(1)—

Add

- “(2) In this section—

prescribed commission (訂明佣金), in relation to an employment agency, means the commission that the employment agency is permitted to charge and receive as prescribed by a regulation made under section 62.”.

7. Section 60 amended (offences)

Section 60—

Repeal subsections (6) and (7)

Substitute

- “(6) A person who contravenes section 51(1) commits an offence and is liable on conviction to a fine of \$350,000 and to imprisonment for 3 years.
- (7) A person who contravenes section 57(1)(a) commits an offence and is liable on conviction to a fine of \$350,000 and to imprisonment for 3 years.
- (8) A person who contravenes section 57(1)(b) or (c) commits an offence and is liable on conviction to a fine at level 5.”.

8. Section 62A added

Part XII, after section 62—

Add

“62A. Codes of practice for employment agencies

- (1) The Commissioner may issue codes of practice setting out principles, procedures, guidelines and standards for the operation, management or control of employment agencies.
- (2) The Commissioner is to make a copy of every code of practice available for inspection by the public free of charge during business hours at offices of the Government directed by the Commissioner.”.
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Part 3

Amendments to Employment Agency Regulations

9. **Regulation 7 amended (company as licensee)**

Regulation 7(1)—

Repeal

everything after “name of”

Substitute

“an individual who is—

- (a) an associate (as defined by section 50(1) of the Ordinance) of the company; and
- (b) appointed by the company to operate, manage or assist in the management of the employment agency in respect of which the licence is issued.”.

10. **Regulation 10 amended (maximum fees and commission)**

Regulation 10(2)—

Repeal

“a licensee”

Substitute

“an employment agency”.

Explanatory Memorandum

The object of this Bill is to amend certain provisions relating to employment agencies in Part XII of the Employment Ordinance (Cap. 57) (*Ordinance*) and the Employment Agency Regulations (Cap. 57 sub. leg. A) (*Regulations*).

2. Part 2 (clauses 3 to 8) contains amendments to the Ordinance.
3. Clause 3 adds the definitions of *associate* and *related person* to section 50(1) of the Ordinance.
4. Clause 4 amends section 51(1) of the Ordinance to allow an associate of the holder of a licence or certificate of exemption issued in respect of an employment agency to operate, manage or assist in the management of the agency.
5. Clause 5 amends section 53(1) of the Ordinance to amend the grounds for refusing to issue or renew, or for revoking, a licence to operate an employment agency.
6. Clause 6 amends section 57 of the Ordinance to make it applicable to an associate of a licensee and a person purporting to act as a licensee or an associate of a licensee.
7. Clause 7 amends section 60 of the Ordinance to increase the penalties for contravening section 51(1) or 57(1)(a) of the Ordinance.
8. Clause 8 adds a new section 62A to the Ordinance to empower the Commissioner for Labour to issue codes of practice for employment agencies.

9. Part 3 (clauses 9 and 10) contains minor technical amendments to the Regulations.