

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 30 June 2017**

**Legal Service Division Report on
Employment (Amendment) (No. 2) Bill 2017**

I. SUMMARY

- 1. The Bill**

The Bill mainly seeks to amend the Employment Ordinance (Cap. 57) to expand the scope of the existing offence of overcharging job-seekers; raise the maximum penalties for the offences of unlicensed operation of employment agencies ("EAs") and overcharging job-seekers; provide for new grounds for refusing to issue, renew or for revoking a licence to operate an EA; and empower the Commissioner for Labour to issue codes of practice for EAs, and to provide for incidental and connected matters.
- 2. Public Consultation**

According to the Administration, the EA associations were briefed on the legislative proposals on 17 February 2017. While some were concerned that the proposals would increase their burden, they acknowledged the need to meet the community's expectation for professional and quality service.
- 3. Consultation with LegCo Panel**

According to the Clerk to the Panel on Manpower, the Panel was consulted on the legislative proposals on 21 February 2017. While members were generally supportive of the proposals, some members expressed concerns on various issues.
- 4. Conclusion**

In view of the concerns expressed by members of the Panel on Manpower, Members may wish to consider whether a Bills Committee should be set up to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 28 June 2017. Members may refer to the LegCo Brief (File Ref.: LD CR/5/15/706) issued by the Labour and Welfare Bureau on 14 June 2017 for further details.

Object of the Bill

2. The Bill seeks to amend the Employment Ordinance (Cap. 57) and the Employment Agency Regulations (Cap. 57A) to:

- (a) expand the scope of the existing offence of overcharging persons on account of having obtained, or in connection with obtaining or seeking to obtain, employment for these persons ("job-seekers");
- (b) raise the maximum penalties for the existing offences of unlicensed operation of employment agencies ("EAs") and overcharging job-seekers;
- (c) provide for new grounds for refusing to issue, renew or for revoking a licence to operate an EA; and
- (d) empower the Commissioner for Labour ("the Commissioner") to issue codes of practice for EAs.

Background

3. At present, the regulation of EAs is provided in Part XII of Cap. 57. Under Cap. 57, a person who operates a business of an EA is required to obtain a licence or a certificate of exemption ("Certificate") issued by the Commissioner. Section 51(1) of Cap. 57 prohibits a person from operating, managing or assisting in the management of an EA without a licence or a Certificate. Section 57 of Cap. 57 prohibits a holder of a licence ("licensee") from receiving from a job-seeker any reward, payment, or other advantage other than a commission, which, as prescribed by Cap. 57A, is 10% of the job-seeker's first month's wages ("prescribed commission") after he has been placed in employment by the EA.¹ Contravention of sections 51(1) and 57 of Cap. 57 is an offence punishable by a fine at level 5 (i.e. HK\$50,000).²

¹ Section 57(a) of Cap. 57 as read with regulation 10 of and Part II of the Second Schedule to Cap. 57A.

² Section 60(6) and (7) of Cap. 57.

Provisions of the Bill

Expanding the scope of the existing offence of overcharging job-seekers

4. The Bill proposes to expand the scope of the existing offence of overcharging job-seekers by prohibiting, not only a licensee, but also an associate of a licensee or any person purporting to act as such a licensee or associate from charging a job-seeker more than the prescribed commission. (clause 6)

5. Under the proposed section 50(1) in clause 3, "associate", in relation to a person, means:

- (a) if the person is a company, a related person (see paragraph 8) of the company or an individual employed by the company;
- (b) if the person is a partner in a partnership, a related person of the partner or an individual employed by the partner or by the partnership; or
- (c) in any other case, an individual employed by the person.

Raising the maximum penalties for the offences of unlicensed operation of EAs and overcharging job-seekers

6. Clause 7 proposes to amend section 60 of Cap. 57 to, among others, raise the maximum penalties for the offences of unlicensed operation of EAs and overcharging job-seekers from a maximum fine of HK\$50,000 to a fine of \$350,000 and imprisonment for three years.

New grounds for refusing to issue, renew or for revoking a licence to operate EA

7. Under section 53 of Cap. 57, the Commissioner may refuse to issue or renew a licence or may revoke a licence for the operation of an EA having regard to, among others, the conducts of the licensee or person intending to operate the EA ("intended licensee"). Clause 5 proposes to amend section 53 of Cap. 57 to allow the Commissioner to revoke or refuse to issue or renew a licence of an EA if:

- (a) in addition to the licensee or the intended licensee, a related person of the licensee or of the intended licensee ("related person") has,

within the preceding five 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, or has contravened any provision of Part XII of Cap. 57 or any regulation made under section 62 of Cap. 57 by the Chief Executive in Council for matters in relation to EAs;

- (b) a licensee, an intended licensee or a related person has not complied with a code of practice issued by the Commissioner; and
- (c) an individual employed by the licensee or by the intended licensee has contravened any provision of Part XII of Cap. 57 or any regulation made under section 62 of Cap. 57 or has not complied with a code of practice issued by the Commissioner.

8. "Related person" is proposed to be defined as, in relation to a company, a director, manager, secretary or other similar officer of the company; or in relation to a partner in a partnership, another partner in the partnership and any other person concerned in the management of the partnership.

Empowering the Commissioner to issue code of practice for EAs

9. Currently, the Commissioner has no statutory power to issue codes of practice on the principles, procedures, guidelines and standards for the operation, management or control of EAs. A new section 62A is proposed to be added to Cap. 57 to, among others, empower the Commissioner to issue such codes of practice. (clause 8)

Other amendment

10. The Bill also proposes to amend section 51(1) of Cap. 57 to the effect that not only the licensee and the holder of a Certificate, but also an associate of the licensee or of the holder of a Certificate would also be allowed to operate, manage or assist in the management of an EA. (clause 4)

Incidental and connected amendments

11. Part 3 of the Bill proposes incidental and connected amendments to the Employment Agency Regulations (Cap. 57A).

Commencement

12. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

Public Consultation

13. According to paragraph 16 of the LegCo Brief, the Administration has briefed the EA associations on the legislative proposals on 17 February 2017. While some were concerned that the proposals would increase their burden, they acknowledged the need to meet the community's expectation for professional and quality service.

Consultation with LegCo Panel

14. According to the Clerk to the Panel on Manpower, the Panel was consulted at its meeting on 21 February 2017 on the legislative proposals. While members were generally supportive of the proposals, some members expressed concerns on various issues including the effectiveness of the code of practice in regulating the malpractices of EAs providing placement services of foreign domestic helpers and equally protecting the interests of foreign domestic helpers and their employers, and penalty for offences under the legislative proposals.

Conclusion

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill and may report further if necessary. In view of the concerns expressed by members of the Panel on Manpower, Members may wish to consider whether a Bills Committee should be set up to study the Bill in detail.

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