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**Panel on Manpower**

**Background brief prepared by the  
Legislative Council Secretariat for the meeting on 21 February 2017**

**Regulation of employment agencies placing foreign domestic helpers**

**Purpose**

This paper provides background information and summarizes the past discussions by the Panel on Manpower ("the Panel") on issues relating to the regulation of employment agencies ("EAs") placing foreign domestic helpers ("FDHs").

**Background**

2. According to the Administration, as of April 2016, there were 2 900 licensed EAs in Hong Kong, amongst which 1 400 were EAs providing placement service of FDHs. While there is no legal requirement in Hong Kong that FDHs must be recruited through the intermediary service of an EA, EAs are the most common channel through which employers in Hong Kong recruit FDHs.

3. EAs in Hong Kong, including those placing FDHs, are regulated under the Employment Ordinance (Cap. 57) ("EO") and the Employment Agency Regulations (Cap. 57A) ("EAR"). Under the existing regulatory regime, all EAs are required to apply for a licence from the Labour Department ("LD") before undertaking any job placement business. EAs are only allowed to receive from FDHs the prescribed commission specified in the Second Schedule of EAR, which is no more than 10% of the latter's first month's salary for successful job placement service. The Employment Agencies Administration ("EAA") of LD is responsible for regulating the operation of EAs, including those providing FDH placement service, through licensing, both regular and

surprise inspections, complaints investigation and prosecution to ensure that they are operating in compliance with the law.

4. The service charges collected from employers by EAs are, however, not regulated under the existing regulatory regime. For employers who consider the services provided by EAs unsatisfactory or do not match with the service agreements, they can lodge a complaint with the Consumer Council and seek advice and assistance as appropriate. Furthermore, the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012, which prohibits specified unfair trade practices such as false trade descriptions of services or misleading omissions, applies to the services provided by EAs to FDH employers.

5. In April 2016, LD promulgated a draft Code of Practice ("CoP") for EAs for public consultation. The draft CoP set out, among others, the salient legislative requirements that EA licensees must follow and the Commissioner for Labour ("C for L")'s expectation of minimum standards of EAs including those placing FDHs, with a view to promoting the professionalism and service quality of the industry. The consultation period ended on 17 June 2016.

### **Deliberations of the Panel**

6. The Panel had discussed the regulation of EAs placing FDHs and related issues at a number of meetings. Following the launch of the public consultation exercise on the draft CoP for EAs, the Administration sought members' views on the draft CoP at the Panel meeting on 19 April 2016. The Panel then held another meeting on 24 May 2016 to receive views from deputations on the draft CoP. The past deliberations and concerns of members on the subject are summarized in the following paragraphs.

#### Tackling malpractices of employment agencies

7. Members expressed grave concern that some FDHs, particularly those from Indonesia, had incurred huge debts in order to meet the high intermediary fees and training fees charged by EAs in their home countries prior to working in Hong Kong. Upon arrival in Hong Kong, these FDHs had to make monthly repayment for the huge debts through the local EAs. Some FDHs' passports were allegedly withheld by EAs so as to force them to make loan repayment.

8. The Administration advised that according to Hong Kong law, charging of commission exceeding the prescribed amount and money-lending activities were regulated under EAR and the Money Lenders Ordinance (Cap. 163) respectively. FDHs could file claims with LD, so that LD would conduct

investigation upon receipt of the overcharging or malpractices complaints. An EA or any other person withholding a FDH's passport without the latter's consent would have committed an offence under the Theft Ordinance (Cap. 210). Whenever such malpractice was detected by officers of EAA during their inspections to EAs, they would take appropriate enforcement action and refer the case to the Police for follow-up. These legislative requirements that EAs had to follow were listed in Chapter 3 of the draft CoP.

9. Some members asked whether the Administration would verify the accreditation status of the intermediaries in FDH-sending countries so as to facilitate the taking of enforcement actions. Some members considered that arrangement could be made for FDHs to receive job training in Hong Kong so as to alleviate their burden arising from the high level of fees for attending the relevant training in their home countries.

10. The Administration explained that while there was no legal requirement in Hong Kong that FDHs must be recruited through the intermediary service of an EA, such requirements were imposed by many of the FDH-sending countries and these requirements varied from country to country. For instance, the Philippine Government did not allow direct hiring of first-time FDHs, while the Indonesian Government only allowed hiring FDHs through accredited EAs. The Administration pointed out that it was the national laws and practices of individual FDH-sending countries that FDHs be required to undergo relevant training in their home countries. The Hong Kong Government did not have any jurisdiction on the operation of overseas intermediaries and training institutes. The Administration also drew members' attention to the fact that while the existing legislation did not require accreditation by other governments as a prerequisite for obtaining an EA licence in Hong Kong, all EAs, regardless of whether they were accredited by the relevant FDH-sending governments, were subject to the regulation of EO and EAR.

11. Members were further advised that the Government had through its regular contacts with the relevant Consulates General ("CGs") in Hong Kong, brought the concern about "bonded labour" to the latter's attention and urged them to draw the problem to the attention of their respective governments so as to tackle the issue at source for protecting the interests of both employers and FDHs. LD had since 2014 intensified collaboration with CGs of major FDH-sending countries in Hong Kong by participating in briefings for newly-arrived FDHs and cultural events organized by these CGs from time to time to promote among FDHs the important information on employment rights and ways to seek redress from various channels. In addition, an inter-departmental regular liaison mechanism with both the Indonesian and Philippines CGs respectively had been set up since 2014 for information sharing and coordination of FDH-related matters. With the setting up of a new office

of the Hong Kong Economic and Trade Office in Jakarta, it was expected that it would help further strengthen the liaison with the FDH-sending countries.

#### Enforcement actions against employment agencies

12. Members were advised that EAA, the Police and the Immigration Department would regularly conduct joint operations to ensure that EAs were operating in compliance with the law. C for L would also consider revoking or refusing to renew EAs' licences if they were convicted of criminal offences. The Customs and Excise Department would take appropriate enforcement actions against EAs for contravention of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance. According to the Administration, in 2013, 2014 and 2015, LD conducted 1 341, 1 806 and 1 803 inspections respectively to EAs across the territory. In 2015, among which 1 348 (75%) were inspections to EAs providing placement service for FDHs. In the same year, a total of 12 EAs were prosecuted by LD, among which nine were convicted of overcharging commission from job-seekers and/or unlicensed operation. In 2015, C for L revoked/refused to renew licences to five EAs, for reasons including the licensee being convicted of overcharging commission from FDHs and unlicensed operation before a licence was granted.

#### Effectiveness of the Code of Practice for Employment Agencies

13. While considering that the issue of CoP would facilitate EAs' compliance and for ease of reference by FDHs and their employers, some members expressed concern about the binding effect of CoP, in particular whether it could adequately address issues relating to money-lending activities of intermediaries and the unscrupulous operation of EAs. To enhance the deterrence effect against unscrupulous operation of EAs, some members called on the Administration to, in addition to the issue of CoP, consider publishing the names of these EAs on LD's website and introducing a demerit points system for regulating EAs. Some other members, however, took the view that CoP should equally safeguard the interest of employers who suffered from the problem of job hopping of FDHs. There was a view that a probation period should be introduced for newly-recruited FDHs, so as to better protect the interests of both employers and employees.

14. The Administration advised that CoP would define the roles and obligations of an EA during its dealings with job-seekers and employers so that each party would know clearly what to expect from EAs. It applied to all licensed EAs providing FDH placement services, irrespective of whether or not they were accredited EAs by the FDH-sending governments. It would also illustrate best practices for EAs and provide some sample forms for EAs, for example, sample service agreements and sample resume of FDH job-seekers.

The Administration further advised that in relation to the implementation of CoP, LD would issue warning letters to EAs for rectification of irregularities detected, including but not limited to failing to meet the statutory requirements and/or standards set out in CoP. When making decision of issuing, revoking, or refusing to issue or renew EA licences, C for L would consider, amongst other relevant factors, whether a person was fit and proper to operate an EA in accordance with section 53(1)(c)(v) of EO based on the relevant track record (for example whether EAs had persistently failed to meet the requirements and/or standards set out in CoP, as well as records of failure to rectify upon warning of LD, etc.) of EAs and/or their capability of meeting such requirements/standards.

15. Some members pointed out that prospective employers of FDHs relied heavily on the information provided by EAs in deciding whether to employ the FDH concerned. They enquired how CoP could help ensure EAs' provision of accurate information. In addition, a complaint mechanism for handling disputes of FDH-related matters should be established.

16. The Administration advised that a "Sample Form for Profile of Foreign Domestic Helper" was provided in CoP. In drawing up the service agreement with employers, EAs had to provide a copy of the resume of the selected FDH to the prospective employers. EAs should also exercise due diligence in checking the accuracy of the information in the resume of the job-seekers as far as practicable (e.g. the accuracy and/or validity of the qualification and work experience set out therein). It was believed that such information would facilitate employers to make an informed decision when selecting FDHs and the service agreement/resume could serve as supporting documents for legal proceedings as necessary.

17. Members were advised that LD would, in light of the views collected in the consultation period, refine the draft CoP and publish it for implementation. The Administration stressed that if the effectiveness of CoP was far from satisfactory, the Administration would consider adopting other means including, inter alia, introducing legislative amendments to EO and/or EAR to suitably regulate the industry.

### **Latest development**

18. LD issued on 13 January 2017 CoP for EAs, which, according to the Administration, highlights the salient legislative requirements that EA operators must follow and sets out the minimum standards expected of EA licensees by C for L.

19. In the Chief Executive's 2017 Policy Address, it was stated that LD planned to introduce an amendment bill into the Legislative Council ("LegCo") in the second quarter of 2017 to provide legal basis for the newly promulgated CoP for EAs, and to impose heavier penalties on EAs overcharging job-seekers or those operating without a licence. In the latter connection, the Administration proposed that the maximum penalty be increased from \$50,000 to \$350,000 and three years of imprisonment, with a view to attaining a more potent deterrent effect.

### **Relevant papers**

20. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
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## Appendix

### Relevant papers on the regulation of employment agencies placing foreign domestic helpers

Committee	Date of meeting	Paper
Legislative Council	4.7.2012	<u>Official Record of Proceedings</u> (Question 16)
Panel on Manpower	18.6.2013 (Item IV)	<u>Agenda</u> <u>Minutes</u> <u>LC Paper No. CB(2)1851/12-13(01)</u>
Legislative Council	3.7.2013	<u>Official Record of Proceedings</u> (Question 6) (Question 18)
Legislative Council	16.10.2013	<u>Official Record of Proceedings</u> (Question 13)
Legislative Council	12.2.2014	<u>Official Record of Proceedings</u> (Question 17)
Panel on Manpower	27.2.2014 (Item I)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	6.5.2015	<u>Official Record of Proceedings</u> (Question 7)
Panel on Manpower	16.6.2015 (Item V)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	8.7.2015	<u>Official Record of Proceedings</u> (Question 21)
Legislative Council	4.11.2015	<u>Official Record of Proceedings</u> (Question 15)

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Legislative Council	6.1.2016	<u>Official Record of Proceedings</u> (Question 3) (Question 11)
Panel on Manpower	19.4.2016 (Item V)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	24.5.2016 (Item I)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	25.5.2016	<u>Official Record of Proceedings</u> (Question 16)
Legislative Council	1.6.2016	<u>Official Record of Proceedings</u> (Question 18)
Panel on Manpower	23.1.2017	<u>LC Paper No. CB(2)652/16-17(03)</u>

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