

For information on  
21 September 2021

## **Legislative Council Panel on Manpower**

### **Regulation of Employment Agencies**

#### **Purpose**

This paper briefs Members on the latest situation of regulation of employment agencies (“EAs”) undertaken by the Labour Department (“LD”).

#### **Regulation of EAs**

2. LD is responsible for enforcing Part XII of the Employment Ordinance (Cap. 57) (“EO”), the Employment Agency Regulations (Cap. 57A) (“EAR”) and the Code of Practice for EAs (“CoP”) to regulate EAs and to safeguard the interests of job seekers and employers engaging the service of EAs in Hong Kong by way of licensing, inspection, complaint investigation and prosecution.

3. According to EO, “employment agency” refers to any institution or person who operates a business the purpose of which is to obtain employment for another person or supply the labour of another person to an employer. All EAs operating in Hong Kong, regardless of their mode of operation or the categories of job openings offered (including EAs providing employment services for foreign domestic helpers (“FDH EAs”)) must have obtained a licence issued by LD before operation and are subject to regulation. To protect the interest of job seekers, the EO stipulated that the commission which may be received by an EA from a job seeker shall be an amount not exceeding 10% of the first month’s wages received by the job seeker after being placed in employment.

4. LD processes and approves applications for issue and renewal of EA licence in accordance with the law and CoP requirements. Apart from checking the records of the EA's licensee, LD would also scrutinise the records of the EA's operator, person intending to be the operator, and the related persons of the licensee (i.e. the management) or employees to see whether they have relevant conviction records. If it is found that the applicant or his/her associate (i.e. the management or an employee) has committed an offence under EO or breached the CoP, LD would refuse the application so as to prevent the offender from operating an EA again. As at the end of August 2021, there were 3 337 licensed EAs, of which 1 529 were FDH EAs.

5. LD has all along taken rigorous enforcement actions in combating irregularities of EAs, and has beefed up its manpower to step up inspections to EAs. The annual target number of inspections to EAs has been increased from 1 800 to 2 000 since 2018. The inspection officers of LD would make detailed inquiries with the operator, as well as scrutinise relevant records and documents to ensure that the EA is operating in compliance with the law and over 40 requirements set out in the CoP. Upon detection of possible irregularities, LD officers would seize placement records and carry out further investigation. In addition, LD has established a regular liaison mechanism with the consulates general of major FDH sending countries so as to strengthen cooperation and exchange relevant information on EAs.

6. If LD receives complaints against EAs, LD would initiate investigation, including conducting interview with the complainant to solicit statement, obtaining related information from relevant persons or organisations, making inquiries with the EA's licensee or his/her associates, seizing placement records, etc. LD will initiate prosecution where there is sufficient evidence to substantiate an offence.

7. In the past three years (i.e. 2018 to 2021 (up to August)), LD received 411, 550, 350 and 309 complaints against EAs, among which 357, 475, 290, and 269 involved FDH EAs. The complaints mainly involved overcharging of commission, unlicensed operation, failing to provide payment receipt to employers or job seekers, getting involved in the financial affairs of job seekers, failing to explain to job seekers their rights and obligations, etc.

8. During the same period, LD successfully prosecuted 10, 10, 11 and 4 EAs respectively. The breakdown of these cases by reasons of conviction is given in the table below.

|                          | Number of EAs successfully prosecuted |               |                |                        |
|--------------------------|---------------------------------------|---------------|----------------|------------------------|
|                          | 2018                                  | 2019          | 2020           | 2021<br>(up to August) |
| Unlicensed operation     | --                                    | 2 (2)         | 3 (3)          | 1 (1)                  |
| Overcharge of commission | 3 (3)                                 | 4 (4)         | 3 (3)          | 1 (1)                  |
| Others*                  | 7 (3)                                 | 4 (2)         | 5 (4)          | 2 (1)                  |
| <b>Total</b>             | <b>10 (6)</b>                         | <b>10 (8)</b> | <b>11 (10)</b> | <b>4 (3)</b>           |

Remark : The figures in brackets denote figures related to FDH EAs.

- \* : Including failing to display licence and the Second Schedule to the EAR, failing to maintain the prescribed record in the law, failing to notify LD within the statutory time limit of the change in management. The Second Schedule to the EAR stipulates that the maximum commission which an EA may receive from a job seeker is an amount not exceeding 10% of the first month's wages received by the latter after he/she is successfully placed.

### Employment (Amendment) Ordinance 2018

9. In light of public concern over the malpractices of EAs, especially overcharging of commissions from job seekers (FDHs in particular), the Government introduced the Employment (Amendment) Ordinance 2018 ("E(A)O 2018") to strengthen the regulation of EAs, thereby better protecting the interests of job seekers and employers engaging the service of EAs. E(A)O 2018 was passed by the Legislative Council on 31 January 2018 and was effective on 9 February in the same year. The major amendments of the E(A)O 2018 include –

- (a) increasing the maximum penalties for offences of overcharging job seekers and unlicensed operation from a fine of \$50,000 to a fine of \$350,000 and imprisonment for three years;
- (b) extending the statutory time limit for prosecution of the above two offences from six to 12 months;
- (c) expanding the scope of the overcharging offence to cover associates of the licensee including the management as well as persons employed by EAs;

- (d) setting out new grounds for the Commissioner for Labour (“the Commissioner”) to refuse to issue/renew or revoke EA licences<sup>1</sup>; and
- (e) providing a legal basis for the CoP<sup>2</sup> promulgated by the Commissioner.

10. The E(A)O provides an even more solid foundation for LD to combat irregularities of EAs. From 2020 to 2021 (up to August), LD considered taking out prosecution against EAs involving offences of unlicensed operation or overcharging in 24 cases. Of these, the prosecution of 14 cases could only be pursued due to the amendments mentioned in the paragraphs 9(b) and (c) above. In respect of sentencing, the court fined an EA and its director in 2019 for the offences of overcharging of commission for a total of \$92,000, which was five times the amount of the highest fine (\$16,600) imposed on a case of the same offence before the legislative amendment. In the same year, the court ordered a fine of \$120,000 for a case involving unlicensed operation of an EA, which was eight times the amount of the highest fine (\$15,000) imposed on a case of the same offence before the legislative amendment. From 2020 to 2021 (up to August), the court imposed a fine of \$80,000 on a defendant in a case involving unlicensed operation.

## CoP

11. In January 2017, LD promulgated the CoP to regulate the EAs with a view to promoting the professionalism and service quality of the industry. The CoP highlights the salient legislative requirements<sup>3</sup> that EA operators must follow and sets out the minimum standards which the Commissioner expects from EAs<sup>4</sup>. E(A)O 2018 provides a legal basis for the CoP. If an EA breaches the CoP, the Commissioner may revoke or refuse to issue/renew its licence, or issue warnings for rectification of the irregularities detected.

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<sup>1</sup> The new grounds include: (1) the licensee or his/her associates has not complied with the CoP; (2) the associate of the licensee has contravened any provision of Part XII of the EO or any regulation made under section 62; and (3) the related person of the licensee 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.

<sup>2</sup> Under section 62A of EO, the Commissioner may issue a CoP setting out the principles, procedures, guidelines and standards for the operation, management or control of EAs.

<sup>3</sup> For example, EAs are not allowed to overcharge job seekers, should adopt fair trade practices, not to withhold the personal property of job seekers such as passport, employment contract, bank ATM card, etc.

<sup>4</sup> For example, maintaining transparency in business operations, drawing up service agreements with job seekers and employers, providing payment receipt, avoiding getting involved in the financial affairs of job seekers, etc.

12. The table below sets out the number of revocation of licence, refusal to issue/renew a licence, and the number of written and verbal warnings issued to the EAs for breaches of the CoP from 2018 to 2021 (up to August). The main reasons for taking the relevant decisions include the licensee being convicted for overcharging job seeker's commission, failure of the licensee to comply with the CoP, and the licensee being considered not a fit and proper person to operate an EA.

|   | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021<br/>(Up to August)</b> |
|---|-------------|-------------|-------------|--------------------------------|
| No. of licence revocation, refusal to issue/renew a licence | 11 (10)     | 13 (12)     | 7 (7)       | 6 (6)                          |
| No. of written warnings issued                              | 39 (39)     | 46 (46)     | 60 (60)     | 55 (55)                        |
| No. of verbal warnings issued                               | 1 097 (775) | 1 057 (638) | 635 (532)   | 696 (556)                      |

Note: The figures in brackets denote figures concerning FDH EAs.

### **Publicity and educational work**

13. In order to provide more information on the regulation of EAs to the public and job seekers and remind them of the matters to be noted when choosing an EA, LD has published leaflets written in different languages (including Chinese, English, Tagalog and Indonesian). LD also operates a dedicated EA Portal ([www.eaa.labour.gov.hk](http://www.eaa.labour.gov.hk)), which is a one-stop platform to assist job seekers and employers to gain access to information relating to EAs, including verifying whether an EA holds a valid licence. Tagalog, Indonesian, Thai and Khmer versions of the FDH section of the EA Portal are available for FDHs. The public can also use the online platform to send in complaints against EAs about suspected contravention of the law or non-compliance with CoP. Furthermore, LD would also remind EAs to operate in compliance with the law through regular inspection visits, communications, radio Announcements in the Public Interest, organising briefings, etc.

14. In addition, in order to enhance transparency of EAs' track records and help job seekers and employers make informed decisions when engaging EA services, LD has published since October 2018 on its dedicated EA Portal the lists of records of conviction of overcharging and unlicensed operation, revocation/refusal of renewal of licence, and issue of written warnings to EAs for breaches of the CoP.

### **Stepping up enforcement actions against unscrupulous EAs**

15. In view of public concern over unscrupulous EAs arranging FDHs to take out loans from financial institutions and inducing FDHs to change employers frequently within a contract period (commonly known as "job-hopping") in recent years, LD has taken the following measures to tackle the related problems.

#### ***Actions against cajoling FDHs to take out loans***

16. According to CoP, EAs should not be directly or indirectly involved in the financial affairs of job seekers. They should not advise, arrange, encourage or force job seekers to take out loans from any financial institutions or individuals. In light of the public's concern over unscrupulous EAs and financial institutions arranging FDHs to take out loans, and the fact that such problems might involve overcharging of commission by EAs, LD has taken various measures to tackle the situation, including checking whether an EA is a licensed money lender or is appointed third party of a licensed money lender in relation to granting of loans while vetting the applications for issue or renewal of EA licences. LD would also regularly monitor whether an EA and licensed money lender or appointed third party are operating at the same address or in the immediate vicinity. LD would conduct company search to check whether responsible persons of FDH EAs are concurrently the directors of financial institutions. If the above situation is found, LD would take follow-up actions, including conducting inspections to the EAs concerned, seizing relevant records and contacting relevant FDHs to investigate whether they are overcharged commission or have been arranged to take out loans from financial institutions. In addition, LD has close cooperation with law enforcement agencies. If any suspected offence relating to money lending is detected, LD would refer the case to the Police for taking follow-up actions.

#### ***Actions against EAs inducing FDHs to job-hop***

17. Due to the persistence of the COVID-19 pandemic, the supply of FDHs has been greatly affected, leading to concerns in the community over the problem of job-hopping of FDHs. LD and the Immigration Department ("ImmD") have taken the following measures.

18. ImmD has all along been processing employment visa applications of FDHs in a rigorous manner. If an applicant has any adverse records or breaches, ImmD may consider refusing his/her application. The special duties team of ImmD would strengthen the assessment of employment visa applications from FDHs who changed employers frequently. In assessing whether an FDH is a job-hopper, the special duties team would take into account all relevant factors, such as the number and reasons for premature termination of contract, the conduct and record, etc. If FDHs are suspected of job-hopping, ImmD would refuse their employment visa applications and require them to leave Hong Kong.

19. Pursuant to CoP, EAs are required to act honestly and exercise due diligence when providing placement service to employers and job seekers. EAs have the responsibility to ensure that the candidates offered to employers could satisfy the employers' requirements. In general, employers expect FDHs to complete the two-year Standard Employment Contract.

20. LD has taken a series of measures to strengthen efforts in combatting suspected inducement of FDH job-hopping by EAs, including

- (a) closely monitoring the business practice of EAs and conducting inspections to EAs offering cash incentives to FDH job seekers (particularly those who terminated the employment contract prematurely) and their referrers;
- (b) strengthening communication and exchange of information with ImmD concerning FDHs suspected of job-hopping and, on need basis, mounting joint operations to inspect relevant EAs with a view to jointly combatting job-hopping of FDHs in a more proactive and focused manner;
- (c) preparing inspection and investigation guidelines for the cases involving job-hopping of FDHs, so as to conduct inspections and collect evidence on EAs inducing FDH job-hopping in a more targeted manner; and
- (d) issuing letters to all FDH EAs to remind them that they should not adopt business practices to encourage or induce FDHs to job-hop. If there is sufficient evidence to substantiate the breach of CoP, LD may revoke or refuse to issue or renew its licence, or issue warning for rectification of the irregularities detected.

21. From 2018 to 2021 (up to August), LD received 9, 17, 29 and 120 complaints respectively involving FDH EAs inducing FDHs to job-hop, e.g. EAs providing monetary incentives such as cash rewards to FDH job seekers to attract them to use the EAs' services for finding new employers. LD has instigated investigation into each complaint case, sending officers to inspect the relevant EAs and reminding them not to encourage FDHs to job-hop. The EAs concerned have ceased such business practices.

22. Members are invited to note the content of this paper.

Labour and Welfare Bureau  
Labour Department  
September 2021