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**Panel on Manpower**

**Updated background brief prepared by the  
Legislative Council Secretariat for the meeting on 21 September 2021**

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

**Purpose**

This paper provides background information and summarizes the past discussions by the Panel on Manpower and the Bills Committee on Employment (Amendment) (No.2) Bill 2017 on issues relating to the regulation of employment agencies ("EAs") placing foreign domestic helpers ("FDHs").

**Background**

2. According to the Administration, as of May 2017, there were 3 023 licensed EAs in Hong Kong, amongst which 1 416 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 Ordinance (Cap. 362) ("TDO"), as amended by the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012, 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 January 2017, LD promulgated the Code of Practice for EAs ("CoP") as an administrative measure to promote the professionalism and service quality of EAs. CoP sets 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. Failure to comply with CoP, C for L may refuse to issue, renew, or even revoke an EA licence under section 53(1) of EO.

6. In June 2017, the Administration introduced the Employment (Amendment) (No. 2) Bill 2017 ("the Bill"), which sought to raise the maximum penalties for the existing offences of unlicensed operation of EAs and overcharging job-seekers on commissions; extend the scope of the existing offence of overcharging jobseekers to associates in addition to the licensee; provide for new grounds for refusal to issue or to renew or for revoking a licence to operate an EA; and empower C for L to issue CoP for EAs to ensure its effective implementation. Following the passage of the Bill at the Council meeting of 31 January 2018, the Employment (Amendment) Ordinance 2018 came into operation in February 2018.

## **Members' deliberations**

### Tackling malpractices of employment agencies

7. Members expressed grave concern that some FDHs 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. As such, some FDHs' passports were allegedly withheld by EAs so as to force them to make loan repayment, and some FDH employers were requested by EAs to deposit their FDHs' wages into designated bank accounts other than those of the FDHs concerned.

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. To reduce the chance of unscrupulous EAs escaping from criminal liability, the statutory time limit for prosecution of EAs overcharging and unlicensed operation had since 2018 been extended from six to 12 months to allow complainants sufficient time to file complaints. An EA or any other person withholding an FDH's passport without the latter's consent would have committed an offence under the Theft Ordinance (Cap. 210) ("TO"). 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. As for FDH employers, although the payment method of wages was subject to the mutual agreement between them and FDHs, it was illegal for them to deduct FDHs' wages and pay the deducted part to EAs or another party as settling FDHs' placement fees or loans. In relation to service fees, EAs would be liable on conviction to a maximum penalty of a fine of \$350,000 and imprisonment for three years if they received from FDHs, reward of any kind, or any payment or advantages in respect of expenses or otherwise, except for the prescribed commission which was to be no more than 10% of the job-seekers' first month's wages for the successful job placement service. These legislative requirements that EAs had to follow were listed in Chapter 3 of CoP.

9. Some members were concerned that employees of EAs such as director, manager, secretary, or other similar officers could become the scapegoat for the licensee since they could be held liable to the overcharging offence. Having regard to the possibility that an FDH might have given consent to an EA for keeping his/her passport for processing necessary documents, but the latter subsequently did not return the passport to the FDH concerned, some members expressed concern about the effectiveness of tackling EAs withholding passports of FDHs under TO in which "theft" was usually defined as obtaining personal belongings without the owner's consent. In such circumstances, withholding of passports by EAs might not be regarded as "theft". These members called on the Administration to draw reference to the relevant legislation of Singapore which provided for a specific offence and penalty to address the malpractice of withholding FDHs' passports by EAs.

10. The Administration advised that introducing a specific offence under EO for withholding FDHs' passports by EAs might not be the most effective means to address the issue, as this could entail other issues such as the difficulty in securing sufficient evidence for prosecution. Members were assured that in considering whether to prosecute a person involved in overcharging, LD would

consider carefully all relevant facts of each case, such as ascertaining whether such a person was the end receiver of the overcharged commission.

11. 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.

12. 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.

13. Members noted with concern that the number of EAs which were convicted of overcharging FDHs was on the low side. They called on the Administration to optimize the manpower resources for conducting more frequent inspections to detect breaches of various labour laws so as to safeguard the statutory rights and benefits of FDHs.

14. Members were advised that EAA, the Police and the Immigration Department ("ImmD") 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 TDO. The Administration assured members that it would review the manpower requirements for the regulation of EAs from time to time and deploy additional resources as necessary.

### Enhancing protection and raising awareness of FDHs of their rights

15. Some members were concerned that some FDHs might be forced labour victims. The Administration 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.

16. Members also called on the Administration to step up its publicity to enhance FDHs' awareness of their rights and entitlements, especially for those coming from places other than the Philippines and Indonesia. According to the Administration, apart from the publication of a "Do's and Don'ts" leaflet in different languages for FDHs, employers and EAs on their respective rights and obligations under EO and the Standard Employment Contract in 2016, LD established a dedicated website for employment of FDHs ([www.fdh.labour.gov.hk](http://www.fdh.labour.gov.hk)), which contained information and useful links related to the employment of FDHs. Publications and publicity videos related to the employment rights of FDHs were also uploaded to the website to help FDHs, FDH employers and the public access to the relevant policies and labour laws.

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

17. 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 in mother languages of all FDHs in Hong Kong, consider publishing the names of these EAs on LD's website and introducing a demerit points system for regulating EAs. Some other members 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.

18. The Administration advised that CoP defined 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. CoP also illustrated best practices for EAs and provided some sample forms for EAs such as sample service agreements and sample resume of FDH job-seekers. It was available bilingually for reference mainly by EAs and employers, while more easy-to-understand publicity materials would be prepared for FDHs.

19. The Administration further advised that to curb "job-hopping", ImmD had strengthened the assessment of employment visa applications of FDHs who changed employers frequently. LD would also take into account whether EAs were involved in cases of FDHs' premature termination of contracts when considering their applications for licence renewal. This apart, LD had issued letters to all EAs providing FDH placement services to remind them that they should not encourage or induce FDHs to job-hop through business malpractices. If there was sufficient evidence to prove that EAs had induced FDHs to engage in misconduct like job-hopping and/or failed to comply with CoP, LD may revoke or refuse to issue or renew their licence, or issue a warning to ensure the rectification of the irregularities detected. Members were also advised that the Administration would need to examine carefully the suggestion of introducing a probation period for newly-recruited FDHs to safeguard against adverse unintended consequences.

20. 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. There was also a view that a complaint mechanism for handling disputes of FDH-related matters should be established.

21. 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. Members were assured that LD would closely

monitor the implementation of CoP and consider conducting a review in about 18 months or two years after its implementation.

### **Relevant papers**

22. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
15 September 2021

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

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
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> LC Paper No. CB(2)1851/12-13(01)
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	<a href="#">Official Record of Proceedings (Question 3)</a> <a href="#">(Question 11)</a>
Panel on Manpower	19.4.2016 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Panel on Manpower	24.5.2016 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	25.5.2016	<a href="#">Official Record of Proceedings (Question 16)</a>
Legislative Council	1.6.2016	<a href="#">Official Record of Proceedings (Question 18)</a>
Panel on Manpower	23.1.2017	<a href="#">LC Paper No. CB(2)652/16-17(03)</a>
Panel on Manpower	21.2.2017 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	28.6.2017	<a href="#">Official Record of Proceedings (Government Bills)</a>
Bills Committee on Employment (Amendment) (No. 2) Bill 2017	31.1.2018	<a href="#">Report of the Bills Committee on Employment (Amendment) (No. 2) Bill 2017</a>
Legislative Council	1.2.2018	<a href="#">Official Record of Proceedings (Government Bills)</a>
Legislative Council	27.1.2021	<a href="#">Official Record of Proceedings (Question 21)</a>