

Family Council

Draft Code of Practice for Employment Agencies

PURPOSE

This paper briefs Members and seeks their views on the draft Code of Practice (draft CoP) for Employment Agencies (EAs).

BACKGROUND

2. At present, EAs in Hong Kong are regulated by Part XII of the Employment Ordinance (EO) (Cap. 57) and the Employment Agency Regulations (EAR) (Cap. 57A). According to section 51(1) of EO, any person who wishes to operate an EA¹ in Hong Kong is required to obtain a licence or a Certificate of Exemption in advance from the Commissioner for Labour (C for L), or otherwise he/she may be held liable for an offence. At present, there are about 2 900 licensed EAs, amongst which 1 400 are EAs providing placement service of foreign domestic helpers (FDHs) (herein after referred to as “FDH EAs”).

3. The Employment Agencies Administration (EAA) of the Labour Department (LD) is responsible for enforcing the above legislation. It regulates EAs’ compliance with the laws through regular and surprise inspections, complaint investigations, as well as instituting prosecutions against EAs which are suspected of breaching the laws.

4. The Government has all along been taking stringent enforcement actions against EAs which have violated EO and EAR, in particular against their involving in unlicensed operation and overcharging of commission from job-seekers. LD will initiate investigation immediately upon receipt of complaints; where there is sufficient evidence, prosecution will be instituted accordingly. Having regard to public expectations and concerns, especially

¹ An EA is defined under section 50(1) of EO as “a person who operates a business the purpose of which is to obtain employment for another person; or to supply the labour of another person, to an employer, whether or not the person who operates the business will derive any pecuniary or other material advantage from either the employer or such other person”.

those from employers and job-seekers (with particular regard to the situation of FDHs) on services of EAs, EAA has strengthened the manpower in the past two financial years to strengthen the monitoring of EAs by increasing the annual inspection targets to EAs from 1 300 to 1 800 (representing a 38% increase).

5. In 2013, 2014 and 2015, LD conducted 1 341, 1 806 and 1 803 inspections respectively to EAs across the territory, amongst which 1 013 (76%), 1 352 (75%) and 1 348 (75%) were inspections to FDH EAs. In the first four months of 2016, LD conducted 755 inspections to EAs across the territory, including 546 (72%) inspections to FDH EAs. In 2014, LD successfully prosecuted four EAs, including one conviction of overcharging commission from job-seekers; whereas in 2015, a total of 12 EAs were prosecuted by LD, amongst which nine were convicted of overcharging commission from job-seekers. In 2014 and 2015, C for L revoked/refused to renew licences to five EAs respectively each year, for reasons including the licensee being convicted of overcharging commission from FDHs, unlicensed operation before a licence was granted, perverting the course of public justice, as well as the licensee was considered by C for L on reasonable grounds that he/she was not a fit and proper person to operate an EA.

6. To promote professionalism and quality service in the EA industry, C for L is promulgating a CoP for EAs to follow during their operations. The draft CoP is at **Annex**. LD is conducting a consultation on the draft CoP. The consultation period will end on 17 June 2016.

CONTENT OF THE DRAFT COP

7. The draft CoP consists of five chapters and eight appendices. Of these, Chapter 3 lists out some salient legislative requirements that EA licensees must follow. They are by no means exhaustive and EAs shall ensure that their operations are in full compliance with all laws of Hong Kong at all times.

8. Section 53(1) of EO sets out the grounds upon which C for L may refuse to issue or renew, or to revoke an EA licence. C for L may exercise such power if he/she is satisfied on reasonable grounds that –

- (a) the name under which the EA is operated or is intended to be operated –
 - (i) is identical with the name of another EA which is being, or has been, carried on by another person; or
 - (ii) so nearly resembles the name of another EA as to be likely to deceive the public;
- (b) the EA is being, or is likely to be, used for unlawful or immoral purposes; or

- (c) the person operating, or intending to operate, the EA –
 - (i) is an undischarged bankrupt;
 - (ii) 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;
 - (iii) has knowingly furnished to C for L any false or misleading information in connection with his/her application for the issue or renewal of the licence;
 - (iv) has contravened any provision of Part XII of EO or any regulation made under section 62 of EO; or
 - (v) is not, for any other reason, a fit and proper person to operate an EA.

Section 53(1)(c)(v) provides that C for L may take into account all relevant facts in determining whether a person is fit and proper to operate EA business. Chapter 4 of the draft CoP provides elaboration in this regard.

9. Without prejudice to C for L's power to consider all relevant facts in determining whether a person is fit and proper to operate EA business, Chapter 4 of the draft CoP sets out the minimum standards which C for L expects from EA licensees in operating their business. Apart from complying with the statutory requirements (particularly those set out in Chapter 3) at all times, whether an EA licensee or an applicant can meet the standards set out in Chapter 4 is one of the important factors which C for L will take into account when considering if a person is a fit and proper person to operate an EA.

10. The standards set out in Chapter 4 cover all aspects in operating an EA, including –

- (a) Management's responsibilities;
- (b) Display of notices as required by law and government authorities;
- (c) Act honestly and exercise due diligence;
- (d) Maintain transparency in business operations;
- (e) Draw up service agreements with job-seekers and with employers;
- (f) Provision of payment receipts;
- (g) Provision of the employment contract to the contracting parties;
- (h) Maintain professional knowledge and stay up to date with latest laws and regulations relating to the industry;

- (i) Promote job-seekers' and employers' awareness of their rights and obligations;
- (j) Adopt good record management practices; and
- (k) Avoid involving in financial affairs of job-seekers.

11. Amongst the standards set out in Chapter 4, some of them are particularly relevant to FDH EAs. Whether EAs could meet such standards is one of the important factors which will be taken into account by C for L when issuing licences to or renewing licences for FDH EAs (please refer to paragraph 9 above).

12. To facilitate EAs' compliance and for ease of reference by FDHs and their employers, LD has also provided some sample forms in the Appendices of the draft CoP, including -

- (i) Sample record sheet for keeping information of job-seekers;
- (ii) Sample service agreements which EAs should respectively draw up with FDH job-seekers and FDH employers;
- (iii) Sample resume of FDH job-seekers;
- (iv) Sample receipts from EAs for FDH job-seekers and FDH employers;
- (v) Sample wage receipt for FDHs;
- (vi) Sample letters of termination of SEC initiated by FDHs and by FDH employers; and
- (vii) Sample receipt for payment upon termination/expiry of SEC.

EAs may, having regard to their own business operations, add further details/items to the above sample forms as they deem it appropriate.

13. In relation to the implementation of the CoP, LD may issue warning letters to EAs to demand for rectification of irregularities detected (which may include but not limited to failing to meet the statutory requirements and/or standards set out in the CoP). C for L may also take into account all relevant factors, including the relevant track record² of the EAs and/or their capability of meeting such requirements/standards, in deciding revoking or refusing to issue or renew EA licenses under section 53(1) of EO.

² For example whether systematic and intentional abuse has been detected or EAs have persistently failed to meet the requirements and / or standards set out in this CoP, as well as records of failure to rectify upon warning of LD, etc..

14. To enhance transparency, LD will publish a list of licensed EAs at its website for verification by members of the public. LD will also issue press statements and publish such on its website upon an EA being convicted, and/or the licence of an EA has been revoked or refused for renewal.

THE CONSULTATION EXERCISE

15. The Labour and Welfare Bureau has already notified the relevant Consulates-General about the draft CoP. LD has also uploaded the draft CoP to its website (www.labour.gov.hk/en/copconsultation.htm), and has provided a copy of the draft CoP to various stakeholders, including the EA associations, EAs, FDH employers groups and FDH groups. The Legislative Council Panel on Manpower has been consulted on the CoP, and LD has arranged consultation sessions for different stakeholder groups. LD welcomes organizations and individuals to send their views in writing to LD on or before 17 June 2016.

WAY FORWARD

16. Upon completion of the consultation, LD will carefully consider views collected and further refine the CoP for promulgation in due course. LD will closely monitor the effectiveness of the CoP (please refer to paragraph 13 above). If the effectiveness of the CoP is not satisfactory, LD may consider adopting other appropriate measures including, among others, seeking legislative amendments to EO and/or EAR to suitably regulate the industry.

PUBLIC EDUCATION

17. In addition to the introduction of the CoP to tighten regulation, LD will continue with its public education efforts to enhance the professionalism and service quality of the EA industry, as well as promoting the awareness of job-seekers and their employers about their rights and obligations, and the points to note when engaging an EA. In this regard, LD has published a simple and easy to understand leaflet in April 2016, setting out the respective “Do’s” and “Don’ts” for FDHs, employers and EAs. The leaflet is available in Chinese, English, Tagalog and Indonesian languages, with Thai version to be available shortly, and is distributed through offices of LD, the Immigration Department and the Public Enquiry Services Centre of District Offices of the Home Affairs Department. It is also available at LD’s website (http://www.labour.gov.hk/en/public/pdf/Dos_and_Donts_Leaflet_Eng.pdf).

ADVICE SOUGHT

18. Members are invited to offer their views on the draft CoP.

Labour and Welfare Bureau

Labour Department

June 2016