

# **Preliminary Proposals for Revising the Code of Practice for Employment Agencies**

## **Introduction**

The Labour Department (“LD”) has reviewed the Code of Practice for Employment Agencies (“CoP”) and put forth the preliminary proposals for revising the CoP. This paper sets out the details of the proposals.

## **Background**

2. In January 2017, LD promulgated the CoP by administrative measure to regulate employment agencies (“EAs”) with a view to promoting the professionalism and service quality of the industry. The CoP highlights the salient legislative requirements<sup>1</sup> that EA operators must follow and sets out the minimum standards which the Commissioner for Labour (“the Commissioner”) expects from EAs<sup>2</sup>. The Employment (Amendment) Ordinance 2018 (“E(A)O 2018”), effective from 9 February 2018, provides a legal basis for the CoP. In tandem, LD issued the prevailing CoP pursuant to section 62A(1)<sup>3</sup> of the EO.

3. LD has all along taken rigorous enforcement actions on combatting irregularities of EAs. LD officers conduct inspections to EAs to make detailed inquiries with the operators. Relevant records and documents are scrutinised to ensure that EAs are operating in compliance with the law and over 40 requirements set out in the CoP. Upon receipt of complaints against EAs, LD will instigate investigations. If an EA breaches the CoP, the Commissioner may revoke or refuse to issue/renew its licence, or issue warnings for rectification.

4. The CoP has largely been operating smoothly since its promulgation

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<sup>1</sup> For example, EAs are not allowed to overcharge job seekers, not to withhold the personal property of job seekers such as passport, employment contract, bank ATM card, etc.

<sup>2</sup> For example, maintaining transparency in business operations, drawing up written service agreements with job seekers and employers, providing payment receipts, avoiding getting involved in the financial affairs of job seekers, etc.

<sup>3</sup> A new provision introduced by E(A)O 2018.

in 2017. Most of the EAs are able to comply with the requirements of the CoP when conducting their EA business. After reviewing the implementation of the CoP, LD puts forth preliminary proposals with a view to further improving the relevant requirements. LD will revise the CoP after consulting the views of stakeholders.

## **Preliminary Proposals for Revising the CoP**

5. Having reviewed the CoP, we preliminarily propose to:

### *Avoiding involvement in financial affairs of job seekers*

- (a) require EAs, when submitting applications for issue and renewal of licence, to provide information on whether they are operating at the same premises of any financial institutions and whether the EA licensee or its related persons are the responsible persons of any financial institutions. We will also require EAs not to provide information relating to personal loans (e.g. information about financial institutions) to FDHs;
- (b) stipulate that, in addition to prohibiting EAs from collecting relevant fees for any local or overseas recruiters, agents or training centres, EAs should not remind, advise, request or urge job seekers to make payment to their overseas EA partners;

### *Job seekers' documents*

- (c) stipulate that if EAs need to ask for and/or keep the passports or personal identification documents of job seekers, EAs are required to explain the reason(s) to the job seekers and provide them with a written acknowledgement;
- (d) stipulate that EAs are not allowed to ask for and/or keep the Standard Employment Contract of foreign domestic helpers ("FDHs") in order to force them to pay or repay a sum of money;

Protecting personal information of employers and job seekers

- (e) stipulate that EAs are not allowed to publicly display or broadcast the sensitive personal data of job seekers (e.g. address, passport and Hong Kong Identity card numbers and family members of the job seekers) and their previous employers via their websites or mobile apps, broadcast function of instant messaging software, social media, shop windows, etc.;

Combatting job-hopping of FDHs

- (f) require EAs to clearly explain to FDH job seekers that in accordance with the prevailing policy, save for the exceptional circumstances of premature termination of contract owing to the transfer, migration, death or financial reasons of the original employer, or where there is evidence that the FDH has been abused or exploited, an application from an FDH for change of employer in Hong Kong within the two-year contract period will normally not be approved. An FDH who wishes to be employed by a new employer must leave Hong Kong and submit a fresh employment visa application. If there is evidence showing that an FDH job-hops, his/her employment visa application will be refused. The relevant application record will be one of the factors to be considered by the Government when processing his/her future employment visa applications;
- (g) stipulate that EAs should not adopt business practices such as providing monetary incentives to FDHs in employment to induce them to terminate their contract prematurely;
- (h) revise the CoP to require EAs to include the refund or FDH replacement arrangements in case of premature termination of contract initiated by FDHs in the EAs' service agreement ("SA") with the FDH employers;

Enhancing transparency of service fees charged by EAs

- (i) require EAs to set out in the SA the amount of fees charged for each

category of services, including fees relevant to processing FDHs' visas; fees relating to arrangement of FDHs' arrival in Hong Kong (e.g. air ticket, transport), fees relating to medical services or insurance, fees relating to employment of FDHs (e.g. translation, follow up and consultation services within the FDHs' employment period), so as to enhance transparency and strengthen the protection of employers' interests;

Boarding facilities operated by EAs

- (j) require EAs to declare whether they are operating boarding facilities for their FDH job seekers and provide basic information on these facilities (e.g. address, name of operator, whether a valid licence issued by the Home Affairs Department has been obtained (if applicable), facilities provided, etc.). EAs are also required to confirm whether their boarding facilities comply with relevant legislation, licensing (if applicable) requirements and regulations;
- (k) publish the aforementioned basic information on the boarding facilities operated by EAs to enhance transparency, as an incentive for EAs to improve the environmental condition of their boarding facilities;
- (l) set out in the CoP the relevant laws, standards, guidelines, etc. applicable to EAs when operating FDH boarding facilities for their reference and compliance; and

Defining the meaning of "job-seeker" in the CoP

- (m) define "job seeker" in the CoP as a person looking for employment or having been placed in employment by a relevant EA, making it clear that "job seeker(s)" referred to in certain parts of the CoP (e.g. involvement of EAs in the financial affairs of job seekers and retention of job seekers' passport or personal identification) includes persons in employment.

**Consultation and Invitation of Views**

6. LD has consulted the Labour Advisory Board Committee on Employment Services on 17 March 2023 and the Legislative Council Panel on Manpower on 21 March 2023. LD also plans to meet with EA associations, FDH organisations and FDH employer groups to solicit their views. Views from members of the public are also invited. You may send your views and suggestions in writing by 15 May 2023 (Monday) by email, fax or mail as indicated below. Please note that views and suggestions submitted may be published for consultation purposes. Please specify in your submission if you wish to request anonymity.

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