



CONSULTATION ON DRAFT CODE OF PRACTICE FOR EMPLOYMENT AGENCIES

SUBMISSIONS

Background

1. The primary sources of law regulating employment agencies ("EAs") in Hong Kong are Part XII of the Employment Ordinance (Cap.57) ("EO") and the Employment Agency Regulations (Cap.57A)("EAR").
2. "Employment agency" means 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 employer or such other person (section 50(1) of the EO).
3. Under the existing regulatory regime, all EAs are required to obtain a licence or certificate of exemption from the Commissioner for Labour ("the Commissioner") before operating their business (section 51 of the EO).
4. In April 2016, the Labour Department released a Draft Code of Practice for Employment Agencies ("the Code") for public consultation. It is said that the Code serves to help promote professionalism and quality services in the EAs industry.
5. The Law Society of Hong Kong has reviewed the Code and has the following comments.

Comments

6. In a wake of the publicity on problems regarding EAs and the placement of foreign domestic helpers ("FDHs"), we consider that the Code is a right move to better regulate the EAs industry.
7. Some of the problems related to EAs have been widely reported. For example, some FDHs have incurred huge debts in order to meet high intermediary fees and

training fees which are charged by the EAs.

8. The Code consists of two major parts, namely statutory requirements in relation to operating an EA (Chapter 3) and standards which the Commissioner expects from EAs (Chapter 4).
9. We do not have any comments on Chapter 3 of the Code which broadly replicates the provisions of the EO and/or the EAR.
10. It is, however, worth noting that section 53(1)(c) of the EO provides that the Commissioner has a power not to issue or renew a licence upon application or revoke a licence if the Commissioner is satisfied on reasonable grounds that the EA is not, for any other reason, a fit and proper person to operate an EA.
11. Chapter 4 of the Code sets out the minimum standards which the Commissioner expects from EAs in operating their business. Although it is non-exhaustive as to what is "fit and proper", it explains what are the "relevant factors" for the Commissioner in determining whether a person is "fit and proper" to operate an EA. Whilst the Code is definitely a move in the right direction, it is hoped that the Code should be reviewed on a regular basis to fine-tune the minimum standards. For example, if the problems mentioned in paragraph 7 above persist, paragraph 4.12 of the Code ("Avoid involving in financial affairs of job-seekers") should probably be tightened up.
12. The Code is also useful in bringing the attention of the EAs to the following areas where there are reported cases of breaches the law:
 - charging excessive fees by EA (paragraph 3.5)
 - the need to exercise due diligence on information provided by job seekers and employers (paragraph 4.4)
 - avoiding involvement in financial affairs of job seekers (such as helping others to collect fees and borrowing money) (paragraph 4.12).

Conclusion

13. The Law Society welcomes the introduction of the Code in Hong Kong.
14. The Administration should review the Code on a regular basis and embark on legislative amendments to EO and/or EAR to further tighten regulation of EAs in a more stringent way, when necessary.

The Law Society of Hong Kong
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