

香港法例第五十七章

《僱傭條例》第 XII 部及

《職業介紹所規例》指南

**A Guide to Part XII of the
Employment Ordinance (Chapter 57) and
Employment Agency Regulations**



勞工處

Labour Department

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簡介

本指南淺釋香港法例第 57 章《僱傭條例》第 XII 部（第 50 至 62A 條）及《職業介紹所規例》的各項主要條款。

2. 在編製本指南時，雖然力求準確，但對於各項法例條文的詮釋，仍應以該法例的原文為依歸。
3. 如有任何疑問，可向勞工處職業介紹所事務科查詢：

地址：九龍旺角道 1 號
旺角道壹號商業中心 9 樓 906 室
電話：2115 3667
傳真：2115 3756

「職業介紹所」的定義

4. 以替他人覓取職位或向僱主提供員工為宗旨的機構或人士均屬職業介紹所。

「相關人士」的定義

5. 相關人士指職業介紹所持牌人或擬作為持牌人的人的有關連人士或受僱人員。

「有關連人士」的定義

6. 有關連人士就一間公司而言，指該公司的董事、經理、秘書或其他類似的人員；或就一個合夥中的合夥人而言，指該合夥中其他合夥人，或其他涉及該合夥的管理的人。

《僱傭條例》第 XII 部的適用範圍

7. 該條例適用於香港所有職業介紹所，但下列介紹所則屬例外：
- (a) 其業務由香港特別行政區政府所經營或資助者；
 - (b) 其業務按照《商船（海員）條例》而經營者；
 - (c) 其業務目的僅為僱主本身招募僱員者；
 - (d) 其業務由承判商或次承判商經營，以招請員工為他人工作者；
 - (e) 其業務屬非牟利性質而由刊物出版社的東主經營者；或
 - (f) 其業務屬非牟利性質，而由認可教育機構所維持或管理而專為協助該教育機構的學生或畢業生就業者。

職業介紹所領取牌照事宜

8. 經營職業介紹所的人士，必須領有勞工處處長發給的牌照或豁免證明書。

違例者可被罰款 350,000 元及監禁 3 年

9. 經營職業介紹所分公司的人士，必須為每間分公司領取分行牌照。

違例者可被罰款 10,000 元

10. 牌照（包括總行及分行牌照）必須展示於職業介紹所營業地方的當眼處。

違例者可被罰款 10,000 元

牌照費

11. 牌照的有效期為 12 個月，由發牌日起計，每次申請發牌或續牌的費用為 2,000 元。
12. 每次就各分行申請複本牌照的費用為 385 元。
13. 因更改營業地址或分公司結束營業而申請更改牌照資料者，每次須繳付費用 155 元。

申請發牌或續牌

14. 申請發牌者，須於擬開始營業最少一個月前，以指定的表格申請。
15. 申請續牌者，須於牌照有效期屆滿的最少兩個月前，以指定的表格申請。
16. 如申請者為有限公司，則必須由該公司的一名董事代為提出申請。

就發牌或續牌申請提供虛假資料者可被罰款 50,000 元

拒絕發牌 / 續牌及撤銷牌照

17. 勞工處處長如有合理理由信納有以下情況，可拒絕發牌或續牌，或撤銷牌照：
 - (a) 職業介紹所的名稱與另一職業介紹所的名稱相同或極為相似；
 - (b) 職業介紹所被用作或相當可能被用作非法或不道德的用途；
 - (c) 持牌人或擬作為持牌人的人—
 - 是一位未獲解除破產的破產人；
 - 於過去 5 年內，曾因以下罪行而被定罪：對兒童、青年或婦女犯了侵害人身罪，或犯了涉及身為三合會會員、

- 欺詐、不誠實行為或勒索的罪行；
 - 就有關發牌或牌照續期的申請向處長明知而提供虛假或誤導的資料；
 - 曾違犯《僱傭條例》第 XII 部或《職業介紹所規例》；
 - 沒有遵從《實務守則》；或
 - 由於任何其他理由並非經營職業介紹所的適當人選；
- (d) 持牌人或擬作為持牌人的人的有關連人士 —
- 於過去 5 年內，曾因以下罪行而被定罪：對兒童、青年或婦女犯了侵害人身罪，或犯了涉及身為三合會會員、欺詐、不誠實行為或勒索的罪行；
 - 曾違犯《僱傭條例》第 XII 部或《職業介紹所規例》；或
 - 沒有遵從《實務守則》；或
- (e) 某名受僱於持牌人或擬作為持牌人的人的個人 —
- 曾違犯《僱傭條例》第 XII 部或《職業介紹所規例》；或
 - 沒有遵從《實務守則》。

18. 任何人士在接獲拒絕發牌或續牌，或撤銷牌照通知後 28 天內，可按指定的格式及方式，向行政上訴委員會遞交上訴通知。

19. 如職業介紹所的牌照被拒絕續發或撤銷，持牌人須於下述時間內將牌照交回處長：

- (a) 他接獲有關決定的通知後 28 天內；或
- (b) 如他已向行政上訴委員會提出上訴，則在他撤回上訴或放棄上訴或接獲行政上訴委員會駁回上訴的通知後 14 天內。

牌照已被拒絕續發或撤銷而未有交還者可被罰款 10,000 元

申請豁免證明書

20. 申請豁免證明書者，必須以指定的表格向勞工處處長申請。勞工處處長如信納該職業介紹所屬非牟利性質，及就公眾利益而言應獲得豁免，則可批准該職業介紹所豁免領取牌照。

撤銷豁免

21. 勞工處處長如信納某一職業介紹所不再屬於非牟利性質，或就公眾利益而言不應獲得豁免，則可撤銷其豁免證明書。

22. 對於處長撤銷職業介紹所豁免證明書的決定不得進行上訴。豁免證明書的持有人須於接獲撤回豁免的通知後 14 天內，將豁免證明書交回處長。

豁免證明書被撤銷而未有交還者可被罰款 10,000 元

通告

23. 有關下列各事項，必須以書面通知勞工處處長：

- (a) 職業介紹所的經營或管理人士如有任何變更，必須於 14 日內通知處長；
- (b) 職業介紹所如停止營業，必須於停業後 7 日內通知處長及將其牌照交回處長；及
- (c) 職業介紹所的營業地址如有任何更改，必須於更改前最少 14 日通知處長。

違例者可被罰款 10,000 元

保存紀錄

24. 持牌人必須保存一份紀錄，列明在其職業介紹所登記求職的人士的資料：

- (a) 該份紀錄須載有求職人士的姓名、地址、香港身分證號碼(如並非香港居民，其護照號碼及國籍)、所收取費用及佣金、受僱日期及僱主的名稱與地址；
- (b) 職業介紹所須在其每個會計年度完結後保留此等紀錄最少12個月；及
- (c) 將紀錄保存於其營業的地方，以便勞工處處長或獲處長授權的公職人員隨時查閱。

違例者可被罰款 10,000 元

職業介紹所受禁止的行為

25. 職業介紹所持牌人、或持牌人的相關人士、或看來是以此等持牌人或相關人士身分行事的人，不得直接或間接—

- (a) 向求職人士收取任何與謀職有關的費用或報酬(訂明佣金除外)，違例者可被罰款 350,000 元及監禁 3 年；
- (b) 除其職業介紹所的其他持牌人或真正合夥人或股東外，與任何人分享訂明佣金，違例者可被罰款 50,000 元；
- (c) 除獲得勞工處處長書面許可外，與某一僱主訂立合約，不論屬於明言或暗示者，而據此—
 - 僱主答允只僱用透過該職業介紹所求職的人士；及
 - 該職業介紹所同意支付或給予僱主某種實質利益，違例者可被罰款 50,000 元。

26. 持牌人不得將其牌照借給或轉讓他人。

違例者可被罰款 10,000 元

勞工處處長的權力

27. 處長及獲處長授權的任何公職人員—

- (a) 可在任何合理時間內，毋須持有手令而進入及視察或搜查職業介紹所的營業地方；
- (b) 可要求與職業介紹所有關的人士提供與該職業介紹所有關的資料；及
- (c) 可檢取、扣押或帶走任何可能構成違反本條例的物件、登記冊、紀錄或其他文件作為證據。

28. 任何人士在接受處長或任何獲授權的公職人員的查訊時，不得提供明知或理應知悉為虛假或誤導的資料。

違例者可被罰款 50,000 元

職業介紹所可收取的最高佣金額

29. 職業介紹所可向每名求職者收取的佣金額，不得超過其覓得職位後所賺取的第一個月工資的百分之十。

違例者可被罰款 350,000 元及監禁 3 年

30. 持牌人必須將列明職業介紹所可收取最高佣金額的「附表 2」展示於介紹所營業地方的當眼處。

違例者可被罰款 10,000 元

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Introduction

This guide explains briefly the main provisions set out in Part XII (Section 50 to 62A) of the Employment Ordinance, Chapter 57 and the Employment Agency Regulations.

2. While every care has been taken in the preparation of the guide, the ordinance and the regulations remain the sole authority for the provisions of the law explained.

3. Enquiries may be made at the Employment Agencies Administration, Labour Department:

Address: Unit 906, 9/F,
One Mong Kok Road Commercial Centre,
1 Mong Kok Road,
Kowloon
Tel. no.: 2115 3667
Fax no.: 2115 3756

Definition of an employment agency

4. An employment agency is an establishment or person who aims at obtaining employment for another person or supplying personnel to an employer.

Definition of associate

5. An associate means a related person of or an individual employed by the licensee or the person intending to be the licensee of an employment agency.

Definition of related person

6. A related person means, in relation to a company, a director, manager, secretary, or other similar officer of the company; or in relation to a partner in a partnership, another partner in the partnership or another person concerned in the management of the partnership.

Application of Part XII of the Employment Ordinance

7. The Ordinance applies to all employment agencies in Hong Kong except those which are

- (a) carried on or subvented by the Government of the Hong Kong Special Administrative Region;
- (b) carried on under the Merchant Shipping (Seafarers) Ordinance;
- (c) carried on by employers solely for employing persons for themselves;
- (d) carried on by contractors or sub-contractors who employ people on work for others;
- (e) non-profit making and carried on by the proprietors of publications; or
- (f) non-profit making and carried on by a recognized educational institution solely for the employment of the students or graduates of that educational institution.

Licensing of employment agencies

8. The operator of an employment agency must obtain a licence or certificate of exemption from the Commissioner for Labour.

Penalty for offence: fine of \$350,000 and imprisonment for 3 years

9. A duplicate licence is required for each branch office of an employment agency.

Penalty for offence: fine of \$10,000

10. Licence (including main and duplicate licences) must be displayed in a conspicuous position at the place of business of an employment agency.

Penalty for offence: fine of \$10,000

Licence fees

11. A licence is valid for twelve months from the date of issue and a fee of \$2,000 is payable on each application for issue or renewal.

12. A fee of \$385 is payable on each application for the issue of a duplicate licence for each branch office.

13. A fee of \$155 is payable on each application for any alteration to a licence due to change of place of business or cessation of business of branch office.

Application for the issue or renewal of licences

14. An application for the issue of a licence must be made to the Commissioner for Labour in the prescribed form not later than one month before the applicant intends to commence business.

15. An application for the renewal of a licence must be made in the prescribed form at least two months before the licence expires.

16. Where the applicant is a limited company, the application shall be submitted by a director of the company on its behalf.

Penalty for furnishing false information in connection with any licence or renewal application: fine of \$50,000

Refusal to issue/renewal and revocation of licences

17. The Commissioner for Labour may refuse to issue or renew a licence, or may revoke a licence in the following circumstances:

- (a) the name of the employment agency is identical with or closely resembles the name of another employment agency;
- (b) the employment agency is being or likely to be used for unlawful or immoral purposes;
- (c) the licensee or the person intending to be the licensee –
 - is an undischarged bankrupt;
 - has, within the preceding 5 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;
 - has knowingly furnished to the Commissioner any false or misleading information in connection with his licence or renewal application;
 - has contravened any provision of Part XII of the Employment Ordinance or Employment Agency Regulations;
 - has not complied with the Code of Practice; or
 - is not, for any other reason, a fit and proper person to operate an employment agency;
- (d) a related person of the licensee or the person intending to be the licensee –
 - has, within the preceding 5 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;
 - has contravened any provision of Part XII of the Employment Ordinance or Employment Agency Regulations; or
 - has not complied with the Code of Practice; or
- (e) an individual employed by the licensee or by the person intending to be the licensee –

- has contravened any provision of Part XII of the Employment Ordinance or Employment Agency Regulations; or
- has not complied with the Code of Practice.

18. Any person may, within 28 days of notice of refusal of issue/renewal or revocation, appeal to the Administrative Appeals Board in such form and manner as the board may determine.

19. The licensee shall deliver the licence to the Commissioner:

- (a) within 28 days after he is notified of the decision of refusal of renewal or revocation; or
- (b) if he has appealed against the decision of refusal or revocation, within 14 days after he withdraws or abandons the appeal or he is notified of the Administrative Appeals Board's dismissal of the appeal.

Penalty for failure to return licence after refusal of renewal or revocation: fine of \$10,000

Application for certificate of exemption

20. An application for exemption must be made in the prescribed form to the Commissioner for Labour who may grant exemption to an employment agency if he is satisfied that it is non-profit making and should, in the public interest, be so exempted.

Withdrawal of exemption

21. The Commissioner may withdraw an exemption granted if he is satisfied that the employment agency has ceased to be non-profit making or should not be so exempted in the public interest.

22. No appeal shall lie against the decision of the Commissioner to withdraw an exemption granted to an employment agency. The holder of a certificate of exemption shall, within 14 days after he is notified of the withdrawal of the exemption, deliver the certificate to the Commissioner.

Penalty for failure to return certificate of exemption after withdrawal: fine of \$10,000

Notifications

23. The Commissioner for Labour must be notified in writing:
- (a) within 14 days of any change in the management of an employment agency;
 - (b) within 7 days after the cessation of operation of an employment agency and the licence must be delivered to the Commissioner; and
 - (c) at least 14 days before any change of place of business of an employment agency.

Penalty for offence: fine of \$10,000

Maintenance of record

24. A licensee has to maintain a record showing particulars of every person who registers with his/her employment agency for employment. This record:

- (a) should contain the person's name, address, Hong Kong Identity Card Number (in the case of a non-resident, passport number and citizenship), fee and commission received, date of employment and name and address of employer;
- (b) must be retained for a period not less than 12 months after the expiration of each accounting year of the employment agency; and
- (c) must be made available for inspection by the Commissioner for Labour or any public officer authorized by him at all times at the place of business of his/her employment agency.

Penalty for offence: fine of \$10,000

Prohibited acts in respect of employment agencies

25. A licensee, or an associate of a licensee, in respect of an employment agency, or a person purporting to act as such a licensee or associate must not directly or indirectly –

- (a) receive from a job applicant, in connection with obtaining employment for him/her, any fees or reward (except the prescribed commission), penalty for offence: fine of \$350,000 and imprisonment for 3 years;
- (b) share with any person, other than another licensee or a bona fide partner or shareholder in the employment agency, the prescribed commission, penalty for offence: fine of \$50,000;
- (c) enter, except with the written permission of the Commissioner for Labour, into an agreement, express or implied, with an employer whereby
 - the employer undertakes to employ only persons who seek employment

- through the employment agency; and
- the employment agency agrees to pay or give to the employer some form of material benefit, penalty for offence: fine of \$50,000.

26. A licensee shall not lend, transfer or assign his/her licence to another person.

Penalty for offence: fine of \$10,000

Authority of the Commissioner for Labour

27. The Commissioner, and any public officer authorized by him, may:
- (a) enter and inspect or search without a warrant at any reasonable time the place of business of an employment agency;
 - (b) require any person associated with an employment agency to furnish information relating to the employment agency; and
 - (c) seize, detain or remove any article, register, record or other document which may be evidence of an offence under this part of the Ordinance.

28. In connection with any inquiry or inspection, no person shall furnish to the Commissioner or any public officer any information which he/she knows or reasonably ought to know to be false or misleading in any material particular.

Penalty for offence: fine of \$50,000

Maximum commission receivable by an employment agency

29. The maximum commission which may be received by employment agency from each job-seeker is an amount not exceeding 10% of his/her first month's wages received after he/she has been successfully placed.

Penalty for offence: fine of \$350,000 and imprisonment for 3 years

30. The Second Schedule showing the maximum commission which may be received by an employment agency must be displayed at all times in a conspicuous position at the place of business of the employment agency.

Penalty for offence: fine of \$10,000

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