



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

### Definition of an employment agency

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

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

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

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

- ◆ carried on or subvented by the Government of the Hong Kong Special Administrative Region;
- ◆ carried on under the Merchant Shipping (Seafarers) Ordinance;
- ◆ carried on by employers solely for employing persons for themselves;
- ◆ carried on by contractors or sub-contractors who employ people on work for others;
- ◆ non-profit making and carried on by the proprietors of publications;
- ◆ 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

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

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

 Penalty for offence: fine of \$10,000

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

- ◆ 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.
- ◆ A fee of \$385 is payable on each application for the issue of a duplicate licence for each branch office.
- ◆ A fee of \$155 is payable on each application for any alteration to a licence due to change of place of business, addition or cessation of business of branch office.

### Application for the issue or renewal of licences


- ◆ 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.

(Please refer to page 69-71 for the application procedures)

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

(Please refer to page 74-76 for the application procedures)

- ◆ 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 / renew and revocation of licences

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

- ◆ the name of the employment agency is identical with or closely resembles the name of another employment agency;
- ◆ the employment agency is being or likely to be used for unlawful or immoral purposes;
- ◆ 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 application for the issue or renewal of the licence;
- 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;
- ◆ 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
- ◆ 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.

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

The licensee shall deliver the licence to the Commissioner:

- within 28 days after he is notified of the decision of refusal or revocation; or
- 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 to renewal or revocation: fine of \$10,000

### Application for certificate of exemption

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

- ◆ 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.
- ◆ 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

The Commissioner for Labour must be notified in writing:

- ◆ within 14 days of any change of the associate (including the nominated operator, the management or the employed individual) of an employment agency  
(please refer to page 79-82 for the procedures for change of director / partner / nominated operator / other associates)
- ◆ at least 14 days before any change of place of business of an employment agency  
(please refer to page 83 for the procedures for change of place of business)
- ◆ within 7 days after the cessation of operation of an employment agency and the licence must be delivered to the Commissioner  
(please refer to page 84 for the procedures for notification of cessation of business)

 Penalty for offence: fine of \$10,000

## Maintenance of record

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

- ◆ 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 (sample of the record at Appendix 13);
- ◆ must be retained for a period of not less than 12 months after the expiration of each accounting year of the employment agency; and

- ◆ 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

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:

- ✗ receive from a job-seeker, 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

- ✗ 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

- ✗ 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

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

The Commissioner, and any public officer authorized by him, may:


- ◆ enter and inspect or search without a warrant at any reasonable time the place of business of an employment agency;
- ◆ require any person associated with an employment agency to furnish information relating to the employment agency; and
- ◆ seize, detain or remove any article, register, record or other document which may be evidence of an offence under this part of the Ordinance.

In connection with any inquiry or inspection, no person shall furnish to the Commissioner or any authorized 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

The maximum commission which may be received by an 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

The Second Schedule (sample at Appendix 14) 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

### Enquiries

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

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1 Mong Kok Road, Kowloon

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