Illegal worker jailed

An Indonesian illegal worker holding a recognisance form was jailed at Shatin Magistrates' Courts yesterday (May 17).

Immigration Department (ImmD) investigators received a referral from the Hong Kong Police Force to further investigate an illegal employment case in April. Enforcement officers arrested a female Indonesian worker, aged 40, washing dishes at a restaurant in Tai Po. Upon identity checking, she produced for inspection a recognisance form issued by the ImmD, which prohibits her from taking employment. Further investigation revealed that she was a non-refoulement claimant. An employer suspected of employing the illegal worker was arrested and the investigation is ongoing.

The illegal worker was charged at Shatin Magistrates' Courts yesterday with taking employment after landing in Hong Kong unlawfully and remaining in Hong Kong without the authority of the Director of Immigration or while being a person in respect of whom a removal order or deportation order was in force. She pleaded guilty to the charge and was sentenced to 15 months' imprisonment.

The ImmD spokesman warned that, as stipulated in section 38AA of the Immigration Ordinance, illegal immigrants or people who are the subject of a removal order or a deportation order are prohibited from taking any employment, whether paid or unpaid, or establishing or joining in any business. Offenders are liable upon conviction to a maximum fine of $50,000 and up to three years' imprisonment. The Court of Appeal has issued a guideline ruling that a sentence of 15 months' imprisonment should be applied in such cases.

The spokesman reiterated that it is a serious offence to employ people who are not lawfully employable. The maximum penalty is imprisonment for three years and a fine of $350,000. The High Court has laid down sentencing guidelines that the employer of an illegal worker should be given an immediate custodial sentence. According to the court sentencing, employers must take all practicable steps to determine whether a person is lawfully employable prior to employment. Apart from inspecting a prospective employee's identity card, the employer has the explicit duty to make enquiries regarding the person and ensure that the answers would not cast any reasonable doubt concerning the lawful employability of the person. The court will not accept failure to do so as a defence in proceedings. It is also an offence if an employer fails to inspect the job seeker's valid travel document if the job seeker does not have a Hong Kong permanent identity card. The maximum penalty for failing to inspect such a document is imprisonment for one year and a fine of $150,000.

Under the existing mechanism, the ImmD will, as a standard procedure, conduct initial screening of vulnerable persons, including illegal workers, illegal immigrants, sex workers and foreign domestic helpers, who are arrested during any operation with a view to ascertaining whether they are trafficking in persons (TIP) victims. When any TIP indicator is revealed in the initial screening, the officers will conduct a full debriefing and identification by using a standardised checklist to ascertain the presence of TIP elements, such as threat and coercion in the recruitment phase, and the nature of exploitation. Identified TIP victims will be provided with various forms of support and assistance, including urgent interference, medical services, counselling, shelter, temporary accommodation and other supporting services. The ImmD calls on TIP victims to report crimes to the relevant departments.

[Tenders invited for government properties tenancy]

The Government Property Agency is inviting tenders for a three-year tenancy of government properties at China Hong Kong City, China Ferry Terminal, 33 Canton Road, Tsim Sha Tsui, and the Hong Kong-Macau Ferry Terminal, Sheung Wan.

The properties should be used for general retail purposes only (including storage, sale and display of duty-free liquor, cigarettes, cigars and other tobacco products but excluding any goods or commodities that are prohibited under the Import and Export Ordinance (Cap. 60), any regulations made thereunder and any amending legislations).

The tender notice was uploaded today (May 18) to the Agency's website: www.gpa.gov.hk. Tender documents are available for collection at the Government Property Agency, 31/F, Revenue Tower, 5 Gloucester Road, Wan Chai, during office hours (8.30am to 5.45pm from Mondays to Fridays). The documents can also be downloaded from the Agency's website.

Interested tenderers who wish to inspect the sites should make prior appointment with the Government Property Agency by calling 2594 7697 on or before May 25.

Tenderers must submit their tenders by placing them in the Government Logistics Department Tender Box at G/F, North Point Government Offices, 333 Java Road, North Point, before noon on June 8, 2018. Late tenders will not be accepted.

New regulation in relation to ships' ballast water proposed

The Government proposes to make a new regulation under the Merchant Shipping (Prevention and Control of Pollution) Ordinance to incorporate the latest requirements of the International Convention for the Control and Management of Ships' Ballast Water and Sediments of the International Maritime Organization (IMO) into local legislation.

â€‹ The new Merchant Shipping (Control of Ballast Water and Sediments) Regulation seeks to implement the latest requirements of the Convention to regulate the discharge of ballast water of ships by establishing standards and procedures for the management and control of ships' ballast water and sediments.

â€‹ A spokesman for the Transport and Housing Bureau said today (May 18), "Major requirements of the Convention include requiring ships to conduct ballast water exchange before discharge, as well as to keep a ballast water management plan and a ballast water record book on board. The requirements will apply to all ocean-going vessels (OGVs) registered in Hong Kong and all OGVs within Hong Kong waters."

â€‹ The Legislative Council Panel on Economic Development and the relevant consultative committee of the Marine Department have been consulted. Members supported the legislative proposal.

â€‹ The legislative proposal was gazetted today and will be tabled at the Legislative Council on May 23 for negative vetting.

Subsidiary legislation for open-ended fund companies gazetted

The Government and the Securities and Futures Commission (SFC) published in the Gazette today (May 18) three pieces of subsidiary legislation to enable the implementation of the open-ended fund company (OFC) regime. The three pieces of subsidiary legislation are:

(a) the Securities and Futures (Amendment) Ordinance 2016 (Commencement) Notice (the Commencement Notice);
(b) the Securities and Futures (Open-ended Fund Companies) Rules (the OFC Rules); and
(c) the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation

(the Fees Regulation).

The Commencement Notice will bring into effect all provisions in the Securities and Futures (Amendment) Ordinance 2016 from July 30, 2018, onwards and the OFC regime will commence on that day. The detailed statutory operational requirements of the regime, including matters related to an OFC's formation, incorporation and maintenance, appointment and cessation of appointment of the key operators, corporate filings, segregated liability of sub-funds (if any), winding-up and offences, will be set out in the OFC Rules. The fees to be collected by the SFC and the Registrar of Companies in respect of OFCs will be set out in the Fees Regulation.

The Inland Revenue (Amendment) (No. 2) Ordinance 2018, which extends profits tax exemption to onshore privately offered OFCs, will also take effect on July 30, 2018.

"With the commencement of the OFC regime, fund managers will have the option of setting up a fund in the form of a company, in addition to the form of a unit trust. This additional choice should help diversify Hong Kong's fund domiciliation platform and build up our fund manufacturing capabilities. This will in turn help further develop Hong Kong's asset management industry," a government spokesperson said.

An OFC is a collective investment scheme with variable capital set up in the form of a company, but with the flexibility to create and cancel shares for investors' subscription and redemption in the fund. Also, an OFC will not be bound by restrictions on distribution out of capital applicable to a conventional company, and instead may distribute out of capital subject to solvency and disclosure requirements. The SFC will be the primary regulator responsible for the registration and regulation of OFCs under the Securities and Futures Ordinance (Cap. 571). The Companies Registry will oversee the incorporation and statutory corporate filings of OFCs and the Official Receiver's Office the winding-up procedure.

The three pieces of subsidiary legislation will be tabled before the Legislative Council on May 23, 2018, for negative vetting.

Order on Comprehensive Avoidance of Double Taxation Agreement with Saudi Arabia gazetted

An order made by the Chief Executive in Council under the Inland Revenue Ordinance (Cap. 112) to implement the Comprehensive Avoidance of Double Taxation Agreement (CDTA) with Saudi Arabia was gazetted today (May 18).

"The CDTA with Saudi Arabia ensures that investors will not have to pay tax twice on a single source of income. This CDTA will bring tax savings and a greater certainty on taxation liabilities for investors from Saudi Arabia when they engage in trade and investment activities with Hong Kong and vice versa," a Government spokesman said.

Highlights of the CDTA with Saudi Arabia are set out in the Annex.

The order will be tabled at the Legislative Council on May 23 for negative vetting. The CDTA will enter into force after both Hong Kong and Saudi Arabia have completed their ratification procedures.

Hong Kong signed the CDTA with Saudi Arabia in August 2017.