

**CONTRACTS FOR OVERSEAS EMPLOYMENT  
ORDINANCE 1965.**

**ARRANGEMENT OF SECTIONS.**

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**HONG KONG**

No. 8 OF 1965.

I assent.

D. C. C. TRENCH,  
Governor.

11th February, 1965.

An Ordinance to control contracts of employment entered into in the Colony by manual workers proceeding overseas for employment and the obtaining and supply of such workers and to provide for matters ancillary thereto.

[ ]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

**PART I.****PRELIMINARY.**

Short title.

1. This Ordinance may be cited as the Contracts for Overseas Employment Ordinance 1965.

Inter-pretation.

2. In this Ordinance, unless the context otherwise requires—

“Commissioner” means the Commissioner of Labour;

“dependant” means the spouse of a worker, and his or her children, step-children, and lawfully adopted children, who are unmarried and under the age of sixteen years;

“manual worker” includes personal and domestic servants;

“overseas contract” means a contract to which this Ordinance applies;

“worker” means a person who has entered or is about to enter the employment of another under a contract to which this Ordinance applies.

Delegation by Commissioner.

3. The Commissioner may, in writing, delegate to any public officer, either generally or for any particular purpose and either by name or by reference to a public office, such of his powers and functions under this Ordinance as he may consider expedient.

4. This Ordinance applies to contracts of employment entered into in the Colony after the commencement of this Ordinance, by which a person in the Colony enters or agrees to enter into the service of another person as a manual worker, where the contract is to be performed, whether wholly or partially, outside the Colony:

Contracts to which the Ordinance applies.

Provided that this Ordinance shall not apply in respect of—

- (a) persons employed for service as members of the crews of ships or aircraft;
- (b) persons proceeding to the United Kingdom for the purpose of employment there who are in possession of a current voucher issued for the purposes of section 2 of the Commonwealth Immigrants Act 1962 by or on behalf of the appropriate authority in the United Kingdom;
- (c) any person or class of persons migrating for employment in respect of whom the Commissioner is satisfied that admission to the country of immigration will be granted on a permanent basis.

(10 & 11 Eliz. 2, c. 21).

## PART II.

### CONTROL OF OVERSEAS CONTRACTS.

5. (1) Every overseas contract shall be in writing, and, before the departure of the worker from the Colony, shall be signed by the worker and by the employer or other person acting on behalf of the employer:

Overseas contracts to be in writing and to contain certain particulars.

Provided that a worker who is unable to sign may indicate his assent by affixing to the contract the impression of his thumb.

(2) Every overseas contract shall contain all such particulars as may be necessary to define the rights and obligations of the parties thereto, and shall in all cases include the following—

- (a) the name of the employer and where applicable the name of the business or undertaking;
- (b) the name of the worker and particulars of the place of engagement and the place of origin of the worker and any other particulars necessary for his identification;
- (c) the name of the place at which the contract is to be performed and particulars of the nature of the employment;
- (d) particulars of the rates of wages, including rates for overtime work where applicable, and the manner and periodicity of payment;
- (e) particulars governing the advances of wages, if any, and the manner of repayment of any such advances;

## CONTRACTS FOR OVERSEAS EMPLOYMENT

- (f) except in the case of a contract for employment in domestic service, particulars of the days and hours during which the worker may be called on to work and of his entitlement in respect of rest days and paid holidays;
- (g) particulars of the duration of the contract, the grounds of, provision for, and manner of, terminating the contract, provisions for varying the contract and provisions for re-engagement of the worker;
- (h) a stipulation that the contract shall not be transferred from the employer to any other employer except with the consent of the worker freely given and not obtained by or as a result of any threat, intimidation, bribery, deceit, undue influence, misrepresentation or mistake, and except with the endorsement of the transfer upon the contract by an officer or official of the country in which the contract is performed for the time being responsible for matters pertaining to employment;
- (i) particulars of the measures to be taken to provide for the welfare of the worker and any dependants who may accompany him under the terms of the contract, including particulars as to medical treatment, compensation in the event of the death of or injury to, or incapacity due to occupational disease of, the worker arising out of and in the course of the employment, and the provision of food and quarters;
- (j) particulars relating to the passage of the worker and his dependants to and from the place at which the contract is to be performed and an undertaking that the passage of the worker and his dependants to the place at which the contract is to be performed and all necessary documents, including travel and employment permits, for the worker and his dependants shall be provided by or on behalf of the employer free of charge to the worker and his dependants;
- (k) an undertaking that, upon the termination of contract otherwise than by, or in consequence of, the default of the worker, the worker, if he so requests the employer within three months after such termination, shall be repatriated at the employer's expense (which shall include travelling and subsistence expenses during the journey and subsistence expenses during the period, if any, between the date of such termination and the date of repatriation other than a period during which repatriation has been delayed by the worker's own choice or for reasons of *force majeure*) to his place of engagement or, at the worker's request, to his place of origin if such place is nearer to the place at which the contract was performed, together with his dependants (if any) who were brought to the place at which the contract was performed by or on behalf of the employer;

- (l) an undertaking that in the event of the death of the worker his dependants (if any) who were brought to the place at which the contract was being performed by or on behalf of the employer shall, if they so request within three months after the death of the worker, be repatriated at the employer's expense (which shall include travelling and subsistence expenses referred to in paragraph (k)) to the worker's place of engagement or, at their request, to the worker's place of origin if such place is nearer to the place at which the contract was being performed;
- (m) a stipulation that the employer shall provide free of charge facilities for the worker to make remittances to his family or dependants in the Colony;
- (n) an undertaking that, on the expiry of the contract, the worker will not be required to begin the employment stipulated in any re-engagement contract if—
  - (i) on the expiry of the contract, he has been separated from all his dependants for more than eighteen months; or
  - (ii) the period served under such contract together with the duration stipulated in the re-engagement contract will involve the separation of the worker from all his dependants for more than eighteen months, until he has had the opportunity of returning, at the employer's expense, to the place stipulated in the contract as his home, being the place at which his dependants or the majority of his dependants are at the date when he entered into the contract or such other place as the Commissioner in the special circumstances of the case may approve;
- (o) any other special conditions of the contract.

6. Every overseas contract shall be presented to the Commissioner for attestation before the departure of the worker from the Colony.

Presentation of overseas contract for attestation.

7. Where an overseas contract—

- (a) is not in writing in accordance with subsection (1) of section 5; or
- (b) has not been presented to the Commissioner for attestation before the departure of the worker from the Colony,

Effect of non-compliance with section 5 or 6.

it shall not be enforceable against the worker and no action shall be maintainable against the worker for breach or non-fulfilment thereof, and, where the omission to make the contract in writing or to present the contract for attestation, as the case may be, is due to wilful omission or neglect on the part of the employer or any person acting on the employer's behalf, the worker may, without prejudice to any right he may have

to sue for damages for breach of contract, sue the employer or such person for any expenses reasonably incurred by him in the return of himself and any dependants accompanying him to the Colony.

8. The Commissioner may require, as a condition precedent to the attestation of any overseas contract, that a person approved by him and permanently resident in the Colony shall—

(a) furnish a bond in such sum and in such form as he may require, with or without sureties; or

(b) sign a guarantee in such form as he may require,

generally for the performance of the contract by the employer, and, in particular, for performance by the employer of his undertaking respecting repatriation of the worker and his dependants (if any) contained in the contract pursuant to paragraph (k) or (l), as the case may be, and, as regards provision of travel documents, pursuant to paragraph (j), of subsection (2) of section 5, whether, as regards any such undertaking, the contract is or may be or becomes void or unenforceable for any reason.

9. Every worker who enters into an overseas contract shall, at the expense of the employer or other person acting on the employer's behalf, be medically examined prior to the attestation of the contract as to his fitness to perform the work contemplated by the contract.

10. (1) Before attesting any contract pursuant to section 6, the Commissioner shall satisfy himself that—

(a) the worker has freely consented to the contract and that the consent has not been obtained by or as a result of any threat, intimidation, bribery, deceit, undue influence, misrepresentation or mistake;

(b) the worker has fully understood the terms of the contract;

(c) the contract is in accordance with the requirements of this Ordinance;

(d) in relation to the worker, there has been no contravention of any of the provisions of subsection (1) of section 14;

(e) the provisions relating to medical examination set out in section 9 have been complied with and the worker is in a fit condition to perform the contract;

(f) any bond or guarantee required to be furnished has been furnished in accordance with section 8; and

(g) the worker has declared himself not bound by a previous engagement;

Power to require bond or guarantee for due performance of overseas contract.

Medical examination prior to attestation.

Attestation of overseas contracts.

(h) in respect of a contract to be performed in a territory for which the Contracts of Employment (Indigenous Workers) Convention 1939, of the International Labour Organization, is not in force, the worker will be entitled in that territory, either in virtue of the law of that territory or in virtue of the terms of the contract, to the rights and protection specified in articles 10 to 16 of the aforementioned Convention.

(2) The Commissioner may refuse to attest any such contract in respect of which he is not satisfied in regard to any of the matters specified in subsection (1), and any contract which the Commissioner has refused to sign, being a contract required to be presented to him for attestation pursuant to section 6, shall have no further validity.

(3) Where the Commissioner attests any such contract, he shall attest not less than two copies in addition to the original and shall—

- (a) deliver one copy to the worker; and
- (b) retain one copy in safe custody for a period of not less than six years.

11. A person whose age is either less than eighteen years or less than the minimum age of capacity for entering into an overseas contract allowed by the law of the territory in which the contract is to be performed shall not be capable of entering into an overseas contract.

Capacity to enter into an overseas contract.

12. The maximum duration which may be stipulated in any overseas contract shall in no case exceed—

Maximum duration of overseas contract.

- (a) two years if the worker is not accompanied by any dependants, or three years if the worker is accompanied by a dependant or dependants; or
- (b) the maximum period prescribed by the law of the territory in which the contract is to be performed,

whichever is the less.

13. For the avoidance of doubt, all the provisions of this Ordinance save where the context otherwise requires shall apply to overseas contracts of re-engagement.

Provisions to apply to overseas contract of re-engagement.

### PART III.

#### THE OBTAINING OR SUPPLY OF PERSONS FOR OVERSEAS CONTRACTS.

14. (1) No person shall, in the Colony, undertake any operation with the object of obtaining or supplying, for employment under overseas contracts, the labour of persons who do not spontaneously offer their services at an emigration or employment office registered with the Commissioner.

Prohibition in respect of obtaining and supplying labour of certain persons.

(2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

(3) Nothing in this section shall be construed to prohibit the advertisement, in the press or by means of posters, notices, letters or word of mouth, of vacancies for employment under overseas contracts.

Power  
to make  
regulations.

15. The Commissioner may by regulation provide for the maintenance by persons engaged in obtaining or supplying persons for employment under overseas contracts of written records, and for the submission of returns, in such form as may be specified therein.

#### PART IV.

##### CONSEQUENTIAL AMENDMENT AND COMMENCEMENT.

Consequen-  
tial amend-  
ment of  
Asiatic  
Emigration  
Ordinance  
1915.  
(30 of 1915).

16. (1) The Asiatic Emigration Ordinance 1915 is amended—
- (a) in subsection (1) of section 2, by the deletion of paragraph (f) (which contains the definition "Free emigrant");
  - (b) by the repeal of section 17;
  - (c) by the deletion in paragraph 2 of the Form of Emigration Officer's certificate for ships under special licence, contained in the First Schedule, of the comma and words ", of whom none are to be under any contract of service whatever"; and
  - (d) by the deletion in each of Forms of general licence, special licence and outport licence, specified in the Eleventh Schedule, of the words "free emigrants" and the substitution therefor of the following—
- "emigrants".

(2) Every Emigration Officer's certificate for any ship under special licence issued under section 8 of the Asiatic Emigration Ordinance 1915 and in force on the commencement of this Ordinance shall, during the validity thereof after the commencement of this Ordinance, be construed as if amended in the same manner as the Form contained in the First Schedule to the Asiatic Emigration Ordinance 1915 is amended by paragraph (c) of subsection (1) of this section.

(3) Every general licence, special licence and outport licence issued under the Asiatic Emigration Ordinance 1915 and in force on the commencement of this Ordinance shall, during the validity thereof after the commencement of this Ordinance, be construed as if any reference therein to free emigrants were a reference to emigrants.



17. This Ordinance shall not come into operation until Her Majesty's confirmation of the same has been proclaimed in the Colony by the Governor and thereafter it shall come into operation upon such day as the Governor shall by the same or any other proclamation appoint. Suspending clause.

*This printed impression has been carefully compared by me with the Bill which passed the Legislative Council on the 10th day of February, 1965, and is found by me to be a true and correctly printed copy of the said Bill.*

A. CHAPMAN,  
*Deputy Clerk of Councils.*

(Secretariat GR30/3/5683/58)