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27 June 2014

Clerk to Panel on Manpower
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Miss Betty Ma)

Dear Miss Ma,

**Follow-up to Meeting on 27 February 2014
Policies Relating to Foreign Domestic Helpers and
Regulation of Employment Agencies**

I refer to your letter of 19 March 2014 requesting the Government to further respond to the issues and concerns raised by some of the deputations at the special meeting of the Panel on Manpower held on 27 February 2014 and set out below our responses in seriatim –

Overcharging of intermediary and training fees

1. Hong Kong is neither a destination for human trafficking nor a place of origin or transit for such illicit activities. The existing legislation in Hong Kong provides a solid framework underpinning our robust law enforcement efforts to combat human trafficking. We do not tolerate any illegal recruitment activities in Hong Kong.
2. The Government of the Hong Kong Special Administrative Region (HKSARG) has all along maintained contact with countries exporting the foreign domestic helpers (FDHs) and their consulate-generals in Hong Kong to exchange views on FDH-related matters. Amongst others, we have been discussing our serious concerns with the Indonesian

Government on the huge amount of intermediary and training fees that Indonesian domestic helpers (IDHs) are required to pay to the intermediaries in their home country, and asked that the problem be tackled at source so as to alleviate the burden of the IDHs. Nonetheless, HKSARG has to respect the national laws and practices of the FDH exporting countries. We can only lobby and raise suggestions to the foreign governments concerned but cannot force them to take on board our views.

3. The Labour Department (LD) attaches great importance to any complaints against overcharging of local or foreign employees by employment agencies (EAs). LD will initiate investigation promptly upon receipt of complaints against any EA for charging an FDH a commission that is more than the allowable amount under the law through any means. If there is sufficient evidence, enforcement action will be taken out immediately.

Furthermore, pursuant to the Money Lenders Ordinance, except for exempted bodies, anyone who conducts business as a money lender must operate with a licence and be subject to the regulation of the Ordinance. If any reports relating to the violation of the Money Lenders Ordinance by EAs are received, the Police will undertake relevant investigation and follow-up accordingly.

4. Like other commercial businesses, the amount of fees that EAs (as service providers) charge employers (as consumers) is determined by the individual EA having regard to its operational strategies and market force. We have not conducted research on the level of fees charged by local EAs on employers in relation to FDH placement.

Retention of FDHs' personal identification documents

5. Under section 7A of the Registration of Persons Ordinance, it is an offence to use or possess an identity card which relates to another person. Offenders are liable to prosecution and a maximum penalty of \$100,000 in fine and 10 years' imprisonment on conviction.

If an EA retains the passport of an FDH without the latter's consent and if there is evidence to show that the EA has the intention to dispose of the passport as its own property regardless of the right of the FDH, it may amount to theft under the Theft Ordinance. Any person who commits theft shall be liable on conviction upon indictment to a maximum imprisonment of 10 years. LD will refer such cases to the Police for investigation if discovered during our regular inspection or in the course

of processing cases. If the licensee of an EA is convicted of an offence under the Theft Ordinance, LD will revoke or refuse to renew his/her EA licence.

Regulation of EAs

6. Since April 2014, six officers of the Labour Officer grade in the Employment Agencies Administration (EAA) of LD have been deployed to largely conduct inspections to EAs. During regular inspections, EAA will inspect whether the EAs have complied with Part XII of the Employment Ordinance (EO) and Employment Agency Regulations (EAR) by displaying in a conspicuous position at the EAs their licence and the maximum commission that they may receive from an employee. LD officers are also empowered to inspect related records and documents of the EAs.

EAA will conduct surprise inspections if they receive any complaint on suspected offence committed by an EA. Should there be evidence indicating that the concerned EA has committed an offence, LD will refer the case to the Department of Justice to consider whether to take out prosecution according to the established procedures and policies. Whether an EA, which is suspected for committing an offence, can be successfully convicted will be subject to various factors, such as whether there is sufficient evidence, and whether the victim is willing to attend court hearings or to act as prosecution witness, etc.

7. In accordance with Clause 8 of the Standard Employment Contract (SEC) for FDHs, an employer shall be responsible for the fees and expenses for the departure of his/her FDH from the latter's place of origin and entry into Hong Kong, including medical examination fees, authentication fees by the relevant consulate-generals, visa fee, insurance fee, administration fee, or fee such as the Philippines Overseas Employment Administration fee, or other fees of similar nature imposed by the relevant overseas government authorities. In the event that the FDH has paid the above costs or fees, the employer shall fully reimburse the FDH forthwith the amount so paid by the FDH upon demand and production of the corresponding receipts or documentary evidence of payment. The arrangement, which is based on the principle of reimbursement of actual cost incurred, is fair to both the employer and employee. We will relay to the Indonesian Government that our legislators have suggested that the Indonesian authorities should issue a receipt to their domestic helpers so that the latter could seek reimbursement from employers for the fees they have paid.

We will continue to keep in close contact with the Indonesian Government, and to reflect to them the difficulties that FDHs often have to face before they come to work in Hong Kong. However, we consider that it would be most effective to tackle at source the problem of IDHs having to pay an huge amount of intermediary and training fee in their home country before coming to Hong Kong.

8. HKSARG does not require FDHs to seek employment through EAs, nor EAs that are accredited by the foreign governments. LD has in the past suggested to the representatives of the relevant governments and their consulate-generals to remove the requirement for accredited EAs so that employers can employ FDHs direct. We will continue to raise the suggestions to the relevant governments, but we also have to respect the laws and practices of the foreign governments concerned.
9. There are at present over 326 000 FDHs in Hong Kong. We will have to incur enormous manpower and administrative resources if we were to visit and follow up with each individual FDH. By entering into the residence of FDH employers, it would also very likely give rise to concerns on privacy and other related legal issues. As EAs have already kept the particulars of the FDHs and their employers, and are familiar with the relevant labour legislation and the problems typically faced by FDHs, it would be more appropriate for EAs to provide services like job counselling etc. to FDHs. We have already stepped up liaison with the Indonesian Consulate-General in Hong Kong, and strengthened our publicity and promotional efforts to enhance FDHs' awareness of their rights and encourage them to make complaint to LD if necessary.
10. EAA has already increased the manpower in the financial year of 2014/15 so as to strengthen the monitoring of EAs and to increase the number of inspections to EAs by 38% to 1 800 per year.

Whether there is any coordination / agreement between HKSARG and the governments of FDH exporting countries so as to protect FDHs

11. & 12. HKSARG has all along maintained communication with the consulate-generals of the FDH exporting countries (including the consulate-generals of Bangladesh and Myanmar) to brief them on our policies on importation of FDHs and the relevant regulations, including the local labour laws which grant FDHs rights (such as weekly rest day, statutory holidays, etc.); and protection by a Government-prescribed SEC, offering FDHs extra benefits including Minimum Allowable Wage (MAW), free food, free return passages, and free accommodation. We have explained to the Bangladesh and Myanmar authorities that

employers in Hong Kong have the responsibility of providing their FDHs air tickets to/from FDHs' home countries and therefore FDHs do not need to pay for their air tickets separately.

We have also explained to the consulate-generals of the FDH exporting countries that the laws of Hong Kong stipulate that local EAs are not allowed to receive from job seekers any commission that is more than 10% of the latter's first month salary.

On the agreement between EAs and the governments of the FDH exporting countries, or the fees charged by intermediaries or recruiters in FDHs' home countries, despite the fact that HKSARG does not have any extra-territorial jurisdiction over such overseas operations, we have been proactively bringing the matter to the attention of relevant consulate-generals in Hong Kong, urging them to reflect the concerns to their respective governments and for follow-up actions to address the issue.

Facilitating FDHs to report exploitation

13. Under the prevailing policy, an FDH is required to leave Hong Kong upon completion of his/her contract or within two weeks from the date of termination of his/her contract, whichever is earlier. If an FDH is involved in labour or monetary disputes and has to attend hearings at relevant tribunals, or if he/she has been criminally intimidated or abused and is required to remain in Hong Kong to assist in investigation or act as a witness etc., after the termination or expiry of his/her contract, the Immigration Department (ImmD) may, based on individual case's merits, exercise discretion to allow him/her to extend his/her stay in Hong Kong as a visitor. If he/she wishes to continue to work in Hong Kong, he/she may apply for change of employer. ImmD will process his/her application in accordance with the current procedures. If there is evidence showing that the FDH has been abused or exploited, or if there are other compassionate grounds, ImmD may exercise discretion to approve the application for change of employer in Hong Kong.

14. If an FDH in Hong Kong has been abused or exploited by his/her employer, he/she should immediately report the case to or seek assistance from relevant government departments. ImmD will render assistance as appropriate and will, depending on the circumstances and needs, refer such cases to relevant government departments for follow-up. ImmD will keep these records and take them into account in considering any future applications for employment visas or extension of stay submitted by the FDHs, or future applications for employment of FDHs by the employers.

On regulation of EAs, LD has already increased manpower to strengthen the monitoring of and inspection to EAs. In the long run, LD will consider ways to strengthen the present licensing mechanism to better protect the interests of employers and FDHs.

Forced labour

15. HKSARG will absolutely not tolerate any acts of forced labour in Hong Kong.

The International Labour Conventions currently applied to Hong Kong and relating to forced labour include the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105). These two Conventions have been applied to Hong Kong since June 1931 and November 1959 respectively. As far as these Conventions are concerned, “forced or compulsory labour” refers to “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

LD treats very seriously any employers who commit offences under the EO (such as underpayment of wages), and relentlessly combats illegal operations of local EAs (such as overcharging commission to FDHs). Upon receipt of complaints, investigation will be initiated promptly and prosecution will be instituted where there is sufficient evidence and the FDH concerned is willing to act as prosecution witness.

Furthermore, human trafficking acts as defined in the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime” (“UN Palermo Protocol”) are prohibited in Hong Kong by various pieces of legislation including the Crimes Ordinance, Immigration Ordinance and Offences Against the Person Ordinance. The prescribed penalties range from a maximum of 10 years to life imprisonment.

HKSARG has all along spared no effort in cooperating closely with overseas law enforcement institutions in intelligence exchange and conducting joint operations to fight against human trafficking.

16. Since there is appropriate protection under the Hong Kong law at present for alleged trafficking victims, we do not consider that there is an imminent need to extend the above-mentioned UN Palermo Protocol to Hong Kong.

Every report of crime will be professionally attended to, handled and investigated by our law enforcement agencies. In case of sufficient evidence, prosecution will be instituted against the offender. FDHs who feel aggrieved should come forward so that our law enforcement agencies can take prompt enforcement action against abuses by unscrupulous employers that have violated our laws.

Care Services in Hong Kong

17. Elderly care services

To assist elderly citizens to age in the community, HKSARG has been providing a range of subsidised Community Care Services (CCS) and carer support services. Subsidised CCS includes day care places which are provided at day care centres for the elderly (DEs) and day care units (DCUs) and home care places.

As at January 2014, there were altogether 67 DEs and DCUs offering 2 752 subsidised day care places. From 2014-15 onwards, HKSARG plans to allocate additional resources to elderly centres to further strengthen the support for elderly persons who are living in the community, including the enhancement in information dissemination and counselling services, as well as the handling of care needs assessment and service applications. We will also enhance the support services for elderly persons with dementia and their carers by District Elderly Community Centres.

For home care services, the Integrated Home Care Services (Frail Cases) and Enhanced Home and Community Care Services (EHCCS) are providing 6 699 places to serve the frail elderly. From March 2015 onwards, HKSARG will provide an additional 1 500 places of the EHCCS in phases (i.e. from 5 579 of such places at present to a total of 7 079 places), and strengthen the service content of all places of such services as far as practicable, so as to further enhance the support and care to frail elderly persons living at home.

The Social Welfare Department (SWD) has rolled out the First Phase of the Pilot Scheme on Community Care Service Voucher for the Elderly in September 2013. The Pilot Scheme adopts a new funding mode, i.e. “money-following-the-user” approach whereby eligible elderly may choose the services that suit their individual needs with the use of service vouchers. It aims to promote the diversity and development of elderly services as well as to invite new service providers and social enterprises to enter the market. The first phase of the Pilot Scheme (which will last for two years) is launched in eight selected districts. A total of 1 200 vouchers have been issued, which were all granted in early April this year.

HKSARG has been providing a range of support services to carers of elderly persons, including training, counselling services and respite services, so as to empower the carers of elderly persons and help relieve their stress. Since 2007, we have implemented the District-based Scheme on Carer Training to provide participating elderly centres seed money to organise carer training courses. In view of the effectiveness of the scheme, we plan to regularise this scheme from 2014-15 onwards.

HKSARG also provides respite services for elderly persons, including short-term residential service and temporary day care service, to elderly persons living in the community who need their family members or relatives' assistance in personal care. The service aims at providing support to carers, allowing them to take a short break when need be. As for residential respite service, in addition to the 11 designated residential respite places provided by subvented residential care homes for the elderly (RCHEs), all subvented RCHEs, nursing homes, contract homes and private RCHEs participating in the Enhanced Bought Place Scheme provide residential respite service through the use of casual vacancies of the subsidised places. Moreover, all DEs and DCUs are providing day respite services for elderly person, which also help to relieve carers' stress.

Carers who come from low income families may also need some financial assistance to help supplement their living expenses. The Commission on Poverty has agreed to conduct a two-year pilot scheme funded by the Community Care Fund to provide 2 000 carers of the elderly¹ from low-income family living allowance of \$2,000 per month. SWD anticipates that invitation letters could be issued to the carers by the end of this month (June), the earliest.

As regards discussion on the service models, as announced by the Chief Executive (CE) in his 2014 Policy Address, the Elderly Commission (EC) has been tasked to conduct a study on the feasibility of a voucher scheme on residential care services for the elderly, with a view to submitting a report to the Government in a year's time. As for the long-term planning, EC has also been invited by the CE to formulate an Elderly Services Programme Plan within two years.

Childcare services

To support parents who are unable to take care of their children temporarily because of work or other reasons, SWD has all along been

¹ Carers refer to those who are providing care to elderly persons who have been assessed by the Standardised Care Needs Assessment mechanism for Elderly Services of SWD to have impairment at moderate level or above; are waiting for subsidised long term care services (i.e. residential care services and or community care services) on the Central Waiting List and are not using any residential care services.

providing subsidy to non-governmental organisations (NGOs) to run a variety of child care services for children below the age of six, including standalone child care centres, child care centres attached to kindergartens, occasional child care service, extended hours service and mutual help child care centres. In addition, SWD has injected additional resources to promote more flexible child care services in recent years. The Neighbourhood Support Child Care Project (NSCCP) was regularised and extended to all 18 districts in Hong Kong in 2011 to provide flexible and convenient services to parents. Under NSCCP, service operators have the flexibility to provide additional child care places on top of the minimum requirement set by SWD in order to meet the actual service demand.

As to children aged six to twelve, NGOs have been providing half-day after-school care services to children whose parents are unable take care of them because of work or other reasons in after-school hours on a self-financing and fee charging basis. To ensure that the low-income families can afford the various child care services and after-school care services, SWD has been providing needy families with fee-waiving or reduction.

To further respond to community demand for child care services, and to provide child care services with greater flexibility, SWD will enhance the service quality and quantity of NSCCP from 2014-15, including lifting the age limit of service beneficiaries from under six to under nine; providing at least 234 additional places for home-based child care service; and increasing funding to operators to enhance social work support for the service.

Moreover, to enhance the after-school care services currently provided by NGOs for children aged six to twelve, SWD will, starting from 2014-15, allocate additional resources to extend the service hours of some after-school care centres on weekday evenings, Saturdays, Sundays and school holidays, as well as providing 360 additional fee-waiving and fee reduction quotas across the territory.

We understand that hiring FDHs for providing child care assistance is an option, among others, for parents. As there is a live-in requirement for FDHs, they can take care of employers' children at the latter's home round-the-clock except on holidays. Such arrangement is different from the delivery mode of the aforementioned child care services.

The live-in requirement

18. Under the prevailing policy, employers who wish to employ FDHs shall enter into a SEC, Clause 3 of which provides that the FDH shall work and reside in the employer's residence. To safeguard the rights of FDHs, Clause 5(b) of the SEC stipulates that the employer shall provide the FDH with free, suitable and furnished accommodation as per the accommodation arrangements in the "Schedule of Accommodation and Domestic Duties" of the SEC. When an FDH applies for an employment visa, both the employer and the FDH are required to give an undertaking on the above arrangements. If an FDH or an employer breaches the undertaking, ImmD will take into consideration their conduct when considering the FDH's future applications for employment visas or extension of stay or the employer's future applications for employment of FDHs, and may refuse such applications.

In processing employment visa applications of FDHs, ImmD will scrutinize the "Schedule of Accommodation and Domestic Duties" of the SEC and assess whether the accommodation arrangements provided by an employer for the FDH are suitable (e.g. the FDH will not share a room with an adult or a teenager of the opposite sex), has reasonable privacy (e.g. the FDH will not sleep on make-do beds in the corridor with little privacy), and has basic facilities/furniture (such as electricity and water supply, toilet and bathing facilities, bed and beddings, wardrobe, etc.), etc. ImmD may request the employer to furnish further information and may arrange field visits to the residence when necessary. The application will be refused if ImmD is not satisfied that the employer can provide suitable accommodation for the FDH.

If ImmD receives any report of an employer's failure to provide suitable accommodation for the FDH, ImmD will follow up on the complaint and arrange a field visit where necessary. If an employer and/or an FDH furnish false information in the application, they may contravene the Immigration Ordinance. Under the existing legislation, it is an offence for any person to make false representation to Immigration Officers. Offenders shall be liable to prosecution and a maximum fine of \$150,000 and imprisonment for 14 years on conviction. Aiders and abettors are also liable to prosecution.

19. As in many other jurisdictions in the world, it has been HKSARG's established policy that priority in employment should be given to local workforce, and importation of workers should only be allowed where there is a confirmed manpower shortage in a particular trade that cannot be filled by local workers. Under this principle, Hong Kong therefore allowed importation of FDHs so as to meet the shortfall of local live-in domestic workers. The "live-in requirement" forms the foundation and

prerequisite of Hong Kong's policy of importing FDHs, and such requirement has been clearly specified in the SEC for FDHs. Any change to this requirement would seriously undermine the interest of local non-live-in domestic workers, and may lead to the problem of FDHs taking up illegal employments or part-time jobs, thus seriously affecting the job markets for local employees.

Apart from the above cardinal policy considerations, the employers' affordability in providing separate accommodation to their FDHs, the additional medical costs, insurance and other risks by allowing FDHs to live out as well as issues such as the additional pressure on private housing and public transportation, etc. should also be taken into account. HKSARG considers it necessary to retain the "live-in requirement" and the relevant requirements specified in the SEC.

20. In 2013, 208 FDHs were arrested for taking up illegal work (accounting for 0.064% of the total FDH population), representing a decrease of 32% when compared with 0.094% in 2002.
21. In accordance with the SEC, an employer is required to provide his/her FDH with free and suitable accommodation with reasonable privacy. Such requirement is also applicable to the period of leave taken by the FDH (including maternity leave).

The SEC does not require the employer to provide free accommodation or any other benefits for the FDH's family member(s). In general, we would suggest the employer and the FDH resolve the problem by consultation among themselves.

Premature termination of contract

22. Under the existing policy, FDHs are required to leave Hong Kong upon completion of their contract or within 14 days from the date of termination of their contract, whichever is earlier (see paragraph 13 above). The main purpose of the "two-week rule" is to allow sufficient time for FDHs to prepare for their departure; rather than to facilitate them to find new employers. The "two-week rule" is essential for maintaining effective immigration control and helps prevent FDHs from taking up illegal work in Hong Kong after contract termination thus undermining the employment opportunities of local employees, and changing employers frequently by abusing the contract termination arrangements.

23. The policy does not preclude FDHs from applying to work in Hong Kong again after returning to their places of origin and has allowed sufficient flexibility to cater for exceptional circumstances such as the former contract is terminated on grounds of the migration, external transfer, death or financial reasons of his/her ex-employer, or if there is evidence suggesting that the FDH has been abused or exploited. ImmD may exercise discretion in approving an FDH's application for change of employer in Hong Kong without having first returning to his/her place of origin.
24. ImmD does not maintain statistics on premature contract termination.

Issues relating to policies on FDHs

25. LD has been maintaining regular contacts with FDH and employer groups to discuss issues relating to FDH policy and the MAW. LD will invite both parties for tripartite discussion if necessary.
26. HKSARG is committed to safeguarding the employment rights and benefits of FDHs. The Migration for Employment Convention (Revised), 1949 (No. 97) has been applied to Hong Kong since August 1980. The Government attaches much importance to fulfilling our obligations under Convention No. 97 and has accorded equal statutory protection in employment to foreign and local employees.

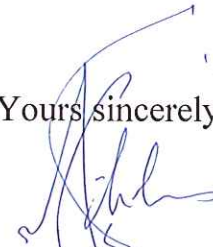
Others

27. &
28. As the Hospital Authority does not have separate classification for FDHs in its database and the Department of Health also does not have the breakdown on attendance by FDHs for perinatal and family planning service, the requested figures cannot be provided.
29. According to information provided by the Police, most of the violence cases between employers and their FDHs in recent years involved wounding and serious assault. From 2011 to 2013, there were 56, 40 and 37 reports respectively of wounding and serious assault involving FDHs being attacked by their employers; and 46, 35 and 31 respectively of these cases were detected. As for wounding and serious assault cases involving FDHs being attacked by people other than their employers between 2011 and 2013, there were 60, 60 and 64 cases respectively.

According to information from ImmD, the number of FDH employers arrested for contravening the Immigration Ordinance or committing related offences in the past three years is as follows:

Year	No. of FDH employers arrested	
	Illegal employment of FDHs or illegal deployment of FDHs to take up non-domestic duties	Aiding or abetting FDHs in giving false representation for the purpose of obtaining an FDH employment visa
2011	170	2
2012	185	8
2013	198	2

Yours sincerely,



(Nicholas CHAN)
for Commissioner for Labour

c.c. Administrative Assistant to Secretary for Labour and Welfare