Hong Kong Federation of Asian Domestic Workers Unions (Affiliated to HKCTU)
香港亞洲家務工工會聯會（職工盟屬會）

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Code of practice" is a mere scrap of paper, legislation must be introduced

Submission on consultation on "Code of practice for employment agencies" and employment agency regulations.
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In response to tremendous appeals that had been made by unions and civil society for over two years to strengthen the regulation of employment agencies, the Labour and Welfare Bureau has been conducting a consultation on "the draft code of practice for employment agencies" since April. A case of abusing migrant domestic workers shocked the world, and disclosed that employment agencies were insufficiently supervised. The exploitation of migrant domestic workers almost make Hong Kong "the city of modern slavery". In reaction to the scandal, the government gave lots of talk but little action. Since then only a "code of practice" were published but no suitable law reform is expected.

The "code of practice" is merely an extension of the existing "practical guide". There is nothing new on the regulation of the agencies. They are still gaming the system under the supervision of the contemporary "practical guide". It makes no difference to change its name from "guide" to "code". Foreign domestic workers fall into "debt bondage" when they are irredeemably overcharged by the placement agencies, this makes launching an appeal to kick off investigation on sharp practice extremely unlikely. Despite that, the department put little effort and not much is written on the published code about the overcharging crisis. We seriously doubt the gov's willingness to crack down the situation.

The Labour Department conducted, in 2015, over 1300 regular inspections, but only nine employment agencies were prosecuted for overcharging intermediary fee and were then delisted, as stated in figures provided by the department. The sharp contrast between the frequency of inspections and the number of agencies delisted reveals the failure of existing legislation and codes to effectively monitor unscrupulous agencies. The majority of Indonesian workers were once overcharged, according to a survey (2013) conducted by Amnesty International. Another survey ran by Progressive Labour Union of Domestic Workers in Hong Kong (PLU) also pointed out that 90% Filipinos workers were charged for excessive fees.

With the lack of updated labour policies and laws, the Employment Agencies Administration (EAA) of the Labour Department has limited power in supervision. The inferior statutory status of the code of practice allows delisting illegal intermediary agencies but, on the other hand, licensed person is immune from criminal prosecution, which is not enough to deter agencies from illegal offences.

The agencies are ineffectively monitored and negligibly punished. The "Employment Agency Regulations" states that overcharging intermediary fee is liable to a maximum penalty of $50,000 only, and no imprisonment at all. Obviously, the current impotent punishment could not reflect the seriousness of "debt bondage". An employer who willfully fails to pay wages to an employee when it becomes due is liable to prosecution and, upon conviction, to a fine of $350,000 and to imprisonment for three years. The penalty for overcharging agency fees should resemble that of arrears of wages.

The “Code of Practice” did not deal with the relationship between Hong Kong based agencies and their overseas working partners. The agencies tend to blame workers’ home countries for overcharging and bonded labour which hide the fact that forming partnership with overseas recruitment agencies are actually aggravating the situation. The government has to request every intermediary agencies in Hong Kong to reveal the information of their overseas working partners for public scrutiny. These associated companies must meet certain conditions, otherwise Hong Kong agencies are liable to prosecution.

On the other hand, there are increasing numbers of companies providing domestic and postnatal care helpers intermediary service. They charged excessively at the range of 20% to 30%, just like the agencies that refer migrant domestic workers does. The company also try to bewilder the relationship between employers and employees, thus forcing postnatal care helpers to be “self-employed”, preventing them to enjoy the rights of workers. The “code of practice” is clearly outdated ,incapable to unveil current crisis and lack of measures to tackle overcharging.

We urge the government to:

1. Optimize the “Code of practice”, request every employment agencies to reveal their overseas working partners for public scrutiny; Hong-Kong based placement agencies should be convicted for associating with illegal and dishonest overseas recruitment agencies.
2. Crack down on the overcharging intermediary fee by raising the penalty to an extent that is in line with the severity of "debt bondage". The punishment should be no less than that of the arrears of wages.
3. Lay down the law to regulate vile behavior of employment agencies. Licensed person must be punished if migrant domestic workers have to pledge themselves as bonded labour involuntarily.
4. Review the “Employment Agency Regulations” immediately and introduce a timetable for legislation.

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