
INFORMATION NOTE

Regulation of domestic helper employment agencies in selected places

1. Introduction

1.1 At its special meeting to be held on 27 February 2014, the Panel on Manpower will discuss the policies relating to foreign domestic helpers ("FDHs") and regulation of employment agencies placing FDHs. In order to facilitate the discussion, this information note provides the information on the measures adopted by Singapore in regulating the local employment agencies placing FDHs in the country. Similar to Hong Kong, Singapore is one of the largest destinations of FDHs which employed about 211 000 migrant domestic helpers at end-June 2013. With most of FDHs in Hong Kong coming from the Philippines and Indonesia, the information note also studies the regulatory framework put in place by these two places to regulate the operation of their local employment agencies placing workers abroad as FDHs.

2. Singapore

2.1 In Singapore, the vast majority of FDHs come from the Philippines and Indonesia. There is no legal requirement imposed by the Singaporean government on the recruitment of FDHs through the intermediary service of a maid agency.¹ However, the Philippine government requires a Filipino coming to Singapore to work as a FDH to go through a local employment agency partnered with a Singapore employment agency accredited by the Philippine Embassy. The only exception are those Filipino FDHs who renew their contract with the same employer or are employed by another employer after completion of their two-year contract in Singapore. In Indonesia, domestic helpers must use private agencies in order to formally work abroad. In addition, Indonesian employment agencies are also obliged by law to have a partner maid agency in Singapore which is approved by the Indonesian Embassy.

¹ An employment agency seeking to operate the FDH placement business must register with the Accounting and Corporate Regulatory Authority with its principal activity as a "maid agency".

2.2 At present, there are about 1 150 maid agencies in Singapore. They are primarily regulated under the *Employment Agencies Act* (Cap. 92), the *Employment Agencies Rules 2011* and the *Employment Agencies Licensing Conditions*, which set out, among other things, the licensing criteria and conditions, fee caps, and penalties for violating relevant laws and regulations.

Licensing criteria

2.3 The Ministry of Manpower requires all employment agencies, including maid agencies, operating in Singapore to be licensed and subject to a set of licensing conditions. Maid agencies must apply for a Comprehensive Licence from the Ministry of Manpower.² A Comprehensive Licence is valid for a period of three years subject to ongoing renewal.

2.4 In addition to their licence, some maid agencies can be accredited by either the Association of Employment Agencies of Singapore ("AEAS") or CaseTrust.³ Such accreditation guarantees that the accredited maid agency respects the good practices defined by the accreditation body. Accreditation has been optional since 2011. Before that, maid agencies were required to be accredited by AEAS or CaseTrust before their licences could be renewed.

2.5 Applicant for the issue of a Comprehensive Licence should hold the position as a proprietorship owner, a company director, or a partner if running in the form of partnership. In addition, the applicant must be a Singapore citizen, a permanent resident, or hold an employment pass as a foreigner. He or she must also not be an undischarged bankrupt and cannot have any previous court convictions, specifically under the *Women's Charter*, *Children and Young Persons Act*, *Penal Code*, *Employment Agencies Act* and *Employment of Foreign Workers Act*.

² There is another type of licence, the Select Licence, applicable only to employment agencies which place workers in jobs earning a monthly salary of more than S\$7,000 per month (HK\$42,686). An employment agency holding a Select Licence is not allowed to place FDHs.

³ CaseTrust is the accreditation arm of the Consumers Association of Singapore.

2.6 As stipulated in the *Employment Agencies Rules 2011*, all applicants have to furnish a security deposit of S\$60,000 (HK\$365,880) to the Ministry of Manpower as a financial commitment before a Comprehensive Licence is granted.⁴ In addition, maid agency personnel have to fulfill the certification and registration requirements.

Certification requirement

2.7 In order to work in a maid agency that is issued with a Comprehensive Licence, all relevant employees including key appointment holders⁵ must be certified under the Certificate of Employment Intermediaries ("CEI") course. Key appointment holders will have to attend the 40-hour CEI course while other relevant maid agency personnel need to attend the 32-hour CEI course. Certification of key appointment holders is mandatory, irrespective of whether they perform maid agency related work or not. All other personnel need to be certified only if they perform maid agency related work. The certificate requirement seeks to raise industry standards of maid agencies in Singapore by encouraging understanding and compliance of various legislations, licensing conditions and good practices through the CEI course.

Registration requirement

2.8 After attaining the CEI, the key appointment holders and other personnel are required to register with the Ministry of Manpower through the Online Business Licensing System. Upon successful registration, the maid agency shall issue all registered personnel with the registration card in accordance with the specifications prescribed in the *Employment Agencies Rules 2011*.

⁴ The amount will be reviewed after 12 months of operations and subsequently on a monthly basis, with allowance for adjusting it downwards to a minimum of S\$20,000 (HK\$121,960) subject to the maid agency's placement volume and track record. If the maid agency fails to comply with the relevant rules and regulations, the security deposit may be forfeited in whole or in part.

⁵ Key appointment holder refers to any person in a maid agency who has general control and management of the administration of any maid agency work. This includes director, chief executive officer, chief financial officer, chief operating officer, partner, sole-proprietor or manager of the maid agency.

Licensing conditions

2.9 Licensed maid agencies are also required to satisfy the duties and responsibilities set out in the *Employment Agencies Licensing Conditions*.⁶ For example, they must:

- (a) be responsible for the upkeep and maintenance of any FDHs brought in by them prior to the issuance of the work permit including the provision of acceptable accommodation, medical treatment and food;
- (b) furnish the Commissioner for Employment Agencies with the information on the premises used to house any FDHs under their care;
- (c) provide full employment history and biographical information of the FDHs to the prospective employers; and
- (d) sign a written service agreement with each applicant for a FDH.

Service agreement with employers

2.10 From 1 April 2011, maid agencies are required under the *Employment Agencies Licensing Conditions* to enter into a written service agreement with the employers. The service agreement shall prescribe the minimum service standards including the amount of fees charged on employers and FDHs respectively, refund policy, FDH replacement policy⁷, and dispute mechanism established to settle any dispute that may arise between the agency and the employer.

⁶ See Ministry of Manpower (2014a).

⁷ The replacement policy shall include at least the maximum number of FDH replacements allowed and the maximum validity period for the replacements.

2.11 Maid agencies can choose to draft their own service agreement, which must prescribe the minimum service standards as mentioned above. Alternatively, they can use the recommended service agreement available on the Ministry of Manpower website.⁸ In addition to the minimum service standards, the recommended service agreement also includes a special provision that the employer shall permit the maid agency or its authorized persons to visit the work location to determine the welfare of the FDH concerned and to observe and adjudge the performance of her obligations to the employer or agency.

Fee caps

2.12 As required by the *Employment Agencies Rules 2011*, maid agencies may charge their clients a fee. There is no fee cap on the fee charged on employers for services provided. However, fee charged on the FDH who is selected for employment should be no more than one-month salary per year of contract, which means two months of salary for a two-year contract. The *Employment Agencies Rules 2011* also provides that in the event of the employer terminating a FDH within six months of employment, the maid agency will have to refund 50% of the fees collected from the FDH.⁹

2.13 The fee cap does not apply to agency fees collected by overseas employment agencies. Certain items are not subject to the fee cap such as training and medical check-up expenses incurred overseas and travel expenses to Singapore.

Enforcement and penalties

2.14 Currently, the Ministry of Manpower has the power to warn, suspend or revoke licences, forfeit security deposit, impose composition fines¹⁰ and utilize other penalties as described below against malpractice of maid agencies depending on the gravity of the offence.

⁸ See Ministry of Manpower (2014b).

⁹ This refund rule does not apply if employment termination is initiated by the FDH concerned.

¹⁰ Composition fine is a sum of money paid by the maid agency which has committed an offence. It is imposed by the Ministry of Manpower in lieu of court prosecution.

Liability of licensees and agency personnel

2.15 Under *the Employment Agencies Act*, the licensee and all maid agency personnel involved in committing an offence will be held personally liable. For instance, if a maid agency submits work pass applications on behalf of an unlicensed maid agency, all agency personnel involved in the commission of the offence will be subject to the maximum penalty of a fine of S\$80,000 (HK\$487,840) or two years' imprisonment, or both.

Demerit point system

2.16 The Ministry of Manpower issues demerit points to those maid agencies which infringe the relevant regulations, rules or licensing conditions. The demerit points are valid for a period of one year. A maid agency which accumulates 12 or more demerit points is placed under surveillance of the Ministry of Manpower. Their work pass applications would be frozen. The sanction will only be lifted after three months, or after the maid agency concerned proves that rectification measures have been put in place to avoid recurrence of its latest breach, whichever is later. Maid agencies that commit any infringement during the surveillance period may have their licences revoked or barred from licence renewal.

Fines for overcharging clients

2.17 It is also an offence for any maid agency personnel to, directly or indirectly, charge or receive for their services provided any sum greater than the prescribed fee. Any person found guilty of the offence shall be liable on conviction to a fine not exceeding S\$5,000 (HK\$30,490). Commission of a second or subsequent offence shall be subject to a fine not exceeding S\$5,000 (HK\$30,490) or imprisonment for a term not exceeding six months, or both.

Penalty for illegal withholding of foreign domestic helpers' passports

2.18 A licensee or maid agency personnel, upon obtaining employment for a FDH, should ensure that the passport or other documents of identity of the FDH is delivered or returned directly to her as soon as practicable, unless the licensee or the maid agency personnel has a reasonable excuse not to do so. Breach of this regulation for the first time shall be liable to a fine not exceeding S\$5,000 (HK\$30,490). Commission of a second or subsequent offence shall be liable to a fine not exceeding S\$5,000 (HK\$30,490) or imprisonment for a term not exceeding six months, or both.

Publication of maid agency data online

2.19 The Ministry of Manpower places the licensed maid agency data online, which include the names of agencies by district, their years of operation since licence was issued, FDH placement volume, FDH retention success rate¹¹, and the number of demerit points issued. The list of licensed maid agencies under the surveillance of the Ministry of Manpower can also be found from the online database.

3. The Philippines

3.1 In the Philippines, the activities of private employment agencies placing workers abroad are primarily regulated by the *Migrant Workers and Overseas Filipinos Act of 1995*, the *Labor Code* (Presidential Decree No. 442), and the *Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers* issued by the Philippine Overseas Employment Administration ("POEA").

3.2 POEA is an organization established under the Department of Labor and Employment for implementing overseas employment policies. It regulates private Philippines-based employment agencies through requiring them to enter into legally enforceable work contracts with workers seeking employment abroad. POEA approves these contracts and inspects employment agencies, as well as prosecuting violations of relevant rules and regulations.

¹¹ A retention success rate of 50% means that on average, one in two FDHs placed by the maid agency stayed with the same employer for at least 365 days over a specified period.

Licensing of employment agencies

3.3 Filipinos seeking overseas employment must go through a local employment agency, unless permission is given by the Department of Labor and Employment for direct hiring by overseas employers. Philippine employment agencies are responsible for the whole overseas employment process, from recruitment of workers to repatriation upon the termination of their employment. They may advertise job vacancies, create a manpower pool, and conduct preliminary screening and interviews of candidates. For candidates who are pre-qualified for foreign employment, the employment agencies should arrange for them to attend the relevant skills test and perform medical examination. All test centres and medical clinics should be accredited by the government.

3.4 In the Philippines, employment agencies carrying out recruitment and overseas placements must be licensed. The licence is valid for four years and can be renewed. Only Filipino citizens, partnerships or corporations with at least 75% capital stock owned or controlled by Filipino citizens are qualified to receive licences. To prove financial competence, employment agencies applying for a licence should meet the minimum capital requirement of PHP¹² 2 million (HK\$345,006). They are also required to provide two types of financial guarantee: a bank deposit under escrow account of PHP 1 million (HK\$172,503) and a surety bond of PHP 100,000 (HK\$17,250).

3.5 Furthermore, an applicant for a licence to recruit and place workers should have a clean derogatory record. Any person who has been evidently involved in, charged with or convicted of illegal recruitment is automatically disqualified from applying, as are persons or corporations operating travel or airline sales agencies. Persons who previously held a licence which has been cancelled for violation of the law and regulations on recruitment and placement are also disqualified.

¹² PHP is the currency code for Philippine peso.

Placement fees charged on migrant domestic helpers

3.6 Philippine employment agencies are allowed to charge the hired migrant workers (a) a placement fee for the provision of recruitment and placement services, and (b) documentation costs arising from the administrative work. Under Part II of the *Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers*, the placement fee chargeable to migrant workers should be no more than one month of their salary. In the light of FDHs' vulnerability to exploitation and abuses, the Philippine government has since 2006 banned the Philippine employment agencies from charging placement fee on migrant workers employed in household work, either collected prior to their deployment or through salary deduction after deployment.¹³ Yet, they still have to bear the documentation costs for the processing of documents, the conduct of skills test and medical examination, etc.¹⁴

Enforcement and penalties

3.7 POEA is responsible for supervising and monitoring private employment agencies and their compliance with the licensing conditions. Investigation of complaints concerning violations of the law on recruitment and placement of workers by a private employment agency falls under the exclusive authority of POEA. The investigation by POEA is usually carried out based on a complaint or information from the migrant worker. Nevertheless, POEA may also initiate investigations based on information received from any person.

3.8 Any malpractice by employment agencies against workers are subject to penalties, ranging from fines to the suspension or cancellation of licences. As to the penalty of licence suspension/cancellation, it is classified into serious, less serious, or light depending on the severity of the offence (see **Table 1**). According to POEA, serious offences, such as deployment of underage workers and overcharging of fee, would result in the outright cancellation of licence of the employment agencies even they have committed the offences for the first time.

¹³ See Philippine Overseas Employment Administration (2006).

¹⁴ It was reported that some private employment agencies circumvented the order by charging more on the other items after the ban on placement fees.

Table 1 – Suspension and cancellation of licences

Classification	Examples of offences	Conviction of the offence			
		1 st time	2 nd time	3 rd time	4 th time
Serious	Overcharging on workers or deployment of underage workers.	Cancellation of licence			
Less serious	Withholding of travel documents of workers for reasons not authorized under law, or charging directly or indirectly any fees on workers before they are employed.	Suspension of licence for 2-6 months	Suspension of licence for 7-12 months	Cancellation of licence	
Light	Disregarding of orders, notices and other legal processes issued by POEA, or failure to submit reports related to overseas recruitment and employment within the specified time to POEA.	Reprimand	Suspension of licence for 1-3 months	Suspension of licence for 4-6 months	Cancellation of licence

Source: Philippine Overseas Employment Administration (2002).

4. Indonesia

4.1 In Indonesia, placement of workers abroad is primarily regulated by the *Placement and Protection of the Indonesian Migrant Workers Law* (Law No. 39/2004). Private employment agencies (known as Pelaksana Penempatan Tenaga Kerja Indonesia Swasta in Indonesia) are required to be licensed by the Ministry of Manpower and Transmigration.

4.2 The Ministry of Manpower and Transmigration is responsible for managing overseas labour migration, including issuing policies on worker's placement and protection through ministerial decrees. It also negotiates labour or recruitment agreements with governments of migrant destination countries. Meanwhile, the National Board for the Placement and Protection of Indonesian Overseas Workers (known as BNP2TKI in Indonesia) implements migration policies and coordinates with other parties on the placement and protection of migrant workers. It is also responsible for pre-departure training, conflict resolution and monitoring of worker documentation.

Licensing of employment agencies

4.3 The Ministry of Manpower and Transmigration issues operating permits to private employment agencies, authorizing them to engage in recruitment and placement of workers overseas. A permit issued is valid for five years subject to renewal. The Ministry requires each licensed agency to operate as a limited liability company with a minimum paid-up capital of IDR¹⁵ 3 billion (HK\$1,932,205). In addition, they are required to hold at least IDR 500 million (HK\$322,034) in their accounts as guarantee, submit a three-year work plan, and equip with necessary facilities to support their services.

4.4 Indonesians seeking overseas employment in domestic work are required to register with the local government and apply through licensed employment agencies.¹⁶ Employment agencies in Indonesia are responsible for managing the entire process from recruitment, document management, education and training, temporary accommodation, to departure of migrant workers to the destination country. They also help arrange new employment agreements for migrant workers changing employers, and arrange renewal of employment agreements. Further, they are obliged to provide protection to returning labour, such as repatriating migrant labour in trouble.¹⁷

¹⁵ IDR is the currency code for Indonesian rupiah.

¹⁶ Licensed employment agencies are required to have a placement agency partner in the destination country through which the migrant workers are placed for employment.

¹⁷ See International Organization for Migration (2010b).

Placement fees charged on migrant domestic helpers

4.5 Indonesian migrant workers including FDHs have to pay a placement fee comprising charges on training, agency service, medical examination, competency test and document processing. The level of placement fee varies among the destination countries and the employment agencies, but it is subject to a fee cap stipulated by the Ministry of Manpower and Transmigration. For example, the Ministry of Manpower and Transmigration issued a Ministerial Decree (No. 98/2012) in May 2012 on the *Components and Placement Fee of Domestic Workers Candidates with Hong Kong as the Destination Country*. The Decree set the maximum total fee which employment agencies can charge on Indonesian domestic helpers coming to Hong Kong at IDR 14,780,400 or HK\$13,436.

Enforcement and penalties

4.6 Migrant workers can complain to the National Board for the Placement and Protection of Indonesian Overseas Workers against the violation of the relevant rules and regulations by private employment agencies. While the National Board does not have any enforcement authority, it will deal with the complaints and recommend to the Ministry of Manpower and Transmigration to take enforcement actions if necessary.

4.7 Breach of the *Placement and Protection of the Indonesian Migrant Workers Law* would be subject to sanctions, which include written warnings, suspensions or temporary cessation of the whole or part of the placement activities, or withdrawal of licence. An employment agency will have its licence withdrawn if it has seriously breached the regulations, such as placing excessive placement fee on migrant workers beyond the stipulated level.

4.8 In addition to administrative sanctions, criminal sanctions are also imposed by the Indonesian government. Illegal activities constituted as criminal breaches include transfer of licence to another employment agency, placing workers not fulfilling the health and psychological requirements, and failing to place workers through a business partner in the destination country. Penalties include imprisonment for a maximum term of five years and a fine of no less than IDR 1 billion (HK\$644,068).

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