Expert Discussion and Analysis

You have asked our firm to provide an expert overview of criminal activity in the domestic worker recruitment chain in the Philippines including specific references to the relevant laws. Our overview as follows:

Numerous research efforts by reputable human rights groups have shown Philippine domestic workers are frequently the victims of criminal acts by agencies especially regarding illegal recruitment, illegal exaction of placement and related fees, swindling and illegal loans. These practices are widespread. Some studies show that more than 80% of job applicants become victims of illegal fees or other offenses. Issues regarding criminal acts in the recruitment process are widely discussed in the press and their existence is not particularly a matter of dispute.

The primary legislation covering migrant domestic worker recruitment is Republic Act No. 8042 otherwise known as “The Migrant Workers and Overseas Act of 1995” as further amended by Republic Act Nos. 10022 and 11299.

Under Section 6(a) of Republic Act No. 8042, as amended by Republic Act No. 10022, it is prohibited for an agency –

“(a) to charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment…”

The allowable fee is set forth in the “Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016”. As per this regulation, the maximum allowable placement

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1 also referred to as “estafa” punishable under Article 315 of the Revised Penal Code of the Philippines.
fee for landbased workers (vs. seafarers) going abroad is one month of the contractual salary. However, there are 2 exceptions:

1. No fee may be charged to a domestic worker; and
2. No fee may be charged if prohibited by law or practice in the destination country.

As such, any placement fee charged to a domestic worker going abroad constitutes illegal recruitment under section 6(a) of R. A. 8042, as amended by R. A. 10022, and carries a minimum prison sentence 12 years and 1 day on conviction as discussed below.

In order to circumvent this limit on placement fees, agencies often require job seekers to purchase training or medical exam services at specific affiliated providers with whom the agency has a profit-sharing agreement, or to obtain a real or fictitious loan from an affiliated lending company or person. In a typical arrangement, an agency would require a job seeker to undergo training at a specific provider for 30,000 pesos (US$600) or considerably more, when a similar course widely offered by the government (TESDA), would cost just 1,000 pesos (US$20). As few applicants can afford the fee, the agency often loans the money, or arranges for a loan, with the total resulting cost doubling often to US$1,200 or more including interest.

These tied provider practices are also prohibited. Under Section 6(2),(4) and (5) of R. A. 8042, as amended by R. A. 10022, it shall be unlawful for any person or entity to:

“(2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons; . . .[or]

(4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics...[or]

(5) undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions...”
So, it is lawful to require a medical exam and/or a training course but it is unlawful to specify which provider to use. Recruitment agencies are also prohibited from requiring applicants to obtain loans (real or otherwise) only from specifically designated persons or lending institutions. Unfortunately, this law related to tied medical, training, loan and other service providers is routinely violated and the primary means by which agencies charge, what is in substance, a placement fee and which otherwise would be prohibited.

Another frequent criminal act is violating applicable lending laws. Under Section 6(1) of Republic Act No. 8042, as amended by R. A. 10022, any agency, person or entity may lend a job seeker funds for the payment of legal and allowable placement fees with a maximum interest rate of 8% per year. Note again that for domestic workers bound for Hong Kong and Singapore, the allowable placement fee is zero as are tied training fees and therefore no loan is allowed. But agencies, or affiliated lenders, often lend for placement, training and other fees that were unlawful in the first place and often at rates far in excess of 8% per year. These loans are therefore illegal and a criminal violation.

The commission of “illegal recruitment”, including the acts deemed to be acts of illegal recruitment enumerated under Section 6(a) to (n) of R. A. 8042, as amended by R. A. 10022, are punished under Section 7(a) and (b) of the same law as follows:

"(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) nor more than Two million pesos (P2,000,000.00).

"(b) The penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) nor more than Five million pesos (P5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

"Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.
Commission of the prohibited acts enumerated under Section 6(1) to (7) of R. A. No. 8042, as amended, inclusive of violations of the lending and tied service provider rules are punished under Section 7(c) of Republic Act No. 8042, as amended, as follows:

"(c) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Five hundred thousand pesos (P500,000.00) nor more than One million pesos (P1,000,000.00)."

In all cases:

"If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings.

"In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment/manning agency, lending institutions, training school or medical clinic."

The “Revised POEA Rules of 2016” is a highly detailed, 71-page document that leaves no room for misinterpretation or loopholes. Any placement fee, however disguised, charged to a domestic worker is illegal and the act of charging constitutes illegal recruitment and carries a mandatory sentence of at least 12 years and one day if convicted.

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