Domestic Worker Placement Fees in Hong Kong

I. Summary

This document is based on DWJI research and consultations with legal professionals. It does not constitute legal advice or a legal opinion. It reflects our understanding of Hong Kong law.

Under the relevant provisions of the Employment Ordinance (Cap. 57) and Employment Agency Regulations (Cap. 57A), the maximum amount an agency may legally charge a domestic worker is 10 per cent of the first month's salary. Fees in excess of this amount are illegal and often result in a vicious cycle of debt, exploitation, and abuse in Hong Kong. The minimum salary is roughly equivalent to US$590 which means the maximum placement fee is roughly US$59. A person who charges in excess of this amount contravenes section 57(1)(a) thus commits an offence and is liable on conviction to a fine of $350,000 and to imprisonment for 3 years.

In order to gain employment in Hong Kong, foreign domestic workers, in their position as prospective employees, will normally pay to an employment agency a “placement fee” for the service of placing them with a prospective employer. Under the laws of Hong Kong, employment agencies are only permitted to charge up to 10 per cent of the domestic helper's first month’s salary. However, an Oxfam funded study ("Between a Rock and a Hard Place") conducted by Right's Exposure found that 70% of Philippine domestic workers paid a placement fee in Hong Kong averaging the equivalent of US$1,459 or almost 25 times the legal maximum. Many others studies have made similar findings.

In order to afford these illegal fees, foreign domestic helpers will often take personal loans once in Hong Kong. Sometimes, an employment agency may bring them to a loan company as soon as they arrive to sign a loan contract to cover recruitment fees. These money lenders often excess interest of what is permitted under s. 24 of the Money Lenders Ordinance (Cap. 163) and are known to regularly engage in criminal harassment and intimidation for loan repayment as well.

II. Hong Kong's Regulatory Framework on Illicit Placement Fees

In Hong Kong, the main legislation surrounding the practices of employment agencies are the under the Employment Ordinance (Cap. 57) and the Employment Agency Regulations (Cap. 57A).
Apart from prohibitions on employment agencies, the Immigration Department has also issued a standard form called the “Standard Employment Contract and Terms of Employment for Helpers”, the form of which can be found on the Immigration Department website. This standard form contains standard contract terms pertaining to reimbursement of certain fees involved in the recruitment process; to domestic helpers, which must be followed by individual employers. This will all be further discussed below.

III. Prohibitions on Placement Fees: s.57 Employment Ordinance (Cap. 57) and Regulation 10, Employment Agency Regulations (Cap. 57A)

The maximum fees and commission chargeable to the employee by the employment agency for employment work or contract or hire of services (referred to in the Employment Ordinance as a ‘prescribed fee’), is an amount not exceeding ten per cent of the first month’s wages after placement by the agency. See S.57(1)(a)(ii), Employment Ordinance (Cap. 57), reg. 10(2) and part II Employment Agency Regulations (Cap. 57A)

Section 57(1)(a)(ii) of the Employment Ordinance (Cap. 57) provides that: “A licensee, or an associate of a licensee, in respect of an employment agency, or a person purporting to act as such a licensee or associate, must not, directly or indirectly—receive from any person on account of having obtained, or in connection with obtaining or seeking to obtain, employment for that person—any payment or other advantage in respect of expenses or otherwise, except the prescribed commission.”

Section 57(2) of the Employment Ordinance then goes on to define ‘prescribed commission’ as “commission that the employment agency is permitted to charge” and subsequently refers to Regulation 10(2) and Part II of the Employment Agency Regulations (Cap. 57A) which denotes that “the maximum commission which may be received by an employment agency shall be—from each person applying to the employment agency for employment, work or contract or hire of his services, an amount not exceeding a sum equal to ten per cent of the first month’s wages received by such person after he has been placed in employment by the employment agency”.

Following from the above provisions denoting the maximum prescribed commission as no more than 10 per cent of the employee’s first month’s wages, and given that the Minimum Allowable Wage for foreign domestic helpers as announced by the Hong Kong SAR Government is $4,630 per month”, then, by way of example, the maximum prescribed commission chargeable by employment agencies is HK$463 if the first month’s salary is $4,630. If an employment agency charges in excess of the prescribed amount, they are in breach of the law.
IV. Criminal liability and fines for charging illicit placement fees: s.60(7), Employment Ordinance (Cap. 57)

Following from the above, an employment agency in breach of the Employment Ordinance and its accompanying Employment Agency Regulations is liable to prosecution and revocation of its licence. Section 60 of the Employment Ordinance (Cap. 57) lists out the legal consequences for breach of various sections of the Employment Ordinance, and s. 60(7) pertains to breach of s.57(1)(a) regarding the charging of excessive placement fees. Section 60(7) provides: *A person who contravenes section 57(1)(a) commits an offence and is liable on conviction to a fine of $350,000 and to imprisonment for 3 years*

It is worth noting that the law in Hong Kong on overcharging domestic workers is a matter of strict liability. An offence which holds strict liability is one where prerequisite knowledge on the part of a person that an offence has been committed is not required for breach. Therefore, any employment agency who is found to overcharge a prospective employee, even if its employees did not know this was illegal, shall be guilty of an offence under the requisite provisions of the Employment Ordinance and Employment Agency Regulations.

**Paragraph 8, Standard Employment Contract and Terms of Employment for Helpers**

Apart from employment agencies, individual employers are regulated in the contract terms they enter into with foreign domestic helpers. The Standard Employment Contract and Terms of Employment for Helpers (hereinafter ‘Standard Employment Contract’) is a form containing contract terms which all employers must abide by in hiring a foreign domestic helper and are only acceptable as valid contract terms by the Immigration Department of the Hong Kong SAR Government whenever an application to employees a domestic helper from abroad is made by a prospective employer. The Standard Employment Contract is governed by the Employment Ordinance (Cap. 57), the Immigration Ordinance (Cap. 115) and the Employees’ Compensation Ordinance (Cap. 282).

For our purposes, the relevant section is paragraph 8 of the Standard Employment Contract, which provides that employers are responsible for the domestic workers': (i) medical examination fees; (ii) authentication fees by the relevant Consulate; (iii) visa fee; (iv) insurance fee; (v) administration fee or fee such as the Philippines Overseas Employment Administration fee.

These standard employment contract specifies that in the event that the domestic worker has paid the above costs or fees, the employer shall fully reimburse the domestic worker forthwith the amount so paid by the domestic worker. Failure to reimburse these expenses is common. Many employers do not read the contract in detail and/or assume the agency has already covered these items.
Domestic workers are generally reluctant to request reimbursement for fear of appearing uppity and angering their employer just as their work begins. Many workers themselves don’t know they are entitled to these reimbursements.

The standard employment contract is effective for two years. An employer who fails to pay the statutory benefits and other payments due to the foreign domestic helper in accordance with the Employment Ordinance (Cap. 57) and the Standard Employment Contract commits an offence. Under the Employment Ordinance, any employer who underpays wages commits an offence and is liable to a fine of HK$350,000 and to imprisonment for three years; and any person who unlawfully deducts wages commits an offence and is liable to a fine of HK$100,000 and to imprisonment for one year.