

Research Brief

Migrant Worker Recruitment Costs

China

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The **People's Republic of China** is a major country of origin for low-skilled migrant workers, while at the same time, it is also an emerging country of destination for irregular and frequently undocumented low-skilled labour from neighbouring countries. The migration trends are the result of rapid economic development and the labour overcapacity of the massive Chinese population. Unequal economic prosperity and opportunity in China has also contributed to massive rural-urban domestic migration from the rural inner territories to the industrialised centres of the country.

Inadequate legislation, poor enforcement of existing laws to regulate recruitment fees, complicated by the geography of China, and the magnitude and complexity of the labour migration market, results in prevalent and exorbitant recruitment fees in China.

Background

The Three Migration Flows

As much as the People's Republic of China is an undisputed economic powerhouse, its GDP per capita at \$14,107 in 2015, the 84th in the world, is indicative of serious social inequality and concomitant social problems. (International Monetary Fund, 2016)

The massive but uneven economic development and growth of China's urban centres, together with the labour overcapacity of the 1.36 billion Chinese population, has contributed to large scale economic migration of low-skilled Chinese workers (National Bureau of Statistics of China, 2014). This migration takes the form of both **internal rural-urban migration** and **outward international migration**. China has also seen increasing **inward cross-border migration** of low-skilled labour from neighbouring countries.

While China has had a historical record of being a gargantuan country of origin for low-skilled economic migration, the economic policies initiated in the 1980s¹ have contributed to a new wave of low-skilled labour migration out of China of sustained and enormous magnitude. As of 2015, an estimated 0.69% of all Chinese citizens lived outside of China – a whopping 9.43 million Chinese citizens (International Organisation for Migration, 2015). Of this 9 over million, the UN estimates the number of Chinese international low-skilled migrant labour at 685,000, although the actual numbers are likely to be greater (United Nations, Department of Economic and Social Affairs, 2012). Singapore is the second most popular country of destination for Chinese low-skilled migrant labour, after Japan as of 2011 (Chan, 2011). African nations and European nations as well, are popular countries of destination.

At the same time, the poorer economic opportunities of the Chinese rural interior have precipitated a burgeoning rural-urban domestic migration of Chinese labour to the industrialised urban centres. At an estimated 260 million in the fall of 2012, this category of rural-urban migrant workers make up an enormous 36% of China's workforce (China Labour Bulletin, 2015). These workers, largely in the service and construction sector, face a glaring lack of access to social welfare, such as healthcare and education benefits and pensions – the result of a 1950s Mao-era policy of *hukou*. The household registration system, or *hukou*, tethers access to social welfare services to their residential provinces and statuses, thus effectively severing rural-urban migrants from social welfare (Branigan, 2014). Although governmental efforts to calibrate the *hukou* system have brought a limited measure of alleviation to rural-urban migrants with some migrants receiving urban *hukous*, more future comprehensive reforms are being deliberated.

¹ Deng Xiaoping's economic reforms initiated in 1978, reversed a long period of Chinese economic stagnation by introducing a socialist market economy with open access to external trade. The market economy has been continued by successive Chinese administrations and has led to rapid economic development and resultant social change.

36.2% of these rural-urban workers are employed under labour-dispatch agencies which function as third parties, matching and hiring out workers to employers under temporary short-term contracts (Liu, 2014). Labour-dispatch is prevalent in China where manufacturing industries require large bulks of temporary low-skilled labour responding to seasonal demands and under-capacity. They are paid less than traditional direct-hire labour, although the 2014 *Interim Regulations on Labor Dispatch* and their “Equal Pay Equal Work” regulation now in principle prohibits this. As the law only came into effect in 2016, its effectiveness remains to be seen. Workers under labour-dispatch also have reduced access to labour protection compared to permanent local staff due to the roundabout employment of labour-dispatch which exploits loopholes in Chinese labour laws. *Figure 1* below illustrates the labour-dispatch system.

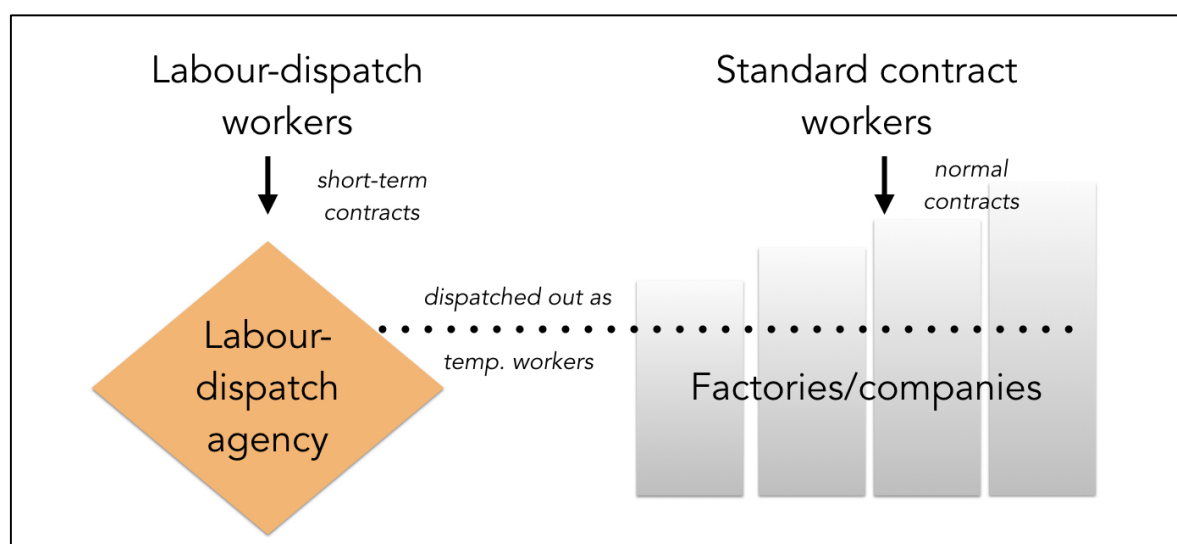


Figure 1: The Labour-Dispatch System in China

In this regard, workers may seek redress through the labour dispute resolution system. Enacted by the 1993 *Regulations on Handling Labor Disputes in Enterprises* and further refined by the 2008 *Labor Dispute Mediation and Arbitration Law*, labour disputes go through a four-stage process of consultation, mediation, arbitration and litigation. Mediated settlements however, are said to be the preferred route among Chinese authorities and labour court institutions (China Labour Bulletin, 2015).

Beyond outward international migration and domestic migration, the growth of the Chinese economy has made China an emerging country of destination for economic migration. This is particularly so of neighbouring Burmese, Vietnamese and North Korean migrant workers, most of whom enter China through irregular and illegal means, and hence naturally incur hefty recruitment fees. The Burmese and Vietnamese migrants typically find employment in Southern China, attracted by the promise of higher wages, whereas the North Koreans are scattered in North-eastern Chinese provinces. The proportion of

North Korean labour has fallen since the 1990s at the height of the famines², but Burmese and Vietnamese migrant labourers continue to number in the “tens of thousands”³ (Skeldon, 2011). In addition, a sizeable and increasing number of migrants from African states work in the service sector in China, a development highlighted by the emergence of an “African Street” enclave in Guangzhou (J. Fan, personal interview, 31 July 2016). The estimated foreign migrant stock residing in China is estimated at 978,046 in 2015 (United Nations, Department of Economic and Social Affairs, 2015).

The issue of recruitment fees is prevalent and severe in all these three migration flows in, out and within China due to the inadequate legislation, lax enforcement of laws regulating recruitment fees, geography and complexity of the labour migration market, and exploitation by recruitment middle-men who facilitate migration and employment – a necessary evil under present conditions.

² Large-scale flooding in 1995, devastated large swathes of North Korean crops and agricultural infrastructure, leading to widespread famine, fuelling irregular flows of North Korean labour into Northeast China.

³ Estimates are uncertain due to the under-reported and undocumented nature of their employment.

Details of policy

Modes and Regulation of External Migration

External migration of Chinese labour occurs through four general channels: labour recruitment agencies, direct employment with companies working on overseas projects, migration facilitated via connections with relatives working overseas and their foreign employers, or less frequently, illegal human smuggling syndicates.

Termed as *Foreign Labor Service Cooperation*, migrant labour recruitment agencies have to be licensed by the Ministry of Commerce to send workers overseas and are regulated under the *2012 Regulations on Management of Foreign Labor Service Cooperation* (Ministry of Commerce of the People's Republic of China, 2012). These recruitment agencies are evolved descendants of 1950s state-directed “labour export” policies⁴ but have since been privatised, and, numbering over 800⁵, serve a diverse range of industries, from seafaring to construction. Foreign companies have to liaise directly with these Foreign Labor Service Cooperation agencies that will in turn source for and provide workers (Chen, 2010). These Foreign Labor Service Cooperation agencies are also tasked with the vocational training of workers who have to undergo 40 – 80 vocationally-related training sessions to qualify for certification in order to go overseas.

These agencies are large corporations, sometimes state-owned enterprises, that operate on the regional level and outsource the immediate recruitment of workers in the town, provincial and sub-regional level to a large web of smaller intermediate recruitment agencies. These intermediate recruitment agencies, which lack licenses to send workers overseas, deal primarily with the direct sourcing of workers, while the main certified agencies manage liaison with foreign firms and the sending of workers overseas. Only the certified agencies have the license to send workers overseas, hence the smaller intermediate recruitment agencies will have to refer the workers downstream to the main certified agencies.

Uncertified or illegal agencies that send workers overseas have been eradicated through the combined efforts of the Ministry of Commerce and the authorities since the *Regulations* were passed into law in 2012 (J. Fan, personal interview, 31 July 2016).

It should be noted that the smaller upstream intermediate recruitment agencies, while not legitimised by the purview of the *Regulations*, are not technically illegal for they essentially function as informal sub-contractors or brokers of the main downstream certified agencies. Nonetheless, the core business focus of the intermediary agencies is, in fact, the recruitment of workers for local jobs, of which they are legally

⁴ China in 1950-1970 deployed numerous skilled technicians as part of “Friendship Aid” projects to African nations (Poltzer, 2008)

⁵ Sourced from the “List of Int’l Labor Companies” on the website of the Ministry of Commerce of the People’s Republic of China

certified to do so. Their recruiting services for Foreign Labour Service Cooperation agencies are secondary to their main business focus (J. Fan, personal interview, 31 July 2016).

These main agencies themselves on the other hand are subject to stringent and prohibitive qualifying standards for “certification” or licensing under Article 6 of the *Regulations*⁶.

Building on previous laws managing migrant labour, the *Regulations* provide a series of measures protecting the welfare of migrant workers recruited by Foreign Labor Service Cooperation agencies, mandating the agencies to provide personal accident insurance for workers, to track living and working conditions of migrant workers overseas and to assist workers abroad in times of difficulty, among other measures⁷. Unlike precursor employment agencies, the Foreign Labor Service Cooperation agencies also have to ensure that the promised employment in the country of destination is indeed available; and this is corroborated by the Chinese embassy in the country of destination, thereby preventing scams.

Article 25 of the *Regulations* also explicitly prohibits the collection of recruitment fees, termed as “service fees”, from workers by the Foreign Labor Service Cooperation agencies. Violations are made punishable under the clauses of the *2008 Labor Contract Law of the People's Republic of China*, which mandates fines of between 1000 to 5000 yuan (150 - 770 USD) per worker together with de-licensing⁸.

However, in practice, recruitment fees are not just present but severe, due to the practice of outsourcing of recruitment to numerous and complex networks of intermediate recruitment agencies on the sub-regional level mentioned above (Chan, 2011). Workers go through multiple intermediate recruitment agencies from town-level to provincial levels, and are sometimes bounced around, until finally being referred to the main certified agencies that retain the sole authorisation to send workers overseas. These intermediate recruitment agencies in turn exploit the complexity of the recruitment system and their geographical monopoly on the town-level migrant labour recruitment to extract profits from recruitment fees at every point. The fees paid to the intermediaries are estimated to be at 600 to 800 RMB (90 – 120 USD).

Few Foreign Labor Service Cooperation agencies themselves comply stringently with the regulations. This is evident from the consistent prevalence of recruitment fees among Chinese migrant workers revealed through research (Open Working Group on Labour Migration & Recruitment, 2014). Workers departing for Singapore have been reported to be charged between 30,000 to 40,000 yuan (4,500 – 6000 USD) in

⁶ These include a paid-up capital of 6 million yuan (916,000 USD), legal representatives with no criminal records and “a sound internal management system and an emergency handling system”

⁷ These clauses are provided for under Article 13 and 16 of the *Regulations on Management of Foreign Labor Service Cooperation*

⁸ These can be found under Article 44 of the *Regulations on Management of Foreign Labor Service Cooperation* and Article 93 of the *2008 Labor Contract Law*

recruitment fees, while employment in Japan and South Korea, as a result of higher demand, incur fees as high as 60,000 yuan (9000 USD).

This prevalent and blatant violation of the recruitment prohibitions is typically made possible by avoiding the use of the term “recruitment fees” when charging workers, thereby circumventing the clauses of the *Regulations*. Such exorbitant fees may be attributed to the high costs incurred by the agencies in deploying “marketing teams” overseas to source for and liaise with employers. However, it is reported that such fees are one-time payments and are not charged again when migrant workers renew their expired contracts (J. Fan, personal interview, 31 July 2016).

This mode of external migrations, despite its prohibitive costs, accounts for almost half of all low-skilled external migration out of China, regardless of industry (Ministry of Commerce of the People's Republic of China, 2016).

A separate and simpler model of recruitment also exists, although it is not as prevalent. In this model, a single Chinese company, typically a construction company contracted to work on an overseas construction project, fulfils the role of both recruiting agencies and the eventual employer (Chen, 2010). Certified by the Ministry of Commerce as a Foreign Service Labor Cooperation enterprise, the Chinese company is able to send their own body of contracted workers overseas. This is illustrated in *Figure 2* below.

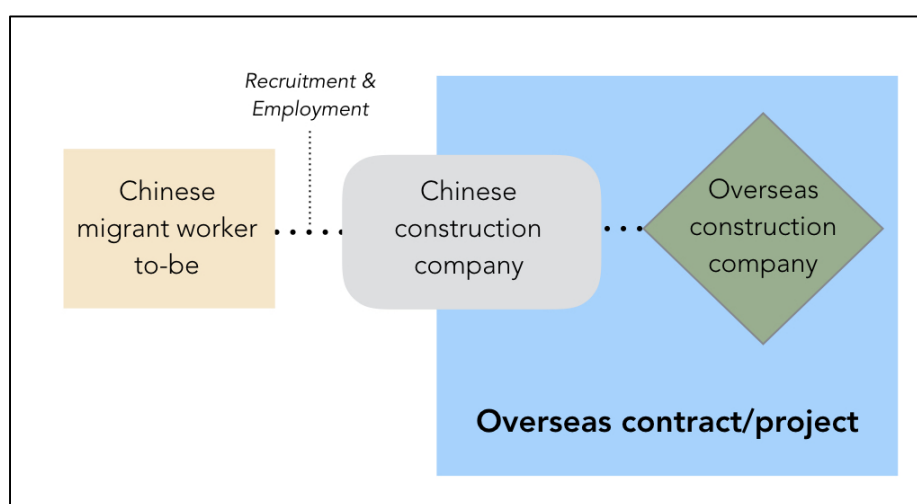


Figure 2: Direct recruitment and employment of Chinese workers

While their workers are also protected by the 2012 *Regulations*, they still fork out recruitment fees. Nevertheless, unlike the workers who go through multiple intermediaries and sign multiple contracts, their workers sign only one contract, and thus pay lower recruitment fees. An ILO report⁹ on Chinese

⁹ Chen, Xiao. (2010). *Souls in Exile: A Study of Chinese Migration Workers in Romania*. International Labour Office for China and Mongolia. Beijing: International Labour Organisation. P. 39

workers in Romania indicates that workers employed under this model paid about 65,000 yuan (9900 USD), compared to the typical fees of 75,000 to 100,000 yuan (11,400 USD to 15,200 USD) for other migrant workers recruited through the legal agency route.

Despite the affordability and ease of migration in this mode of migration, it remains uncommon as it is firstly, restricted to skilled labour and, secondly, utilised only by construction firms due to their unique manpower requirements. Moreover, the lack of information and inaccessibility of these firms to Chinese workers compounds the poor uptake.

The third mode of labour migration is through direct connections to foreign employers facilitated by relatives or friends already working in the destination countries (J. Fan, personal interview, 31 July 2016). In this popular mode of migration, workers need only register for an exit permit together with evidence of employment with the foreign employer. Recruitment fees, if present, are modest.

Migrants who go through the final channel of illegal migration are unprotected under the Regulations and are at the mercy of these syndicates. Known as *snakeheads*, syndicates smuggling¹⁰ migrant workers out of China, while common in the 1990s, have become rare with better economic conditions and the advent of proper recruiting channels (Keefe, 2008). Nonetheless, snakeheads provide a promise of lifetime migration, rather than contract-based migrant labour, but the illegality of the mode of migration incurs exorbitant fees¹¹ while the hazardous means of travel are infamous for their occasional fatalities¹² (Thompson, 2003). The snakehead trade is also precipitated by demand for employment in countries of destination that offer high wages, like Japan and South Korea, which have stringent annual quotas on the entry of migrant workers (J. Fan, personal interview, 31 July 2016).

These migrants also have to find their own employment, unlike the previous three modes where migration is packaged with employment.

Internal rural-urban migration and regulations

While rural-urban migrant workers are disenfranchised by the *hukou* system, their basic labour rights are nonetheless protected in principle, under the *2008 Labor Contract Law*. Recruitment fees are prohibited under Article 60 of the Law and Article 37 of the *2008 Law of the People's Republic of China on Promotion of Employment*, but they remain prevalent nevertheless¹³. This may be attributed to the labour-dispatch

¹⁰ Human smuggling is distinct from trafficking, in terms of the full consent of smuggled individuals, complete knowledge of risks and termination of interactions between smugglers and customer upon arrival at the destination, unlike the markedly more exploitative human trafficking.

¹¹ The average fee in 2008 was \$70,000 USD (Keefe, 2008)

¹² In an infamous case in 1993, 10 of the 286 illegal Chinese immigrants on board the cargo ship, *Golden Venture* drowned when the ship ran aground the beach at Queens, New York (Faison, 1993).

¹³ Apple Inc. in 2015 forced its China-based suppliers to remove recruitment fees that its 1.1 million Chinese workers face, underscoring the prevalence of recruitment fees (Kan, 2015).

system, which, to an extent, exacerbates the malfeasance of employers and their ability to bypass labour protection laws (Liu, 2014).

This loophole however, is being patched up with clarifications on existing legislation and sweeping new regulations on labour-dispatch from Ministry of Human Resource and Social Security. The 2014 *Interim Provisions on Labor Dispatch* promulgate greater labour protection for labour-dispatch workers, in line with the *Labor Contract Law* (Xu, 2016). It does not however indicate any prohibition of recruitment fees.

Nonetheless, those workers seeking legal redress through the Labor Dispute Arbitration Committee (LDAC) have been tepidly successful, with workers having a clear win in just 35.2% of the 711,044 cases¹⁴. Workers are further disadvantaged and dis-incentivised by the financial cost and time of litigation procedures (China Labour Bulletin, 2015).

Inward migration

As in the case of rural-urban migration, the 2008 *Labor Contract Law* would in principle protect foreign migrant workers in China. However, these migrant workers are similarly also affected by the labour-dispatch system and the recruitment fees that come with the contracts. Moreover, in light of their undocumented and illegal status, most illegal foreign migrant workers working in China are very likely not covered by the *Labor Contract Law*.

Furthermore, the Chinese authorities have been hostile towards undocumented migrant workers and have overhauled the 1985 *Law Of The People's Republic Of China On Entry And Exit Of Aliens*, in 2012 with the *Exit and Entry Administration Law*, after an eight-year process of deliberations (Haugen, 2015). The new law particularly imposes heftier punishments on undocumented, low-skilled migrant workers.

¹⁴ While employers won only 11.6% of the time, 53.2% of the cases, however had no clear winner

Pros and Cons

Outward Migration

At the core of the recruitment fees issue for outward migration in China is insufficient legislation and inadequate enforcement of existing legislation. This has allowed Foreign Labour Service Cooperation agencies to interpret the *Regulations* vaguely such that they may extort exorbitant recruitment fees with impunity.

In a similar vein, the massive and unregulated network of intermediate recruitment agencies, illustrated in *Figure 3* below is able to retain an immense latitude to extract recruitment fees. Fundamentally, the large geography of the People's Republic and the resultant lack of accessibility and profitability of certified agencies reaching out to rural towns directly, necessitates the existence of this intermediary network that bridges the gap.

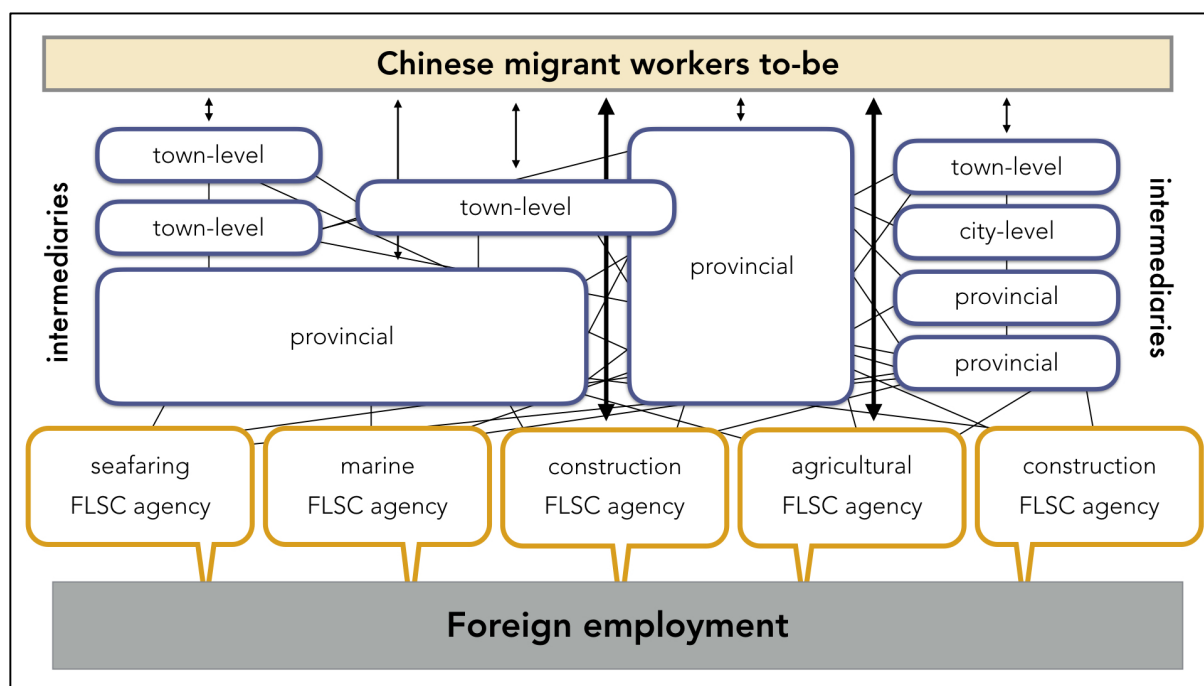


Figure 3: Foreign Labor Service Cooperation and intermediaries in the Chinese foreign labour market

The lack of a wider, calibrated regulatory framework to accommodate this bigger network of smaller intermediaries is at the crux of this problem. For one thing, the stringent qualifications for certification of a Foreign Labor Service Cooperation agency increases the barriers to entry severely, thereby creating a ready and profitable informal market for sub-regional intermediate recruitment agencies. This in turn restricts the capacity of the state to regulate recruitment processes beyond the level of the certified agencies.

Understandably, the recruitment fees issue is aggravated by virtue of the reality that the number of smaller intermediate firms could possibly run into the tens of thousands, given that the main licensed

ones already number over 800. In Nantong City, Jiangsu province alone, a “Labour Street” has over 100 mid-sized intermediate agencies with which a larger pool of even smaller agencies have contacts (Chen, 2010).

This thus also illustrates the other fundamental problem of the lack of allocated resources to enforce labour regulations amidst the sheer number of Foreign Labour Service Cooperation agencies and their intermediaries scattered across the immense geography of China. The magnitude of the labour migration market, and under-staffing and under-funding, of the responsible provincial level offices, results in lax enforcement of regulations. Furthermore, the economic benefits of allowing the unregulated market to go on incentivises disinterest among state planners and provincial officials in enforcing the labour laws. Thus, the complementing inability and institutional disinterest in enforcement leads to a continued proliferation of recruitment fees and labour abuse.

On the flip side, it has been noted that the markedly more hazardous and exorbitant channel of the snakehead trade has been undercut by better economic conditions and access to the fruits of China’s economic growth (Keefe, 2008). In this regard, the 2012 *Regulations* can be argued to have facilitated access to economic opportunities through increasing the reliability and accessibility of legal migration options. Though impaired by the lack of enforcement and the huge network of smaller intermediate agencies, the state certification and stringent qualifications of the main recruitment agencies provide a token of credibility and legitimacy that increases appeal to would-be migrant workers, thereby cutting into the market of patently less reliable snakehead trade.

Similarly, the network of smaller intermediate recruitment agencies, although complex and a legal grey area that opens a major loophole for the charging of recruitment fees, has allowed for this increased accessibility, opening in-roads for legal labour migration options to the town level, and ultimately economic mobility.

The institution of the Foreign Labour Service Cooperation scheme, while flawed, has also afforded better protections for migrant workers as opposed to its precursor employment agencies that existed before the 2012 *Regulations*. For example, workers are unlikely to be scammed, as promised employment has to be assured to exist by both the agency and the Chinese embassy in the country of destination. This, among other standardised requirements, is an evident improvement to the old modes of external migration.

With respect to the issue of recruitment fees, the 2012 *Regulations* also aptly target the primary avenue where recruitment fees are incurred – the middlemen of the labour migration process. Although severely limited in scope and enforceability, the legislative focus of the law, if expanded, calibrated and enhanced, has the potential to effectively regulate labour rights and recruitment fees in the recruitment process. In this respect, the existing qualifications for licensing of a Foreign Labor Service Cooperation agency may

provide a useful precedent for future enhancements of the law that could be expanded into separate qualifications for different categories and “levels” of recruitment agencies such as the main recruitment agencies and their intermediary “sub-contractors”.

It is also unrealistic for the Chinese government to impose a zero recruitment fees policy on all recruitment agencies. This, if stringently enforced, erodes the profitability of the labour migration middlemen trade, and will proliferate an underground economy of unregulated recruitment agencies, in light of huge demand.

Instead, the streamlining of the recruitment process, from town to the actual Foreign Labor Service Cooperation agency, while ambitious, could be considered. Such streamlining has already been achieved in the second model of legal migration through the direction employment of workers by Chinese companies contracted to work on overseas projects, albeit with low uptake. This low uptake is indicative of the challenges such a model will have to surmount in order to gain further traction: outreach to a wider cross-section of workers, and adaptation to different industries and their labour requirements.

Such a model of labour migration nevertheless retains the potential to match China’s burgeoning population of migrant workers to their preferred employment and countries of destination, with the greatest ease and at the lowest possible cost.

Rural-Urban Migration

On the other hand, the recruitment fees issue in rural-urban migration is becoming a non-issue with increasing institutional attention and reform of the *hukou* and labour-dispatch system, which thereby removes the systemic grounds for recruitment fees. While effectiveness of the new laws remains to be seen, this development clearly demonstrates the obvious wherewithal of the Chinese government to act, when accompanied with adequate political will. This is especially so given the relatively enormous scope of 260 million rural-urban migrant workers, compared to a mere 8.4 million external-migration migrant workers and mere “tens of thousands” of inward-migration workers.

Inward Migration

Conversely, the recruitment fees issue in undocumented inward migration is a diametric opposite with abject institutional neglect – the result of a lack of political interest and popular silence.

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TWC2 Recruitment Costs Research Working Group

The great majority of migrant workers pay large sums of money in order to obtain jobs in other countries. The costs, often exorbitant, leave workers debt-ridden and in a more vulnerable position to pernicious labour abuse. At TWC2, we recognise the consequences of recruitment costs and the urgent need to eliminate such fees.

This report is part of a series of papers analysing the policies in various countries regulating recruitment costs. Through this evaluative process, we hope to be able formulate effective policy recommendations in reducing the recruitment costs of workers who come to Singapore.



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