

Key markers for promoting responsible recruitment of migrant workers

Guidance for companies

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Foreword

Even with many years of effort by worker advocates, governments, industry, and multilateral organizations, migrant workers in the apparel and footwear sectors continue to face forced labor risks due to the ongoing practice of charging workers for employment offers. By passing the cost of doing business onto the migrant workers, they are often left with crushing debt that makes them even more vulnerable to exploitation. While many guidance documents exist to help companies establish policies meant to solve this issue, policy implementation with their suppliers is difficult. The worker recruitment process can be opaque and extremely complex, and companies may be unaware of the high-risk activities that labor brokers or other recruitment actors take, and thus are not able to effectively address them.

The Fair Labor Association (FLA) has joined with Andy Hall, an international migrant worker rights specialist with deep knowledge of responsible recruitment programs across Asia, to develop guidance for the industry, highlighting industry responsible recruitment challenges, and provide guidance for overcoming these challenges. We hope this document is a helpful resource for companies/buyers and other stakeholders as they work to eradicate recruitment fees for workers and promote decent work in global supply chains.

About FLA

The Fair Labor Association (FLA) promotes human rights at work. We are an international network of companies, universities, and civil society organizations collaborating to ensure that millions of people working at the world's factories and farms are paid fairly and protected from risks to their health, safety, and well-being.

About Andy Hall

Andy Hall is a human rights defender and independent migrant worker rights specialist, researcher, and activist.

Born in the United Kingdom, he lived in Thailand from 2005 to 2016, during which time he became an internationally recognized human rights defender, migration specialist, and campaigner on migrant rights, empowerment, and modern-day slavery within international supply chains. He is fluent in the Thai language.

He has served as a foreign expert in migration at Mahidol University's Institute for Population and Social Research and as an advisor to the Myanmar government in Naypyidaw. He often speaks as an expert on migration, human rights, and forced labor issues at the European Parliament.

From 2018 to 2021, he was a special advisor on migration issues to Impactt, an ethical trade consultancy in the UK, providing general advice and capacity building on migration and forced labor issues to the organization. He also continues to support Elevate/LRQA, a global social compliance company, in its forced labor and migration related advisory work in Asia.

Since 2018, he has lived in Nepal, focusing on migrant worker issues there, and continuing his work on migrant worker rights across Asia and into the Middle East and Gulf States. While he acts increasingly as an advisor to companies and investors, as well as civil society, trade unions and governments, he firmly remains a migrant worker rights advocate at heart, most recently exposing recruitment abuse impacting Indonesian and Nepalese workers in the UK's seasonal workers' scheme.

Andy has a 1st Class Honors Law degree (LLB) from University College London and has been awarded several academic prizes and scholarships. He studied at a postgraduate level at the Centre for Business Relationships, Accountability, Sustainability and Society (BRASS) at Cardiff University, Wales and at the Criminology Department at the University of Melbourne. His postgraduate research focused on Commonwealth proposals to develop occupational health and safety laws relating to organizational criminal responsibility and accountability for industrial deaths and disasters.

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Glossary

DECENT WORK: [The International Labour Organization](#) (ILO) definition of decent work is “productive work for women and men in conditions of freedom, equity, security and human dignity.”

DESTINATION OR “HOST” COUNTRY: The country where a migrant worker will eventually work with their end-user employer.

END-USER EMPLOYER: The actual employer of a migrant worker and/or the owner of the workplace where the migrant worker works. End-user employers are also the companies or “suppliers” that supply companies with goods or services.

FORCED LABOR: The [ILO](#) definition of forced labor is “all work or service exacted from a person under threat or penalty, which includes penal sanctions and the loss of rights and privileges, where the person has not offered him/herself voluntarily.”

KICKBACK: The “kickback” is a process whereby recruitment actors in source countries of migrant workers pay bribes either to an end-user employer’s staff or a destination country recruitment intermediary for a recruitment demand to source and recruit migrant workers in a source country for an end-user employer’s operation in a destination country. These kickback costs are in the end covered by workers, on top of whatever other recruitment-related fees and costs they must bear for their recruitment. Kickbacks can occur whether an end-user employer covers migrant worker’s recruitment-related fees and cost or not. The amount of a kickback offered often determines which recruitment actors are chosen to conduct recruitment for an end-user employer. The recruitment actors in source or destination countries who pay highest kickbacks to an end-user employer or recruitment intermediary often secure more migrant worker recruitment demands.

MIGRANT WORKERS: A migrant worker is defined in Article 2 of the [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”

MODERN SLAVERY: The term modern slavery is used to encompass more than situations defined as forced labor or human trafficking. See for instance Anti-Slavery International’s [definition](#) “when an individual is exploited by others, for personal or commercial gain. Whether tricked, coerced, or forced, they lose their freedom.”

OPEN TENDER: A process that consists of a transparent and objective selection process by which recruitment actors are chosen or procured for the issuance of a recruitment demand to provide recruitment services to an end-user employer based on set criteria including quality, ethics and cost. This is in contrast to a situation when recruitment actors are chosen through informal or subjective channels, based on relationship or long-term business partnerships only.

RECRUITMENT OR RECRUITMENT PROCESS: The term includes, [according to the ILO](#), the advertising, information dissemination, selection, transport, placement into employment and, for migrant workers, return to the country of origin (or source country) where applicable. This applies

to both jobseekers and those in an employment relationship. In this guidance note, the term is also used to refer to the stage of recruitment agencies processing migrant workers for their departure to an end-user employer.

RECRUITMENT ACTORS: Used in a wider sense than just “recruitment agencies” or “recruitment intermediaries” to describe all the actors, companies or individuals who are involved in the process of migrant worker recruitment. These recruitment actors may be registered or licensed, but they may also be informal, irregular or unregistered.

RECRUITMENT AGENCIES: These are registered recruitment actors licensed under the prevailing laws and regulations of a particular country to conduct recruitment activities legally. Agencies often must place operating deposits as guarantees and only those with recruitment licenses can officially recruit or deploy workers from source countries to destination countries and to end-user employers.

RECRUITMENT AGREEMENT: This is a written agreement between an end-user employer and all recruitment actors involved in recruitment processes for recruiting migrant workers to an end-user employer’s operations setting down the detailed terms and conditions concerning the process of recruitment from beginning to end.

RECRUITMENT DEMAND: This refers to a migrant worker recruitment “demand letter,” which often needs to be attested by related destination and source country government agencies and related embassies/consulates. This letter is how an end-user employer usually assigns authority in writing for a licensed recruitment actor in a source country to recruit workers for the end-user employer.

RECRUITMENT INTERMEDIARIES: Used interchangeably with “recruitment agencies” or “recruitment actors” to describe companies or individuals who are involved in migrant worker recruitment processes. These recruitment intermediaries may be registered or licensed but they may also be informal, irregular or unregistered.

RESPONSIBLE RECRUITMENT: Responsible, ethical and fair recruitment are terms that can be used interchangeably. In this guidance document, migrant worker recruitment that accords with developing international standards shall be referred to as “responsible recruitment.” International standards on responsible recruitment currently in existence include those developed by the [ILO](#), International Organization for Migration (IOM)’s [International Recruitment Integrity System \(IRIS\)](#), the Fair Hiring Initiative’s [On The Level](#), [Responsible Business Alliance](#) (RBA), and the [Responsible Recruitment Toolkits Clearview](#).

RECRUITMENT-RELATED FEES AND COSTS: Defined by the [ILO](#) as “any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.” See the [ILO’s definition](#) of recruitment related-fees and costs, and associated [supporting literature](#). Responsible recruitment is as much about recruitment costs, and who pays these costs, as it is about worker’s informed consent to agreed or advertised terms and conditions of employment, access to personal documents and confidentiality in use of personal data.

SOURCE OR “ORIGIN” COUNTRY: This is the country where a migrant worker comes from or has the nationality of, or the country where a worker’s recruitment process is initiated.

Introduction

Millions of workers migrate beyond their home countries and internally to find decent work and improve their economic livelihoods. However, unethical migrant worker recruitment practices drive worker exploitation and can exacerbate other forms of abuse such as forced labor and child labor.

The International Labour Organization (ILO)'s [Fair Migration Agenda](#) recognizes human mobility as a key element of sustainable development and designates [fair recruitment](#) and the equal treatment of migrant workers as a critical component in preventing exploitation. However, responsible recruitment of migrant workers remains a challenging topic. While responsible recruitment is outlined in principle one of the [Dhaka Principles for Migration with Dignity](#) as a commitment to ensuring migrant workers are not indebted from paying exorbitant recruitment costs, responsible recruitment is more nuanced and requires a detailed set of practices and standards to ensure workers are treated fairly and ethically.

Recruitment actors often operate outside of legal and regulatory frameworks, preying on workers in vulnerable situations. Recruitment often sets the tone for a worker's employment journey. Unfair recruitment practices, such as forcing workers to pay placement fees, deception about the terms and conditions of employment, threats and intimidation, and other abuse, can occur prior to workers arriving at the destination country and beginning their employment.

Forced labor risks occur even when laws in the source and host countries are followed, since most countries allow workers to be charged recruitment or other fees associated with their employment contracts. Responsible recruitment must be part of a holistic effort looking at the entirety of the worker journey and not focus solely on legal compliance.

Governments, employers, and labor recruiters (public and private employment agencies and other intermediaries or subagents that offer recruitment and placement services) all play a role in ensuring that worker recruitment is conducted within the applicable laws, in line with international labor standards, and with respect to human rights. Understanding the complementarity between all actors involved in the recruitment process and how they can work together helps ensure a fair process.

Promoting fair migration and recruitment and safeguarding the dignity and rights of migrant workers in global supply chains is critical to protecting the rights of all workers. This guidance document focuses on international standards for promoting responsible recruitment and examines the most pressing supply chain challenges employers face. It also highlights benchmarks relevant to fair recruitment practices and provides examples and recommendations for companies to identify unfair practices and engage in responsible recruitment.

Responsible recruitment

There are several comprehensive responsible recruitment programs and initiatives that contribute to the expertise around international standards on and definitions of responsible recruitment:

- [Stronger Together's Responsible Recruitment Toolkit \(RRT\)](#) and [Clearview standard](#);
- The ILO's [Fair Recruitment Initiative](#);
- The International Organization for Migration (IOM)'s [International Recruitment Integrity System \(IRIS\)](#);
- The Fair Hiring Initiative (FHI)'s [On The Level](#) certification scheme; and
- The [Responsible Business Alliance's](#) (RBA) [Responsible Recruitment Programme](#) and [Responsible Labour Initiative](#), linked to the [RBA](#) standard.

American Apparel & Footwear Association (AAFA)/FLA Commitment to Responsible Recruitment

In March 2023, the AAFA and FLA [re-launched](#) this industry effort. As individual companies and united as an industry association, the signatories of the Commitment have committed to work with supply chain partners to ensure that:

1. Workers do not pay for their jobs;
2. Workers receive a timely refund of fees and costs paid to obtain or maintain their jobs;
3. Workers retain control of travel documents and have full freedom of movement; and
4. Workers are informed, in a language they understand, of the basic terms of their employment before leaving their country of origin.

A company that signs the Commitment agrees to incorporate it into social compliance standards, such as their code of conduct, within one year from the date of signing. They must also periodically report on their actions to embed elements of the Commitment in the company's policies and processes, such as through their sustainability reporting and/or modern slavery legal disclosures.¹ The Commitment is a good start, but needs additional action by companies to ensure workers are recruited in a responsible manner.

¹ See [Annex 1](#) for FLA's Fair Labor Code and Compliance Benchmarks and Fair Labor Principles that support the Commitment to Responsible Recruitment.

Templates and materials on responsible recruitment (including model policies, procedures, and processes) have been developed as part of these programs, such as IOM [guidelines](#) and [toolkit](#). FHI360, Responsible Business Alliance, and the Responsible Recruitment Toolkit materials are generally only available to subscribers or members. The U.S. Department of Labor, Bureau of International Labor Affairs, maintains [a page of resources on business and human rights](#) with guidance and issue briefs. A publicly available comprehensive responsible recruitment archive is also provided by the [Fair Fish Responsible Recruitment Programme](#).

Active engagement in responsible recruitment should align with existing labor, human rights, and modern slavery prevention policies and standards, including the joint American Apparel & Footwear Association (AAFA)/FLA [Commitment to Responsible Recruitment](#).

Despite the increased focus on responsible recruitment of migrant workers by governments, multilateral institutions, industry initiatives, and increased funding and commitments globally by brands and buyers to advance such practices, there has been [limited progress](#) in ensuring responsible recruitment practices on the ground. The certification of contracted recruitment actors (manpower agencies) as responsible recruiters has been slow, while manpower actors certified as responsible report little benefit to their business since their certification.

However, responsible recruitment of migrant workers remains important for companies, as risks of [modern slavery](#) or forced labor often result from poor or unethical recruitment practices. Responsible recruitment of migrant workers in supply chains promotes compliance with international standards and laws on responsible business conduct, human rights due diligence, and modern slavery prevention.

Importance of Source Country Monitoring

In contrast to existing challenges in monitoring the general workplace and living conditions of migrant workers through social compliance audits, identifying challenges in worker recruitment in a source country, which may impact them negatively even more than their work and living conditions, can be more difficult. This is especially the case when the monitoring is only done once a worker arrives at their workplace. As a result, specific monitoring techniques by companies are recommended to promote responsible recruitment by end-user employers or their suppliers, and more widely.

Responsible recruitment and decent work go hand in hand, and it is difficult to achieve one without the other.

It is often assumed by stakeholders that migrant workers pay high recruitment costs because of unethical, or illegal, subagents or source country agents and recruitment actors. That may not be the full picture. While the money workers pay for unethical recruitment is often paid to (or collected by) these source country actors, one needs to look deeper to understand the rationale behind overcharging that is central to irresponsible recruitment practices.

Important [academic research](#) on migrant worker recruitment suggests that “kickbacks” are often related to the charging of recruitment fees by recruitment actors in the source country. Recruitment actors in the source country must pay fees to destination country actors, employers, or even third country recruitment intermediaries. A common misunderstanding of actors working on social compliance, forced labor, and migrant issues is that source country agents are at fault for irresponsible recruitment, when the real root cause is the kickbacks process itself. If one doesn’t understand the source of a problem, it is hard to develop realistic solutions.

Source country recruitment actors frequently must pay “irregular kickbacks” to deploy workers overseas. In addition, source country recruitment actors are often not paid the full costs of recruitment from end-user employers or destination country recruitment intermediaries. These costs are then passed on to the migrant workers. The source country recruitment actors collect a significant amount of money from their nationals, though most of the money ends up in the destination country.

Consequently, only a few recruitment actors believe there is a “business case,” or benefit, for adopting responsible recruitment practices and therefore do not change their business model or improve their professional ethics. This is because genuinely responsible recruitment actors who do not pay kickbacks or who do not pass recruitment costs onto migrant workers continue to find it difficult to find clients (employers) willing to pay the additional costs that are currently borne by migrant workers.

Most responsible recruitment manuals, materials, and solutions proposed for irresponsible high-risk migrant worker recruitment practices address the source country recruitment actors collecting payments and other misconduct. That is part of the problem, as mentioned above, but not the root cause nor the first issue to be addressed. The recruitment plan and process must be above-board in the destination country first if responsible recruitment can ever succeed. This guidance note is based on that premise and seeks to correct or explain a significant misunderstanding of the root cause to the problem of responsible recruitment.

Role of companies/buyers

Companies, who are the buyers sourcing from the suppliers, play an important role in promoting responsible migrant worker recruitment by employers within their supply chains, thereby incentivizing responsible recruitment practices and reducing forced labor and modern slavery risks. Targeted, informed engagement by companies with their supply chain partners is pivotal in cultivating fair, transparent business environments. This is particularly true in high-risk countries like Jordan, Malaysia, Mauritius, Thailand, and Türkiye.

Yet there remains much progress to be made in ensuring responsible recruitment of migrant workers and developing responsible recruitment markets. When actors with considerable leverage demand, ensure, and monitor for responsible recruitment, suppliers and end-user employers subsequently must demand and ensure, through suitable labor sourcing practices, responsible recruitment of workers. Investors, global brands, companies, and other large buyers have the kind of significant leverage for change required.

Considering this challenging context, this guidance document will not attempt to duplicate existing resources. Many companies already have responsible recruitment policies and have started to cascade or implement these policies into their operations and supply chains, with the support of the organizations listed above. These programs provide material that can be useful for those beginning to develop and implement responsible recruitment programs. Instead, this document details 15 key markers of risks that are likely occurring in companies' supply chains and how to address them.

This guidance highlights critical areas to prioritize when developing, implementing, and monitoring responsible recruitment programs and promoting ethical recruitment markets across global supply chains. The guidance provided should be applied alongside existing, more prescriptive guidance on responsible recruitment and complements responsible recruitment certification programs, which continue to be implemented in countries and migration corridors.

Key markers of risks

Marker 1

Ensure a “good governance”-focused responsible recruitment policy

Ensure company policies on promoting responsible recruitment are consistent with ensuring “good governance” and preventing corruption and bribery on the ground.²

Policy commitments to responsible recruitment by brands, buyers, suppliers (end-user employers) and related recruitment actors are only the start of ensuring responsible recruitment for migrant workers on the ground. This is because many actors (often more than are necessary) are involved in migrant worker recruitment. Too often, end-user employers of migrants (with destination country recruitment actors and the involvement of source country recruitment actors), participate in a kickback process. This prevalent kickback process undermines policy commitments to responsible recruitment and prevents development of responsible recruitment markets.

Links between irresponsible recruitment and poor governance are [clear \(referenced above\)](#). Companies should seek to ensure all actors involved in migrant worker recruitment for their supply chains do not engage in, or become complicit in, corruption; the solicitation of bribes, gifts, and entertainment; or other activities that may lead to financial crimes. This focus on good governance should be included in existing responsible recruitment policies and implemented in practice. Responsible recruitment governance clauses should specifically mention risks of kickback payments occurring and the need to prevent these payments being made by recruitment actors or monitoring for non-compliance; otherwise, responsible recruitment policies will be undermined on the ground.

2 Companies should implement a comprehensive policy applicable to its own operations and clauses contained in contracts and codes of conduct applicable to the entire supply chain mandating responsible migrant worker recruitment. This policy, which must be adopted in full (or in equivalence) by suppliers and their contracted recruitment actors (manpower agencies) throughout the entire supply chain, should build in more detail on the FLA/AAFA's Commitment to Responsible Recruitment. The standard of responsible recruitment mandated for all migrant workers recruited into operations and supply chains should be aligned with international standards alongside FLA/AAFA's Commitment to Responsible Recruitment. Such international standards on responsible recruitment are outlined for instance by the [International Labour Organization](#), International Organisation for Migration's [International Recruitment Integrity System \(IRIS\)](#), the Fair Hiring Initiative's [On The Level, Responsible Business Alliance](#) and the [Responsible Recruitment Toolkit's Clearview](#).

CASE STUDY 1: A leading Malaysian manufacturer claimed to cover all recruitment costs for its migrant workers recruited from Nepal, allegedly utilizing an “advisor,” who is not a registered Malaysian manpower intermediary, who recommended Nepalese manpower agencies for the company to use in its migrant worker recruitment processes.

In 2022, a customer’s social compliance audits revealed workers allegedly paying more than 300,000 Nepalese rupees (NPR) each in recruitment fees and other costs to acquire work at the company. Nepalese recruitment agencies claimed that workers were charged high recruitment-related costs because neither the Malaysian manufacturer nor its advisor were willing to pay for those costs. In addition, Nepali agents claimed the Malaysian advisor demanded payment from the recruitment agency per worker, as well as other travel and entertainment costs (business-class airline tickets, hotel rooms, alcohol, etc.) for their worker recruitment visits to Nepal. This was all in addition to the actual recruitment and agency/intermediary recruiter costs.

The manufacturer claimed it filed criminal and civil charges (with assistance from an ethical trade consultant) against the advisor and remediated the recruitment fees paid by the workers.

CASE STUDY 2: In 2013, Nepali workers at a leading Malaysian supplier of bicycle parts were alleged to have paid more than 400,000 NPR in recruitment-related fees and costs for their jobs. The supplier claimed it didn’t cover any recruitment-related costs for the workers as the Nepali recruitment agency involved had informed it that, in breach of the Malaysia/Nepal 2018 Memorandum of Understanding on labor recruitment, the recruitment process was free of charge for the employer.

While this Nepali recruitment actor continued to deny the fees and related costs workers allegedly paid for jobs, the recruitment agency insisted it had to pay a Malaysian intermediary per worker deployed and cover all flights and other recruitment-related costs.

The Telegraph (UK) exposed the recruitment scandal, and the supplier was pressured by the brand to fully remediate the situation. The brand’s image was harmed, and the brand admitted its due diligence and forced labor prevention policies were inadequate and needed reforming and enhancing across its entire supply chain.

To prevent kickbacks and other governance risks from occurring during recruitment, companies should closely monitor all recruitment costs and processes for these risks and ensure their suppliers (the end-user employers) do the same. The below advice and indicators can support effective monitoring of such issues.

■ **Recruitment costs should be transparently and mutually agreed between companies/brands, suppliers, and all recruitment actors, with additional input during the negotiation processes from experts and stakeholders before any recruitment activities commence.**

- Prior to commencing any migrant worker recruitment activities, a joint recruitment agreement between all recruitment actors and an end-user employer for a specific recruitment process should outline (prescriptively and in detail) four key elements: the recruitment process steps, costs, timelines, and responsibilities. This agreement then becomes the basis for parties to conduct, monitor, and verify recruitment activities.
- The document should be binding and signed by the end-user employer and all recruitment actors involved in recruitment processes. This agreement can be included as an appendix to recruitment service agreements. A separate recruitment agreement should be developed and signed for each recruitment activity undertaken by recruitment actors for an end-user employer.
- The CEO and/or senior management of the end-user employer and all recruitment actors should be aware of this recruitment agreement, how it was negotiated, and the provisions of the agreement.
- This recruitment agreement can be negotiated with all recruitment actors and related end-user employer company personnel present to ensure transparency and encourage interactive decision-making. Companies/buyers may wish to observe negotiations to better understand on-the-ground recruitment processes, risks, and costs involved (see Marker 5 on responsible sourcing strategies relating to equitable cost-sharing of recruitment-related costs between brands/buyers and suppliers).
- Many recruitment processes, costs, and timelines can be detailed, so brainstorming and sharing opinions is useful in reaching an accurate and detailed agreement for all related parties. In some cases, one end-user employer may use several recruitment actors at the same time, so all actors should collaboratively finalize joint recruitment agreements.
- Prior to finalizing the recruitment agreement, to ensure accuracy and transparency, agreed recruitment processes, costs and timelines should be triangulated by an end-user employer, considering best practice that has been established through consultation with recruitment industry expert, government officials, industry associations, industry peers, and civil society actors in both the source and destination countries.

CASE STUDY 3: In 2022 and 2023, leading palm oil companies in Malaysia conducted transparent open tender processes to select source country recruitment actors. Shortlisted recruitment actors were gathered by the company's human resources (HR) and sustainability personnel for roundtables in the source country, with assistance from an external advisor or monitor (independent expert on migrant worker rights and management) to jointly agree upon the company's recruitment processes, costs, timeline, and assignment of responsibility to the various parties.³

The agreements were clear and included as an appendix to the service agreements the company signed with each recruitment actor prior to the commencement of any recruitment activities.

3 External advisor or monitor should be identified based on the unique circumstances of company.

EMPLOYER JOURNEY

1

DECISION TO HIRE WORKERS

Employers may bring in new migrant workers or hire workers already in-country.



2

GOVERNMENT APPROVAL PROCESS (DESTINATION COUNTRY)

Employers may use intermediaries to avoid delays or the risk of corruption.



4

HIRE RECRUITMENT INTERMEDIARY

This may be in the source country and/or destination country. The employer will issue a "migrant worker recruitment demand letter."



3

PAY GOVERNMENT FEES

Employers may use intermediaries to avoid delays or the risk of corruption.



5

SOURCE COUNTRY GOVERNMENT APPROVALS

The migrant worker recruitment demand letter is attested by authorities in the destination country, the source country embassy in destination country and/or authorities in source country.



6

RECRUITMENT BY SOURCE COUNTRY RECRUITMENT ACTORS

Final step in the recruitment journey.

DESTINATION COUNTRY RECRUITMENT ACTORS MAY BE UTILIZED BY END-USER EMPLOYER

Employers often outsource recruitment. This increases governance and exploitation risks both for the employer and for workers.

**RISKS LEGEND**

CORRUPTION Usually due to opaque/complicated government processes



KICKBACKS Open tenders help prevent kickbacks from agencies to employers



CONFUSION Result of opaque process or insufficient information sharing

1

JOB SEARCH

Job shared through brokers, subagents, community leaders, referrals, vocational school, colleagues, local government offices, OR source country registered recruitment agency advertisement (riskiest).



2

CANDIDATE MAY PAY INITIAL FEES

Generally without receipts, in cash to 3rd party recruitment intermediaries. Fees may include intermediary services, inflated transport, and food and/or accommodation costs. Documents may be held as collateral.



3

SKILLS TRAINING

Sometimes offered and typically unregulated.



7

INTERVIEW & SELECTION PROCESS

Usually in capital city at registered agency, sometimes by employer, destination country agent, online, and/or by source country agent.



6

PRE-SELECTION PROCESS

This may include skill testing, other metrics.



5

DOCUMENT PROCESSING

ID documents and/or passport application processes are undertaken.



4

PAPERWORK FOR SELECTED CANDIDATES

Undergo processing which may include medical checks, security checks, visa processing.



8

PRE-DEPARTURE TRAINING

Often limited training, leaving candidates unprepared and uninformed.



9

FINAL SOURCE COUNTRY GOVERNMENT APPROVAL

10

CLEARANCE OF ALL FEES / COSTS

with all intermediaries / recruiters prior to departure

**RISKS LEGEND**

CORRUPTION: Usually due to opaque / complicated government processes



FEES: Passing the cost of staff recruitment to the worker



CONFUSION: Result of opaque process or insufficient information sharing



ERRORS: Mistakes that create a potential cost or other risk to worker



DOCUMENT RETENTION: Worker does not have control over their passport/travel documents

13

POST-ARRIVAL

Medical checks, work permits, and related formalities. End of recruitment journey, beginning of employment.



12

ARRIVAL IN DESTINATION COUNTRY

May experience bribery costs to related airport agencies.



11

DEPARTURE

May experience bribery costs to related airport agencies.



- **All recruitment-related costs should be paid directly by an end-user employer to any recruitment actors through official banking systems. The end-user employer's management teams should transparently monitor payments by requiring documentation when conducting internal audits to monitor recruitment practices. Likewise, companies/buyers can require inspection of financial transaction documents when monitoring end-user employers in their supply chains.**
- When destination country intermediaries are utilized as part of recruitment processes by an end-user employer (not recommended, see Marker 6), source country recruitment actors should always be paid the contractually agreed amounts directly by end-user employers.
- Payments between an end-user employer and recruitment actors should be closely monitored by companies through social compliance auditing to ensure transparency. One way to detect kickbacks is to require a paper trail for all financial transactions between the parties to the recruitment agreement.
- An end-user employer should diligently observe and monitor activities of all recruitment intermediaries utilized at each stage of recruitment as part of and during its migrant worker labor recruitment to deter any unethical or corrupt practices.
- The burden to prove during audits that all fees and costs required to responsibly recruit migrant workers has been covered by employers should lay with brands rather than workers.

Companies/buyers can incentivize responsible recruitment practices by requiring evidence of transparency in payment and costs related to all migrant worker recruitment as part of supplier monitoring and social compliance auditing.

OPPORTUNITY: *Companies can engage experts to create migration corridor specific breakdowns of reasonable or minimum recruitment related fees, costs, processes, and timelines to help standardize recruitment agreements used by all their suppliers or end-user employers with recruitment actors.*

Marker 2 Direct worker sourcing policy

Employers and all related recruitment actors should ensure direct sourcing of worker candidates as part of recruitment activities, complying with local recruitment regulations.

Migrant workers, particularly those with limited literacy and experience who live in remote areas, often come to recruitment agencies seeking overseas employment via a number of channels: intermediaries, brokers, subagents, relatives, referral from existing end-user employer workers, or through other individuals who may charge them a fee or inflated costs for introducing them to the recruitment agent. It can be difficult to detect these actors and charges they have levied on workers, as workers are often coached to respond to questioning in a way that denies the involvement of a third party.

All recruitment actors utilized by end-user employers during recruitment should ensure the direct, professional sourcing of worker candidates without use of intermediaries (middlemen, sub-agents, or brokers) beyond their control and outside of company management structures. When companies recruit from countries with suboptimal recruitment standards, they should comply with international standards.

With some exceptions (such as Myanmar), recruitment intermediaries are illegal in source countries and should be prohibited in recruitment policies and practice, especially when the end-user employer or supplier is not aware.

One of the most effective migrant worker sourcing strategies in responsible recruitment is seeking out candidates directly in villages and at job fairs in communities. Such direct sourcing should be promoted to reduce the opportunity for intermediaries to become involved in recruitment processes.⁴ Likewise, recruitment actors in source countries can be encouraged to set up branch offices to extend their direct access to candidates.

Wherever possible, an end-user employer should be as involved as much as is practically feasible in sourcing of candidates, whether at pre-selection/screening or selection stage. This way, end-user employers can ensure the right candidates are selected and monitor the process for fairness, ethics, and legality.

Responsible recruitment can be best achieved when workers are sourced and recruited specifically for an employer following the development of a sourcing strategy and the issuance of a new migrant worker demand letter by an employer. It is very challenging to ensure responsible recruitment processes if workers are sourced or pre-selected in advance by a recruitment agency for general employment, and then some of these workers are offered to an employer as potential candidates.

Worker sourcing should be specific to an employer's worker demand. In some cases, a recruitment actor's professionally developed data bank of workers, which can filter their skills and suitability for an employer, could be used to select workers previously sourced by the agent or those who have registered their interest for overseas employment in advance of a specific employer's recruitment demand to interview.

Recruitment agencies should ensure they have the required permission and licensing for all recruitment actors and that recruitment costs are within legal limits; they should ensure recruitment activities are conducted according to local regulations, including compliance with regulations on advertisements.

As part of the recruitment agreement (signed by all related parties and outlined in Marker One), the manpower agency's sourcing strategies should be discussed and agreed upon by an end-user employer and all recruitment actors in advance of the signing of the agreement, and prior to any recruitment commencing. This is critical, as an agreement for a recruiter to focus on direct candidate sourcing strategies like village campaigns or job fairs may result in higher recruitment costs than sourcing strategies that utilize candidate walk-ins with risks of intermediaries' involvement.

4 Mobile applications would rarely be useful in promoting direct sourcing of candidates with limited literacy and, if utilized, would need to be intensively monitored closely for unexpected challenges that may arise. There is some evidence that online recruitment is more effective for workers with increased literacy.

One way to promote direct worker recruitment is requiring recruitment agencies to provide a full list of certified recruitment actors that will be utilized for any specific recruitment activities (as part of the agreement on sourcing strategy concluded prior to recruitment activities commencing). Only these recruitment actors have access to recruitment areas. This “recruitment actor list” can also ensure all recruitment actors utilized during recruitment drives have been trained in responsible recruitment activities in advance.

In addition, during pre-selection or candidate sourcing processes, recruitment actors should limit the number of candidates identified for final interviews for a particular end-user employer to reduce high rejection rates and vulnerabilities that arise from this. No more than 5 to 10% excess candidates should be recruited as standby candidates to replace candidates who drop out or otherwise fail requirements.

End-user employers may consider setting up a referral system for existing staff to refer candidates to the company to be high-risk, as actors involved (both existing workers and HR personnel) have been found to charge candidates for a place on referral lists. While existing staff or workers should be at liberty to refer workers to selection interviews, referral candidates should not receive privileged treatment and should be selected only if they satisfy the job requirements in the same way that non-referred candidates do.

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring suppliers to produce evidence of a sourcing strategy document negotiated in advance with all their recruitment actors for all recruitment activities as part of their monitoring and social compliance auditing of their suppliers.*

CASE STUDY 4: A Malaysian palm oil company uses registered Indonesian recruitment agents to source workers (often with limited literacy) from relatively remote communities in Indonesia for their palm oil estates as manual laborers. The use of irregular sponsors (or subagents) by these agents is prevalent, and despite encouragement to recruit directly, agents insist they need these sponsors to recruit workers effectively.

As part of recent responsible recruitment pilot projects, these sponsors were renamed “recruiters” to ensure legal compliance with local regulations disallowing sponsors. Each recruiter signed a written service agreement with registered recruitment agencies to receive a set rate, negotiated interactively in roundtable discussions between the end-user employer, recruitment agency and their recruiters, for recruiting each worker.

Recruiter service agreements outlined in detail their duties and responsibilities, and recruiters received capacity building on company responsible recruitment policies. The end-user employer required evidence of recruitment agencies’ training, signed agreements, monitoring, and taking disciplinary action against unethical recruiters as part of this pilot project.

CASE STUDY 5: Malaysian glove companies recruit Nepalese migrant workers for their manufacturing facilities through Nepalese-registered recruitment agencies. Previously, these agents utilized subagents to source candidates, in breach of local regulations. Some of these recruitment companies are now paid a dividend by glove manufacturers per worker recruited to prioritize direct hiring of workers through village campaigns or job fairs. Direct recruitment of workers in this way has reduced the prevalence of intermediaries charging the candidates for these job opportunities.

CASE STUDY 6: A Malaysian company agreed to source Nepalese migrant workers for their production facilities through a Nepalese registered recruitment agency. No sourcing strategy was agreed in advance.

As a result, HR personnel at the company, alongside recruitment agency staff, developed a referral system for existing workers to refer their friends and relatives in Nepal for recruitment. These referred workers jumped the queue and bypassed the agencies pre-selection processes, leading to accusations of unfairness and increasing the risks that so-called existing workers (who often were not even employed by the company) charged referred workers for the fast track to selection.

It became difficult to monitor the recruitment process to detect costs paid, as selected workers didn't want to expose themselves, report friends and relatives (or brokers), or raise concerns.

CASE STUDY 7: In Nepal, it is mandatory to advertise every foreign job opportunity in newspapers with required approval numbers, job details, and the details of recruitment agencies to ensure transparency and inform Nepalese citizens about available job opportunities. This is also protected by the "rights of information" included in the Nepal Constitution. However, given the limited newspaper readership these days, particularly among foreign job aspirants with limited literacy and financial capacity, this requirement has become less effective and unauthorized actors such as middlemen and brokers are taking negative advantage of it.

However, social media platforms such as Facebook, YouTube, TikTok, and other mobile applications could be the primary sources of foreign job information as apps replace the dependency on traditional sourcing channels such as sub-agents, brokers, and other middlemen.

There is a media company called "Sajha Sabal Media" in Nepal that operates with social media platforms like the mobile application "Baideshik Rojgar" YouTube channel, Facebook page, and TikTok. They post all official newspaper advertisements on their mobile application and Facebook page as well as post many a videos on YouTube to create awareness about ethical and zero fee recruitment practices which promote direct sourcing of candidates to avoid the risks from middlemen and illegal brokers. There is an

opportunity for recruitment agencies to be part of it and many of the candidates use this direct platform as their information source.

More than 600,000 Nepalese have downloaded the “Baideshik Rojgar” app on their Android and iOS phones. Through this app, Nepali youth get regular information about foreign employment. 600 to 1,200 new users join this app daily. This number is about 40% compared to the number of people who go for foreign employment. At present, an average of 2,000 Nepalis are going to foreign employment from Nepal every day.

The app has given special priority to the demands of manpower companies and employers who are committed to ethical recruitment process. The reach of newspapers, where advertisements are printed, is limited to the capital of Nepal. As the app is available to anyone with internet access, it has a broad reach.

Marker 3 Do not confiscate or retain workers’ personal documents

In no circumstances should recruitment actors hold in possession or confiscate workers’ personal documents for any longer than is essential during all stages of recruitment.

Recruitment actors may feel inclined to hold onto selected workers’ documents until the time of their departure for their overseas employment to ensure they depart. This is often the case as payment of recruitment agencies costs may not be made if a worker doesn’t depart, which may result in a loss of profit for the recruitment actors. One way to overcome this scenario is to ensure recruitment costs expended by recruitment agencies, separate from their recruitment fee charged to an end-user employer, are not linked to a worker’s actual departure. This means that if a worker fails to depart, a recruitment agency can recoup its costs.

No documents of candidates or selected workers (including passports, identification documents, educational certificates, etc.) should be kept by recruitment actors during their recruitment processes for longer than necessary. Once processes requiring worker documents are completed (for example, issuance of travel visas), these documents should be returned or made available for collection without conditions attached.

Recruitment actors can make photocopies of required documents instead of retaining the original documents and keep photocopies for each worker’s personnel file. A consent form should be utilized by all recruitment actors, consisting of simple language that is accessible to workers. The consent form should make clear an unfettered right for workers to have all their personal documents returned to them at any time during recruitment processes without any conditions imposed on them, including the repayment of any processing fees expended by recruitment actors.

When finalizing the recruitment plan outlined in Marker 2, all actors should agree on a specific timeline for recruitment actors to return the workers’ personal documents and specify, based on

experience and processing timelines, how long these documents shall be kept by recruitment actors prior to return. Workers should not be provided with the personal documents only at the time of departure, as this would limit their ability to decline to depart for overseas.

One way to ensure that recruitment agencies are not encouraged to hold onto a worker's personal documents prior to their departure is to set up payment terms and conditions so that payment of recruitment agencies for related costs expended on recruitment processes, as distinct from their recruitment-related fee, is not tied to whether a worker departs or not. Controlled cost-sharing in case of the failure of workers to depart, whereby a recruitment actor recoups all or part of costs expended whether a worker departs or not, should be adopted to ensure worker irresponsibility burdens are shared between recruitment actors. Companies should be mindful of potential exploitation of this by recruitment agencies, such as inflating the number of workers.

CASE STUDY 8: Some Malaysian palm oil employers adopt a cost-sharing model in cases where workers fail to depart through no observable fault of the recruitment agencies.

Previously, some recruitment actors were found to retain worker passports and insist workers give deposits to agencies to guarantee their departure and ensure agencies didn't lose money on processing workers documentation and readying them for departure, particularly under an employer pays model where all costs were paid in advance by the recruitment actor.

Once recruitment agencies were assured they would be paid all expended costs whether or not a worker departed, and only their recruitment service fee would be withheld if a candidate didn't depart, these agencies no longer held onto worker passports for longer than was required for processing of permissions to depart, and no longer demanded deposits from candidates also.

However, it is important that the workers are not inconvenienced in having to make unnecessary trips from their home to recruitment agency offices to collect their returned personal documents. These documents should be returned when it is practically convenient for both parties, given workers may live in remote areas that are often far from recruitment agency offices or urban centers.

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring suppliers to make available a document retention policy and evidence of a negotiated document return date settled in advance with their recruitment actors for all recruitment activities as part of their supplier monitoring and social compliance auditing.*

Organize capacity-building and mentoring programs to ensure relevant staff and management involved in all recruitment activities (including all recruitment actors) are knowledgeable about responsible recruitment standards and need for good governance.

Staff and management of the end-user employer of migrant workers, together with destination country recruitment actors or intermediaries and source country agents, often lack the capacity to understand the language of social compliance, forced labor, and modern slavery contained in responsible recruitment training. There is a need to simplify the discussion, which can most effectively be carried out during mentoring as part of responsible recruitment projects.

Companies should prioritize small group mentoring with operations, suppliers, and recruitment actors as part of responsible recruitment projects rather than hold more general trainings and capacity-building sessions to provide more effective training techniques to these actors that have longer-term impacts and ensures practical skills are developed.

Training should be given to all actors who are relevant to recruitment processes, including senior management responsible for forced labor prevention and human rights/social compliance.

- **HR DEPARTMENTS** often handle migrant worker recruitment, though procurement or other departments might play a role in some circumstances.
- **FINANCIAL DEPARTMENTS** must be involved in monitoring financial transactions between the company and recruitment actors to prevent governance challenges.
- **PRODUCTION DEPARTMENTS** are involved in outlining labor force projections, which need to be forecast in advance to ensure adequate time for responsible recruitment.
- **SUSTAINABILITY/CSR DEPARTMENTS** often lead responsible recruitment projects and policy implementation and should likewise be adequately trained.

Developing training and capacity-building materials in a train-the-trainers format that can be cascaded throughout operations and supply chains is another way to ensure all actors involved in responsible recruitment are aware of key issues, risks, and opportunities. In advance of recruitment, recruitment actors should determine what capacity-building, training, or knowledge is needed and by whom for those involved in the recruitment process. Evidence (training records and training materials) should be provided during monitoring and audits that all those involved in recruitment have been trained to this required standard to monitor supplier recruitment practices.

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring suppliers to have available evidence of capacity-building for all actors involved in their recruitment as part of their monitoring and social compliance auditing of their suppliers.*

CASE STUDY 9: A palm oil producer in Malaysia hired an external consultant to support their Indonesian recruitment agency's responsible recruitment capacity-building programs. A mix of techniques — group training, and one-on-one mentoring, conducted by the consultant as well as company personnel — increased recruitment actors' knowledge of responsible recruitment practices and allowed them to more effectively apply those principles on the ground.

Key topics of the mentoring program required to implement responsible recruitment programs included effective HR systems and management as well as basic financial management.

Marker 5

Allocate an appropriate budget for responsible purchasing practices

End-user employers should be supported in allocating an appropriate budget for recruitment activities that ensures responsible recruitment can be achieved sustainably in practice. These suppliers could be encouraged to ring fence responsible recruitment costs for negotiating buying costs with companies.

Too often, staff and management of the end-user employer of migrant workers, together with destination country recruitment actors or intermediaries and source country agents, will underestimate the costs involved in responsible recruitment to secure recruitment demands in a competitive market. This results in insufficient funds assigned to recruitment, and additional non-budgeted costs being passed onto workers to cover the shortfall and ensure recruitment remains profitable for the actors concerned. An open tender process and careful triangulation of proposed recruitment costs with multiple information sources can ensure the costs of recruitment are accurately assigned.

As outlined in Marker 1, prior to commencing recruitment activities, a joint agreement outlining in detail the recruitment process, costs, timelines, responsibilities, sourcing strategy, and documentation retention timeline should provide the basis upon which recruitment activities by all parties are conducted and monitored. This agreement should be signed by all actors involved in the recruitment process and be contractually binding. This agreement, prior to finalization, should be triangulated and shared for feedback from related experts for transparency and accuracy.

If at any stage during the recruitment process the costs involved change, recruitment actors should be supported to bring this to the attention of the end-user employer and changes in budget allocation should, where appropriate, be allowed and the original recruitment agreement amended accordingly.

Companies should ensure responsible purchasing policies are implemented to guarantee their fair contribution toward responsible recruitment costs of their suppliers. They can do this by

encouraging their suppliers to ring-fence the agreed costs required for responsible recruitment for when negotiating the purchasing price of a product between supplier and buyer, and by interactively participating in negotiations between their suppliers and recruitment actors whenever feasible and/or seeking in other ways to fully understand how recruitment-related fees and costs were negotiated or final amounts determined.

It is essential for development of a responsible recruitment market that the profit made by recruitment actors on their recruitment activities allows them to sustainably develop their businesses and cover all their business-related costs. While the illicit profits made from unethical recruitment still often surpass the profit that can be made from responsible recruitment, end-user employers or suppliers and brands should be aware of the need to ensure responsible recruitment practices are profitable to promote development of responsible recruitment markets prioritizing responsible recruitment actors.

It is also important to note that responsible recruitment practices may, in some cases, cost less than irresponsible ones, once end-user employers understand fully the real costs of responsible recruitment. Some employers may otherwise be overcharged by recruitment intermediaries in the destination country, and these intermediaries may also overcharge recruitment agencies in the source country while workers also pay increased costs.

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring suppliers to provide evidence of responsible purchasing practices as concerns cost allocation for recruitment as part of their monitoring and social compliance auditing of their suppliers.*

Avoid use of destination country recruitment actors or intermediaries in migrant recruitment processes by bringing recruitment-related functions in-house.

There is a risk that staff and management of the end-user employer of migrant workers frequently utilize destination country recruitment actors and intermediaries as vehicles for kickbacks and for other irregular purposes, even when such actors are not required by law.⁵ Therefore, destination country recruitment actors could either be removed from recruitment processes altogether or, when essential or required by local regulations, closely monitored for compliance and good governance.

End-user employers frequently utilize destination country-based recruitment actors and intermediaries for recruitment activities, thereby outsourcing recruitment and creating an unnecessary additional layer of actors. This increases governance and exploitation risks for both end-user employers and recruited workers. Destination country-based recruitment actors often also become a single service provider of recruitment activities as well as worker housing, transport, and welfare, which can create conflicts of interest.

Wherever possible, end-user employers, especially those in larger suppliers with reasonably resourced HR departments, should bring recruitment activities in-house. When necessary, companies may hire additional staff for their HR teams to replace the need for recruitment intermediaries.

If a destination country recruitment actor is utilized by an end-user employer, they should be chosen through an open tender process (see Marker 8), should have the required legal status to act on behalf of an end-user employer, and not act as an intermediary in terms of payment of costs and fees to source country recruitment agencies (see Marker 1).

Companies can incentivize responsible recruitment practices by requiring suppliers to commit to not using destination country manpower actors, or providing evidence that such actors are indeed essential to recruitment processes and will be monitored effectively, as part of their monitoring and social compliance auditing of their suppliers.

CASE STUDY 10: Palm oil and glove producers in Malaysia have utilized in-country recruitment intermediaries to assist with recruiting of migrant workers. This has frequently exacerbated unethical recruitment practices and cost them money both in paying additional recruitment-related costs but also in having to remediate the situation of workers who arrived in debt from recruitment-related fees and costs paid at source.

⁵ It is good practice across the board to avoid destination country manpower actors, and this document is not looking at specific domestic level instances.

From 2022 on, many of these producers started to directly recruit workers from source country recruitment actors in Indonesia and Nepal, removing Malaysian recruitment intermediaries and simplifying recruitment processes. Cases of unethical recruitment significantly were reduced.

CASE STUDY 11: Seafood companies in Thailand have utilized Thai recruitment intermediaries to assist them in recruitment of migrant workers. This has frequently exacerbated unethical recruitment practices and cost the companies money both in paying additional recruitment-related costs but also in having to remediate workers who arrived in debt from recruitment-related fees and costs paid at source.

From 2015 on, [Thai Union Group](#), a large seafood manufacturer, started to recruit workers directly from source country recruitment actors in Cambodia and Myanmar, removing Thailand recruitment intermediaries and simplifying recruitment processes. Cases of unethical recruitment were significantly reduced.

Marker 7

Promote an open tender recruitment agency selection process

Promote the transparent selection of migrant worker recruitment actors through open and public tendering to promote good governance, ensure the most professional and responsible service, ensure value for money, and promote a responsible recruitment market.

End-user employers frequently use their HR or high-level managers to subjectively decide which recruitment actors are utilized. Too often, recruitment business links occur between long-term friends or partners resulting in non-transparent or uncompetitive pricing, alongside reduced service quality. The risks of commission and bribery in the form of kickbacks remain high. Any commission or kickback linked with recruitment business ultimately will be imposed on the workers as a recruitment fee or cost. It is essential that recruitment contracts are not awarded based on the ability of recruitment actors to pay bribes or kickbacks to other recruitment actors or an end-user employer.

To ensure the most transparent, responsible recruitment processes, recruitment quotas (business opportunities) or recruitment demand should be awarded by an end-user employer based on an objective and standard open tender (procurement) process conducted with due diligence, and in a way that ensures the most able and responsible recruitment actors proceed to provide recruitment services. By requiring open tender processes in migrant worker recruitment actor selection processes, companies and their suppliers can work to incentivize creation of responsible recruitment actors whose skills and professionalism, and value for money, are recognised with more business opportunities and higher profits.

An open tender process should prioritize factors beyond the cost quotation levels in agency selection. The main criteria for choosing the right partner for recruitment activities should focus on commitment to responsible standards and credibility based on experience and reputation. This open tender process, which includes objective pre-sourcing assessments, also guards against unethical practices stemming from allocating recruitment orders based solely on cost or personal relations, ensuring that responsible recruitment remains a sustainable business.⁶

Tools including a Self-Assessment Questionnaire (SAQ), Selection Audit Framework and a Corrective Action Plan Framework will need to be developed as part of this open tender process.

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring their suppliers to conduct open tender recruitment processes for all recruitment activities, and provide evidence of this, as part of their monitoring and social compliance auditing of their suppliers.*

CASE STUDY 12: In 2022, Malaysian agriculture and manufacturing companies were advised to conduct open tender processes to select new manpower agency partners following high-profile reports of workers paying excessive recruitment fees prior to 2021. Some of these actors faced import trade restrictions imposed by United States Customs and Border Protection regarding forced labor that cited payment of recruitment fees as part of the reason for these enforcement actions.

As a result, a variety of open tender processes were conducted to select new and more reliable manpower agencies on an objective basis. The quality of open tender processes differed, mostly due to whether independent third-party actors were involved in objectively selecting manpower agencies through the open tender process or company management and HR staff were involved in the scoring and selection criteria. Some of the open tender processes were genuinely transparent and objective.

⁶ See [Annex 2](#): Responsible Recruitment Framework: Open Tender Process.

The sustainability and viability of responsible recruitment practices depends upon realistic recruitment timelines that allow responsible recruitment on the ground, and realistic recruitment cost payment schedules that ensure source country recruitment actors operate under a business model that recognizes any cash flow limitations that may be present.

While not always possible, ensure that all actors involved in recruitment processes agree (see also Marker 1 regarding the recruitment agreement) on a realistic recruitment timeline that ensures recruitment actors are not forced to cut corners and/or pay additional irregular costs to speed up processes. Responsible recruitment will often have less flexibility and speed than irregular recruitment processes, where standards of good conduct do not have to be adhered to. In some source and destination countries, there may be limits on when recruitment can occur and recruitment timelines, so recruitment actors should research and adhere to these standards.

A clear timeline for deployment of migrant workers is also essential as in some cases candidates must wait a long time to be deployed after selection, creating financial or other challenges for them and their families. Recruitment actors should also comply with timelines on deployment set down by source country governments and related enforcement actors. An end-user employer should avoid excessive recruitment until deployment is guaranteed.

An end-user employer should ensure that release of recruitment-related costs and fees are made in advance, where required, and at different stages of the recruitment process as is essential for recruitment actors to manage cash flow. This can ensure candidates are not required to provide recruitment fees or costs or deposits in advance at any stage of recruitment. It is unrealistic in many circumstances for recruitment actors to advance all costs of responsible recruitment when these costs (in addition to their own recruitment fee) are relatively high. Invoices should also be cleared promptly when submitted by recruiters. Standard payment timelines, such as payment of some or all costs 90 days after a worker's arrival to an employer, will not allow adequate cash flow for recruitment actors to conduct responsible recruitment, depending on an actor's individual financial circumstances.

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring suppliers to explain their recruitment timelines and recruitment agency payment schedule as part of their monitoring and social compliance auditing of their suppliers.*

CASE STUDY 13: During roundtable discussions with recruitment actors, a Malaysian palm oil producer noted the importance of advance payments to agencies to ensure they had adequate cash flow to carry out responsible recruitment practices and to advance all the costs of the recruitment so that no costs were passed onto candidates. Previously, the agencies were only paid after a lengthy delay once workers arrived in Malaysia and

held deposits from all candidates to ensure their departure to the employer and to guard against any loss.

As a result, the producer decided on a timetable to allocate a significant proportion of the costs of the recruitment to the recruitment agency upon signing the recruitment agreement; another proportion once the calling visa was issued; and another proportion (the final payment including the service fee) once the worker arrived. The recruitment agency no longer felt compelled to charge any costs to workers nor to hold a deposit.

Marker 9

Impose realistic warranty conditions on recruiters

In line with responsible purchasing practices (Marker 5) and a realistic payment schedule (Marker 8), end-user employers should negotiate service agreements with recruitment actors that lay down fair terms and conditions of responsibility and warranty placed to be placed on them. Shared responsibility for untoward events should be agreed upon.

If warranty conditions placed on recruitment actors are too stringent and they are made to bear excessive costs and losses, in all circumstances, including in cases when workers abscond on arrival or fail to depart after completing all recruitment formalities, there is increased risk recruitment actors will be encouraged to limit workers freedom of movement or hold on to worker's personal documents during recruitment processes as a means to guarantee their investment on that worker departing.

Service agreements between end-user employers and recruitment actors often formalize unequal bargaining power between the two actors. Recruitment actors take on onerous burdens and agree to be bound by warranties that disadvantage them. Recruitment actors are often liable for behavior of deployed workers for a considerable time after their arrival with an end-user employer.

Likewise, recruitment actors are often left to shoulder all costs of responsible recruitment processes, paid up-front by recruiters in case workers do not depart for overseas employment. Recruitment actors are also held responsible for workers failing medical tests on arrival with the end-user employer when they passed all medical tests at source, and when, due to workplace conflict, workers abscond. Sometimes recruitment actors are subject to punitive penalty clauses for issues arising during recruitment that are beyond their control.

An end-user employer should only include fair warranty conditions in service agreements with recruitment actors, and recruitment actors should only be held liable for actions or omissions within their field of control or responsibility. If untoward events occur, or workers' conduct results in a loss for recruitment actors and/or employers, principles of shared responsibility should be adopted, based on what is fair and reasonable.

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring suppliers to have available evidence of contracts outlining warranties and responsibilities imposed on manpower agents as part of monitoring and social compliance auditing of their suppliers.*

CASE STUDY 14: Warranty and responsibility conditions between manpower agencies and Malaysian palm oil and glove producers were transparently negotiated during roundtable discussions, with support from an external consultant. Parties agreed that in all but exceptional circumstances, all official recruitment costs paid in advance or covered by recruitment actors could be invoiced to the end-user employers and would be paid, whether or not a worker departed for overseas and/or returned home earlier than contractually agreed. In addition, as a sign of shared responsibility, recruitment agencies agreed to forfeit recruitment service fees (or provide another worker free of charge to producers) in cases where workers did not depart for overseas employment after completing recruitment. The producers agreed recruitment actors should not be solely reliable for circumstances beyond their control.

Marker 10

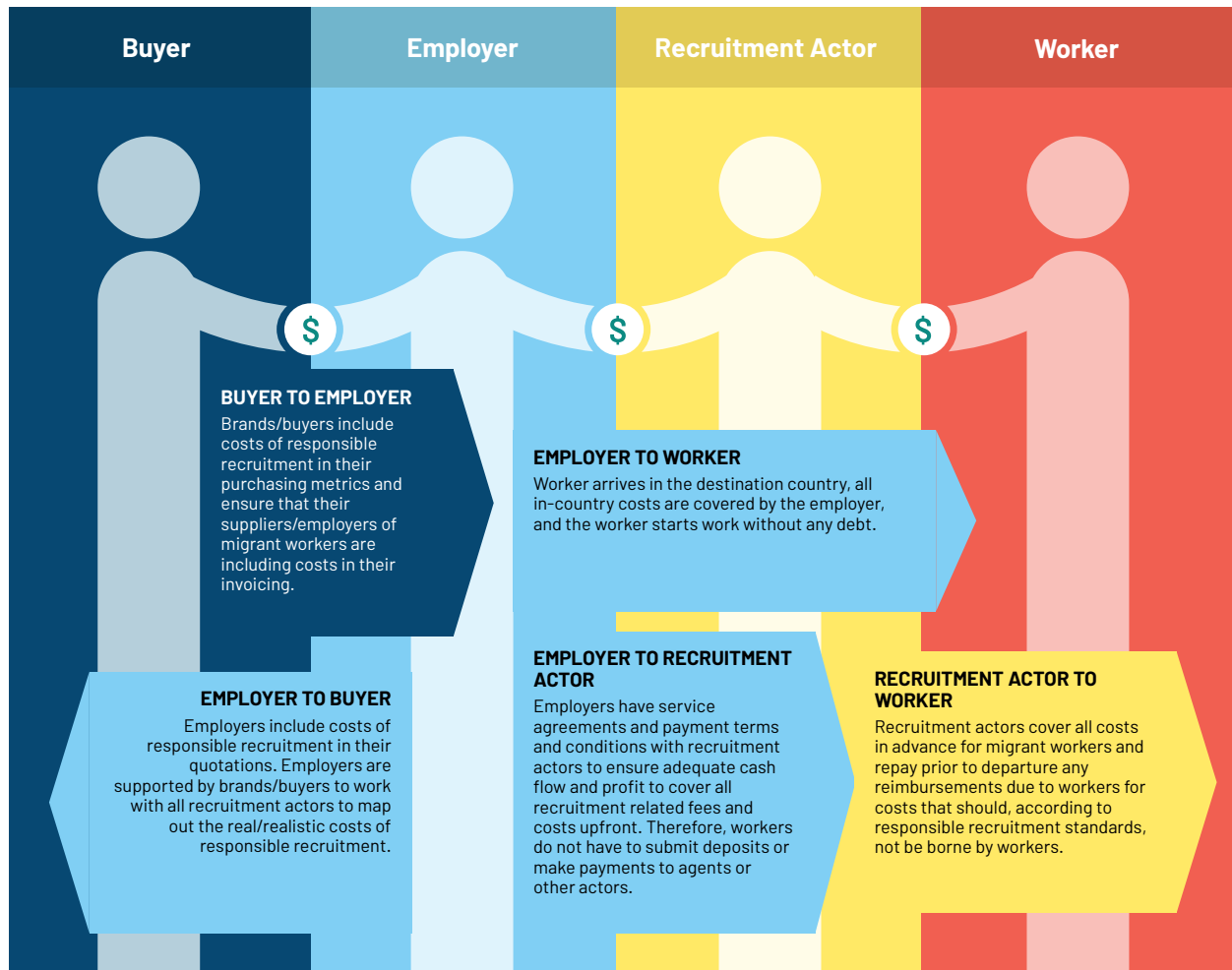
Ensure independent third-party monitoring and verification, including grievance mechanisms

Companies and their suppliers should ensure independent or third-party monitoring mechanisms are available during recruitment drives in source countries (pre-departure) and immediately upon a worker's arrival (post-arrival) in destination countries to reduce risks of worker exploitation and enhance ongoing monitoring process for source country recruiters. Monitors can and should include trade unions and former workers in both source and destination countries.

Typically, when applying with recruitment agencies, a candidate's primary goal is to depart for overseas employment, for multiple personal and family reasons. Despite the best intentions and effort on behalf of responsible recruitment actors, many prospective migrant workers will not openly disclose they have paid recruitment-related costs and fees unless they have trust and confidence in ethical recruitment processes and the recruitment actors themselves.

Frequently, workers will have more trust in recruitment intermediaries known to them than recruitment agencies with which they are unfamiliar. It is useful when third party monitors, particularly trade unions and/or workers that have migrated for work themselves, are utilized to build workers' trust and confidence in recruitment processes. These monitors can ensure the workers that disclosure of excessive fees or costs paid to intermediaries during these processes shall not be punished and workers will still be able to depart overseas once this situation of exploitation has been investigated and remedied.

Money Relationships in a Responsible Recruitment Ecosystem



Independent stakeholders with an in-depth understanding of migration issues, such as former migrant workers and trade unions in both source and destination countries, can help end-user employers as well as buyers and brands to overcome challenges and risks of exploitation during responsible recruitment. Independent third-party grievance mechanisms can be helpful to give a platform to candidates to raise their voices more comfortably during a recruitment drive than would otherwise be possible.

Independent monitoring and counseling mechanisms during recruitment can also play a significant role to support end-user employers and brands or buyers to understand and continually improve their recruitment practice related challenges.

Independent third-party monitoring through counselling of selected candidates during recruitment processes can preferably be done at three separate stages: post-selection, pre-departure, and post-arrival. A hotline linked to the third party to supplement the counseling process is also useful, as is the involvement of the third party in planning the recruitment process (processes, costs, timelines, and responsibilities) and during end-user employer briefings and pre-departure programs.

The use of coercive or threatening techniques including audio and/or video recording of interview sessions or candidates' questions about potential unethical recruitment practices or processes should be avoided. These techniques often frighten candidates and reduce the opportunity for them to be truthful about their experiences during the recruitment process or on arrival with an end-user employer. It is not rare to see workers signing clauses during recruitment processes stating they will be repatriated if they are found to have lied during the interview about recruitment-related costs or fees.

Coaching candidates to deny involvement of third-party intermediaries that charge them recruitment-related fees or costs may ensure that, at least post arrival, they don't disclose these costs and violations. Coercion is not conducive to establishing the truth.

In addition to third party monitoring mechanisms, workers should have other available options for raising recruitment and employment concerns during recruitment processes. Recruitment actors should be encouraged to develop their own external grievance and whistleblowing mechanisms for candidates, and end-user employers and companies should make their grievance channels available as well. Technology or worker voice tools/solutions may be utilized in monitoring. Companies could provide a short survey of workers (anonymous) written or online or verbal about the types of costs they might have incurred during the process. Since this is anonymous, and available either online or by the phone, workers might feel more comfortable, and the end-user will know if the workers have incurred a cost even before they were introduced to them. However, using technology with candidates without establishing trust is not likely to engender truthful responses about their experiences, even anonymously,

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring evidence of third-party monitoring of recruitment processes as part of their monitoring and social compliance auditing of their suppliers.*

CASE STUDY 15: Some Malaysian electronics companies and glove producers utilize an independent consulting organization ([Migration Dristi](#)), founded by former migrant workers in Nepal, for their responsible recruitment activities. The organization monitors recruitment agencies and recruitment processes by being involved in the planning of the recruitment processes, providing input on candidate sourcing strategies, and counseling/ interviewing workers at the post-selection and pre-departure stage; it also has a third-party hotline which candidates or workers can call at any time during or after recruitment. Sometimes post-arrival monitoring is also done by the third-party consulting organization at the company. The independent third party is paid by and reports to the end-user employers directly. The employers report confidence in the third-party monitoring process, which they say is appreciated by their customers too.

Marker 11

Maintain a fair and open candidate selection process during recruitment

The candidate selection process during recruitment should be fair, non-discriminatory, and objective.

A frequent model of selection for migrant workers going overseas for work remains one where workers who pay the most (or are willing to pay hidden costs) are selected for work over those who do not. This has a negative impact for the end-user employer who also gains a worker who may not be appropriate for the work. An objective selection process, together with confidence and trust-building for prospective workers that selection is based solely on objective criteria, can prevent workers from paying fees and costs in hopes of being selected for work.

All candidates applying for a job vacancy should have an equal opportunity to be selected, based only on their ability to do the job advertised; not on discriminatory considerations, willingness to pay additional costs and fees, or priority given due to referrals by existing workers or others. End-user employers or recruiters may otherwise select candidates for the work based on a recommendation and referral basis, which might create a risk of hidden fees or other favoritism and which raises a governance risk, or because workers are willing to pay fees and costs to agencies or intermediaries.

All pre-selection processes should be carried out by authorized staff at the recruitment agency or by the end-user employer, with only authorized staff at the end-user employer company holding the final selection interview. Recruitment actors should not be involved in the final selection process unless or until they prove themselves as responsible, professional actors who can conduct final interviews fairly and objectively on behalf of end-user employers.

Evidence that an objective standard is used in pre-selection and selection processes can be detected by considering during monitoring the job advertisement criteria alongside screening, shortlisting, testing, interview notes and selection materials that demonstrate transparency and accountability. It is not unusual to see recruitment actors in source countries adopting a pre-

selection process where the first candidates to apply are those that are selected for the jobs, particularly in the face of considerable interest in limited job opportunities, and an excessive number of candidates seek to apply for a job. Recruiters should be discouraged from adopting such a process and ensure, within a set period, all candidates who seek to apply for a job can submit their application, be screened, and that those with the most suitability (or highest assessment score) are pre-selected or selected for final interviews based on objective metrics.

Fair and objective selection processes, including the development of scoring or assessment tools, also enhance a recruitment actor's reputation for fairness and transparency, thereby reducing the opportunity for recruitment intermediaries to charge candidates recruitment-related costs and fees. Irregular recruitment intermediaries often are skilled at convincing candidates that they will not be selected for a job opportunity without paying for the intermediary's services and their links to the recruitment agency or employer.

Candidates will be less inclined to pay recruitment intermediaries when they know that the only basis for their selection is their objective characteristics or skills that make them genuinely suitable for the job. If candidates understand that the payment of recruitment intermediaries will in no way enhance their opportunities for selection, they will be less inclined to pay these actors and absorb such unnecessary costs.

Recruitment actors should utilize a queuing system or number tags to ensure fairness in the process of interviewing and selecting. All workers arriving at a proposed venue within an agreed timeframe should be registered, assigned a number based on arrival time, and receive the opportunity to be objectively assessed for the work offered. Effective and humane security or people management skills should be utilized when large numbers of candidates are likely to seek interviews for a potentially limited number of jobs.

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring their end-user employers/suppliers to explain how their recruitment selection processes are objective, non-discriminatory, and transparent as part of their monitoring and social compliance auditing of their suppliers.*

Marker 12 Provide adequate, accessible information on employment

The information provided to workers on their terms and conditions of employment should be expansive enough to ensure informed consent during recruitment, with the amount of information increasing during recruitment from pre-selection to pre-departure stages.

It is normal to see workers sleeping or inattentive during recruitment agency briefings on employment terms and conditions when the information is being shared with them in an overly formal fashion, in a language they don't understand, or in an uncomfortable setting where the facilitator comes across as uninterested or aloof. Workers, particularly those with limited literacy

or education, may struggle to effectively absorb information being shared if it is not shared in an accessible, interactive way.

Job opportunity advertisements by recruitment actors should contain essential and accurate information for candidates to make an informed decision whether to seek the work. Advertisements should always be approved by an end-user employer as part of a pre-recruitment process whereby end-user employers and recruitment actors agree on an accurate package of job information that can be incentivized during recruitment processes.

Candidates should receive interactive briefing sessions prior to selection interviews by employers themselves, in a language they understand, that outline in detail the potential job position, wage, and benefits, working hours, location, entitlements, contract period, and other essential terms and conditions. Job offer letters, pre-departure briefing materials, and final employment contracts should expand the amount and detail of information on the job terms and conditions made available to workers prior to their departure and signing of the contract.

Information about the terms and conditions of employment should be shared with workers during the recruitment process in an interactive way, considering the literacy level of candidates/selected workers and in a language workers understand. Workers should be provided adequate time to read, understand, consult, consider, and sign their employment contract. When appropriate, candidates can be tested on their understanding of information shared, to encourage them to pay attention to the topics discussed.

It is good practice to give workers a full sample copy of their final employment contracts that will be signed prior to their departure, following final selection for employment by an end-user employer. This can allow them to study the contract on their own prior to signing, ensuring informed consent to the terms and conditions. While a job-offer letter may be considered an alternative to sharing a sample final contract of employment at the final selection stage, the more detail about the final employment contract that can be shared with the worker, the better.

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring suppliers to provide evidence of accurate and adequate information provided to candidates during recruitment that is interactive and comprehensive in the monitoring and social compliance auditing of their suppliers.*

CASE STUDY 16: A Malaysian electronics company requires recruitment agencies to test worker's understanding of pre-departure information once the pre-departure orientation session has been completed. The test is announced to workers in advance of the session, increasing their interest and willingness to pay attention during the session.

Remedies for candidates who experience irresponsible recruitment practices should preferably be provided prior to a candidate's departure by an end-user employer in a destination country. There should be accountability for utilizing intentionally unethical recruitment practices.

Any irregularities in recruitment processes should ideally be detected and remedied prior to a candidate's departure for an end-user employer in a destination country, as this will contribute to holding recruitment actors accountable. Several detailed standards have been developed to ensure adequate remediation of recruitment-related fees and costs to exploited individuals. The most widely used is [Impactt's Principles and Guidelines for the Repayment of Migrant Workers Recruitment Fees and Related Costs](#). However, other end-user employers and brands/buyers have adopted their own individual approaches to remediation based on their specific circumstances.

When employers, their personnel, and/or recruitment actors intentionally undertake unethical recruitment practices, it is essential there is a thorough investigation and those responsible are held accountable. Often, there is limited to no accountability for wrongdoing, and the focus of addressing unethical recruitment is wholly concerned with remediation.

Disciplinary procedures and prosecutions (where possible) should be undertaken to deter future unethical recruitment conduct. Embassies, local authorities, and other brands and buyers should be officially notified of unethical recruitment actors. Evidence of disciplinary procedures or accountability processes should be requested during monitoring.

KEY POINT: *Companies can incentivize responsible recruitment practices by requiring suppliers to provide evidence that they focus primarily on pre-departure monitoring, but also incentivize post-arrival monitoring, to remedy unethical recruitment practices as part of their monitoring and social compliance auditing of suppliers. In cases where misconduct has been uncovered, companies can incentivize responsible recruitment practices by requiring suppliers to also provide evidence they sought to establish appropriate accountability for unethical recruitment practices, including providing evidence of disciplinary procedures as part of their monitoring and social compliance auditing of suppliers.*

CASE STUDY 17: One Malaysian company focused most of its resources and efforts on post-arrival monitoring of workers coming into the country (rather than pre-departure in the source country). As a result, many issues were only discovered once workers had arrived, and it became more difficult to settle remediation issues with manpower agencies at source.

Once more monitoring and attention was allocated to pre-departure, more issues could be uncovered prior to the worker's departure to Malaysia, as a pre-condition for their departure and payment of agency-related costs.

Marker 14

Encourage source country agency due diligence practices toward end-user employers

Employers should facilitate, participate, and cooperate in due diligence process conducted by recruitment actors on their operations.

Employers should mandate recruitment actors visit their worksites as part of pre-recruitment planning stage to familiarize themselves with the operations, which in turn will clarify engagement and the true working conditions to candidates. Recruitment actors who fully understand an end-user employers' operations, as well as the experience of existing workers and the terms and conditions of employment, will much more effectively be able to accurately advertise the job opportunities and advise workers about the nature of the work to ensure their full and informed consent for the recruitment process and eventual employment.

KEY POINT: *Buyers and brands can incentivize responsible recruitment practices by requiring suppliers to provide evidence that their recruitment partners visited their worksite prior to recruitment activities as part of their monitoring and social compliance auditing of their suppliers.*

CASE STUDY 18: An increasing number of Nepali manpower agencies have developed Self-Assessment Questionnaires (SAQs) that they require end-user employers to complete before signing a recruitment service agreement and conducting recruitment activities. Wherever possible, these recruitment actors also seek to visit the worksite of every end-user employer as part of the SAQ employer due diligence process.

Marker 15

Encourage humane treatment of workers

End-user employers and all recruitment intermediaries should ensure candidates and selected workers are always treated humanely.

Employers and recruitment actors should always prioritize preventing the abuse of candidates and workers, ensuring they are not subjected to harsh, demeaning treatment or violence and harassment. It is also important to humanize the recruitment processes, treat candidates and workers with the respect they deserve, and make them feel valued.

Recruitment processes can take a significant amount of time, and facilities provided to workers during the processes should be sufficient. Small (but significant) considerations include ensuring adequate space, ventilation, seating, rest areas, clean restroom facilities, sufficient water or refreshments, snacks, and a full meal as required by the situation. It is common to see workers going without food for long periods of time to keep their place in a recruitment queue.

CASE STUDY 19: During recent recruitment for Malaysia's glove sector, recruitment agencies and employers went from providing no refreshments to providing snacks and finally full meals to workers during the recruitment processes, when workers spent significant time waiting for interviews, processing, or the pre-departure formalities and when there were no food vendors or restaurants nearby.

Workers expressed appreciation and satisfaction for this arrangement, which was provided to them in addition to an adequate food, accommodation, and transport allowance calculated based on the specific recruitment process, and in line with developing responsible recruitment standards.

Annex 1: Fair Labor Code and Compliance Benchmarks and Fair Labor Principles

- [FLA Fair Labor Code](#)
- [FLA Workplace Code of Conduct and Compliance Benchmarks \(Manufacturing\)](#)
- [FLA Workplace Code of Conduct and Compliance Benchmarks \(Agriculture\)](#)
- [Principles of Fair Labor and Responsible Sourcing and Production \(Manufacturing\)](#)
- [Supply Chain Principles for Responsible Sourcing \(Agriculture\)](#)

Annex 2: Responsible Recruitment Framework: Open Tender Process

Steps toward responsible relationships between employers and recruitment agencies

1 ASSESS MANPOWER REQUIREMENTS

Identify nationalities and number of foreign migrant workers required by end-user employer; and consider the full hiring and arrival timeline, including quota approval.

2 PREPARE PACKAGE OF OPEN TENDER MATERIALS

An open tender is important for a transparent and fair decision-making process where all recruitment agencies can apply for the opportunity to undertake foreign migrant worker recruitment. A tender process package includes:

1. Application process information and application form
2. Details on employer policies and commitments relating to foreign migrant worker recruitment as well as broader human rights sustainability and procurement.
3. Foreign migrant worker recruitment agency selection criteria self-assessment questionnaire (SAQ) to be completed by recruitment agencies.
4. Development of objective criteria and a scoring system to evaluate the completed SAQs to determine which agencies move to the agency audit stage.

3 RESPONSIBLE RECRUITMENT TENDER BEGINS

Employer holds responsible recruitment tender process events together with government and recruitment agency associations in the origin country. This is an opportunity to launch the tender application process publicly, verbally explain the process, take questions, and publicize the policies.

4 DISTRIBUTE SAQ TO POTENTIAL BIDDERS

- During the open tender period, bidders can perform their own due diligence against the SAQ criteria and consider their capacity to meet the requirements.
- Provide SAQ to all bidders with a pre-set deadline.
- Consider and objectively assess all SAQs; bidders who pass the SAQ stage to move to step 5.

5 AUDITS AND CAPS

- Audit the bidders who meet SAQ evaluation criteria.
- Develop Foreign Worker Recruitment Agency Selection Audit Report and Corrective Action Plan (CAP) Form
- During audits, recruitment agencies are graded according to the criteria and based on consideration of all available information and documents and considering the number of recruitment agencies required for the project. The agency/agencies with the highest scores are selected.
- A Collective Action Plan (CAP) and CAP completion and/or re-auditing timelines are developed for selected agencies and agreed upon between selected recruitment agencies and the employer. Fulfilment of the CAP is a pre-condition to signing a service agreement between the recruitment agency and employer.

6 EMPLOYER VISIT

- Recruitment agencies visit the employer's facility in the destination country to understand the employer's business operations and the working and living conditions for workers.
- Service agreement finalized by the employer. The service agreement and/or related MOU is then signed between the employer and selected recruitment agencies. The agreement includes:
 - a) Conditions of selection i.e., fulfilment of CAP, mentoring process/capacity building syllabus and details
 - b) Terms and conditions of services provided by agencies.
 - c) Related warranties required by agencies.
 - d) Terms and conditions of payment and payment schedule, with a transparent budget breakdown.

7 MENTORING OF SELECTED RECRUITMENT AGENCY

Before recruitment begins, the agency is provided with mentoring/capacity building on ethical recruitment practices and policies as agreed in the service agreement and as specified in the CAP. Where appropriate, third parties may be brought in to assist and/or create capacity building syllabus and develop a model template of agency policies.

8 RECRUITMENT PROCESS PLANNING

- Employer and selected recruitment agency agree on a strategy, process timelines, and recruitment methods.
- The employer develops an information package for workers about the work and the working conditions that can be used by the selected recruitment agency to ensure a transparent and ethical recruitment process.
- Model advertising materials are developed jointly by the employer and the recruitment agency and agreed upon before use by the recruitment agencies during the recruitment processes.

9 RECRUITMENT PROCESS COMMENCES/COMPLETED

Recruitment process, agency mentoring/capacity building and monitoring of overall recruitment process undertaken simultaneously by all parties. Employer may consider the use of a third-party monitor to ensure compliance by recruitment agency with agreements.

The recruitment process ends. Post-recruitment process starts.

10 RECRUITMENT PROCESS POST MORTEM





Employer works with a third-party to conduct a post-recruitment lessons-learned evaluation. Ideally this is made public, but may be kept internal, as needed.

11 FUTURE IMPROVEMENTS

Based on the findings of the evaluation, the employer adjusts the recruitment processes to improve future recruitment projects.

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