



International
Labour
Organization

► **Achieving fair and ethical recruitment**

Improving regulation and enforcement
in the ASEAN region



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Philippine Overseas Employment Administration
- Singapore : Ministry of Manpower
- Thailand: Department of Employment
Department of Labour Protection and Welfare
- Viet Nam: Ministry of Labour, Invalids and Social Affairs



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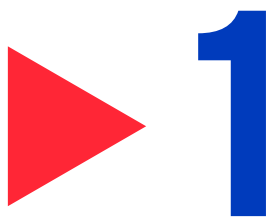
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Abbreviations and acronyms

ASEAN	Association of Southeast Asian Nations
BP2MI	Badan Pelindungan Pekerja Migran Indonesia (National Board for the Placement and Protection of Indonesian Overseas Workers)
DAE	Disciplinary Action against Employers (the Philippines)
DAW	Disciplinary Action against Workers (the Philippines)
DLPW	Department of Labour Protection and Welfare (Thailand)
DMW	Department of Migrant Workers (the Philippines)
DOLAB	Department of Overseas Labour (Viet Nam)
DOLISA	Department of Labour, Invalids and Social Affairs (Viet Nam)
EPA	Employment Permit System (Republic of Korea)
FAST	Forward Assurance and Support Team (Singapore)
HRD Korea	Human Resources Development Service of Korea
ILMS	International Labour Migration Statistics
ILO	International Labour Organization
IOM	International Organization for Migration
IPA	in-principle approval (Singapore)
MOLISA	Ministry of Labour, Invalids and Social Affairs (Viet Nam)
MOLSW	Ministry of Labour and Social Welfare (Lao People's Democratic Republic)
MOLVT	Ministry of Labour and Vocational Training (Cambodia)
MOM	Ministry of Manpower (Indonesia and Singapore)
MOU	memorandum of understanding
MRC	migrant worker resource centres
NGO	non-governmental organization
NLRC	National Labor Relations Commission (the Philippines)
OWWA	Overseas Workers Welfare Administration (the Philippines)
PESO	Public Employment Service Office (the Philippines)
POEA	Philippine Overseas Employment Administration
TU	trade union
UN DESA	United Nations Department of Economic and Social Affairs



1. Introduction

Intermediaries have always played a role in people's search for work because job information can be a rare commodity, especially in countries with high unemployment. In traditional societies, one depended on relatives and networks of friends to know about opportunities for work and livelihood. As communities become larger and more diverse, such informal means of communicating opportunities are no longer adequate and intermediation services become a marketable commodity sought by both workers and producers. Producers can no longer rely solely on their existing workers to look for additional ones with the skills they need, and people seeking work become willing to pay someone who can arrange a job for them. These middlemen or intermediaries perform a useful role in resolving the asymmetry of information in the labour market – the producers know what skills they need but not where to find them; while the workers know their skills but not who is in need of them. The ability to bridge this asymmetry is the capital that recruiters use to fashion their services. These services become more valuable to employers in countries encountering labour scarcities, and to workers in countries with an over-abundance of men and women seeking employment.

In modern societies the task of job intermediation performed by public as well as private recruitment agencies is now considered an essential and a normal business activity, one for which a real demand exists, as it smoothens the adjustment of production to the shifts in the market. This is true in the case of adjustments in a closed labour market, as well as in the case of open markets where the employment of foreign labour is permitted. In the real world, however, the operation of this market is highly imperfect, and can be characterized by exploitative practices, fraud and abuses. These imperfections have been particularly damaging to the interest of workers seeking jobs across national borders.

Recruitment fraud takes many forms, from the most egregious cases of young women being trafficked into forced labour, to the more common cases of jobseekers being misled into accepting lower wages than what they have signed up for. There are also recruitment practices that are contrary to law even though many consider them as "victimless" crimes, such as when a jobseeker offers to pay a recruiter a fee above the permissible legal ceiling, but the more concerning cases involve deception, debt-bondage and virtual enslavement. Recruitment is also an activity that often defies a simple statement of where the responsibility of the intermediary ends and where that of the employer or the worker client begins. In some countries of origin, the responsibility of the recruiter for their client only ends when the worker returns home after completing his or her contract. Given the nature of the beast, regulating recruitment has emerged as a very complex undertaking, requiring action on a broad front at home as well as diplomacy abroad.

The ILO has been addressing the problems posed by recruitment fraud and abuses for many years. Member States have been urged to adhere to the Migration for Employment Convention (Revised), 1949 (No. 97); Migrant Workers (Supplementary Provision) Convention, 1975 (No. 143); and related Recommendations Nos. 86 and 151, which contain requirements on fair recruitment, notably providing comprehensive and accurate information, prohibiting charging fees and costs to workers, using clear and transparent contracts, and ensuring access of workers to grievance and other dispute resolution mechanisms. The Employment Services Convention, 1948 (No. 88); the Private Employment Agencies Convention (No. 181); and the Nursing Personnel Recommendation, 1977 (No. 157), seek to promote efficiency, transparency and protection for workers in the recruitment process, such as through mutual recognition of skills and qualifications. They also advise the conclusion and implementation of bilateral and multilateral labour agreements. ILO's Declaration of Fundamental Principles (1998), to which all Member States are signatories, likewise draws attention to the problems of migrant workers and encourages Member States to mobilize efforts to resolve their problems. In 2014 the Fair Recruitment Initiative (FRI) was launched as part of the ILO Director General's call for a Fair Migration Agenda. Since its launch, the FRI has been critical to ILO's work in the area of national and international recruitment of workers and has added renewed impetus and visibility to this important topic. In 2016 the ILO brought out its General Principles and Operational Guidelines for Fair Recruitment, which called on Member States to adopt appropriate legislation and policies to protect the rights of migrant workers and

pointed to States' obligation to establish and regularly review such legislation and policies with a view to ensuring that the rights of migrant workers are protected. In 2018 the Definition of Recruitment Fees and Related Costs was developed, which should be read in conjunction with the General Principles and Operational Guidelines.¹

The ILO has implemented technical cooperation projects in various regions aimed at promoting the principles in these Conventions and Recommendations and inspiring their inclusion in national law and practice. In the Association of Southeast Asian Nations (ASEAN) region, achieving fair and ethical recruitment has been given special emphasis because of the role that it can play in preventing migrant workers from experiencing abusive conditions, including trafficking and forced labour. Common recruitment-related abuses faced by migrant workers in elementary occupations include: paying exorbitant recruitment fees to recruiters, deception concerning the terms and conditions of employment contracts, processing fake documents, confiscation of passports or ID documents, and physical as well as emotional violence and threats. Curbing recruitment fraud and abuses have proven to be an almost intractable challenge for authorities in countries where the search for jobs has traditionally involved informal or unlicensed intermediaries – local job brokers with family ties to the jobseekers – and where transactions include not only the placement of workers in jobs but also advancing money for their deployment to the work sites. Even where intermediaries are licensed and are known to the authorities, abusive practices can still be perpetuated in situations where there are far too many jobseekers chasing after a few jobs that offer higher wages than what they earn at home.

This report focuses on the efforts of the ASEAN Member States to foster fair and ethical recruitment. It maps the laws and regulations of these Member States and the enforcement mechanisms they have employed, and reviews evidence of the results they may have achieved.

Information for this review was solicited from responsible government agencies in ASEAN by means of a questionnaire (see Appendix I). The questionnaire sought information on:

- ▶ laws and decrees with relevant provisions for regulating the recruitment of migrant workers in origin and in destination countries;
- ▶ licensing requirements and supervision of private recruitment agencies;
- ▶ incidence of violations of recruitment and action taken by authorities;
- ▶ resolution of complaints/sanctions and penalties; and
- ▶ enhancing policy and regulatory effectiveness.

In view of the unusual situation created by COVID-19 when the study was conducted, the questionnaire was pared down to ask only for information that was likely to be readily available to officials responding on behalf of their ministries or departments but covering a period when the pandemic was not yet impacting on the migration of workers. This is the reason why 2019 was selected as the reference year for many of the questions. It also became necessary to draw on other research and knowledge resources to shed more light on how laws and policies, as well as the administrative resources devoted to them, have impacted recruitment practices. A number of case studies have likewise been added to illustrate in concrete terms how regulations have worked to address the problems of migrant workers.

Responses to the Questionnaire were received from Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam.

¹ The complete text of the General Principles and Operational Guidelines for Fair Recruitment and the Definition of Recruitment Fees and Related Costs is available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf.



2

2. Labour migration in ASEAN

Although its Member States are committed to harmonizing their policies on a broad front and have achieved much over the past five decades, ASEAN is still a very diverse region with very large differences in per capita incomes, workforce sizes, the structure and strength of their economies, and their interactions with the rest of the world. These differences are bound to narrow as Member States find advantages in enlarging their markets for goods, for capital and for labour resources. Labour migration, which is driven by differences, is playing an important role in these integration processes. Among the ten ASEAN Member States, four countries – namely, Brunei Darussalam, Malaysia, Singapore and Thailand – are net-receiving countries; while the remainder are net-origin countries for labour migrants.

In recent years, the role of labour migration has become increasingly evident between and among countries bound by geographic and ethnic proximity. Cross-border movements of workers have multiplied from Myanmar, Cambodia and the Lao People's Democratic Republic to Thailand; from Indonesia, the Philippines and Viet Nam to Malaysia; and from all over the region to Singapore. The United Nations Department of Economic and Social Affairs' (UNDESA) World Population Prospects 2019 estimated that prior to COVID-19 disruptions there were almost 7.1 million intra-ASEAN migrants coming from major origin countries in the region, such as Myanmar, Cambodia and Indonesia. The number of intra-ASEAN migrants has risen dramatically, increasing from 3.2 million in 1990. Myanmar migrants are mainly in Thailand (1.9 million); while Indonesians are mainly in Malaysia (1.2 million). Thailand hosted 3.5 million migrants from other ASEAN countries; while Malaysia had 1.9 million. See tables 1 and 2 for migrant stock data as well as stocks of nationals abroad for each ASEAN country.

Per government data submitted to the ILO's International Labour Migration Statistics (ILMS) Database in ASEAN, there are about 5.1 million employed migrants in the region. This number is primarily composed of migrant workers who are documented, and does not account for large numbers of migrant workers in an irregular situation. Flows of remittances from both documented and undocumented migrant workers have lifted millions of families out of poverty in origin communities. The World Bank estimated that in 2019 the ASEAN countries received almost US\$75 billion in migrant remittances from all sources.

► **Table 1. International migrant stock in ASEAN countries by country of destination, 2000–19**

Country	International migrant stock as a percentage of the total population			Total migrant stock (000)	Share of women in total migrant stock	Working-age migrant stock (000)	Share of women in working-age migrant stock	Net migration (000)
	2000	2010	2019	2019	2019	2019	2019	2019
Brunei Darussalam	28.9	25.9	25.5	111	43.4%	105	43.1%	64
Cambodia	1.2	0.6	0.5	79	46.1%	73	45.9%	-1 019
Indonesia	0.1	0.1	0.1	353	41.8%	317	41.5%	-4 180
Lao PDR	0.4	0.5	0.7	48	35.6%	44	34.2%	-1 299
Malaysia	6.3	8.6	10.7	3 430	38.9%	3 111	37.9%	1 741
Myanmar	0.2	0.2	0.1	76	45.2%	65	43.7%	-3 623
Philippines	0.4	0.2	0.2	219	48.2%	167	46.6%	-5 159
Singapore	33.6	42.2	37.1	2 156	55.9%	1 980	56.1%	1 815
Thailand	2.0	4.8	5.2	3 635	49.8%	3 234	49.4%	2 615
Viet Nam	0.1	0.1	0.1	76	42.1%	67	40.5%	-2 608

Note: Blue font indicates that a country is a net destination country for international migrants. Lao PDR = Lao People's Democratic Republic.

Source: UNDESA 2019 data, in ILO, n.d.

► Table 2. Estimated stocks of ASEAN nationals abroad (in thousands) by country, 1990–2019

Country	1990		2000		2010		2019	
	Total	Share of women	Total	Share of women	Total	Share of women	Total	Share of women
Brunei Darussalam	26	40.7%	45	39.9%	44	40.3%	47	41.2%
Cambodia	355	50.8%	460	51.3%	953	52.7%	1 098	53.6%
Indonesia	1 638	41.9%	2 431	44.5%	3 429	44.4%	4 533	45.0%
Lao PDR	483	50.9%	649	51.1%	1 199	53.8%	1 347	55.7%
Malaysia	563	50.8%	1 204	55.0%	1 599	53.8%	1 689	56.6%
Myanmar	685	45.1%	1 224	46.4%	2 470	44.0%	3 699	37.2%
Philippines	2 034	59.0%	3 092	57.3%	4 719	54.2%	5 377	53.6%
Singapore	156	52.3%	193	52.7%	278	51.7%	341	52.3%
Thailand	311	60.5%	537	62.8%	774	63.6%	1 020	64.4%
Viet Nam	1 238	48.6%	1 885	48.7%	2 356	49.2%	2 684	51.0%

Note: Blue font indicates that a country is a net origin country for international migrants. Lao PDR = Lao People's Democratic Republic.


Source: UNDESA 2019, in ILO, n.d.

Sustained rapid growth of the ASEAN economies over the past decade has raised employment levels, revealed shortages of labour in many sectors, and created incentives for migration. Severe shortages of labour in fishing, farming and plantations, and construction arose in Malaysia and Thailand as their economies boomed and more and more of their younger populations moved to urban and metropolitan areas in search of better jobs. These shortages are behind the widening wage differentials for various occupations between neighbouring States in the ASEAN region, as shown in appendix table 2. For elementary occupations in formal employment, the average wage in Thailand was 3.7 times the average in Myanmar, 2.7 times the average in Cambodia, and 1.6 times the average in the Lao People's Democratic Republic. The wage differential appears to become larger the higher the occupational skills involved. Unfortunately, no data were available for Singapore, Indonesia and the Philippines, but there is little doubt that large wage differentials account for much of the cross-border movements of labour between or among the countries.²

Women constitute a very large and growing proportion of intra-ASEAN migration. More than half of all Cambodians, Laotians, Malaysians, Filipinos, Singaporeans, Thais and Vietnamese who were abroad in 2019 were female (see table 2 above). However, most women migrant workers work in occupations characterized by poor working conditions and are highly vulnerable to abuse. Indonesian and Filipina women migrants in Malaysia are mostly in domestic work,³ while those in Thailand are in various occupations, including domestic work, fisheries and farming, and construction. Much of the recruitment of women migrant workers still goes through informal channels arranged by job brokers who may be relatives or close neighbours.

² Among various possible determinants, income differentials were found to have the largest significant impact on intra-ASEAN migration according to a study by Tuccio (2017).

³ Some 94,000 Indonesians, mostly women, worked in domestic work in 2019 (ILO 2022).



3

3. Laws and regulations on recruitment

This review of national policies focuses mainly on the laws and regulations that individual States have adopted and enforced over the past three to four decades. They embody principles and rules that are formal expressions of how ASEAN societies plan to govern the contracting of labour for employment of non-national workers by local employers, or of national workers for employment by foreign employers. Non-nationals refer to citizens of all other countries, not only of other ASEAN Member States.

Most laws and regulations in ASEAN are aimed specifically at regulating the participation and activities of private, for-profit companies engaged in various forms of labour contracting, especially recruitment. Some laws date back to the 1970s, when the cross-border movement of workers first took on significant dimensions in some ASEAN Member States; while others are of more recent vintage, reflecting responses of governments to new challenges in the regulation of labour migration or as adjustments of policy based on lessons learned.

3.1. Laws in destination countries

For those countries admitting foreign labour, the laws and regulations on recruitment are mostly designed to express national priorities about the types of foreign workers who will be desirable to employ or are needed by their industries, under what conditions, and for what lengths of time. These laws and regulations typically provide for different conditions of employment, duration of stay, and rights and entitlements that foreign workers of different skills can enjoy. Some countries, like Singapore and Malaysia, also specify the countries from which certain types of workers must be sourced.⁴ In some countries of destination the law may simply empower the government to specify the sectors of the economy in which foreigners will be allowed to work; how prior approval of their employment needs to be secured from national authorities; and what taxes or levies employers must pay to the government in order to employ them. These levies are intended to pressure employers to give priority to native workers by adding a tax on employing migrant workers. Through the issuance of regulations, which may be revised from time to time, governments also set the rules for the participation of private intermediaries or recruiters, including how they are to conduct their business and what they can and cannot charge workers for their services.

3.2. Laws in origin countries

For ASEAN countries of origin, most of the laws and regulations on recruitment are designed to empower the government to protect nationals, especially those with little education or with few skills, against possible mistakes in accepting foreign employment. These laws and regulations generally make it illegal to undertake recruitment without a license. They also empower labour ministries and related agencies to supervise the activities of private firms engaged in recruitment, to check fraud and abuses, and to provide an umbrella of protection for nationals who are employed beyond their national jurisdictions. Most empower the government to impose requirements before foreign employers can hire or engage national workers directly – although few if any restrictions apply to professionals. The laws typically specify the conditions under which private entities may:

- ▶ engage in the business of recruitment;
- ▶ enter into agreements with foreign employers for the supply of workers;
- ▶ advertise jobs; and

⁴ For example, under Malaysia's regulations, domestic workers can be hired only from other ASEAN countries, India, and Sri Lanka.

- ▶ charge fees to workers for various services, including training, deployment, and overseeing the conditions under which their recruits are employed abroad. Many fee regulations also specify the maximum amount of each fee, if any such fees are permitted.

How complaints and disputes between workers and their employers should be resolved may also be provided for in the law, including the role of conciliation and arbitration in settling them.

3.3. Comparing national laws and regulations

How have policies on labour recruitment evolved in the ASEAN region? The questionnaire for this study sought information on the relevant laws and regulations of ASEAN countries, together with information on the specific government agencies tasked to implement them. Table 3 below has been constructed from a reading of the laws and regulations reported by each country, with a list of relevant laws and regulations supplied at the end of the table. The first column lists what rules and regulations are typically included, from workers' rights and obligations, to licensing requirements, prohibited acts in recruitment, penalties and sanctions, and procedures for settling complaints and disputes. Entries under each of the other columns indicate the form they have taken in each country, either as a basic law or as decrees and regulations issued by the responsible ministry, as simple administrative measures, or as obligations by virtue of bilateral agreements reached with other countries. The power to issue decrees and administrative orders provides flexibility for the responsible government authorities to adopt more specific and detailed measures to achieve specific policy objectives, such as imposing a minimum capital requirement in order to exclude so-called "fly-by-night" operators from engaging legally in recruitment.

▶ **Table 3. Laws and regulations in ASEAN – What they say about regulating recruitment**

	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Key:	(•) Stated in the law or in royal ordinance; (o) Stated in ministerial decrees or rules and regulations; (+) Stated in administrative measures; (§) Obligation under bilateral agreements/MOUs (-) Not stated in law or regulations									
Workers' rights and obligations	-	-	•	-	-	-	•	-	§	•
Gender sensitivity in recruitment	-	-	•	-	-	-	•	-	-	-
Regulatory authority/special commission	-	•	•	+	•	•	•	-	•	•
Conditions for direct hiring by employers abroad	-	-	-	-	-	-	o	-	-	-
Licensing authority/ies	-	•	•	+	•	•	•	-	•	•
Other state bodies/agencies/regional gov'ts	-	•	•	-	-	-	•	-	•	-
Conditions for grant of license										
• Citizenship of owner/operator/CEO	-	-	-	-	-	-	•	-	-	-
• Not disqualified by law (e.g., officials)	-	-	-	-	-	-	•	-	-	-
• Minimum capitalization	-	-	•	-	-	-	•	-	-	•
• Evidence of competence in recruitment	-	•	-	-	-	-	•	o	-	•

	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Key:	(•) Stated in the law or in royal ordinance; (o) Stated in ministerial decrees or rules and regulations; (+) Stated in administrative measures; (§) Obligation under bilateral agreements/MOUs (-) Not stated in law or regulations									
• Job offer meets minimum standards	-	o	-	-	-	-	•	-	-	•
• License fee paid	-	-	-	-	-	•	•	o	-	•
• Required facilities (e.g., language training)	-	•	•	-	-	-	-	-	-	•
• Display or exhibit recruiter fees/charges	-	-	-	-	-	-	-	o	-	-
• Maintain website	-	-	-	-	-	-	-	-	-	•
• Financial guarantee/security deposit	-	•	•	-	-	-	•	o	-	-
• Required training for recruiters	-	•	-	-	-	-	-	o	-	-
License renewal/suspension	-	-	•	-	-	-	-	-	-	•
Participation of subagents/affiliates	-	-	-	-	-	•	•	-	-	•
Required content of job contracts	-	+	-	-	-	-	•	-	•	•
Required language of job contract	-	-	-	-	-	-	-	-	•	-
Registration of job contracts	-	-	•	-	-	•	•	-	•	•
Recruitment for offshore employment	-	-	-	-	-	-	-	-	-	•
Required pre-departure training for recruits	-	o	•	-	-	•	-	-	-	-
Prohibition of officials engaging in recruitment	-	-	-	-	-	-	•	-	-	-
Periodic report on workers sent abroad	-	•	-	-	-	•	•	-	•	•
Assist/represent workers on-site	-	•	-	-	-	-	•	-	-	•
Worker performance bond	-	•	-	-	-	-	-	-	-	•
Definition of illegal recruitment and trafficking	-	-	-	-	-	-	•	-	•	-
Prohibited acts in recruitment										
• Recruiting without license	-	-	•	-	-	•	•	-	•	•
• Transferring or assigning license to others	-	-	•	-	-	-	-	o	-	-
• Charge workers higher than legal max fees	-	•	•	-	•	•	•	o	•	•
• Charging any fee to workers	-	-	o	-	-	-	-	-	o	-

	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam	
Key:	(•) Stated in the law or in royal ordinance; (o) Stated in ministerial decrees or rules and regulations; (+) Stated in administrative measures; (§) Obligation under bilateral agreements/MOUs (-) Not stated in law or regulations										
Obligation/mandate to inspect	-	-	-	-	-	-	-	-	-	•	-
Establish complaints mechanism	-	§	•	-	-	§	-	-	§	-	
Litigation through the courts	-	-	-	-	-	-	-	-	-	O•	
Penalties/sanctions											
• Suspension of license	-	o	•	-	-	-	-	-	-	o	
• Cancellation of license	-	o	•	-	-	-	-	-	-	o	
• Criminal (e.g., prison term)	-	-	•	-	-	•	•	-	-	-	
• Civil	-	-	•	-	-	•	•	-	-	o	
• Administrative fines	-	-	•	-	-	-	-	o	-	o	
Registration of undocumented	-	-	-	-	-	-	-	-	•	-	
Issuance of work permits to foreign workers	-	-	-	-	•	-	-	•	•	-	
Imposition of levy on employing foreign workers	-	-	-	-	+	-	-	•	•	-	
Penalty for hiring foreigners without work permit	-	-	-	-	-	-	-	•	•	-	
Monitoring employment of migrants	-	-	-	-	-	-	-	•	•	-	
Deposit for end-of-contract repatriation	-	-	-	-	-	-	-	-	•	-	
Compulsory housing zones for migrants	-	-	-	-	-	-	-	-	•	-	

Note: Lao PDR = Lao People's Democratic Republic; MOU = memorandum of understanding

Sources:

Cambodia: Sub-Decree 57 (1995); Sub-Decree 190 (2005) creating the Ministry of Labour and Vocational Training (MOLVT), Ministry of Foreign Affairs and International Cooperation, Ministry of Interior; Sub-Decree 70 (2006), MOLVT Prakas 108 May (2006) on "Education of HIV/AIDS, Safe Migration and Labour Rights for Cambodian Workers Abroad"; MOLVT Prakas 45 (2013); MOLVT Prakas 46 (2013); MOLVT Prakas 47 (2013); MOLVT Prakas 249 (2013); MOLVT Prakas 250 (2013); MOLVT Prakas 251 (2013). Cambodia has MOUs with Thailand, Malaysia, Singapore, the Philippines and Viet Nam in ASEAN and also with Japan, Republic of Korea, Hong Kong (China), Saudi Arabia, Kuwait, Qatar, Timor-Leste and Bangladesh.

Indonesia: Act 39 (2004) Concerning Placement and Protection of Indonesian Overseas Worker; Law No. 18 (2017); Government Regulation No. 59; Government Regulation No. 10 (2020); BP2MI Regulation No. 1 (2020); Presidential Regulation No. 90 (2020).

Lao People's Democratic Republic: Ministry Agreement on the Management of Employment Service Enterprises (No. 1050/MoLSW), Memorandum of Understanding between the Government of the Lao PDR and the Government of the Kingdom of Thailand on Labour Cooperation (6 July 2016);

Malaysia: Immigration Act 1959/63 (Act 155); Private Employment Agencies Act (1981).

Myanmar: Law Relating to Overseas Employment (Law No. 3/99); Overseas Employment Central Committee; Education, Health and Human Resources Committee.

Philippines: Department of Labor and Employment; Labor Code of the Philippines (1974); Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042); Anti-Trafficking Act of 2003 (R.A. 9208); RA 10022 amending RA 8042 (2010); Revised Rules and Regulations Governing the Recruitment and Employment of Land-based Filipino Workers (2016).

Singapore: Employment of Foreign Manpower Act (1990); Employment Agencies Rules 2011 under the Employment Agencies Act.

Thailand: Recruitment and Job-Seekers Protection Act (1985); Alien Work Act (2008); Anti-Trafficking in Persons Act (2008); Maritime Labour Act (2015); Royal Ordinance on Management of Employment of Foreign Workers (2017).

Viet Nam: Law No. 72/2006/QH11, replaced by Law No.69/2020/QH14.

3.4. Similarities of recruitment laws

From Table 3 one can see that the most common provisions of laws and regulations on recruitment are those:

1. designating the responsible agency of government;
2. requiring licenses before one can engage in recruitment and specifying the qualifications;
3. prohibiting the charging of excessive fees from workers;
4. prohibiting trafficking; and
5. establishing mechanisms for resolving disputes and complaints.

These are understandably the most basic requirements for regulating recruitment, and have been key features of the earliest laws and regulations on recruitment of migrant workers. The Philippines and Indonesia – from which many of the earliest migrant workers in the region originated – have both had laws governing the recruitment of their nationals for employment abroad, especially to the Gulf States, since the mid-1970s. These measures were aimed at creating order in the recruitment market, which at the beginning saw the participation of just about anyone wanting to make quick buck in a rapidly growing market. Labour ministries or departments – the agencies tasked with regulating the recruitment market – quickly saw the need to control entry into the recruitment business by establishing minimum requirements to be granted a recruitment license, as well as the need to control the deployment of recruited workers. These requirements applied to private agencies representing and acting as the recruiting agents of employers in foreign countries, as well as to local private firms that bring their workers to undertake projects outside the country.

3.5. Regulating admissions

In **Malaysia** employers have to go through the Job Clearance System of the Ministry of Human Resources and demonstrate that they have exhausted all means to hire local workers before they are allowed to recruit foreign workers. Once approved, an employer has to ask for a “quota” of migrant workers from the Ministry of Home Affairs, specifying gender, and pay a levy at the Immigration Department. The latter issues a conditional letter of approval that is forwarded to the Malaysian embassy in the country of origin. Under the Immigration Act of 1959 (Act 155) there are penalties, including imprisonment, for anyone found guilty of smuggling non-citizens into the country or who employs a non-citizen without a valid Entry Permit and a Visit Pass (a VPTE), or Pas Lawatan Kerja Sementara). Migrant workers are not allowed to be accompanied by their spouses or marry Malaysian citizens or become pregnant during their employment. Their visa is valid for 12 months, with annual renewals allowed for up to 10 years for a fee. Migrant workers are allowed to work in six sectors: construction, manufacturing, services, plantations, agriculture, and domestic work.

► Box 1. Malaysia: Levy on foreign workers

The following is an excerpt from P.E. Research, “Migration Cost Survey: Indonesian Plantation Workers, Filipino and Indonesian Domestic Workers in Malaysia Final Report”, 2019 report, unpublished:

Levies for migrant workers were first established in Malaysia in 1992 and rates have increased over time, specifically in years 1995, 1998, 2005, 2012 and 2016. The rates tend to increase with the dependency ceiling, which is the ratio of migrant workers to Malaysian nationals working in a given firm, to disincentivise overdependence on low-skilled migrant workers. Depending on who pays the levy, the levy would influence the decision of the employer (to hire) or migrant worker (to work). In fact, the responsibility for paying the levy has changed from time to time between the employer and the worker. This suggests a lack of consensus on the purpose of the levy. Initially, levies were charged to migrant workers as a form of tax. In 2009, this responsibility

shifted to employers to disincentivise the use of migrant workers, i.e. increase the cost of hiring. In year 2013, employers were granted permission to transfer the levy to workers through monthly wage deductions to offset the imposition of minimum wage for workers. In 2016 higher levies were imposed, especially for the manufacturing and service sector which added the burden on migrant workers. Amid concerns for the need to regulate the influx of migrant labour, potential labour shortages, abscondence, and the need to protect the well-being of migrant workers, the responsibility of paying the levy was shifted back to the employer starting January 2018.

In 1981 the Private Employment Agencies Act set the conditions to qualify for a 12-month license to recruit Malaysian citizens for jobs abroad, as well as to recruit non-citizens for employment in Malaysia. Malaysian citizenship is needed to qualify for the license. The Act was amended in 2017 with the passage of the Private Employment Agencies (Amendment) Act 2017. This latter Act categorized recruitment agencies into three groups and placed a ceiling on recruitment fees equal to one month of basic wages. In 2006 the Government required all companies that hired less than 50 foreign workers to use the services of outsourcing companies that were permitted to bring in foreign workers and manage them for their client companies. This outsourcing system was abandoned at the end of 2013 because it led to casualization and deregulation (Kanapathy 2016).⁵

In 1990, **Singapore** passed legislation repealing the Regulation of Employment Act of 1985 and establishing new rules for firms wishing to employ migrant workers. The Employment of Foreign Manpower Act of 1990 required firms to secure work passes and keep a register of foreign employees, imposed a “levy” that employers must pay for each hired migrant worker, and specified the fines for violations. It designated a “Controller” who was tasked to specify the industries in which foreign workers may be employed. Several amendments have already been made to the Foreign Manpower Act of 1990 adding provisions that strengthened the ability of the Controller to enforce the law, including powers of inspection, securing evidence in case of violations, and specifying the sectors/occupations for which work passes are required.

In **Thailand** the Alien Employment Act of 2009 was replaced by the Foreign Workers Management Act (2017). The new Act provided more protection for migrant workers, including three days of annual leave, entitlement of women workers to maternity leave for 98 days with wages for up to 45 days, and compensation in the event of contract cancellation by the employer without prior notification. Emergency Decree on Management of Foreign Workers in Thailand (2017) established the Foreigners’ Working Management Policy Commission to formulate policies and oversee the employment of foreigners in the country.

3.6. Legal requirements to get a recruitment license

The conditions set by national laws to qualify for recruitment licenses vary little among the countries in ASEAN. Unlike licenses issued to operate in other types of businesses, those for recruitment are generally for a limited duration. In the early years, the licenses issued were typically valid only for one year. These were later extended, but not indefinitely. In Indonesia licenses are now good for five years, in the **Philippines** for four, and in **Thailand** for two. **Viet Nam** used to have a similar limitation but recently amended their policy and now allows for an indefinite period of validity. In all four countries, recruiters must be citizens. In the case of the recruiter being a corporation, a majority of the shares must be held by citizens in **Indonesia** and the **Philippines**. In **Thailand**, 75 per cent of the shares must be owned by Thai citizens. In **Viet Nam** non-citizens are not allowed to own shares of recruitment companies.

3.7. Financial eligibility

Another condition is financial capability. Concerned that recruiters will not be able to compensate workers in case foreign employers fail to honour their contracts (for example, if wages go unpaid),

⁵ However according to Wickramasekara (2020), the Malaysian Government has yet to abandon the outsourcing system.

countries of origin started to establish standards for capitalization. The minimum paid-up capital that national laws require recruiters to have to qualify for a license varies by country, but are generally higher than the legal requirements to engage in other businesses. A licensed agency must have a paid-up capital of:

- ▶ Indonesia: 5 billion rupiah (US\$320,600)
- ▶ Philippines: 2 million pesos (US\$33,960)
- ▶ Thailand: 1 million baht (US\$26,100)
- ▶ Viet Nam: 5 billion dong (US\$203,300)

Myanmar requires the managing director of an agency to have at least 100 million kyat (US\$47,500) of real estate.

In addition, all of the origin countries in ASEAN started to require licensees to post a guarantee in the form of an escrow deposit to the account of the government licensing agency to meet possible future obligations. The amounts to be deposited have been set at:

- ▶ Cambodia: US\$100,000
- ▶ Indonesia: 1.5 billion rupiah (US\$96,000)
- ▶ Philippines: 1 million pesos (US\$16,900)⁶
- ▶ Thailand: 5 million baht (US\$130,500)

The capitalization requirement is meant to restrict entry into the business to only those firms that have the resources to find good clients abroad and provide them with good and reliable services, as well as the capacity to find, test and prepare workers for working abroad. The guarantee deposit, on the other hand, is intended to ensure that legal damages awarded to worker claimants can be met. In comparing the required guarantees by country, one notes that the deposit required in the **Philippines** is much smaller than in the other countries. Indeed, it has proved to be inadequate, as the Philippine Commission on Audit found out in its 2008 review of government effectiveness that the deposit would not suffice to meet the average claims of unpaid wages against recruiters.⁷

3.8. Laws setting minimum standards for employment contracts

When the Gulf States opened their labour markets to so-called “guest workers”, origin countries in ASEAN all recognized that conditions in the Gulf States were likely to be very different and unknown to their nationals. There was concern that jobseekers will not know the cost of living or the labour laws in the country of destination and can easily make the mistake of signing highly disadvantageous employment contracts. This asymmetry of information, typical in the market for foreign labour, was feared to greatly prejudice hopeful jobseekers. Origin countries' governments tried to intervene – as they often do in the domestic market – by establishing minimum wages. Minimum standards for job contracts were set, and workers were required to register with, and have their contracts approved by, the relevant regulatory agencies before they were allowed to depart. Origin countries' governments later advised the use of “model contracts” by licensed agencies. These regulations, however, proved very difficult to enforce where recruitment is largely in the hands of informal and unlicensed job brokers and recruiters. The practice of contract substitution started to emerge, which meant that upon arrival in their countries of employment workers were made to sign contracts with inferior terms to the contracts they had signed before departure and submitted to the authorities. This illegal practice became increasingly prevalent as more and more jobseekers competed for a limited number of jobs.

⁶ Additional amounts are required if the agency has cases against it pending decision by the POEA.

⁷ Based on claims of unpaid wages by 452 migrant workers against 49 recruitment agencies.



▶ 4

4. Prohibited acts in recruitment

Below is a list of acts in recruitment prohibited by one or more countries in ASEAN:

- ▶ recruiting without license;
- ▶ transferring or assigning one's license to others;
- ▶ charging workers more than the legal maximum fees;
- ▶ failing to issue receipts for fee payments received;
- ▶ publishing false information;
- ▶ sending workers without valid work permits;
- ▶ engaging in trafficking in persons;
- ▶ placing workers in harmful jobs;
- ▶ substituting an approved contract with an inferior contract;
- ▶ keeping a worker's personal documents (passport or ID, work permit);
- ▶ withholding travel documents prior to departure unless the worker pays more money;
- ▶ discriminating in job placement;
- ▶ failing to reimburse workers who paid fees but were not placed in jobs;
- ▶ placing workers where their rights are not protected;
- ▶ obstructing inspection by labour authorities;
- ▶ recruiter engaging in the travel business at the same time;
- ▶ recruiting under-age workers;
- ▶ lending money to workers at interest rates above the legal limit; and
- ▶ compelling the use of specific clinics/training centres.

All of the ASEAN countries have laws and regulations severely penalizing trafficking in persons, and most have regulations setting a ceiling on the recruitment fees that can be charged to workers. Among the standards adopted under national laws, this latter requirement has proven the most difficult to enforce. National limits on fees vary, but generally are the equivalent of between one and two months' pay. There have been some recently introduced policies concerning fees, such as the policy of no fees being charged to domestic workers, which has been adopted by **Indonesia**, the **Philippines**, and **Thailand**. **Singapore** set the limit on fees to one month's salary for every year of employment, but for a maximum of two months' pay.

Nevertheless, it is well known that despite legal prohibitions many migrants in all countries incur high costs for getting their jobs. This is partly due to the laborious and at times complex procedures involved in getting deployed for work abroad, from securing passports and work visas and undergoing medical and skills tests, to getting employment contracts approved by the authorities, getting medical insurance, organizing travel, and signing on to membership in social welfare systems and (in some countries) to migrant welfare funds. Recruiters charge workers fees for assisting them to comply with these requirements, and can easily charge them more than what they cost. Fees can easily exceed

mandated limits since there remains some confusion on what services recruiters can charge jobseekers for. How much can they be charged for accommodation while awaiting deployment? How about for financial advances to get medical tests or to obtain passports and other travel documents? In some countries there are regulations that recruits undergo pre-departure training delivered by the recruiter, and the authorities may allow the recruiter to charge the worker for this. The requirement that all payments be covered by receipts has not proven adequate to put a check on over-charging practices, since recruiters know how to collect fees in amounts that can go unnoticed by workers.

The complexity of regulating the recruitment market is demonstrated in box 2 below, which lists the 31 different kinds of violations subject to administrative sanctions in the **Philippines**. Most of these acts are also now proscribed in other origin countries of the region. A few of the ones unique to the Philippines are the prohibition against recruiters also operating or managing a travel agency, against officials in government engaging in private recruitment,⁸ against deploying workers to employers not accredited by the government, and against withholding travel documents from workers for questionable reasons. The prohibition on officials engaging in recruitment is evidently to avoid conflicts of interest. The prohibition against being in recruitment and in the travel business at the same time has been in existence since the Labour Code of 1974 and is justified by the concern that unscrupulous recruiters will try to send as many workers as they can, regardless of conditions, if they already profit from organizing their travel overseas. The prohibition against withholding travel documents is to stop unscrupulous recruiters from “shaking down” workers for more money just as they are about to leave the country. **Indonesia** has a similar prohibition.

► **Box 2. Recruitment violations subject to administrative sanctions under the POEA* Rules and Regulations**

The following is the list of grounds for administrative sanction in the POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers (Part IV, Rule I, section 2):

1. Charging, imposing or accepting directly or indirectly, any amount of money, goods or services, or any fee or bond for any purpose whatsoever before employment is obtained for an applicant worker;
2. Charging or accepting directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary, or making a worker pay any amount greater than that actually received by him as a loan or advance;
3. Charging or collecting placement fee for deployment to countries where the prevailing system, either by law, policy or practice, do not allow the charging or collection of placement and recruitment fees;
4. Collecting any fee from a worker without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made;
5. Engaging in act/s of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment;
6. Inducing or attempting to induce an already employed worker to transfer from or leave his employment for another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
7. Influencing or attempting to influence any person or entity not to employ any worker who has not applied for employment through his agency;
8. Obstructing or attempting to obstruct inspection by the Secretary, the Administrator or their duly authorized representatives;

⁸ The recruiter must guarantee that there is no officer or employee of the agency related within the fourth civil degree of consanguinity or affinity to any official or employee of any government agency engaged, directly or indirectly, in the implementation of the Migrant Workers and Overseas Filipinos Act (1995), as amended.

9. Substituting or altering to the prejudice of the worker, employment contracts approved and verified by the Department [of Labor and Employment] from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department;
10. Failure to submit reports related to overseas recruitment and employment within the specified time, as may be required by the Secretary or the Administration;
11. For the owner, partner, or officer/s of any licensed agency to become an officer or member of the Board of any corporation or partnership engaged directly or indirectly in the management of a travel agency;
12. Withholding or denying travel or other pertinent documents from workers for considerations other than those authorized under existing laws and regulations;
13. Engaging in recruitment activities in places other than that specified in the license without previous authorization from the Administration;
14. Appointing or designating agents, representatives or employees without prior approval from the Administration;
15. Falsifying or altering travel documents of applicant worker in relation to overseas recruitment activities;
16. Deploying workers whose employment and travel documents were not processed by the Administration or those agencies authorized by it;
17. Deploying workers to principals not accredited/registered by the Administration;
18. Failure to deploy a worker within the prescribed period without valid reason;
19. Disregard of orders, notices and other legal processes issued by the Administration;
20. Coercing workers to accept prejudicial arrangements in exchange for certain benefits that rightfully belong to the workers;
21. Withholding of workers' salaries or remittances without justifiable reasons or shortchanging of remittances;
22. Deploying underage workers;
23. Engaging in act/s of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false information or documents;
24. Engaging in the recruitment or placement of workers in jobs harmful to public health or morality or to dignity of the Republic of the Philippines,
25. Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment;
26. Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, where deployment does not take place without the worker's fault;
27. Failure to comply with the undertaking to deploy the required number of workers within the period provided in these Rules;
28. Failure to comply with the undertaking to provide Pre-Departure Orientation Seminar to workers;
29. Non-compliance with any other undertaking in connection with the issuance or renewal of the license;
30. Allowing persons who are otherwise disqualified to participate in the overseas employment program under existing laws, rules and regulations to participate in the management and operation of the agency; and

31. Violation of other pertinent provisions of the Code and other relevant laws, rules and regulations, guidelines and other issuances on recruitment and placement of workers for overseas employment and the protection of their welfare.

* In 2021 a new law was passed in the Philippines creating a new Department of Migrant Workers (DMW). The POEA was absorbed into the Department.

Most of the prohibited acts listed in box 2 are also found in the laws on recruitment of the other ASEAN countries. In addition, **Indonesia's** Law No. 18 of 2017 also sets out the penalties for each of the offences, such as 5 years' imprisonment and a fine of no more than 15 billion rupiah (US\$960,000) for recruiting without the necessary license, for charging the worker fees already borne by the employer, or for sending a worker to a country blacklisted by Indonesia. The fine is 5 billion rupiah (US\$320,600) for placing workers in jobs inconsistent with the contracts they agreed to and signed, or for transferring the recruitment license to another party without prior approval by the authorities.

As in the other ASEAN countries, **Viet Nam's** laws and regulations also make clear the rights and responsibilities of migrant workers and also prohibit certain acts, such as deploying workers through irregular or illegal channels, sending workers to work in "violation of national security" or in jobs that contravene laws of the receiving country, charging fees in violation of regulations, or failing to observe the minimum standards established by Viet Nam for contracts of Vietnamese nationals employed abroad. Licenses for recruitment are also issued to private entities that meet the requirements, including the recruitment agency having capitalization of at least 5 billion dong (US\$203,300); a sufficient security deposit; a legal representative with Vietnamese citizenship, appropriate educational qualification and no criminal record; training facilities; and a website.





▶ 5

5. Recruitment treated differently from other business

A review of the laws and regulations adopted by ASEAN countries reveals the special or perhaps unique way in which these States view migrant worker recruitment as a business activity. Because it deals with human beings and because of limits to sovereignty beyond one's borders, recruitment of migrant workers is viewed everywhere with concern, if not suspicion, especially if it is done for profit. The following are some of its unique characteristics:

1. Although renewable, the validity period of a recruitment license is typically short (one to five years), but the responsibility of the recruiters does not end with job placement.
2. The recruiter is accountable for the actions of the foreign employer who buys the recruitment service.
3. Recruiters can only serve clients (foreign employers) who are approved by the authorities.
4. A license is typically valid for sourcing recruits only from specified geographic areas.
5. Competition from foreign recruitment companies is generally restricted, and non-citizens are disqualified from owning and operating recruitment companies.

5.1. Short validity of licenses

Promoting economic growth and full employment requires creating a business-friendly environment where firms have the incentive to invest and innovate and to develop new products and markets. Stable policies that incentivize risk-taking by entrepreneurs is a sine qua non in such environments, since it takes time to design and develop products or services, to gain acceptance by consumers, and to operate at volumes where economies of scale can be reaped. With a few exceptions these conditions appear to be widely overlooked or absent in the area of recruitment. The validity of licenses is generally limited to a year or at most five, and while the possibility of renewal exists, it is not guaranteed. A single violation of a regulation is sometimes enough to stop renewal; hence it is a business activity that may not appeal to serious investors with a long time horizon. This may be one reason, along with others such as reputational risks, that few, if any, reputable companies venture into international recruitment, an industry that has in most countries attracted small start-up ventures that rely on making quick profits. The majority of recruitment companies do not have the financial resources to invest in developing markets for their services abroad, but simply become agents of recruiters in destination countries. This explains the widely-known phenomenon of "visa-trading", where recruiters in origin countries buy visas from recruiters (or employers) in destination countries, and they in turn "sell" the visas to jobseekers. Workers end up absorbing very high recruitment costs as a result, a phenomenon well documented in studies by the ILO and the World Bank.⁹

Making recruitment an exception seems to be based on an implicit rationale that since the business is prone to fraud and abuses, a license must not be given for an indefinite period but only for a few years, subject to review (every five years in **Indonesia**, every four years in the **Philippines**, every two years in **Thailand**, and after one year in **Malaysia**). Experience shows, however, that this validity limitation can have unexpected consequences that warrant a careful review of its usefulness. As noted above, most laws empower the government to suspend or even cancel a license, at any time, for violating

⁹ The World Bank and ILO undertook surveys and interviewed over 5,500 migrants in 19 bilateral migration corridors between 2015 and 2017 to systematically document the costs incurred by workers seeking jobs abroad. For more information, see: <https://www.knomad.org/data/recruitment-costs>.

recruitment rules and regulations. For instance, a complaint that a recruiter has falsely advertised a job vacancy can trigger a temporary suspension. Suspension usually implies a halt to all transactions, such as obtaining approval for contracts and clearance for the recruits to depart, an eventuality that all recruiters would want to avoid since it can lead to serious financial losses and even the loss of clients. Consequently, to legitimate recruiters the threat of license suspension is usually a powerful enough reason on its own to ensure compliance with all rules and regulations. This suggests that the limitations widely imposed on the validity period for licenses need to be re-examined, and possibly be complemented with an incentive for those recruitment agencies who fully observe the regulations. Recruiters can, for example, be rated annually on the basis of good performance, and if rated highly enough, be assured of automatic license renewal and possibly charged lower fees.¹⁰



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5.2. Open-ended responsibility

Under the laws of ASEAN origin countries, the responsibility of the recruiter does not end with the completion of a job placement. In **Cambodia** and **Viet Nam** licensed recruiters are required to post a representative in the countries of employment who must report on the conditions of their recruits, especially on problems that they may encounter (such as lay-offs, accidents, strikes, and so on).¹¹ The recruiters are also made responsible for organizing the repatriation of workers who have completed

¹⁰ A rating system could be based on the views of a wide spectrum of social partners, such as foreign employers, trade unions, migrant associations, non-governmental organizations (NGOs) and the media. Agunias (2012) recommended strategies like ranking agencies on a set of criteria, adopting certification systems, bringing subagents to the formal sector, and promoting harmonization of policies of both origin and destination countries. In addition to rating agencies, Martin (2017) also recommended rewarding good agencies with exemptions on value added taxes similar to policies used by many governments to incentivize exporters.

¹¹ The requirement varies according to the number of nationals working in the foreign country.

their contracts. Under **Indonesian** laws the recruitment company is also responsible for repatriating the remains of a migrant worker who dies in the country of employment, or arranging for a funeral, and for sending back home any of their personal effects. The **Philippines** has applied the principle of joint and solidary liability in regulating recruitment, which means that the recruiter continues to be accountable for any violation of the employment contract by the employer even after rendering the service of placing a worker in their job. In **Viet Nam** a recruitment company is obliged to honour its contractual obligations until these are completed, even if it dissolves its business. A bankrupt enterprise may transfer its obligations to a new enterprise, including the “workers’ deposits kept in a separate account”, but it cannot get back the guarantee deposit (US\$45,000) that is required to get a license until all its recruits have returned. In case the company opts to transfer its rights and obligations to the Ministry of Labour, Invalids and Social Affairs (MOLISA), the latter may use its deposits to settle its liabilities with the workers. Hence, in all the ASEAN countries of origin, recruitment is unlike other business services, such as a real estate agency or a transport company, where there is a clear end-point to a transaction.

► **Box 3. Case study: Application of the joint and several liability principle**

Star Manning Agency, Inc. recruited an Able Seaman, Marcelo, to work on an ocean-going ship for a period of 12 months, starting on 5 August 2008, with a monthly salary of US\$461.00. On 17 May 2009, Marcelo was brought to the Sheik Khalifa Medical City in the United Arab Emirates due to severe headache and vomiting after he allegedly sustained a fall while lifting heavy motor parts on board the vessel. As a consequence of the work being performed, Marcelo had severe pain of the foot which caused him to slip, hitting his chest first, followed by his head. He suffered from a cerebellar hemorrhage and was eventually recommended for repatriation to undergo further evaluation and treatment. On 9 September 2009, a wheelchair-bound Marcelo arrived in Manila, and he reported to the office of the recruitment agency the next day. However, the recruitment agency’s CEO denied Marcelo’s request for medical assistance on the ground that his illness was not work-related. Marcelo then consulted several doctors and was issued a medical certificate declaring him as permanently unfit for sea duty in any capacity and suffering from post-traumatic psychoneurosis. Armed with the medical assessments, he demanded payment of disability benefits, which he claimed was due to him under his employment contract. However, his demand was denied. On 20 April 2010, he filed a complaint at the Department of Labor against the recruitment agency for payment of disability benefits, among others. On 11 September 2010, the Labor Arbiter ruled in his favor, ordering the recruitment agency to pay a permanent disability benefit (\$60,000); a sickness allowance (\$1,844); moral and exemplary damages (300,000 pesos); and attorney’s fees equivalent to 10 per cent of the total award.

The agency filed an appeal with the National Labor Relations Commission (NLRC), which ruled that Marcelo’s disability was not work-related and accepted the claim of the agency that he did not really comply with the requirement to report after arrival. Marcelo appealed the verdict, but on 30 January 2013 the Court of Appeals affirmed the NLRC ruling. Marcelo then went to the Supreme Court which ruled that a seafarer is entitled to disability benefits when his employment is governed by the POEA Standard Terms and Conditions Governing Employment of Filipino Seafarers Onboard Ocean-Going Vessels. Such contracts require the following for entitlement to disability benefits:

1. the injury must be work related;
2. the work-related injury must have existed during the term of the seafarer’s contract; and
3. the seafarer subjected himself to post-medical examination within three days from repatriation.

The Supreme Court agreed with the NLRC and Court of Appeals that Marcelo was not entitled to disability benefits because he failed to undergo a post-medical examination within three days of his repatriation. Nonetheless, the Supreme Court awarded moral and exemplary damages, as

well as attorney's fees, for failing to ensure Marcelo's welfare and for changing the terms of the employment contract without prior POEA approval.

In holding the recruitment agency liable, the Supreme Court emphasized that the liability of the principal/employer and the recruitment/placement agency for any and all claims shall be joint and several. This provision should be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners (as the case may be) shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

Source: Contributed by Jose Flores Genilo, Judge Advocate General Office in the Philippines, personal communications with the author, 03 December 2021.

5.3. Citizenship requirement for engaging in recruitment

Although there is a more relaxed attitude where the workers involved are professionals and highly skilled, ASEAN governments are generally wary of direct recruitment by foreign employers and recruiters. Their concern is due to the fact that some recruiters may pass off their recruits as "direct hires" in order to escape responsibility or to bypass control processes required to secure exit clearance (ILO 2013). Foreign companies are usually not allowed to simply set up a recruitment desk and interview applicants. Regulations usually say that foreign employers must obtain prior authorization from the authorities before they can recruit, or that they must recruit through a public employment office. Multinational recruitment companies also receive restricted access to the local labour market, and can only do so if they link up with and work through a licensed local agency.^{12 13} Behind the legal limitation to foreign participation is the idea that governments can more easily regulate and go after domestically-based rather than foreign-based companies. While these policies protect the market for local agencies, they also lead to the addition of more intermediaries in job contracting, thus raising the recruitment costs usually borne by the workers. Moreover, the exclusion of foreign-based companies limits access to job opportunities that only multinational recruiters, because of their wider reach, are in a position to offer.

¹² One general exception to this rule is intra-company transfers, in which an employee of a multinational company is moved from a role in their home country to another role within the company that is located in another country.

¹³ In Viet Nam foreign recruitment companies are generally not allowed to invest in Vietnamese recruitment companies, but in exceptional cases may be allowed to do so by the Prime Minister. Multinational companies with operations in Viet Nam may recruit Vietnamese workers to work outside the country in the form of intra-company transfers, but they must first secure approval by MOLISA.



▶ 6

6. Regulatory structures

Although ministries of labour, or other agencies with the labour and employment portfolio, are responsible for regulating recruitment in all the ASEAN countries, the fact that various aspects of international labour migration and recruitment touch on the mandates of other ministries has resulted in some degree of complexity within the needed governance structure. Ministries of foreign affairs obviously share much of the responsibility, since they have to respond to the protection needs of their nationals employed in foreign countries; issue visas to foreign workers wishing to enter their own country; and negotiate with foreign governments on all matters dealing with the treatment of migrant workers. In destination countries, ministries responsible for national security, such as home or interior ministries, have an important role in the admission and treatment of migrant workers, and in insuring that migrant workers comply with the conditions of their permitted stay. Agencies that provide training for employment and certification of skills obviously also have a role to play. The need to provide workers with some basic medical insurance, with certificates attesting to their health and behaviour, as well as the possibility of contributing to their old-age security have also required the involvement of health ministries, social insurance agencies, the police, banks and others.

The role of other ministries or agencies are spelled out in the laws of some countries. In **Malaysia**, which both sends and receives migrant workers, the Ministry of Home Affairs and the Ministry of Labour are jointly responsible for regulating the recruitment of migrant workers. The same is true in **Cambodia**, where regulating labour migration is the joint responsibility of the Ministry of Labour and Vocational Training and the Ministry of Interior. Similarly, in **Thailand** the Ministry of Interior has the major role in dealing with undocumented and irregular migration. In **Indonesia**, the Ministry of Manpower had the original mandate to issue recruitment licenses, but in 2004, Presidential Regulation No. 90 established BP2MI¹⁴ with the power to issue licenses and to conduct inspections. The clearance for Indonesian workers to leave the country is given by the Immigration Department, which is under the Ministry of Law and Human Rights.

In the case of some professions, like that of seafarers, other agencies may also be involved, such as those that certify qualifications to work aboard ocean-going ships or in fishing fleets. In **Thailand**, the Ministry of Fisheries is involved in overseeing the employment of foreign workers in the fisheries industry, in which serious violations of human rights have been reported, especially in the crewing of deep-sea fishing vessels. In **Indonesia** in 2008, the Ministry of Transport set up its own regulatory system for the recruitment and placement of workers in sea-based employment. However, in 2017, the Law on Protection of Migrant Workers (No. 18/2017) transferred this authority to the Ministry of Manpower (MOM). In the **Philippines**, the recruitment of seafarers used to be supervised by the National Seamen Board, an agency under the Department of Labor and Employment; supervision of their recruitment is now with POEA. In order to ensure that all the different responsibilities and functional concerns are taken on board, some ASEAN governments have created multi-agency committees to design policies related to labour migration and recruitment and to oversee the implementation of these policies. **Cambodia** has an Inter-Ministerial Taskforce for Migration co-chaired by the Minister of Labour and Vocational Training and the Minister of Women's Affairs. **Myanmar's** Law No. 3 of 1999 provided for the establishment of an Overseas Employment Central Committee with the responsibility of establishing the policies and standards for overseas employment. **Thailand** has the aforementioned Foreigners' Working Management Policy Commission to formulate policies and oversee the employment of foreigners in the country.

The popularity of "one-stop centres" that provide all the services needed by migrant recruits in one place highlights the importance of coordination among agencies – coordination that has been rarely achieved. Bureaucratic challenges and conflicts easily arise where responsibilities are not delineated and information is not shared. Implementation of policy is easily compromised where officials charged with enforcing such policies have different understandings of policy objectives or where agencies have overlapping responsibilities and jurisdictions. In **Indonesia**, BP2MI reports directly to the President and

¹⁴ BP2MI is the abbreviation for Badan Pelindungan Pekerja Migran Indonesia, or the National Board for the Placement and Protection of Indonesian Overseas Workers.

not to the MOM. Since both the MOM and BP2MI issue licenses (SIPs) for recruiters to start recruiting potential migrant workers, no small amount of confusion has been caused among recruiters and jobseekers, even though both agencies are supposed to operate the “one-stop centres”. The rivalry between the two agencies did not get resolved even after a Supreme Court decision (Karim 2017). When the MOM suspended 213 private agencies issued permits by BP2MI, many recruits for the United Arab Emirates were stopped from leaving. The rivalry has had other consequences. When BP2MI issued a regulation prohibiting recruiters from charging fees for placement and training, it assumed that vocational training was already being provided by local governments. It turned out that many districts did not have a training budget and were in fact expecting it to be provided by the MOM, the agency with the budget for training.

► Box 4. Emergency Decree on Management of Foreign Workers in Thailand

The Emergency Decree on Management of Foreign Workers in Thailand established in 2017 a Foreigners’ Working Management Policy Commission charged with:

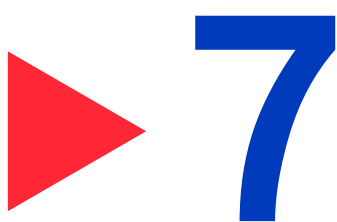
1. laying down the measures to be pursued in the employment of foreign workers;
2. setting rules to ensure that their employment is “appropriate to situations”; and
3. setting the regulations on the operation of foreign labour recruitment agencies used by Thai employers to bring foreign workers to the country; and
4. regulating the employment of migrant workers.

The Emergency Decree also called for the establishment of a Foreigners’ Working Management Fund that can be used to:

1. assist foreigners who have entered the country legally but whose rights have been violated;
2. repatriate foreigners from Thailand;
3. support State agencies or non-governmental organizations that provide welfare services, education, public health and labour protection for foreigners; and
4. provide monetary returns to foreigners who have contributed to the fund for the repatriation of foreigners from the Kingdom under the Foreigners’ Working of Aliens Act, B.E. 2551 [2008].

6.1. Role of local governments

Although most of the processes involved in obtaining passports and other travel documents, securing work visas, and arranging flights to foreign destinations tend to be centred in metropolitan centres, many of the recruits are often located in small communities and even in rural areas. This is particularly true in the case of recruiting plantation workers and domestic workers. In some countries the laws stress the joint responsibility of the central (ministry of labour or manpower) and local governments to protect nationals being recruited for work overseas. Indonesia’s Law No. 18 of 2017 specifies the responsibilities of the Central Government, cities and villages in enhancing jobseeker skills, providing them information, organizing their repatriation and advising on how to manage their remittance incomes. The same is true in Viet Nam, where the law mandates the People’s Committees of provinces and centrally-run cities to identify disadvantaged groups who will benefit from a chance to work abroad, to monitor recruitment activities and to report violations to the local office of the Department of Labour, Invalids and Social Affairs (DOLISA). The same applies to the need for responding to complaints about illegal recruitment, fraud and abuses. In the Philippines there are arbiters of the NLRC in provincial capitals who are empowered to receive complaints about violations of recruitment regulations and to arbitrate disputes.



7. Modalities and capacities for regulating recruitment

Where workers are able to find their way to jobs in other countries through the help of informal recruiters and by using irregular channels, the task of regulating recruitment becomes difficult. Irregular movements of workers in ASEAN have been large, shaped by geography, ethnic propinquity and income differences. Over the past two decades the scale of irregular movements of Myanmar, Cambodian and Lao workers into **Thailand** has risen sharply due to the rapid growth of the Thai economy, the widening income gap with its neighbours, and the ease of crossing borders. There has been some success in putting some order into these movements after the countries entered into bilateral agreements (specifically, MOUs) but the long, mostly unguarded borders, and the existence of lucrative informal recruitment channels have continued to make enforcement of regulations very challenging. Similar problems exist with the informal movement of Indonesian workers to **Malaysia**, a continuation of demographic processes that pre-date the creation of the two States. According to a 2017 World Bank study, nearly half of all Indonesian migrant workers travel without going through official legal channels. Farmers in Thailand's southern provinces, where Islam is the dominant religion, also cross over seasonally to **Malaysia** to earn higher wages without going through official processes. Crossing borders has become easier because of the no-visa agreement among ASEAN countries. In the case of the **Philippines**, with the exception of small informal movements to Malaysia's Sabah State, most Filipino migrant workers go to countries outside the region and have to pass through regular channels to go to their countries of employment. There is a sizable population of undocumented Vietnamese workers in Thailand, but most of the irregular movements from **Viet Nam** take the form of overstaying in countries of employment after the expiration of the workers' work visas.

7.1. Incentivizing use of regular migration channels

Through various strategies and measures countries of destination can play a big role in reducing irregular movements. Heavy financial penalties combined with regular inspections have kept the irregular movements to **Singapore** to a minimum. What is most important, however, is to make it inexpensive, easy and economically profitable for migrants to go through regular, official channels – a principle that is often overlooked. In **Indonesia**, 22 separate administrative steps have to be followed to complete the procedures required by BP2MI. Almost half of those who follow the procedures have to wait three or more months to migrate (World Bank 2017). A 2017 ILO survey of migrant workers in **Thailand** originating from Cambodia, Myanmar and the Lao People's Democratic Republic found that those who went through regular channels incurred higher costs than those who went through irregular channels. Those who passed through regular channels had to pay recruiters or brokers in both Thailand and their countries of origin, with fees amounting, on average, to US\$587 for men and US\$626 for women. Cambodian workers who did not go through brokers incurred much lower costs (US\$205, on average), which was also true for Lao workers (US\$235, on average) (ILO 2020a). It is little wonder why: despite the MOUs creating more order in the cross-border movements between Thailand and her neighbours, the situation has ultimately changed very little. It is clear that in order to encourage workers to go through legal channels, bilateral agreements/MOUs should aim to bring down all costs by enabling direct recruitment by employers, thereby eliminating the need for intermediation and minimizing contract approval processes. In addition, States relying on revenues that can be derived from fees certainly adds to the burden on migrant workers and should be avoided.¹⁵

¹⁵ The passport alone costs Cambodian migrants US\$80 for a passport valid for 5 years (US\$100 for 10 years). To secure a work permit in Thailand costs 3,000 Thai baht, (for 6 months to 1 year) and another 2,000 baht for a single entry work visa (VisaGuide. World, n.d.).

7.2. Licensing recruitment agencies

Section 6 above reviewed the efforts of policymakers to exercise some control over recruitment by passing laws and regulations that set the conditions for entry into the recruitment industry, empowered the government to oversee recruitment agency activities, prohibited certain acts and practices, and established the legal processes for dealing with violations. The laws and regulations sought to bring order to recruitment by regulating the behaviour of the key actors in the recruitment business – namely the recruitment agents. The main instrument relied on by governments for influencing the behaviour of recruitment agents is the license, without which recruitment will be considered illegal, as well as the conditions for its use, the violation of which can entail civil and criminal liabilities.

Table 4 shows the number of recruitment agencies with valid licenses as of 1 July 2021 in ASEAN countries. The data were obtained from labour authorities in ASEAN who agreed to take part in this study. The large number of agencies licensed by the authorities in some countries suggest the relative ease of entering the industry (due to, for example, low capital requirements, know-how not being prioritized, relaxed policies, and so on) as well as the size of the market. From the table one can immediately note that the two most important countries of employment – **Malaysia** and **Singapore** – have many licensed agencies. Another major country of employment, **Thailand**, has 243 agencies licensed to recruit abroad for employment in the country, as well as 132 agencies licensed to place Thais in jobs overseas or aboard ships. By contrast, the **Philippines**, a very large sending country, has 642 agencies; while the country with the largest population in the region, **Indonesia**, has only 329. This is no doubt due to the fact that, as noted earlier, almost half of Indonesia’s migrant workforce deployment is organized by informal job brokers.

► **Table 4. Comparative Size of Personnel Assigned to Inspect/Monitor Recruitment**

	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
No. of licensed recruitment agencies as of 1 July 2021	126	329	1034	n/a	642 ¹	3812	132 243 ²	523
Workers recruited for work abroad by year (annual flow)	26 000 (2015)	264 000 (2018)	n/a	95 300 (2015)	798 000 ³ (2017)	n/a	53 000 (2020)	116 000 (2015)
Foreign workers (est. stock)	n/a	n/a	2 million documented	n/a	n/a	174 000 on an S Pass	1.1 million (regularized)	n/a
No. of regulatory personnel assigned to inspect/monitor	27	n/a	462	n/a	6 (licensing branch)	170	154	50 ⁴ 7 126 574

n/a = data not available.

Sources: Various, including responses to the Questionnaire; ILO 2015.

¹ The Philippines reported 493 land-based recruitment agencies and 149 sea-based recruitment agencies with valid licenses in 2021.

² Thailand has 132 agencies that recruit Thai workers for work overseas, and 243 agencies that bring migrant workers to Thailand. There are another 229 recruiters licensed to recruit Thais for jobs in Thailand.

³ In 2017 the POEA reported 420,000 new hires of land-based workers + 378,000 new hires of seafarers.

⁴ Viet Nam’s Ministry of Labour, Invalids and Social Affairs (MOLISA) has regulatory personnel from different departments, operating at different levels of administration. Based on the questionnaire responses, 50 officers from the Division of Inspectorate and Legal Affairs, and the Division responsible for that particular labour market, in the Department of Overseas Labour have the responsibility to inspect and supervise, through the review and approval of, the list of recruited and trained workers prior to departure for overseas employment, and through the inspection activities on the operation of licensed service enterprises. Seven officers from the Section of Labour Policies Inspection in MOLISA’s Inspectorate are also involved. At the provincial level, the Departments of Labor, War Invalids and Social Affairs (DOLISAs) has assigned two inspectors for each province, which totals to 126 inspectors (two inspectors per province, for 63 provinces). Finally at the district level, the DOLISAs provide an officer for each district which totals to 574 officers (one officer per district for 574 districts).

The challenge facing the authorities in regulating recruitment may also be inferred, not only from the number of licensed recruiters relative to the number of inspectors, but also from the average size of placements by each recruiter. Table 4 shows the number of workers deployed abroad in certain years from each of the countries. Based on these figures, the average number of worker placements abroad per licensed recruiter in **Cambodia** and **Viet Nam** appear to be very similar (between 200 and 220 each); while the average deployment of licensed recruiters in the **Philippines** is the highest at 630 placements per recruiter, followed by **Thailand** (with 400). It is difficult to say what the average is for Indonesia because, as noted earlier, informal brokers organize much of the migration of workers, but there is no data on the number who migrant via these informal channels.¹⁶

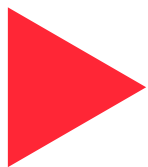
7.3. Adequacy of budget for regulation

The other side of the challenge facing authorities is the adequacy of the government budget typically allocated for the difficult task of regulating recruitment and protecting migrant workers. In 2011 the Philippine Overseas Employment Administration (POEA) and the Overseas Workers Welfare Administration (OWWA) had a combined budget of just US\$38.4 million, a miniscule share of the whole annual government budget, but even smaller amounts are allocated to the same work in the other countries of origin in ASEAN. In his review of migration infrastructures in Asia, Baruah (2016) noted that countries of origin are under-budgeting state funds dedicated over to foreign employment and had to create special contributory schemes, such as the OWWA in the Philippines, to raise resources for migrant support services. Considering the large contribution that labour migration makes to the economies of the region in the form of remittances to origin countries and contributions to GDP in destination countries, it is indeed curious that governments have not allocated more budgetary resources for controlling fraud and abuses in recruitment and for protecting workers.



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¹⁶ These averages are cited just for illustration. It is clear that these are not very meaningful where informal recruitment by unlicensed agents still takes place on a large scale.



8

8. Reporting requirements on recruiters

Licensed recruiters are required to regularly report on the workers they have contracted to work abroad, for which employers, the conditions in their contracts, when the workers are deployed and when they return, and any workers who have met with accidents or death. Table 5 below shows the types of information required to be reported by recruitment agencies and how frequently, based on the questionnaire responses received from the responsible ministries.

► **Table 5. Information required to be reported by licensed recruiters to the authorities, by country and frequency**

Information	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Employer–recruiter agreement	√	√	–	–	–	–	√	√
Job vacancies	–	–	Q	–	–	Q	–	√
Jobseekers	√	–	–	–	–	Q	–	–
Workers referred to employers	–	–	–	–	–	Q	–	√
Workers trained for work abroad	√	√	–	–	√	–	–	√
Accommodation of applicants for domestic work	–	–	–	–	Q	–	–	–
Workers placed/ deployed/trained	D	√	–	–	Q	–	–	M
Conditions of deployed workers	–	–	–	–	Q	–	–	–
Recruiter–worker contracts	√	√	–	–	–	Q	–	√
Contracts renewed	–	√	–	–	–	–	–	–
Terminations	M	–	–	–	–	–	–	√
Returns/ repatriations	√	√	–	–	–	–	–	M
Posted workers	–	–	–	–	–	–	–	√
Accidents/deaths	√	√	√	√	√	√	√	√
Corporate changes	–	–	–	–	√	–	–	–
Cessation of business	–	–	–	–	√	–	–	–
Address change	–	–	–	–	√	–	–	–

– = reporting not required; D = daily; M = monthly; Q = quarterly; √ = for each case/event.

In July 2014, **Cambodia's** Ministry of Labour and Vocational Training launched the Cambodian Migrant Workers Data Management System and started issuing Overseas Cambodian Worker Cards to those cleared for deployment abroad as migrant workers. The system enables the Ministry to quickly access the file on each migrant worker sent abroad and to determine when a worker has been prepared for deployment and when they were actually deployed. It also stores information on accidents, premature termination, and the end of contracted employment. **Indonesia** requires recruiters to report every month the number of workers “in the process of placement” and the number actually placed, by sex, for each destination country. However, the names of workers whose contracts are renewed, those who

have been repatriated, and those who are in some form of trouble must be reported immediately. In **Thailand** recruiters as required to report “within day 10 of the next month” the name of the employer, their telephone number, place of work, the job position, period of employment, salary and recruitment fees collected. The report shall also contain the name of the worker and their ID number, age, education and address. Recruiters for overseas jobs must submit similar details about the workers placed (name, address, ID number, education); the employers (names and address including telephone number); the job position; place of work; period of employment; salary; and fees collected from the jobseeker. Similar reports are required from recruiters placing seafarers aboard ships.

In **Viet Nam** licensed recruiters are required by the Department of Overseas Labour (DOLAB) to notify it whenever they recruit workers for overseas employment and send a list of deployed workers to the respective Vietnamese consular missions abroad. Prior to applying for their work visas, workers bound for Taiwan (China), China and Japan must be reported to DOLAB. For domestic workers recruited for Saudi Arabia, a pre-departure list must be sent to DOLISA. Each month the total number of workers deployed and those returning home must be reported. State-owned and non-profit entities recruiting workers for employment abroad must report the contents of their labour-supply contracts to the Ministry of Labour, Invalids and Social Affairs (MOLISA) before deploying workers, and must report the names of workers to the Vietnamese diplomatic mission as soon as the workers depart. Vietnamese companies that win contracts to undertake projects abroad using Vietnamese workers must show MOLISA a copy of their contract at least 20 days before sending workers abroad. They are also required to coordinate with Vietnamese diplomatic mission in the country concerned.

Similar requirements apply to organizations or individuals with offshore investments. **Singapore** requires every employment agency to submit to the Ministry of Manpower, every quarter, all applicants referred to an employer for a permanent or contractual job of at least six months’ duration with a fixed monthly salary of S\$3,000 and above. The Unique Entity Number of the employer and the National Registration Identification Card number of the foreign applicant must be included. The job position/occupation and the date of referral to the employer must also be included. In **Malaysia** the Department of Labour requires recruitment agencies to report every quarter the number of jobseekers registered, their placement and any fees collected. It likewise requires recruitment agencies to report every quarter the number of job vacancies and registered employers.



9

9. Reported violations of recruitment regulations

The study questionnaire posed two questions that sought to identify the most frequent violations of recruitment regulations and how these violations come to the attention of the authorities. The responses are shown in tables 6 and 7 below. Offering or advertising bogus or non-existent jobs is the classic example of recruitment fraud that is probably more widespread than what is evident from the responses to the questionnaire. The number of recruiters advertising bogus jobs was significant in number in **Viet Nam** and the **Philippines**, but was either not reported or only small numbers were reported by the other countries. Also notable is that no country reported recruiters deploying workers to non-existent jobs. The most frequent violations in **Malaysia** come as no surprise because of its known problems with undocumented or irregular migration. It reported many migrant workers without valid visas or work permits and also those with falsified passports/travel documents, but only one agency was reported to be involved for each violation. **Singapore** reported significant numbers of workers being placed in jobs they did not apply for and workers who were charged fees not allowed by law, but did not indicate how many agencies were involved. In **Viet Nam** and **Cambodia**, many recruiters were found to have offered bogus or non-existent jobs, and to have charged fees above what was legally allowed.

► **Table 6. Number and types of reported violations of recruitment regulations by recruitment agencies, by country (2019)**

Information	No. of agencies (no. of workers)							
	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Offering or advertising bogus or non-existent jobs	2 (2)	19 (70)	-	-	85 (109)	-	-	75 (75)
Deploying workers w/o duly approved contracts	-	-	-	-	9 (10)	-	-	-
Deploying workers to non-existent jobs	-	-	-	-	-	-	-	-
Deploying workers to jobs other than applied for	-	-	-	-	-	(215)	-	-
Deploying workers to prohibited countries/ jobs	-	-	-	-	1	-	-	-
Falsifying passports/ travel documents	-	-	1 (634)	-	49 (57)	-	-	-
Deploying workers w/o valid visa/permit to work	-	-	1 (7 614)	-	9 (10)	-	-	-
Substituting approved contract with inferior contract	-	-	-	-	20 (24)	-	-	-
Charging workers fees not allowed by law	-	53 (159)	-	-	44 (66)	(78)	-	-

Information	No. of agencies (no. of workers)							
	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Not issuing receipts for money paid by jobseekers	-	-	-	-	52 (74)	(33)	-	-
Not returning fees to failed job applicants	-	-	-	-	29 (36)	(14)	3	-
Failure to post abroad officer to monitor conditions of workers	-	-	-	-	92 (114)	-	-	-
Failure to report worker complaints of violations	-	-	-	-	93 (115)	(1)	-	-
Bribing officials/agents of the law	-	-	-	-	93 (115)	-	-	-
Accepting money in exchange for work visa	-	-	-	-	19 (22)	-	-	-
Recruiting undocumented foreign workers	-	-	-	-	-	(1)	-	-

- = No violations of this type reported.

Although the practice of overcharging jobseekers for recruitment fees is recognized to be widespread in Asia and elsewhere, it was mentioned only by **Indonesia** and **Singapore** as a frequently reported violation. This is particularly noteworthy since all the governments in the ASEAN region have been seized with this problem ever since labour migration started as a major phenomenon in the 1970s, prompting the adoption of a slew of regulations based on the idea that governments can set the price for recruitment services. The past three decades have shown that government-imposed standards on recruitment fees have been violated everywhere, in most instances with the grudging acceptance of workers. This was confirmed by ILO/KNOMAD surveys of recruitment costs incurred by migrant workers from Myanmar, Cambodia and the Lao People's Democratic Republic employed in **Thailand** and by Indonesian and Filipino domestic workers in **Malaysia**.¹⁷ In a recent study on recruitment of migrant workers, Wickramasekara (2020) reported that Malaysian recruitment agencies were charging Indonesian domestic workers 3,000 Malaysian ringgit (US\$640), or about two to three times their monthly wage, in addition to what the workers had to pay recruiters in Indonesia (see also, PE Research, unpublished).

Comparing the responses to the question on frequency of violations (table 6) to the responses to the question on sources of information (shown below in table 7), one notes that many sources of information were cited for various violations but then no such violations were reported, which suggests a need to view the responses with some caution. For example, the responses in table 7 from **Indonesia**, **Thailand** and **Viet Nam** strongly suggest that many more violations than were reported in table 6 have come to the attention of the authorities from a wide variety of sources, including workers, inspections, social media and newspapers, other government agencies, non-governmental organizations (NGOs) and trade unions. That said, table 6 is concerned with a single year (2019), while the information in table 7 may reflect respondents' experiences across multiple years, which may explain the discrepancy. **Malaysian** authorities reported that most violations came to their attention through inspections, as well as from the other government agencies and the press. **Singapore** reported that the authorities receive much of their information from "walk-ins" (presumably migrants raising complaints) and from emails sent by migrant workers and other interested parties.

¹⁷ The ILO/KNOMAD surveys of recruitment costs paid by workers provide a great deal of evidence that workers are paying much higher fees than what governments allow. For the survey in Thailand, see: https://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/documents/publication/wcms_740400.pdf. For the survey in Malaysia, see: https://www.ilo.org/asia/publications/WCMS_758614/lang-en/index.htm.

9.1. Guarantee requirements that raise recruitment costs borne by migrant workers

Some regulation issues in recruitment are attributed to workers, not to their recruiters. For instance, some migrant workers are tempted to leave their employers prior to the end of their contracts or to stay in their countries of employment even after the completion of their contracts, for a chance to accumulate more earnings. This became particularly notable in the case of Vietnamese workers who found employment in the Republic of Korea under that country's Employment Permit System (EPS).¹⁸ Due to the growing numbers of workers who left their employers prematurely, the Republic of Korea sought guarantees from EPS source countries that their workers will comply with their contracts. In **Viet Nam**, many workers selected to work in the Republic of Korea are asked to deposit with the private recruitment agency a financial guarantee or have a guarantor so that they will comply with their contractual obligation and return at the end of their contracts. This has the effect of raising the recruitment costs for Vietnamese workers. A survey of recruitment costs borne by migrant workers in the Republic of Korea coming from Viet Nam, Indonesia, Thailand, and the Philippines revealed that the highest costs were borne by Vietnamese workers, largely because the other countries do not require such guarantees (KNOMAD 2015). A recent study by the Viet Nam's Department of Overseas Labour (DOLAB) and the ILO concluded that the guarantee scheme is highly unpopular and was not achieving its objective (see box 5).

► Box 5. Viet Nam: Requiring guarantees from workers does not meet migration objectives

Due to a high incidence of workers leaving their employers prematurely or over-staying their work permits, Viet Nam law allows recruiters to require workers to pay deposits as a guarantee that they will complete their contracts. Alternatively, they can also have someone act as guarantor for their compliance. To examine the effectiveness of this policy, the ILO and DOLAB undertook a survey of 222 enterprises that sent a total of 114,017 workers abroad. It found that only 16 of the enterprises (7 per cent) requested a deposit to be paid by workers. In addition, 13,055 workers (11.5 per cent of all workers placed abroad by the surveyed enterprises) had to have a guarantor pay compensation in case the worker leaves their employment prior to the end of their contract. The highest number of guaranteed workers (8,896) were placed in Taiwan, China, accounting for 68.1 per cent of all workers signing guarantee agreements and 20.2 per cent of workers placed in that destination in 2019. In the same year, some 56 per cent of the 843 workers placed in the Republic of Korea were required to make a guarantee deposit. Of the deposits collected, only 3 per cent were garnished, and these were mainly from workers placed in the Republic of Korea. The recruitment enterprises surveyed reported that it was difficult to recruit workers, and charging deposits made it even more difficult. Moreover, the guarantee deposit requirement did not seem to achieve the stated objective of preventing contract breaches. The enterprises requested that the "guarantee deposits" be required of only some workers. Other measures that may better ensure worker compliance include rigorous hiring processes, comprehensive pre-departure briefings, ensuring worker support and choosing destinations with decent working conditions.

Source: ILO and DOLAB (unpublished).

¹⁸ The EPS is a guest worker programme instituted by the Republic of Korea that involves signed bilateral labour agreements with a number of Asian countries. No private for-profit recruitment intermediaries are involved in the selection of the workers, who must first pass a Korean language test before they can be considered. HRD Korea, a government agency, operates the system, which involves registering job offers from Korean employers and matching them with workers who passed the Korean language test and who are in the registers of the public employment offices of origin countries.



▶ 10

10. Sources of information

Table 7 shows the responses to the question: “How did these violations come to your attention?” It comes as no surprise that NGOs are cited prominently in the responses, since they are active in all the ASEAN countries and are well known to be accessible to migrant workers. It is also significant to note that trade unions are reported to have played a role in bringing violations to the attention of authorities in **Cambodia, Indonesia** and **Thailand**. It is well known that the Malaysian Trades Union Congress (MTUC) has been active in defending migrant worker rights in **Malaysia**, but trade unions were not cited as information sources in the Malaysian authorities’ response to the questionnaire. This is perhaps an oversight, which may also be the case for **Viet Nam**, where trade unions are actively involved in migration policy and governance.

► **Table 7. Sources of information regarding violations, by country**

Information	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore*	Thailand	Viet Nam
Key:	(W) Workers (I) Inspection (M) Media	(A) Other agencies (P) Newspaper (D) Diplomatic mission	(N) NGO (U) Trade union (-) No information provided concerning this violation					
Offering or advertising bogus or non-existent jobs	-	W, I, M, A, P, D, N, U	-	-	W, I, M, A, D	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D
Deploying workers w/o duly approved contracts	W, N, U	W, I, M, A, P, D, N, U	-	-	W, I, M, D, N	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D
Deploying workers to non-existent jobs	-	W, I, M, A, P, D, N, U	-	-	W, I, M, D	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D
Deploying workers to jobs other than applied for	W, N, U	W, I, M, A, P, D, N, U	I, A	-	W, I, M, D, N	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D
Deploying workers to prohibited countries/jobs	-	-	-	-	-	-	-	-
Falsifying passports/travel documents	-	-	-	-	-	-	-	-
Deploying workers w/o valid visa/permit to work	M, N, U	W, I, M, A, P, D, N, U	I, A, P	-	W, I, D, N	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D
Substituting approved contract with inferior contract	-	W, I, M, A, P, D, N, U	-	-	W, I, D, N	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D
Charging workers fees not allowed by law	M, N, U	W, I, M, A, P, D, N, U	-	-	W, I, M, N	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D
Not issuing receipts for money paid by jobseekers	W, N, U	W, I, M, A, P, D, N, U	-	-	W, I, M	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D
Not returning fees to failed job applicants	-	W, I, M, A, P, D, N, U	-	-	W, M	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D
Failure to post abroad officer to monitor conditions of workers	-	W, I, M, A, P, D, N, U	-	-	W, I, M, P, D, N	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D

Information	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore*	Thailand	Viet Nam
Key:	(W) Workers (I) Inspection (M) Media	(A) Other agencies (P) Newspaper (D) Diplomatic mission	(N) NGO (U) Trade union (-) No information provided concerning this violation					
Failure to report worker complaints of violations	-	W, I, M, A, P, D, N, U	-	-	W, I, M, D, N	-	-	W, I, M, A, P, D
Bribing officials/agents of the law	-	W, I, M, A, P, D, N, U	-	-	W, M, P, N	-	W, I, M, A, P, D, N, U	-
Accepting money in exchange for work visa	-	W, I, M, A, P, D, N, U	-	-	W, I	-	-	W, I, M, A, P, D
Recruiting undocumented foreign workers	-	W, I, M, A, P, D, N, U	I, A, P	-	-	-	W, I, M, A, P, D, N, U	W, I, M, A, P, D
Recruiting w/o valid license	W, M, N, U	W, I, M, A, P, D, N, U	I, A	-	W, I, M, A, D, N	-	W, I, M, A, P, D, N, U	-
Trafficking in persons	-	-	M, A	-	-	-	-	-
Others	-	-	-	-	-	-	-	-

*Singapore reported that authorities receive many of the complaints from “walk-ins” – presumably workers filing complaints – as well as from emails received from workers or from other parties.

10.1. Inspections

From the survey it is difficult to discern a common structure and approach to inspecting private recruitment agencies in the ASEAN countries. One notes from table 8 below that the number of inspectors relative to the challenge (as represented by the number of recruitment agencies) greatly varies from country to country. For instance, in the **Philippines** the POEA has only 6 inspectors (in the licensing branch) who must cover some 642 licensed agencies¹⁹; while **Malaysia's** Ministry of Human Resources has 462 inspectors for 1,034 agencies.²⁰ Some countries, like **Singapore**, have no officers dedicated solely to inspecting recruitment agencies, but the 170 officers dealing with migrant worker issues in Singapore's Ministry of Manpower do conduct inspections if deemed necessary. The same is probably also the case in **Thailand**, where the 154 officers who deal with migrant worker issues are also assigned to carry out inspections of agencies from time to time. In **Viet Nam** inspection at the central level is a joint responsibility of the central ministry (MOLISA and DOLAB) and the provincial staff of DOLISA assisting the Provincial People's Committees at the local level. While there are hundreds of officers in Viet Nam's 63 provinces who have responsibilities related to inspection, it is the 50 officers from the Legal Affairs and Inspection Division of DOLAB and the 7 officers of MOLISA's Inspectorate who, aside from reviewing and approving recruitment contracts, also inspect licensed enterprises. According to Viet Nam's response to the questionnaire, about 10 per cent of licensed recruitment agencies are inspected each year. Over a recent five-year period, some 264 recruitment enterprises were inspected and 83 were fined a total amount of nearly 8 billion dong (US\$324,000), while the licenses of about 15 were revoked.

¹⁹ In 2021 a new law was passed in the Philippines creating a new Department of Migrant Workers. The POEA has been absorbed into the Department.

²⁰ The response to the survey appears to omit the fact that the Department of Labor and Employment, under which the POEA is an attached agency, also mobilizes its larger inspectorate whenever needed.

► **Table 8. Overview of inspectorate related to recruitment, by country**

Country	No. of inspectors	Remarks
Cambodia	27	
Indonesia	3 task forces	Each has 10–15 staff assigned to inspect
Malaysia	462	Personnel assigned to monitor/inspect
Philippines	6	Only Licensing Branch
Singapore	170	
Thailand	154	
Viet Nam	57	+ 126 in provincial offices

Thailand's Ministry of Labour has 154 staff members responsible for inspecting and monitoring the activities of the 243 agencies that recruit foreign workers for Thai employers and 132 agencies that recruit Thais for foreign employment. In 2019, all 132 agencies recruiting Thais for foreign employment and 221 agencies that recruit foreign workers for employment in Thailand were inspected. Although inspections were cited in the questionnaire responses as a major source of information about recruitment violations, only three agencies had their licenses suspended in 2019. There were many violations reported in 2019, but only a handful of agencies appear to have been responsible for most of the cases.

In **Singapore** there are around 170 officers responsible for inspecting some 3,812 employment agencies and conducting investigations when necessary. In 2019 the violations reported to the Ministry of Labour from all sources included 215 cases of false declaration and deploying workers without valid visas or work permits, and others for charging workers fees not allowed by law, for failing to issue receipts for payments received, and for recruiting undocumented migrant workers, but how many of these violations were found out through inspections is not possible to tell from Singapore's response to the questionnaire.

Unlike inspection of health and safety conditions or of the payment of minimum wages, inspection of recruitment is understandably a more difficult job. There is little that one can easily observe or examine about the way recruitment is being conducted, except for the adequacy of office facilities²¹, the qualifications of the staff, and compliance with regulations on truthful advertising of available jobs. Contracts with foreign employer clients, deployment and the contracts of employment of recruited workers would have already been submitted to the authorities even in the absence of inspections while records of financial transactions will naturally not include fees collected from workers that violate legal limits. The Thai Department of Employment reported that during inspections, recruitment agencies are required to show ten documents, including their license, the names of their employees, their request to the Department of Employment for a list of jobseekers, the register of workers seeking jobs abroad and their skill certificates (if any), employment permits for jobs abroad, the employment contracts, the receipts for payments, the names of recruits waiting for deployment, and their register of workers sent abroad.

The challenges to regulation can be reduced if inspections are conducted before rather than after granting licenses to applicants to establish their capacity for recruitment, in particular their financial standing, their technical competence to undertake recruitment, and their possession of adequate physical facilities. At the same time, there must be an effort to inform the public – especially potential migrants – about fraudulent and deceptive practices in recruitment. Workers must be made fully aware of their rights and responsibilities. Some countries have added safeguards, such as **Thailand's** requirement that recruitment agencies not be located in hotels, in childcare facilities or in pawnshops. In **Viet Nam**, the authorities have found that some recruitment agencies do not keep appropriate accounting records and do not issue receipts for money received from the applicants or their employer clients. It is clearly important that they be required to do so. Authorities also found that some recruiters do not provide essential information about the jobs they are offering, intentionally or unintentionally. The same has been noted in **Cambodia**, where authorities reported that employment contracts often do not contain complete information about the terms of employment. They suggested that Migrant Worker Resource Centres be mobilized to help in reporting violations.

For greater effectiveness, unannounced inspections should be incorporated into inspection programmes. Moreover, the task is very demanding and requires the involvement of other departments/ministries in

²¹ Viet Nam also requires the agency to have training facilities.

monitoring and curbing violations of recruitment regulations. In the same vein, some countries cite as a serious handicap the inadequacy of the number of labour attachés they have posted in major destination countries given the many tasks they are required to undertake. Finally, the cooperation of destination country authorities will certainly be helpful, especially in providing information about bogus job offers and in reporting on malpractices committed by some of their recruiters.

10.2. Social media

The growth of labour migration in recent decades has placed enormous demands on governments to respond to migrant worker complaints of fraud and abuses. Along with the growth in numbers of migrants is the explosion of communication via social media platforms like Facebook and Tik Tok. With virtually every migrant now possessing a mobile phone, most have the ability and the means to pass on to their families and friends information about jobs and other opportunities beyond their borders, as well as to reach out to the authorities to communicate difficulties and to seek help. These developments evidently offer important new modalities for monitoring the conditions of a country's migrant workforce abroad and raise questions on how social media may complement or even replace conventional approaches to regulation. For example, a recent case of a Thai woman who was deceived into accepting a job that turned out to be for prostitution demonstrates the value of social media (see box 6). While pre-departure briefings given to newly-recruited workers invariably include information about how to contact a country's diplomatic representative in the host country, as well as the labour authorities there, there is still no facility in any of the ASEAN countries for a communication office similar to a call centre that is dedicated to migrants.

► Box 6. Case study: The role of social media in uncovering recruitment abuses

Convinced by a person she got to know on Facebook, a Thai woman accepted work as a masseuse in the United Arab Emirates, only to end up being forced to work as a sex worker. She entered Dubai with a tourist visa after agreeing with the broker who contacted her that she would not have a fixed salary but would receive 30,000-40,000 baht per month in service commissions. Upon arrival, her passport was taken by the broker and she was brought someplace outside of the city and ordered to work as a prostitute. When she refused, the broker demanded that she pay them back 70,000 baht for her flight tickets, visa and other costs. Fortunately, she was able to describe her predicament on Facebook and ask for help. Her predicament was picked up by some news agencies and featured in news releases. Thai government agencies thus became aware of the incident and proceeded to help her. Working together, the labour division of the Thai Embassy in Abu Dhabi and the Thai Consulate in Dubai managed to contact her through Line chat. When the broker learned that she had contacted Thai government agencies, and that there was already coverage of her case on social media, her passport was returned to her and arrangement was made for her to be brought by taxi to the airport for return to Thailand. The Thai officials on the case were able to get hold of the taxi driver and asked him to bring her to the Thai Consulate in Dubai instead. Since this was during the COVID-19 pandemic, officials got the woman registered for a Certificate of Entry (COE) and arranged for her quarantine accommodation upon arrival. She arrived in Bangkok on 21 September 2021. This case of brokering for prostitution is currently under investigation.

Source: Ministry of Labour, Kingdom of Thailand, 2021.

10.3. Diplomatic missions

The survey shows that diplomatic missions are indeed important sources of information. Although most missions are under-staffed and under-resourced, labour attachés or their counterparts are the country of origin officials on the front line and are relied on to:

- ▶ be aware of and to report on the many problems that can occur between workers and their employers;
- ▶ screen the qualifications of employers wishing to recruit from their country;
- ▶ represent workers facing legal issues before the authorities in the host country;
- ▶ arrange the repatriation of workers being sent back home; and
- ▶ respond to emergencies.

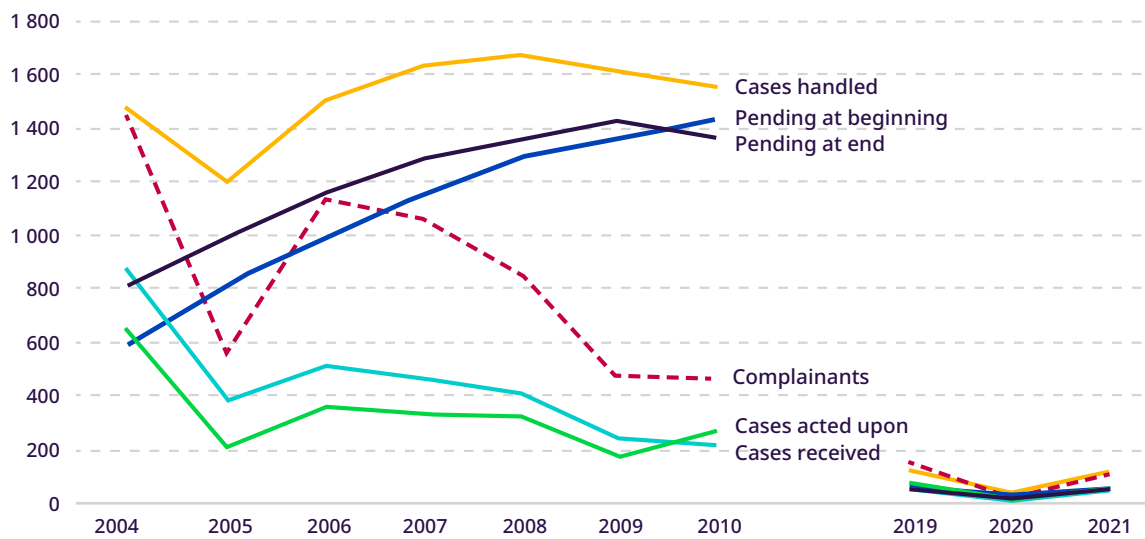
In principle, labour attachés and other diplomatic officials are well placed to alert the authorities at home of recruitment scams, employers with bad records, the “visa-trading” occurring in some countries, workers who need to be rescued and repatriated, and so on. There is still no alternative to having representatives with diplomatic status in a foreign country who can represent their fellow-nationals before a court or other authorities. The role diplomatic officials played in the rescue of a Thai woman described in box 6 above is a good example of their role.

10.4. Investigating complaints

The questionnaire also enquired about how regulatory agencies usually respond to reports of violations that may require urgent attention and action, citing as examples the deployment of minors, trafficking and forced labour of women, and deploying workers without valid visas. From the responses it appears that there are no standard procedures in any of the ASEAN countries. How authorities respond depends very much on the nature of the violation and the circumstances. For example, in a case of a complaint by supposed-trainees that they were actually not being trained but were being made to work, **Indonesia’s** Ministry of Manpower asked the Ministry of Education to help in investigating the matter. The authorities in **Singapore** reported that they find it very helpful to have in-person interviews whenever possible in order to assess the merits of a complaint. Female officers are assigned when sexual offenses are involved, and usually the matter is brought to the attention of the police. If the recruitment agent is found to be negligent or at fault the Ministry may impose a fine, have the agency’s security bond forfeited, or revoke its license.

How representative the reported cases in table 6 are of the violations that typically occur in the countries is unfortunately not possible to gauge from data on only one year (in this case, 2019), but the survey was constrained by time and by the circumstances of doing a survey during the pandemic. In the **Philippines** the number of complaints does appear to have declined over the years. The figure below shows data on cases of illegal recruitment for the periods of 2004–10 and 2019–21 and their disposition, as published by the POEA in its annual reports. Unfortunately, data for the in-between years are not included in published documents. The number of complainants and cases appear to have been on a downward trend over the period covered, and to have significantly declined in recent years. Particularly notable is that while the number of complainants dropped sharply after 2005, the number of cases pending resolution continued to mount until 2009, suggesting that it takes time to resolve them. The data behind the figure (shown in appendix table 1) also show that the number of persons arrested for illegal recruitment rose sharply in 2006 and again in 2008 and 2009. With the travel bans and the havoc caused by COVID-19 starting in the first quarter of 2020, the number of complaints dropped substantially over the past two years to just a fraction of the number for 2006. But even disregarding the pandemic, the number of complaints received in 2019 is less than 7 per cent of the number received in 2004. A more detailed account of how the POEA acted on complaints received in 2014 is described in box 7 below.

► **Figure 1. POEA complaint case load, 2004–10 and 2019–21**



Note: Data for the period 2011–18 was not available due to their not being included in the POEA annual reports for those years.
Source: 2004–2010 – POEA annual reports; 2019–2021 – data provided directly by the POEA.

► **Box 7. The POEA acting on complaints**

The following is an excerpt from the POEA’s *2014 Annual Report*:

From January to December 2014, the POEA assisted a total of 8,757 complainants of illegal recruitment and recruitment violations against licensed agencies. Of the total, 427 were complainants involving cases of illegal recruitment, 7,415 were complainants of recruitment violations, 189 were complainants in filing Disciplinary Action against Workers (DAW) and 375 were complainants for Disciplinary Action against Employers (DAE). The POEA also conducted surveillance of 167 establishments allegedly engaged in illegal recruitment activities. These operations resulted in the closure of 12 establishments confirmed to be engaged in illegal recruitment activities. For 2014, the POEA endorsed a total of 137 cases involving 235 complainants to the different City and Provincial Prosecution Offices for the conduct of preliminary investigation. While this number is lower than 2013’s total of 187 endorsed cases, still these cases manifested the willingness and cooperation of the complainants in the prosecution of illegal recruiters. With the intensified AIR-TIP [Anti-Illegal Recruitment/Trafficking in Persons] Campaign seminars conducted nationwide, victims of illegal recruitment were informed of their rights to go after their recruiters even if recruitment happened three to four years ago. Expedient disposition of cases was a main agenda in 2014. From a target of 4,200 adjudication cases, a total of 3,896 cases were disposed for a 92.8% disposition rate, a manifestation of the Administration’s seriousness in implementing its deployment policies. These include the cancellation of 63 licensed agencies for the blatant disregard of recruitment rules and regulations.

Source: POEA 2015, 19, The Republic of the Philippines.

Information on the number of agencies penalized with various types of sanctions does raise questions as to what they reveal about the incidence of violations in recruitment. Does the small number of licenses cancelled show that there are few serious violations? Or do they indicate that most complaints are settled by agreement between the complainants and the recruiters? Table 9 below shows the responses to the question on how complaints received in 2019 have been settled, and the responses suggest that the authorities find it difficult to establish sufficient grounds for cancelling licenses and instead use warnings and other sanctions to enforce their regulations. Indeed, most complaints are settled through conciliation according to the questionnaire responses.

In **Singapore** it was mostly contractual issues (“those not regulated under the legislation”) that were settled through conciliation in 2019. The few cases that reached the courts went to a Small Claims Tribunal for resolution; while the majority of complaints were simply decided on by the hearing officer of the Labour Ministry. In all the countries surveyed, only a few cases reached the courts or got referred to higher authorities like the Minister for a decision.

► **Box 8. ILO study: Most complaints in Thailand settled out of court**

The following is an excerpt from ILO, *Regulation Recruitment of Migrant Workers: An Assessment of Complaint Mechanisms in Thailand*, 2013, 23:

In practice, informal out-of-court settlements remain at the core of resolving many recruitment-related complaints. After the government officer has collected evidence and testimony from the complainant, the accused agent and any other parties involved are given an opportunity to defend themselves against the allegation. The parties will first meet to try to reconcile their differences through mediation. Frequently, the procedure for resolving complaints made by a worker ends during this stage as the accused agent will offer a monetary settlement as compensation. If the worker is satisfied with the offer, then the case is settled.

Workers who suffer from recruitment fraud and abuses typically prefer to simply have a financial settlement rather than go to the full length of having the perpetrators arrested and jailed. A legal prosecution can take many months of investigation, hearings before a judge and representation by a lawyer – processes that few workers can afford to go through because they have families to support and may already be heavily in debt. Some workers also worry that the recruiter may actually take revenge if they win. In most instances the authorities also prefer other ways of settling complaints, since prosecution can tie up scarce personnel resources at the cost of responding to other important problems.²² The private recruiters accused of wrongdoing would also prefer not to go through legal procedures unless they think that they can save money by doing so. For these reasons, most recruitment rule violations are resolved either through conciliation or through arbitration. The accused will typically offer the plaintiff money to drop the case, and both will settle the case out of court.

► **Table 9. Approach taken by national authorities to resolve complaints, 2019**

Resolution	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Key:	**** – Most complaints resolved this way; *** – Many complaints resolved this way; ** – A few complaints resolved this way; * – No complaints resolved this way.							
Conciliation or amicable settlement by the parties	**** 29 cases involving 153 workers	***	***	n/a	***	***	***	n/a
Decided by the office/responsible hearing officer	*	**	n/a	n/a	**	****	**	**
Referred to police or border enforcement agents	** 1 case	**	n/a	n/a	*	**	*	**
Civil case brought to the courts for settlement	*	**	**	n/a	**	**	*	n/a

²² An ILO (2013, 26) study showed that of the 1,649 complaints received in Thailand in the period 2010–11, about 65 per cent remained unsolved by end of 2011.

Resolution	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Key:	**** – Most complaints resolved this way; *** – Many complaints resolved this way; ** – A few complaints resolved this way; * – No complaints resolved this way.							
Referred to Minister or higher authorities	** 1 case	**	n/a	n/a	*	**	**	n/a
Case unsettled/ requiring further action	*	**	n/a	n/a	**	**	*	n/a

n/a = information not available/not supplied.

The survey for this report confirms this tendency for recruitment complaints to be mostly settled through conciliation or through arbitration by a third party. Although table 9 only reflects the data for 2019, it demonstrates that cases brought before a court account for only a few of the complaints filed in Indonesia, Malaysia, the Philippines, and Singapore – and no such cases were reported in Cambodia and Thailand. A few cases in Cambodia, Indonesia, Singapore and Thailand were referred to higher authorities for settlement, and none were in the Philippines.

A typical process by which most cases get settled is illustrated in the case of Myanmar fishers recruited by an unlicensed broker in Ranong Province in Thailand who failed to pay the workers what they were promised (see box 9).

► Box 9. Case study: Typical process of settling complaints in Thailand

On 3 March 2021, 11 Myanmar fishers in Thailand’s Ranong Province sought assistance from the Fishers’ Rights Network because they were not paid according to the terms of their contracts. Thailand has a regulation that required employers to pay fishers monthly by electronic payment into their bank accounts. The fishing boat operator pretended to comply with the regulation by transferring the workers’ wages to their accounts in order to leave a paper trail, but since he had control of the fishers’ bank books and identity cards, he was able to withdraw the money before the workers did. The foreman, also a Myanmar national who recruited the workers illegally since he had no license, then paid the fishers’ wages, which were much lower than what they agreed to.

The 11 fishers chose to stand together and report their case to Ports-in Ports-Out (PIPO) Ranong. The vessel owner tried to distance himself from the case, refusing to pay and claiming it was the foreman’s responsibility to pay the workers. The latter however also refused to pay the balance of what the workers were owed. When the matter was brought to its attention, the Ranong Office of Department of Labour Protection and Welfare (DLPW) conducted a full investigation. It found that the fishing boat operator violated the law by keeping the documents of the workers illegally, by not paying them their full wages, and for not observing the standards on working conditions. The process took four months, during which time it was alleged that some officers of the DLPW had pressured the fishers to informally settle outside of court, but the fishers were finally paid in full.

Source: Fishers’ Rights Network, 2021. See also Prachatai. Fishers Rights Network (FRN) wins landmark victory on back wages. 23 June 2021, <https://prachatai.com/english/node/9307>.



▶ 11

11. Sanctions against violations of recruitment regulations

The strategies that governments in the ASEAN region have used to influence behavior in the recruitment market are basically similar – cancelling or suspending licenses, imposing financial penalties, charging offenders in court, or using other sanctions. What differs is the way reported violations are handled by the authorities before penalties are imposed, such as the extent to which they go to examine the merits of each complaint or to find amicable solutions. Where the numbers of cases are large, the authorities may have little choice but to adopt standard procedures and impose strict deadlines for resolving cases. Table 10 below shows the responses of the national authorities to the question of what penalties or sanctions are imposed for a variety of violations of recruitment regulations. Most countries reported “license suspension” and “license cancellation” and bringing cases to the courts as instruments in their regulatory tool-box. Financial penalties, usually in the form of garnishing a recruiter’s financial guarantee, is likewise an option for most. It is notable from table 10 that none of the usual penalties are in **Cambodia’s** tool-box, while license cancellation and suspension are the basically the only penalty options in the **Philippines**.

► **Table 10. Penalties and sanctions against recruitment offenses**

Offense	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Key:	(C) Cancellation of license; (S) Suspension of license; (F) Financial penalty	(X) Charged in court; (O) Other; -) No penalty provided						
Offering or advertising bogus or non-existent jobs	O	C, S, X, O	-	-	C	-	CSFX	CSF
Deploying workers w/o duly approved contracts	-	CSFXO	-	-	C	-	CSFX	CSF
Deploying workers to non-existent jobs	-	C, S, F, X, O	-	-	C	C, S, F, X, O	C, S, F, X	C, S, F
Deploying workers to jobs other than applied for	-	C, S, F, X, O	-	-	C	C, S, F, X, O	C, S, F, X	C, S, F
Deploying workers to prohibited countries/ jobs	-	C, S, F, X, O	-	-	C	-	C, S, F, X	C, S, F
Falsifying passports/ travel documents	-	C, S, F, X, O	F, X, O	-	CS	-	-	C, O
Deploying workers w/o valid visa/ permit to work	-	C, S, F, X, O	F, X, O	-	C	C, S, F, X, O	C, S, F, X	C, S, F
Substituting approved contract with inferior contract	-	C, S, F, X, O	-	-	CS	-	C, S, F, X	C, S, F
Charging workers fees not allowed by law	-	C, S, F, X, O	-	-	C	C, S, F, X, O	C, S, F, X	C, S, F

Offense	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Key:	(C) Cancellation of license; (S) Suspension of license; (F) Financial penalty		(X) Charged in court; (O) Other; -) No penalty provided					
Not issuing receipts for money paid by jobseekers	-	C, F	-	-	S	C, S, F, X, O	C, S, F, X	C, S, F, O
Not returning fees to failed job applicants	-	C, S, F, X, O	-	-	-	C, S, F, X, O	C, S, F, X	C, S, F
Failure to post abroad officer to monitor conditions of workers	-	S	-	-	-	-	C, S, F, X	C, S, F
Failure to report worker complaints of violations	-	C, S, F, X, O	-	-	CS	C, S, F, X, O	-	C, S, F
Bribing officials/ agents of the law	-	C, S, F, X, O	X	-	O	-	-	-
Accepting money in exchange for work visa	-	S, F	-	-	-	-	-	C, O
Recruiting undocumented foreign workers	-	C, S, F, X, O	F, X, O	-	-	C, S, F, X, O	C, S, F, X	O
Recruiting w/o valid license	-	-	X	-	-	-	-	-
Trafficking in persons	-	-	S	-	-	-	-	-
Others	-	-	-	-	-	-	-	-

Although recruitment fraud and abuses are problems that are widely recognized in the region, in 2019 relatively few licensed recruitment agencies actually were sanctioned by ASEAN governments for infringement or violation of recruitment regulations, and as noted above the primary approach used to address violations was conciliation between the parties involved. Responses to the questionnaire tabulated in table 11 shows the number of agencies subjected to various sanctions in each country. **Singapore** has 3,812 licensed recruiters, but authorities cancelled only 6 licenses and suspended 6 in 2019. Instead, the authorities there relied more on issuing warnings to agencies and imposing fines. In **Malaysia** the authorities did not cancel any licenses, and only took legal action against 2 of the country's 1,034 licensed recruiters. **Indonesian** authorities suspended 12 out of 329 licensed agencies; while the **Philippines** suspended the licenses of 33 and cancelled the licenses of 14. **Viet Nam**, which has 523 licensed agencies, cancelled only 2 licenses but imposed fines on 24 recruiters. Overall, it appears that in 2019, with the exception of the Philippines, only a small proportion of licensed agencies have been sanctioned by the national authorities for recruitment rules violations.



► Table 11. Number of agencies subjected to inspections and sanctions in 2019

Inspection/ sanction	Cambodia	Indonesia	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Agencies under regular inspection	68	-	-	-	-	-	-	-
Agencies under special inspection	21	-	-	-	-	-	-	-
Issued warning/ pressured violator to settle with complainant	12 53 ¹	-	-	-	-	74	-	-
Suspended processing of contracts already submitted	-	-	-	-	-	-	-	1
Imposed fines/ garnished financial guarantee deposit	-	-	-	-	-	22	-	24
Suspended license	-	12	-	-	33	6	3	-
Blacklisted/ publicized violating agencies	-	-	1	-	-	-	-	-
Cancelled licenses	-	-	-	-	14	6	-	2
Took legal action through the courts	-	-	2	-	-	4	-	-
Ensured regulations followed by agencies	53	-	-	-	-	-	-	-
Agencies with valid licenses as of 1 July 2021	126	329	1034		1266	3812	132 243 ²	523

- = Action not taken against any recruitment agency.

¹ Agencies ordered to implement working conditions improvements, but no penalty for non-compliance specified.

² Thailand has 132 agencies that recruit Thai workers for work overseas, and 243 agencies that bring migrant workers to Thailand. There are another 229 recruiters licensed to recruit Thais for jobs in Thailand.

11.1. Why most complaints are settled out of court

Whether or not a case will reach the courts for settlement usually depends on the what the parties think of the likelihood of winning and the costs and benefits of alternative outcomes. The likelihood of winning usually is based on perceptions of the fairness of the justice system and the impartiality of those involved, particularly the government officers who conduct the investigations, the officers in the labour department who receive the complaints, and the skills of the conciliators or arbitrators assigned to settle the matter. An analysis of over 1,000 complaints from 7,640 complainants recorded by Migrant Worker Resource Centres ²³ from 2011 to 2015 found that “delays in deployment” and “jobs not provided” were the most common complaints among prospective migrant workers in origin countries; while “non-payment and under-payment of wages” were most common from migrants already employed abroad (Harkins et al. 2017).

The costs and benefits of alternative outcomes depend in turn on the policies and regulations of the State. The threat of license suspension or cancellation, especially where such a license is very costly to obtain, often puts enough pressure on the recruiter to settle matters quickly with the complainants. Licensed recruiters in the **Philippines** complain that the “joint and solidary principle” adopted in Philippine laws on recruitment puts them at a great disadvantage. The licensed recruiter, who is

²³ Starting in 2011 the ILO’s TRIANGLE in ASEAN Programme supported the operation of Migrant Worker Resource Centres (MRCs) in Cambodia, the Lao People’s Democratic Republic, Myanmar, Thailand and Viet Nam. The MRCs allowed migrants and members of their families to seek redress for abuses during recruitment and employment (Harkins and Ahlberg 2017).

made answerable also for actions of their employer client abroad, stands to lose business whenever a complaint for contract violation is brought by a migrant worker to the attention of the POEA. The simple action of the POEA “freezing” the process of approving contracts can have very costly consequences for a recruiter with a thriving business. Winning a case usually means little financial reward for the recruiter, but losing a case can be devastating.

A wider and larger problem is that many cases of abuse or rights violation never reach the attention of the authorities. Migrant workers who suffer from unpaid wages or other violations of their contracts by their employers are often reluctant to raise their complaints to the authorities because of what their employers are likely to do in response, like reporting that the worker has abandoned their job or absconded, thereby triggering the cancellation of their work permit. The predicament of some **Indonesian** migrant workers in Malaysia is described in a study by Wahyono (2006, 37):

When a migrant worker seeks redress for unpaid wages or raises other forms of labour disputes or abuses, the employer often retaliates by cancelling the work permit. As a result the migrant worker loses his or her status in the country and his or her right to stay. Without a visa, the worker is unable to continue his or her case through the courts. To enable him or her to pursue his or her case, the Immigration Department only gives the worker a [1] month special pass at RM [ringgit] 100.00 per month. The worker is not allowed to work under this pass.

Cases like these underscore the importance of having a system that puts pressure on recruiters to be very careful in choosing their foreign employer clients. They also illustrate the importance of establishing a procedure whereby a foreign employer is required to first establish their qualifications to employ a migrant worker before allowing recruitment to take place. Most ASEAN countries of origin now have labour attachés or similar diplomatic representatives who are tasked with checking employer qualifications, but the task is obviously a heavy one that often requires more personnel and other resources than are currently available.

In **Thailand** a study of how migrant workers are able to access assistance from local government authorities in case their employers fail to pay them their due wages revealed that fear of retaliation by the employer and lack of sufficient language skills to be able to make their case have effectively deprived migrant workers of the means to air their complaints. Their recruiters, wishing to avoid any problems with the authorities, tend to advise workers to simply reach an amicable solution with their employers (ILO 2013; ILO 2020b; Harkins and Åhlberg 2017).



▶ 12

12. Development of fair and ethical recruitment principles

The high cost of recruitment incurred by many migrant workers has motivated efforts by many organizations – especially the ILO, the International Organization for Migration (IOM), and the World Bank – to examine the extent of the phenomenon and to find solutions. The ILO Private Employment Agencies Convention, 1997 (No. 181), urges ILO Member States to adhere to the general principle that workers should not be charged recruitment fees and related costs. In response to the new international standards and public exposure of exploitative practices in their supply chains, some international companies now require their suppliers to follow ethical recruitment principles. The IOM launched the International Recruitment Integrity System (IRIS), an ethical recruitment initiative aimed at getting cooperation between governments and the private sector to establish ethical recruitment as a norm in cross-border labour migration.²⁴ For its part, the World Bank's migration knowledge-sharing initiative, KNOMAD, has worked to find evidence and measure the recruitment costs paid by migrant workers in a number of countries across different regions.

Political and social pressure do have an impact on who pays for recruitment costs, but high unemployment and large wage differentials between countries still pose enormous challenges. Some have earlier argued that the wage differential between the country of origin and the country of employment, as well as the expected length of employment, set the limit for what workers will be willing to pay a recruiter to get a job (Abella 2004). For example, a Myanmar farmer seeking work in Thailand knows that they cannot expect to earn more than US\$816 a year by staying at home, but may be able to earn US\$2,568 by instead looking for work in Thailand. If they can continue to work for additional years in Thailand the temptation to migrate will be that much stronger, tempting them to pay a recruiter much higher fees than what the Myanmar authorities have set as a limit. They may even be willing to use irregular migration channels as well as pay recruiters on both sides of the border in order to get such jobs. As in other countries, authorities in Myanmar are faced with the dilemma of setting a realistic legal ceiling on recruitment fees knowing that setting it low will undoubtedly lead to widespread violation, but setting it high will be politically unpopular. The recent ILO/KNOMAD surveys of recruitment costs paid by migrants in **Malaysia** confirmed that most have paid costs much higher than the limits set by the authorities in their countries of origin as well as in their host countries. The survey revealed that Indonesian fruit pickers who were earning US\$117 a month on average before they left home were promised an average monthly wage of US\$274 in Malaysia, but actually earned an average of US\$342. It is therefore not surprising that they were willing to pay an average of US\$464 to recruiters (some of which was deducted from their pay when they started working) to get their jobs (ILO 2022).

In countries with a surplus of unemployed labour, those recruiters possessing some kind of monopoly of information about desirable jobs in other countries are often able to charge jobseekers much higher fees for providing placement than what the law allows. The threat of getting reported and having their operation stopped may dissuade licensed recruiters from violating the law, but the threat will not make a difference to those already operating outside the law, including informal brokers. This makes it doubly important for policies and regulations to take these market realities into account and to consider what structures of governance will be required to curb possible excesses. A “carrot and stick” approach that uses both incentives and penalties has frequently been suggested to motivate recruiters to act in a manner that protects the interest of the workers (Agunias 2012; Martin 2017).

²⁴ For more information on IRIS, see: <https://iris.iom.int>.

In his book *Merchants of labor*, Martin (2017, 141) has proposed using a combination of strong penalties and incentives. He argues for a policy framework that “fosters a race to the top among recruiters to satisfy both employers and workers rather than a race to the bottom (one that extracts payments from them), since these can improve both equity and efficiency in international labor recruitment”. In Martin’s view making the transition from agents to partners requires a new business model. Recruiters must invest to learn about job requirements abroad and to give workers needed skills at home, and recoup these investments over time with multiple worker–job matches. Since migration helps individuals to achieve upward mobility and speeds economic growth in poorer countries of origin, the best recruiters can be considered partners for development and should be treated as such, being subsidized rather than taxed by origin country governments. Providing incentives for good recruiter behavior may do more to help migrants than focusing solely on the enforcement of laws that regulate recruiters.

Government incentives to improve recruitment can be aimed at individual recruiters or designed to change the structure of the recruiting industry. The **Philippines** grants “Presidential Awards” to the best performers in the industry, which entitle recipients to faster processing and sped up worker deployment. Unlike other agencies, Presidential Awardees are exempted from securing the prior approval of labour attachés abroad for the jobs they are offered. This greatly shortens the process and helps them to win more business from foreign employers and to build up a strong labour supply base.

Recruitment agencies with a strong (and ethical) performance record could be levied lower or no taxes and accompany political leaders abroad to be introduced to “good employers” abroad. Governments may use other incentives to foster fewer, larger recruiters who can achieve economies of scale and develop reputations to protect, and allow foreign employers to recruit workers directly using experienced country of origin nationals who understand what is required to perform the job abroad and are able to evaluate the credentials of local workers. Policies should aim to foster stable employer–recruiter partnerships that reward investments in efficient and protective job matching over time.





▶ 13

13. Bilateral labour agreements and MOUs

In curbing fraud and abuses in recruitment the importance of coordinated action at both ends of the migration link cannot be overstated. Countries of origin have no power to enforce their regulations outside of their national boundaries, except where contractual obligations are recognized in other States. Countries of destination are unable to maintain labour standards when workers from other countries are able to cross their borders freely and accept any terms they are offered. Countries of origin have sought to remedy the enforcement situation by supervising the act of employment contracting, requiring that job contracts observe standards set by the authorities, and these contracts are accepted by and duly signed by foreign employers before clearance to leave is granted to migrant workers. However, this intervention clearly has little meaning where the State of employment does not recognize the contract or has neither the ability nor the interest to enforce it. Where the situation deteriorates to the extent that it is endangering friendly relations between the States, agreements are often reached on more active engagement of state bodies in regulating cross-border movements, ensuring that workers are documented and their rights are protected, and supervising their recruitment and employment. In the ASEAN region, recent decades have seen a number of bilateral agreements emerge, particularly where undocumented migration has sharply risen, as in the case of the migration corridors between Thailand and its neighboring countries or migration to Malaysia from Indonesia and Cambodia.

While the stated objectives of these bilateral agreements (mainly in the form of non-binding MOUs between governments) are to minimize irregular movements across borders and to provide better protection to migrant workers through enforceable contracts, some have not succeeded in improving the situation on the ground. In most cases the principal reason for failure is the establishment of overlapping and unnecessary controls over recruitment, with many agencies involved in obtaining clearances, requiring various certificates and background documents, and charging high fees for passports. A 2018 ILO-UNDP study found that the average waiting time for Laotian workers from the time of signing the agreement with the recruitment agency to travel to Thailand was two to five months. This is enough to encourage workers to go through irregular channels, which takes less time, are less costly, and enable the workers to change employers.



▶ 14

14. Training of regulation officers

The questionnaire used to gather information for this report solicited information about the subject matter that officers assigned to enforce recruitment regulations were trained in and the approximate amount of time devoted to training. It was a complex question for which a variety of responses were received. In **Cambodia** some 187 training hours have been devoted to familiarizing officers with the labour laws of the country, deployment processes, agreements with other countries, labour contracts, apprenticeship schemes, labour inspection, social security, health and safety, and dispute settlement. In **Indonesia** officers are trained in how to verify if a recruitment agency has the appropriate permit (SIP2MI), how to receive complaints and investigate trafficking in persons, and how to mediate in disputes. In **Viet Nam** officers are trained over a period of one to two days to learn about the provisions of the law on sending workers abroad, and on the laws and regulations of the countries where Vietnamese workers are employed.

In **Singapore** the officers have to be very familiar with the provisions of the Employment of Foreign Manpower Act (11.5 hours of training), the Employment Agencies Act (3 hours), legislation related to migrant domestic workers (3 hours), and the Foreign Employee Dormitories Act (2.5 hours). In addition, much attention is devoted to training them on investigation and how to use digital evidence (digital forensics) in support of investigations, how to utilize person-centred interviewing techniques, and how to prepare reports. In **Malaysia** the training is to familiarize the officers with the provisions of the Private Employment Agencies Act of 1981. In **Thailand** the training focuses on the role and mandate of the Department of Employment, and on inspection and protection of jobseekers and migrant workers.



▶ 15

15. Suggestions for improving regulatory policies and systems

As a final question, the questionnaire asked the national authorities if they thought their current regulations and enforcement systems were adequate to curb malpractices and fraud in recruitment, and if not, what improvements they would recommend.

Singapore's Ministry of Manpower (MOM) made a number of recommendations for improving their effectiveness in regulating recruitment:

- ▶ **Greater use of technology to detect malpractices in recruitment:** In recent years, the MOM has made use of data analytics to detect anomalies and fraud in the employment of migrant workers more quickly and accurately. This has helped proactively detect cases, in addition to relying on the complaints and tip-offs that they receive from NGOs, migrant worker resource centres, embassies, and migrant workers themselves.
- ▶ **Greater engagement with, and education of, migrant workers on fair recruitment practices:** The MOM has been educating migrant workers to report underpayment of salaries and employment kickbacks through various platforms and initiatives such as the FWMOMCare app, the mandatory "Settling-In Programmes" for first-time work permit holders, and road shows.
- ▶ Regular presence of MOM's Forward Assurance and Support Teams (FAST teams) at migrant worker dormitories will allow early detection of problems and provide migrant workers an opportunity to learn about various avenues to seek help.
- ▶ Work with stakeholders, including employers, migrant workers, NGOs and employment agencies, to explore various suggestions on how to reduce the recruitment costs incurred by migrant workers.
- ▶ Require recruitment agencies to provide and bear the related costs of acceptable accommodation, upkeep and maintenance of migrant domestic workers before their deployment to households.
- ▶ Ensure that the In-Principle Approval (IPA) letter that is issued by the MOM and sets out the terms of employment, including salary, is received by the worker within a reasonable time period prior to the worker's departure for Singapore.

The Ministry of Human Resources of **Malaysia** reported that they are in the midst of reviewing the Private Employment Agencies Act of 1981 (as amended in 2018) to consider further amendments, especially to the provisions dealing with the licensing of recruitment agencies and the allowable fees. The financial guarantee requirement is also being re-examined. The Ministry considers it very important that the citizenry be better informed and educated about migrant workers. The Ministry also stated that MOUs with origin countries should include provisions around the sharing of labour market information so as to help in matching more closely the supply and demand for labour.

The authorities in **Cambodia** indicated that they consider their current laws and regulations, as well as systems of enforcement adequate to curb malpractices in recruitment. The Ministry of Labour and Vocational Training is currently drafting a new law on labour migration and the role of private recruitment agencies.

The Ministry of Manpower of **Indonesia** made the following recommendations to improve their effectiveness in enforcing laws and regulations on recruitment.

Licensing	Issuance of a new license must take into account agency's past record and feedback from its clients.
Bail	How it is used must be made transparent.
Monitoring	Establish a recruitment agency compliance monitoring team.
Public education/information	Provide the public with information through online and offline public education.
Contract approval process	Create a streamlined business process online to shorten the process.
Strengthening border control	Involve relevant ministries/agencies.
Recruitment fees and related costs	Placement-related costs must be bilaterally agreed upon in writing, then included in agreements (MOUs, employment agreements, Placement Cooperation Agreements).
Information on recruitment conditions	Include information sharing in bilateral agreements.
Inspection	Monitor implementation with relevant ministries/agencies.
Involvement of local government	Local governments must be strengthened and encouraged through local regulations.
Trade unions/NGOs	Mobilize their support.

The **Philippine** Overseas Employment Administration (POEA) made the following recommendations:

Licensing process	Reduce documents to be submitted, but maintain strict standards.
Demonstrate that violators will be penalized	Encourage victims to not only seek reimbursements but also file and pursue prosecution of criminal cases.
Public education/information	Maximize use of social media platforms; especially since illegal recruiters are now moving to the digital plane, fostering misinformation and committing crimes.
Contract approval process	Digitize the process (exemplified by the Philippine Securities and Exchange Commission's Company Registration System).
Recruitment fees and related costs	Dialogue with recruitment agencies on ethical recruitment practices and amending the 2016 POEA Rules.
Include information sharing in bilateral agreements	Provide mechanisms to balance information sharing with data privacy concerns (for example, incorporate provisions usually found in non-disclosure agreements and data sharing agreements).
Systematize inspections	Build the capacity for virtual inspections during the pandemic.
Involve local governments	Continue information campaign aimed at local government units and clarify role of the Public Employment Service Office (PESO).

From the perspective of the Department of Labour in **Thailand**, the country already has sufficient regulations and enforcement systems, as well as agreements with destination countries to curb malpractices and fraud in recruitment and to ensure effective protection of jobseekers. However, collaboration with other countries – both of origin and destination – will still need to be strengthened because of differences in laws and regulations. Sharing of information is crucial, and both sides must work together to monitor and track deceptive practices and prevent malpractices.

The Ministry of Labour, Invalids and Social Affairs of **Viet Nam** made the following recommendations:

Demonstrate that violators will be penalized	There should be specific, clear and feasible sanctions to ensure deterrence and to strictly handle violators.
Strengthen controls	For workers going to work abroad, it is necessary to have a confirmation from the local DOLISA when working abroad.
Recruitment fees and related costs	Countries of origin and destination need to agree on and publicize information about the fees that workers need to pay to work abroad for each receiving market and each type of occupation.
Bilateral agreements	There should be a provision on exchanging and sharing information on workers working abroad in the agreements/MOUs
Inspections	Inspectors in localities need to focus on detecting and handling unlicensed organizations and individuals that illegally recruit workers for overseas employment.
Local governments	Have local governments adopt administrative procedures that give all enterprises equal rights to directly recruit workers in their areas.
Mobilize trade unions/ NGOs for information campaigns	Trade unions and NGOs can participate in informing potential migrant workers and others of enterprises licensed to provide overseas employment services, and advise them to avoid illegal job brokers. Trade unions and NGOs should also inform competent agencies about unlicensed individuals and organizations that illegally recruit workers for overseas employment.



▶ 16

16. Regional cooperation for more effective regulation of recruitment

Limits to sovereignty greatly constrain the ability of origin country governments to enforce their regulations and standards, since many of the practices they disallow, such as charging abusive fees, can be done when the worker is already outside their jurisdiction. The same is true of prohibited practices like contract substitution, not allowing workers rest periods, or not providing workers with medical attention when sick or injured. It is clear that migrant workers' employment falls under the jurisdiction of host country governments, which have their own labour standards and may not always ensure non-discriminatory treatment of migrant workers. For these reasons bilateral and multilateral agreements on the admission and treatment of migrant workers are of vital importance. Host country authorities are in a better position than those in origin countries to enforce contractual obligations and to check on working conditions, while their counterparts in origin countries are in the better position to ensure that recruitment follows legal or regular channels. Many of these issues can, in principle, be resolved through agreements between countries of origin and countries of destination, as long as both sides commit to enforcing contractual obligations and protecting workers. The Employment Permit System established by the Republic of Korea, and which involves partnerships with many ASEAN countries, offers an example of such agreements.

This survey of ASEAN government authorities overseeing recruitment for work abroad has revealed that the most frequently violated regulations on recruitment in ASEAN countries of destination are the use of fake passports and lack of work permits; while in origin countries the most frequent violations are the offering and advertising of false or non-existent jobs, recruiters charging fees above legal limits, and failure of recruiters to report contract violations. While the employment of migrant workers in an irregular situation may help some employers because they can pay these workers lower wages, it is clearly a situation that both countries of origin and destination want to curb, if not eliminate. There has been sufficient experience in the ASEAN region from which one can draw helpful lessons on how to address these problems, including through effective regularization.

At the same time, countries of origin need to re-examine how their procedures for international labour migration can be streamlined to a minimum, instead of the current multi-step processes in some countries. These include processes for checking job offers from foreign employers, for issuing passports, for granting security clearances, and for approving contracts and exit permits. Keeping these processes to a minimum and building common databases will go a long way in reducing irregular movements that can increase migrants risk of abuse. Recruitment through legal channels still takes many months in many countries due to bottlenecks faced in checking employers and the jobs they offer, especially where the employers are households (such as for domestic workers) and not large corporations. Origin countries never have enough personnel assigned to this task in their diplomatic missions abroad, so the consequence is long delays that penalize recruiters and expectant workers. Cooperation with authorities in countries of destination can greatly simplify and shorten the time needed to perform such checks, because prospective employers already need to obtain their approval to employ foreign workers.

Thanks to advances in digitization, governments in the ASEAN region are already making advances in building databases commonly used and accessed by government agencies with related functions. Sharing databases to improve migration management has often been proposed, but has yet to become a real aide to national authorities in performing a variety of tasks – from reducing dependence on intermediaries, to obtaining information on available jobs and the supply of suitably qualified workers, to checking that contract wages have been paid, that social security contributions have been collected, that work permits are about to expire, that some workers have unsettled disputes with their employers, and so on. Agreement among ASEAN countries to develop a common computerized platform for performing such tasks has yet to be achieved. It is in every member state's interest to develop, participate, and make use of a common digital platform on migration data and information. With sufficient "privacy safeguards" such a platform will lead to more efficient job-to-skill matching, reduce migration costs for the workers and their employers, and enable more effective administration of emigration and immigration regulations.

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Appendix I. The survey questionnaire

Achieving fair and ethical recruitment: Improving regulations and enforcement in the ASEAN region questionnaire

NOTE : *The following questions are addressed to senior officials of the department or ministry tasked with establishing and enforcing regulations on recruitment of workers.*

1. Under which laws is recruitment of workers regulated? And which is (are) the specific Ministry/ Bureau/ Agency or unit specifically responsible for the implementation of these laws and regulations?

Laws regulating recruitment	Agency responsible for implementation
Administrative Orders/Regulations	Agency responsible for implementation

2. Which of these agencies is responsible for:

Issuing licenses for recruitment? -----

For monitoring recruitment? -----

3. Licensed recruitment agencies are usually required to submit periodic reports on their operations to the Recruitment Authority. What specific information are they required to submit and how often do they have to report?

Required Information	Frequency

4. How many Recruitment Agencies (RAs) have valid licenses as of 1 July 2021 and how many Regulatory Authority personnel are assigned to inspect or monitor them?

Number of Recruitment Agencies with valid licenses as of 1 July 2021	
Number of Regulatory Authority personnel assigned to inspect or monitor Recruitment Agencies	

5. Prior to assuming their functions are the Regulatory Agency personnel required to undergo any structured training? YES ----- NO -----

If YES, please describe what subjects are covered in such training and for how many hours.

Subject matter	No. of hours

6. Listed below are the usual violations against recruitment regulations. Can you please provide data on how often these violations were committed in the year 2019 either by the number of cases brought to your attention or by the number of agencies involved, or both.

Violation	No. of agencies	No. of cases
Offering or advertising bogus or non-existing jobs		
Deploying workers w/o duly approved contracts		
Deploying workers to non-existing jobs		
Deploying workers to jobs other than applied for		
Deploying workers to prohibited countries/jobs		
Falsifying passports/travel documents		
Deploying workers w/o valid visa/permit to work		
Substituting approved with inferior contracts		
Charging workers fees not allowed by law		
Not issuing receipts for money paid by job-seekers		
Not returning fees to failed job applicants		
Failure to post abroad officer to monitor conditions of workers		
Failure to report worker complaints of violations		
Bribing officials/agents of the law		
Accepting money in exchange for work visa		

Recruiting undocumented foreign workers		
Others: pls specify		

7. Please check (√) what penalties and sanctions are usually imposed by your Ministry/ Department/ Bureau for these violations. You may check more than one box for each violation, as appropriate.

Violation	Penalties and Sanctions				
	License cancellation	License suspension	Financial penalty	Charged in court	Other sanctions
Offering or advertising bogus or non-existing jobs					
Deploying workers w/o duly approved contracts					
Deploying workers to non-existing jobs					
Deploying workers to jobs other than applied for					
Deploying workers to prohibited countries/jobs					
Falsifying passports/travel documents					
Deploying workers w/o valid visa/ permit to work					
Substituting approved with inferior contracts					
Charging workers fees not allowed by law					
Not issuing receipts for money paid by job-seekers					
Not returning fees to failed job applicants					
Failure to post abroad officer to monitor conditions of workers					
Failure to report worker complaints of violations					
Bribing officials/agents of the law					
Accepting money in exchange for work visa					
Recruiting undocumented foreign workers					
Others: pls specify					

9. Please provide information on number of agencies that have been the subject of various sanctions in 2019.

Specific measures taken against violators	Number of agencies (in 2019)
Issued warning / pressured violator to settle with complainant	
Suspended processing of contracts already submitted	
Imposed fines / garnished financial guarantee deposit	
Suspended license	
Blacklisted/publicized violating agencies	
Cancelled licenses	
Taken legal action through the courts	
Other measures:	

10. Drawing on your records for the year 2019 how many of the complaints on recruitment violations that reach your department/ministry have been settled through conciliation? Through arbitration by a third party/or by an administrative decision by your office? Through action or directive by higher authority?

	None	A few	Many	Most
Conciliation or amicable settlement by the parties				
Decided by the office/responsible hearing officer				
Referred to police or border enforcement agents				
Civil case brought to the courts for settlement				
Referred to Minister or higher authorities				
Cases unsettled/requiring further action				

11. Some violations of recruitment regulations require more immediate attention or more concerted action by the authorities than others. Examples include deployment of minors, deployment of women for prohibited jobs abroad, or deployment of workers without valid travel documents or visas, trafficking and forced labour. In your experience how do such cases usually get the necessary attention to trigger appropriate response from the authorities? Can you cite a concrete case that illustrate how the matter reached the attention of the authorities, and what processes and procedures were activated, and what were the results?

Brief description of violation and how it came to the attention of the authorities

Action taken/procedures followed

Outcome/results

12. Have standard operating procedures or an operations manual been developed for monitoring and responding to recruitment violations? YES ___ NO ___

If YES are there specific guidelines for monitoring, hearing and investigating complaints about violation of regulations on recruitment for "domestic work" or for employment in industries like sea fisheries? What gender responsive measures are adopted in the SOPs?

Gender-responsive measures

13. Do you consider your current regulations and enforcement system, as well as agreements with destination countries, sufficient to curb malpractices and fraud in recruitment? If not, what improvements would you recommend?

	Please specify recommended action
Licensing standards	
Financial guarantees	
Demonstrate violators are penalized	
Public education/information	
Shorten contract approval process	
Strengthen border controls	
Recruitment fees and related costs	
Include information-sharing in bilateral agreements	
Systematize inspections	
Involve local governments	
Mobilize trade union/ NGO support	
Other	

Thank you.

Appendix II. Additional tables

► Appendix Table 1. Philippines: Number of illegal recruitment cases, 2004–10 and 2019–21

	2004	2005	2006	2007	2008	2009	2010	2019	2020	2021
Cases handled	1 462	1 198	1 504	1 624	1 667	1 610	1 548	122	42	115
Cases pending at beginning of year	594	812	992	1 154	1 285	1 358	1 427	60	34	57
Cases received	868	386	512	470	402	252	221	62	8	58
Number of complainants	1 441	543	1 135	1 057	857	469	468	149	12	99
Cases acted upon	650	206	360	339	329	183	283	71	11	58
Cases pending at the end of the year	812	992	1 154	1 285	1 358	1 427	1 365	51	31	57
Disposition rate (cases acted upon/cases handled)	44.5	17.2	23.3	20.9	19.5	11.4	18.2	58.2	26.2	50.4
Persons arrested	12	4	50	26	98	74	12	–	–	5
Establishments closed	40	19	12	9	10	6	6	4	1	3

– = nil.

Note: Data for the period 2011–18 was not available due to their not being included in the POEA annual reports for those years.

Source: POEA 2010 Annual Report for years 2004–10; data for 2019–21 obtained through direct communication with the POEA

► Appendix Table 2. Average monthly earnings in formal/informal employment in selected ASEAN countries, by occupation (US\$)

	Cambodia	Lao PDR	Malaysia ¹	Myanmar	Thailand	Viet Nam	
Formal employment							
Professionals		113.5	262.2	1 220.6	120.7	1 155.6	321.7
Clerks		119.4	254.9	532.6	209.6	641.6	256.4
Service workers and shop sales workers		114.1	248.7	436.8	151.0	439.0	335.1
Skilled agricultural, forestry and fishery workers ²		n/a	n/a	n/a	n/a	502.4	289.9
Craft and related trades workers		148.8	263.5	460.6	155.8	430.4	277.5
Plant and machine operators		94.0	196.6	449.8	120.6	550.9	252.3
Elementary occupations		141.6	238.1	377.8	101.1	378.9	234.7
Informal employment³							
Clerks		158.5	302.4	n/a	126.3	277.6	144.0
Service workers and shop sales workers		126.4	218.8	n/a	92.1	283.0	203.5
Skilled agricultural, forestry and fishery workers ²		n/a	n/a	n/a	n/a	336.8	209.1

	Cambodia	Lao PDR	Malaysia ¹	Myanmar	Thailand	Viet Nam
Craft and related trades workers	98.2	237.4	n/a	100.7	239.0	199.6
Plant and machine operators	127.0	237.4	n/a	110.5	357.1	222.6
Elementary occupations	104.7	244.6	n/a	68.0	214.5	157.9

n/a = data not available. Lao PDR = Lao People's Democratic Republic.

¹ Malaysia data refers to salaries and wages of citizens aged 15–64 years who were employed either as: full-time employees; employees who did not work during the reference month but received salaries and wages and will definitely be called for work; employees who worked for at least 6 hours a day or at least 20 days a month for the usual occupation done every month; or contract workers in the government sector.

² Skilled agricultural, forestry and fishery workers refer to those employed in such occupations outside of the agricultural sector (for example, a skilled farmer working for a farm-to-market restaurant, and thus being in the services sector, or a skilled forestry worker employed by a government agency tasked with regulating environmental concerns, and thus being in public administration).

³ Informal employment is defined using official operational definition of each country (see Chapter 4 of ASEAN, Regional Study on Informal Employment Statistics to Support Decent Work Promotion in ASEAN, 2019, for individual country definitions).

Source: ASEAN.

Appendix III. Additional case studies of recruitment-related offenses

► Appendix Box 1. Case study: Forced labour

Vietnamese workers were recruited to work in the Daewoosa clothing factory in American Samoa, a supplier of Target and JC Penney. In March 1999 two workers from the factory reported to the authorities about the conditions in the factory. They claimed that workers paid between US\$5,000 and US\$8,000 in recruitment fees and related costs. They were made to work 18 hours a day, given little food, subjected to physical violence by factory guards, threatened with arrest and deportation if they complained, and some women were sexually assaulted. The complaint was investigated by the FBI following advocacy by lawyers and the Vietnamese community in the United States. The Seattle Post reported that state-owned recruitment agencies in Viet Nam had recruited and placed the workers. The newspaper estimated that the workers were owed a total of US\$3.5 million in damages. The US Department of Labor ordered payment of the workers' salaries and levied fines against Daewoosa. In February 2003 the factory owner was convicted of federal criminal violations, including involuntary servitude, extortion and money laundering. In June 2005 the owner was sentenced in Hawaii to 40 years' imprisonment and ordered to pay US\$1.8 million as restitution to the workers. There is no information available concerning what happened to the recruitment agencies in Viet Nam.

Source: US DOJ 2005. Garment factory owner sentenced to 40 years for human trafficking. Press Release, 23 June 2005, https://www.justice.gov/archive/opa/pr/2005/June/05_crt_335.htm.

► Appendix Box 2. Case study: Recruitment fraud

Hong Yu, an employment agency in Taiwan, China, recruited 126 Vietnamese workers ostensibly to work in a manufacturing company, but which turned out to be a mere "shell company". Upon arrival, the workers were hired out by Hong Yu to construction companies in an arrangement that allowed Hong Yu to deduct approximately half of the salaries paid to the workers. The amount fraudulently deducted was estimated at US\$900,000. The workers' identity documents were allegedly confiscated and threats were made to deport anyone who complained. In September 2020 the Taichung City Government's Labor Affairs Bureau was tipped off on the matter, and on 28 January 2021 four individuals who worked at Hong Yu were indicted on charges of human trafficking, forgery and violations of the Employment Services Act. Prosecution of the four individuals has not yet commenced.

Source: Ling 2021.

Achieving fair and ethical recruitment: Improving regulation and enforcement in the ASEAN region

Job information can be a rare commodity in the labour market – employers know what skills they need but not where to find them; while the workers know their skills but not who is in need of them. Intermediaries such as recruiters play a useful role in resolving this asymmetry of information. In the real world, however, the operation of the recruitment market is highly imperfect, and can be characterized by exploitative practices, fraud, and abuses. These imperfections have been particularly damaging to the interest of workers seeking jobs across national borders. This report focuses on the efforts of the ASEAN Member States to foster fair and ethical recruitment. It maps the laws and regulations of these Member States, and moreover the enforcement mechanisms they have employed, and reviews evidence of the results they may have achieved.

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