



# ► Promising practices for fair recruitment

April 2021

## Viet Nam – Revision of the Law on Contract-Based Overseas Workers

### Key points

- Tripartite and civil society dialogue, including with Vietnamese migrant workers, informed the drafting process of the new Law
- Recognition of the nexus between labour migration, fair recruitment and human trafficking
- Explicit prohibition on recruitment agencies passing brokerage commissions on to migrant workers will result in substantial savings in terms of non-paid brokerage fees by migrant workers
- Possibility of unilateral contract liquidation in case of maltreatment

### Focus

**FRI pillar:** Improving laws, policies and enforcement

**Sectors:** All

**Country:** Viet Nam

**Responsible organizations:** Ministry of Labour, War Invalids and Social Affairs (MOLISA), Viet Nam

## Description of the practice

Following an ILO-supported assessment of the 2006 version of the Law on Contract-Based Vietnamese Overseas Workers (Law 72), the ILO put forth recommendations for revisions to the legal framework for labour migration in Viet Nam in 2017. In 2020, Law 72 was revised by the National Assembly.

A series of broad-based consultations ensued, involving amongst others employers' and workers' organizations and, significantly, migrant workers. Furthermore, the engagement of anti-human trafficking stakeholders helped to create clarity on the nexus between effective rights-based labour migration legislation – including

attention to fair recruitment – and prevention of human trafficking. Along with these consultations, drafts of a new Law were prepared to which ILO provided inputs based on requests by the National Assembly Social Affairs Committee.

On 8 December 2020, the Vietnamese President's Office announced the Law on Contract-Based Vietnamese Overseas Workers 69/2020/QH14 (Law 69), which was adopted by the 14th National Assembly of Viet Nam on 13 November 2020 and will come into force in January 2022.



A returned migrant worker participating at a tripartite stakeholder consultation workshop on Law 69 in Vinh Long.  
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Several of the ILO's key recommendations have been incorporated into the final version of the Law, including:

- The removal of the obligation for migrant workers to pay brokerage commissions and an explicit prohibition on recruitment agencies passing these costs on to workers;
- The removal of the obligation for migrant workers to pay service fees in addition to brokerage commission to public employment services in line with Convention No. 88;
- If part or all of the service fee is covered by employers or overseas-worker receiving parties, then workers will only pay for any remaining amount required under Law;
- The ability for migrant workers to unilaterally liquidate contracts in situations of threats, sexual harassment, maltreatment or forced labour;
- The inclusion of definitions for discrimination and forced labour in line with ILO Conventions No. 111 and Protocol P029;
- A provision for legal aid in cases of abuse, violence or discrimination whilst working abroad;
- Specific wording about gender equality in the state goals;
- Prohibition on deceitful advertising for the purpose of organizing trafficking in persons, abusing recruitment activities to illegally collect fees, and charging brokerage fees – breaching these prohibitions results in recruitment agency license revocation;
- Pre-departure training must include information on: forced labour, trafficking in persons prevention, gender equality, sexual abuse, gender-based violence and prevention skills.

## Proof of impact/progress

As the Law does not come into force until 1 January 2022, there has been no impact assessment of the legal reform pertaining to migrant worker recruitment, but the normative relevance and impact of removing one of the cost categories for payment by migrant workers is an important step forward, as is the possibility of unilateral contract liquidation in case of maltreatment.

The magnitude of the number of migrant workers in previous years may provide an indication of future benefits: In 2019, over 152,530 (54,700 women) migrant workers went to work abroad through regular migration channels, including 82,703 workers to Japan and 54,480 workers to Taiwan (China). In March 2020, around 560,000 Vietnamese people were working in more than 40 countries and territories worldwide.

In 2019, migrant workers travelling to Taiwan (China) alone cumulatively paid over USD 81 million to recruitment agencies for brokerage commission (USD 1,500 per migrant worker under Law 72), which will be saved under the new Law.

## Other promising features

### Participation and representation

Tripartite and civil society dialogue, including Vietnamese migrant workers informed the drafting process of the revised law.

### Potential for replication or extension

The specific removal of brokerage fees tackles a cost category that is regularly charged to migrant workers, and should be mirrored in other countries with migration destinations shared with Viet Nam.



Private Sector-Government Dialogue on regulation of recruitment and the Draft Law on Contract-based Vietnamese Overseas Workers (Revised). © ILO Ha Noi Office

## Resources

Law on Contract-Based Vietnamese Overseas Workers 69/2020/QH14 (Law 69).

[Press release: ILO commits to supporting Viet Nam to enforce new law on Vietnamese migrant workers.](#)

[ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs \(GPOG\).](#)

### Five years of the Fair Recruitment Initiative

- This promising practice is part of a series, and results from a stocktaking exercise undertaken five years after the launch of the Fair Recruitment Initiative (FRI).
- The FRI aims to ensure that recruitment practices nationally and across borders are grounded in labour standards, developed through social dialogue, ensure gender equality. Specifically, they:
  1. Are transparent and effectively regulated, monitored, and enforced;
  2. Protect all workers' rights, including fundamental principles and rights at work (FPRW), and prevent human trafficking and forced labour; and
  3. Efficiently inform and respond to employment policies and labour market needs, including for recovery and resilience.

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