

Code of conduct for employers and private employment agencies on the fair and ethical recruitment of migrant workers in the Indian Ocean region

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The aim of this code of conduct is to have a positive and verifiable impact on the ethical and fair recruitment of migrant workers in the Indian Ocean region, by strengthening transparency, accountability and proactivity. This is not only in the interest of the workers, but also in the interest of all employers who want to ensure that they operate on a level playing field.

Employers and businesses are committed to taking a positive and proactive stance on how to make geographic mobility work for all parties; as such, the Code of Conduct is part of a wider programme to develop effective and flexible approaches to the governance of labour migration and to promote fair and ethical practices in international recruitment.

The scope and content of the Code of Conduct is based on ideas and feedback gathered from one-to-one interviews with employers' organisations, business leaders and policy experts in the Indian Ocean region. It is complemented by a self-assessment tool that will help employers and private employment/recruitment agencies (PEAs/R) to identify and address awareness gaps and review their internal policies and practices.

The eight principles set out below are aimed at employers who employ migrant workers as well as PTAs/Rs who are responsible for sourcing, recruiting and placing workers at home and abroad. Employers' organisations will have a key role to play in raising awareness and adopting the Code within member companies.

In short, this code of conduct is intended for companies (including APE/Rs), employers' organisations and their members.

PRINCIPLE 1

Promoting awareness of and compliance with national laws and international conventions

Employers and APE/Rs will comply with national legislation and established principles on fair and ethical recruitment, as well as ILO Conventions¹ (in particular Convention 181) and international guidelines¹. The focus on internal due diligence will involve:

- a. Ensuring awareness of all relevant policies and practices - as well as feedback from workers and line managers - to ensure compliance with legal requirements.
- b. Working with all relevant stakeholders to ensure that regulatory requirements are fully understood and effectively implemented.
- c. Ensure that regulatory requirements and good practice guidance are regularly disseminated internally to all relevant staff working in the recruitment sector, employers and APE/Rs throughout the recruitment process.
- d. Ensure that the internal staff concerned are sufficiently trained and competent to fulfil their responsibilities in terms of fair and ethical recruitment.
- e. Take a proactive stance against abusive and fraudulent recruitment methods, particularly cases of forced labour and human trafficking. This should include awareness-raising sessions to help internal staff identify and report "red flags" linked to indications of forced labour.
- f. Develop mechanisms (such as access to alerts and information from a business members' organisation or the use of external legal expertise) to keep abreast of regulatory developments and to adapt policies and practices to new legislative requirements.

¹ In addition to the ILO's international labour standards, various guidelines, recommendations and tripartite resolutions provide practical guidance to the ILO and its constituents:

- a) The 2016 ILO General Principles and Operational Guidelines on Fair Recruitment (GPOG-ENG);
- b) The ILO's 2019 definition of recruitment and related costs.

PRINCIPLE 2

Acting with integrity and guaranteeing contractual transparency

Employers and APE/Rs will act honestly and transparently in all their dealings with migrant workers as well as with stakeholders involved in the various stages of the recruitment process. This will include

- a. Not to make any false or inaccurate statement, or disclose any material fact, in any dealings with employees and other organisations as part of the recruitment process.
- b. Provide migrant workers with full details of the work, conditions of employment, the nature of the work to be performed, rates of pay and methods and frequency of payment in a language they understand. Migrant workers should not be subject to contract substitution, and any changes in terms and conditions should only be made with the prior notification and agreement of the worker.
- c. Pay workers, promptly and correctly, all wages and benefits due in accordance with agreed terms and legal requirements, including contractually agreed provisions for overtime and holiday entitlements (weekly and annual).
- d. Ensure that identity documents and contracts are not confiscated, destroyed or retained, and that migrant workers are free to terminate their employment and change employers in the event of exploitation and abuse;
- e. Avoid non-payment and illegal deductions of wages and ensure that no worker is charged for job search services (including recruitment and placement), in accordance with national laws, international conventions and global guidelines.
- f. Ensure that job advertisements and job descriptions are accurate and clear and reflect the reality of the position being advertised - APE/Rs only advertise specific positions for which they have documented permission from the company to recruit. Employers should take reasonable steps to verify how the APE/Rs they work with describe the positions advertised.
- g. Disclose all fees invoiced by APE/R to the end-user employer prior to acceptance of an assignment or any recruitment activity.

PRINCIPLE 3

Respect for workers' rights and the principles of non-discrimination

Employers and APE/R adhere to the spirit of all applicable human rights laws and employment regulations and treat migrant workers and job seekers without prejudice or discrimination. This includes:

- a. To treat all migrant workers and jobseekers with dignity and respect and to guarantee equal opportunities in employment and occupation on the basis of objective criteria linked to the role and needs of the company.
- b. Ensure that migrant workers' acceptance of recruitment and employment conditions is voluntary and not subject to deception or coercion.
- c. Establish working conditions and practices that protect against unlawful or unethical discrimination in the management of staff and in the operation of the business.
- d. APE/R refuse to act on the basis of discriminatory instructions from a client employer, and employers proactively check that the APE/R with whom they work respect non-discrimination and diversity.
- e. Ensure that all migrant workers have free or affordable access to grievance and other dispute resolution mechanisms and that they benefit from effective remedies.

PRINCIPLE 4

Promoting health and safety at work and the well-being of employees

Employers and APE/Rs shall take all reasonable steps to prevent and manage occupational safety and health risks and to assess and protect the welfare of migrant workers. This includes:

- a. Take all reasonable steps to assess risks to the health and safety of workers and ensure that potential future risks are identified, understood and addressed. Where appropriate, this will cover

transport provided by the employer to and from the workplace, as well as the use of protective equipment and the prohibition of harmful substances in the workplace.

- b. Providing migrant workers with effective induction and integration support (the overall process of introducing a newly-hired employee to an organisation), with a focus on occupational health and safety and the well-being of workers.
- c. Overcoming language barriers to ensure effective induction and integration (the overall process of introducing a new employee to an organisation), as well as day-to-day management and ongoing two-way communication in the workplace.
- d. Where appropriate, work with public employment services to actively promote good practice in diversity and inclusion and ensure that jobseekers are aware of their rights.

PRINCIPLE 5

Promoting integration into the labour market, the workplace and the community, as well as adequate living conditions

Employers and APE/Rs will take the necessary measures to promote the integration of migrant workers in the workplace, as well as their integration into the local community and adequate living conditions. This will include

- a. Provide appropriate integration and move-in support to improve well-being as well as productivity and performance. This will also include providing information to help workers adapt to their new environment, including information on the cost of living and details of essential community services.
- b. Ensure that workers have access to adequate housing and living conditions, in accordance with national legislation and international conventions.
- c. To proactively prevent and address issues related to negative perceptions of migrant workers within the local community. This includes making workers aware of any potential threats and how to report any incidents to the relevant authorities.

- d. Provide practical information and further guidance to help migrant workers whose spouses and family members are resident in the country. This may include information on local schools and employment opportunities for spouses.

PRINCIPLE 6

Compliance with confidentiality and data protection requirements

Employers and APE/Rs will maintain the confidentiality and privacy of workers and jobseekers in accordance with national legislation and good business practice. This will include:

- a. Ensure that all information on migrant workers and personal records (including information on work permit applications) are stored in accordance with national legislation and the latest data protection and confidentiality requirements.
- b. Obtain the required consent before disclosing, transferring, displaying, submitting or searching for confidential or personal information.
- c. Ensuring that new technologies and online platforms used as part of the recruitment process comply with data protection requirements.
- d. Monitor changes in data protection and confidentiality requirements to ensure ongoing compliance in a constantly changing regulatory environment.

PRINCIPLE 7

Due diligence at all stages of the recruitment process

Employers and APE/Rs will work together - and with all relevant stakeholders - to embed compliant procedures and business ethics at all stages of the recruitment process. This will include

- a. Employers take steps to verify the compliance, ethics and professional standards of APE/Rs and other intermediaries involved.

in the recruitment process. External validation to look for may include government licensing (in countries where licensing requirements are in place), membership of an established trade body or industry associations, or international standards such as ISO 9001.

- b. APE/Rs exercise due diligence and take steps to verify the compliance, ethics and professional standards of umbrella organisations (separate companies often used by recruitment agencies to pay temporary contract workers) and other intermediaries they work with as part of the recruitment process.
- c. APE/R are prepared to challenge discriminatory instructions and unethical employment practices within the recruitment companies to which they supply staff.

PRINCIPLE 8

Actively engage in debates on labour migration policy and the wider mobility agenda

Employers and PTAs/R will participate in the wider debate on how to make international skills mobility beneficial for all parties (i.e. workers, employers and national governments committed to boosting productivity and competitiveness). This will usually involve proactively contributing to the work of a representative employers' organisation, and in particular to

- a. Provide evidence and practical information for government consultations and national labour migration policy reviews (including skills shortage lists and work permit procedures).
- b. Share examples of good practice in the protection of migrant workers and adopt a collegiate approach with other business leaders and employers' organisations.
- c. Support government initiatives to integrate the current code of conduct into bilateral agreements on labour migration with other countries.

- d. To call for the ratification of the relevant ILO conventions and protocols and to strengthen social dialogue on all issues relating to the protection of migrant workers.
- e. Support targeted awareness campaigns aimed at those most exposed to fraudulent or abusive recruitment and employment practices.
- f. Report examples of abuse and malpractice raised by individuals who previously worked for other employers and/or through APE/Rs with questionable workforce management practices.

End notes

i Three major ILO conventions and one protocol cover work in this field:

- a. The **Employment Service Convention, 1948 (No. 88)**, which calls for "effective co-operation between the public employment service and private employment agencies". Art. 6 states that ratifying states must "take appropriate measures to facilitate the movement of workers from one country to another as may be approved by the governments concerned";
- b. The **Migration for Employment Convention (Revised), 1949 (No. 97), and** Annexes I and II to the Migration for Employment Recommendation (Revised), 1949 (No. 86), which define the concepts of recruitment, introduction and placement of migrant workers;
- c. **The Private Employment Agencies Convention, 1997 (No. 181)**, the purpose of which is "to provide for the operation of private employment agencies and the protection of workers who make use of their services". Article 8 of Convention No. 181 states:
 1. Each Member shall, after consultation with the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in cooperation with other Members, to ensure adequate protection for migrant workers recruited or placed in its territory by private employment agencies and to prevent abuses against them. Such measures shall include legislative or regulatory provisions providing for sanctions, including the prohibition of private employment agencies that engage in fraudulent practices and abuse.
 2. When workers are recruited from one country to work in another, the members concerned will consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.
- d. **The 2014 Protocol to the Forced Labour Convention** states that measures to prevent forced or compulsory labour include "the protection of persons, in particular migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process" (Art. 2(d)). **The Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), refers to** measures to eliminate abuses and fraudulent practices by labour recruiters and employment agencies, including:
 - the elimination of recruitment fees charged to employees ;
 - Demand transparent contracts that clearly explain employment and working conditions;
 - the establishment of adequate and accessible complaints mechanisms;
 - the imposition of appropriate sanctions; and
 - regulation or licensing of these services.

In addition to the ILO's international labour standards, various guidelines, recommendations and tripartite resolutions provide practical guidance to the ILO and its constituents:

- a. **The 2016 ILO General Principles and Operational Guidelines on Fair Recruitment (GPOG- FR);**

The ILO's 2019 **definition of recruitment and related costs**.

Appendix

SELF-ASSESSMENT TOOL

(version 2)

The aim of the self-assessment tool is to support the Code of Conduct for the fair and ethical recruitment of migrant workers by employers and PTAs/Rs in order to identify and address gaps in current awareness and to review internal procedures and practices. Ultimately, the aim is to operationalise the commitment to fair and ethical recruitment and due diligence by integrating the fundamental principles into management policies and practices. And that starts by asking the right questions.

The code and self-assessment tool are aimed primarily at employers who hire migrant workers and private employment agencies (PEAs), which are responsible for finding and placing workers. Representative employers' organisations and other stakeholders have an essential role to play in raising awareness and mobilising organisations around this agenda.

The draft self-assessment tool is divided according to the same themes and fundamental principles identified in the draft code of conduct. Initially, the aim is simply to ensure that the right areas are covered and the right questions are asked (the precise wording, presentation and functionality will be monitored). The questions below are mainly yes/no answers (so they are quick and easy to complete), but some are open-ended questions aimed at examining current internal mechanisms. The end result of the self-assessment tool will be an action plan that employers and PEAs can use to address any gaps and drive continuous improvement.

Principles	Suggestions and questions for self-assessment
PRINCIPLE 1 Promote awareness of and respect for national laws and international conventions	<ol style="list-style-type: none"> 1. What mechanisms do you currently have in place to monitor and maintain compliance with all national legislation, as well as with all ratified ILO Conventions (in particular Convention 181) and official international guidelines? 2. Do you have a person (or team of people) responsible for ensuring compliance within your organisation and reviewing due diligence? 3. Among the following principles, guides and codes of conduct, with (Yes/No checklist). <ul style="list-style-type: none"> United Nations Guiding Principles on Business and Human Rights ILO general principles and operational guidelines on fair recruitment IOE Employer's Guide to Fair Recruitment Best practice guide on corporate migration for social responsibility World Employment Federation (WEF) Code of Conduct on Recruitment Practices Code of professional conduct for APE/Rs of the Confederation of Private Employment Sector Associations (CAPES) 4. Do you have mechanisms in place to keep abreast of regulatory developments and to adapt your policies and practices to all legislative amendments and new requirements? 5. Do you have internal mechanisms (such as access to alerts and information from a professional organisation or the use of external legal expertise) to ensure that regulatory requirements and good practice guidance are regularly disseminated internally to all relevant staff and to partner organisations within the recruitment supply chain?

Principles	Suggestions and questions for self-assessment	PRINCIPLE
PRINCIPLE 2 Acting with integrity and guaranteeing contractual transparency	<ol style="list-style-type: none"> 6. Do you provide migrant workers with full details of the work, the conditions of employment, the nature of the work to be performed, the rates of pay and the methods and frequency of payment? Do you ensure that any changes to the contract are made only with the prior notification and agreement of the worker? 7. Are you familiar with the ILO definition of recruitment and related costs? What procedures are in place to ensure that workers are paid promptly and correctly, including agreed overtime arrangements and holiday pay rates? 8. Do you examine advertisements and job descriptions to ensure that they are clear and reflect the reality of the position? Is there a procedure to ensure that APE/Rs only advertise jobs for which they have received the employer's authorisation to recruit? 	
PRINCIPLE 3 Respect for workers' rights and the principles of non-discrimination.	<ol style="list-style-type: none"> 9. Do you regularly review current policies and practices relating to the recruitment and management of migrant workers? 10. Do you have mechanisms for gathering feedback from workers and line managers on the effectiveness of current recruitment and management practices and on compliance issues? Do workers have access to grievance and dispute resolution mechanisms and appropriate remedies? 11. Do you provide specific training and advice to your staff on non-discrimination issues, and do you systematically investigate alleged violations and cases of suspected discrimination? 12. How do you ensure that non-discrimination and respect for diversity are built into the entire recruitment process? Do you challenge discriminatory instructions and poor recruitment practices? 	PRINCIPLE

Principles	Suggestions and questions for self-assessment	PRINCIPLE
PRINCIPLE 4 Promoting the health, safety and well-being of workers	<p>13. Are in-house staff sufficiently trained and competent to assume their responsibilities for the fair and ethical recruitment of migrant workers? Are they informed about how to identify and report "red flags" relating to indications of forced labour?</p> <p>14. Do you have a clear procedure for assessing risks to workers' health and safety and for ensuring that potential risks are reported, understood and dealt with (including risks associated with transport to and from the workplace)?</p> <p>15. Do you offer migrant workers an effective induction and welcome (the overall process of introducing new employees to an organisation)? Do these measures focus on health, safety and well-being?</p> <p>16. Do you have mechanisms in place to ensure that language barriers are taken into account (including for induction and integration procedures, as well as for day-to-day communication in the workplace)?</p> <p>17. Do you work with public employment services (where possible) to ensure that jobseekers are aware of their rights and to promote inclusive hiring practices?</p>	PRINCIPLE
PRINCIPLE 5 Promoting integration in the workplace and in the community, as well as adequate living conditions.	<p>18. Do you provide workplace (and community) integration and move-in support to improve well-being as well as productivity and performance?</p> <p>19. Do you ensure that workers have access to adequate housing and living conditions, in accordance with national legislation and international conventions?</p> <p>20. Do you provide additional integration assistance and guidance to help migrant workers who have spouses and family members with them in the country?</p>	PRINCIPLE

Principles	Suggestions and questions for self-assessment	PRINCIPLE
PRINCIPLE 6 Compliance with confidentiality and data protection requirements	<p>21. Do you have mechanisms in place to ensure that all information on migrant workers and personal records is stored in accordance with national legislation and the latest data protection and confidentiality requirements?</p> <p>22. Do you systematically obtain the required consent before disclosing, transferring, displaying, submitting or searching for confidential or personal information?</p> <p>23. What review and risk management procedures do you have in place to ensure that any new technology and online platforms used as part of the recruitment process comply with data protection requirements?</p> <p>24. Do you have mechanisms in place to monitor changes to data protection and confidentiality regulations to ensure ongoing compliance?</p>	
PRINCIPLE 7 Due diligence at every stage of the recruitment process	<p>25. Do you have mechanisms in place to work with all relevant stakeholders to promote compliant procedures and business ethics at all stages of the recruitment process?</p> <p>26. As an employer, what measures do you take to check the compliance, ethics and professional standards of the PAs and other intermediaries involved in the recruitment process?</p> <p>27. As a private employment agency (PEA), are you prepared to challenge unethical employment practices within the companies to which you supply staff?</p>	PRINCIPLE

Principles	Suggestions and questions for self-assessment
<p>PRINCIPLE 8</p> <p>Take an active part in debates on the labour migration policy and in the agenda broader than mobility.</p>	<p>28. Do you contribute to the work of representative employers' organisations by providing evidence for national migration policy reviews, social dialogue and discussions on the ratification of ILO conventions?</p> <p>29. Do you share examples of good practice in managing migrant workers with other business leaders and employers' organisations?</p> <p>30. Are you aware of any government initiatives to incorporate the current Code of Conduct into bilateral agreements with other countries, and do you support them?</p> <p>31. Do you support targeted awareness campaigns aimed at those most exposed to fraudulent or abusive recruitment and employment practices?</p> <p>32. Do you have a procedure for reporting examples of abuse and malpractice raised by people who previously worked for other employers and/or through EPAs with questionable personnel management practices?</p>