

# **SELECTED PHILIPPINE LAWS, RULES AND REGULATIONS ON OVERSEAS EMPLOYMENT**

**COMPILED BY: LAWYERS  
BEYOND  
BORDERS  
PHILIPPINES**



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**LAWYERS  
BEYOND  
BORDERS  
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# Preface

The Commission on Filipinos Overseas (CFO) estimated that as of December 2013, there are 10.24 million overseas Filipinos scattered in 221 countries worldwide. Of this figure, 4.87 million (48%) are permanent residents outside of the Philippines, 4.2 million are documented temporary migrant workers and 1.16 million are undocumented migrant workers.

The number of documented Filipino migrant workers grew exponentially beginning 1974 when the Philippine government institutionalized its overseas employment program. From 36,035 workers deployed in 1975, the number of overseas workers leaving the country every year has reached 2.24 million in 2013.

Poverty, unemployment and low salaries/wages are the main push factors for the temporary overseas migration of Filipino workers. For many households, a family member working abroad is redemption from low incomes and inaccessibility to basic needs such as shelter, health and education. There are many success stories of Filipino migrant workers yet unfortunately, there are also countless numbers of them who experienced extreme hardships and abuse that amounted to violations on their human and migrants' rights. Oftentimes those who are most vulnerable are those lacking material resources in the first place and therefore lack the means to seek legal recourse.

There is no official centralized and updated figures yet on the aspect of access to justice of Filipino migrant workers. This is due to the fact that there are several agencies handling migrant-related cases, thus data and stock taking have yet to reach a level of consolidation. Insufficient attention has also been given to the operationalization of the Shared Government Information System for Migration as envisioned under Republic Act No. 8042.

In its latest Annual Report published online, the Philippine Overseas Employment Administration (POEA) reported that in 2011, it resolved 3,861 recruitment violation and disciplinary action cases against erring

private recruitment agencies. The POEA also reported assisting 382 complainants in enforcing their money claims worth P 13.45 million. The POEA also conducted conciliation proceedings that resulted in the payment of P 80.41 million to the complaining migrant workers. The POEA also addressed 4,668 repatriation cases in 2011.

Another agency, the Presidential Task Force Against Illegal Recruitment (PTAIR) - reported that from 2011-2013, the Bureau of Immigration turned over a total of 754 cases involving 1,838 off-loaded passengers for suspected human trafficking and/or illegal recruitment cases. In the same period, the POEA was reported to have received 439 illegal recruitment cases involving 832 victims.

On the other hand, the Overseas Workers Welfare Administration (OWWA), the government agency tasked to manage a P 17.2 billion welfare fund for overseas workers, reported that it handled 25,178 welfare cases in 2013.

The National Labor Relations Commission (NLRC), the quasi-judicial government agency that has jurisdiction over money claims of documented migrant workers arising from employer-employee relations, reported in its 2013 Annual Report that it awarded P3.055 Billion to migrant worker claimants through settlement and P 1.314 Billion through decisions on the merits of the cases. Unfortunately, no segregated data is available that would indicate the number of migrant workers involved in these monetary awards.

Lastly, the Department of Foreign Affairs reported that it provided legal assistance to 489 overseas Filipinos in 2013 through the Legal Assistance Fund worth P 39.44 million. The DFA also reported assisting 3,709 victims of human trafficking and illegal recruitment.

In 2014 The Public Attorney's Office (PAO) reported that its total complement of 1,522 public attorneys assisted 7.51 million clients. Of this figure, the PAO was able to assist only 855 cases involving land-based and sea-based overseas Filipino workers.

All told, the foregoing figures illustrate the significant number and complexity of legal problems confronting overseas Filipino workers before leaving the country, in their country of destination, and upon return to the

Philippines. In almost all cases, these workers are in need of legal assistance in order to pursue their just and valid claims and quest for justice.

The huge number of cases involving Filipino migrant workers (e. g. labor claims, illegal recruitment, human trafficking, etc.) and the insufficient public resource and public attorneys available to meet such need necessitates the intervention of private law organizations such as the Lawyers Beyond Borders Philippines, Inc. in order to provide legal assistance, legal education and policy advocacy to Filipino migrant workers and their families.

Legal assistance to disadvantaged Filipino migrant workers does not appeal to many lawyers as an area of legal practice on account of the very small legal fees that may be awarded to the lawyers who win their cases. Attorneys fees in labor cases can be claimed only up to ten percent (10%) of the award, excluding award for damages. Since land-based migrant workers' cases usually involve individual claimants with small claims, this area of practice is shunned by many private law firms and is considered as basically pro bono practice.

With this in mind, the Lawyers Beyond Borders Philippines, Inc. (“LBB-PH”) would like to equip its members, other lawyers and paralegals providing legal assistance to overseas Filipino workers with this compilation of the most relevant Philippine laws, rules and regulations on overseas employment. It is a handy reference material that may be used especially for preparing pleadings and legal submissions, and oral arguments before the courts.

HENRY S. ROJAS  
President  
LBB-PH  
December 2015





REPUBLIC ACT 8042

MIGRANT WORKERS AND OVERSEAS

FILIPINOS ACT OF 1995

AS AMENDED BY REPUBLIC ACT 10022



# Republic Act 8042

## **Migrant Workers and Overseas Filipinos Act of 1995 as amended by RA 10022**

**An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes**

SECTION 1. *Short Title.* — This Act shall be known and cited as the “Migrant Workers and Overseas Filipinos Act of 1995.”

SECTION 2. *Declaration of Policies.* —

- (a) In the pursuit of an independent foreign policy and while considering national sovereignty, territorial integrity, national interest and the right to self-determination paramount in its relations with other states, the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular, continuously monitor international conventions, adopt/be signatory to and ratify those that guarantee protection to our migrant workers, and endeavor to enter into bilateral agreements with countries hosting overseas Filipino workers.
- (b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.

- (c) While recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizen shall not, at any time, be compromised or violated. The State, therefore, shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development.
- (d) The State affirms the fundamental equality before the law of women and men and the significant role of women in nation-building. Recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers.
- (e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, whether regular/ documented or irregular/undocumented, are adequately protected and safeguarded.
- (f) The right of Filipino migrant workers and all overseas Filipinos to participate in the democratic decision-making processes of the State and to be represented in institutions relevant to overseas employment is recognized and guaranteed.
- (g) The State recognizes that the most effective tool for empowerment is the possession of skills by migrant workers. The government shall provide them free and accessible skills development and enhancement programs. Pursuant to this and as soon as practicable, the government shall deploy and/or allow the deployment only of skilled Filipino workers.
- (h) The State recognizes non-governmental organizations, trade unions, workers associations, stakeholders and other similar entities duly

recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect. The significant contribution of recruitment and manning agencies shall form part of this partnership.

- (i) Government fees and other administrative costs of recruitment, introduction, placement and assistance to migrant workers shall be rendered free without prejudice to the provision of Section 36 hereof.

Nonetheless, the deployment of Filipino overseas workers, whether land-based or sea-based, by local service contractors and manning agencies employing them shall be encouraged. Appropriate incentives may be extended to them.

SECTION 3. *Definitions.* — For purposes of this Act:

- (a) “Overseas Filipino worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas; to be used interchangeably with migrant worker.
- (b) “Gender-sensitivity” shall mean cognizance of the inequalities and inequities prevalent in society between women and men and a commitment to address issues with concern for the respective interests of the sexes.
- (c) “Overseas Filipinos” refers to dependents of migrant workers and other Filipino nationals abroad who are in distress as mentioned in Sections 24 and 26 of this Act.

## **I. Deployment**

SECTION 4. *Deployment of Migrant Workers.* — The State shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any

of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers:

- (a) It has existing labor and social laws protecting the rights of workers, including migrant workers;
- (b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and
- (c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers:

Provided, That the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b) and (c) hereof.

In the absence of a clear showing that any of the aforementioned guarantees exists in the country of destination of the migrant workers, no permit for deployment shall be issued by the Philippine Overseas Employment Administration (POEA).

The members of the POEA Governing Board who actually voted in favor of an order allowing the deployment of migrant workers without any of the aforementioned guarantees shall suffer the penalties of removal or dismissal from service with disqualification to hold any appointive public office for five (5) years. Further, the government official or employee responsible for the issuance of the permit or for allowing the deployment of migrant workers in violation of this section and in direct contravention of an order by the POEA Governing Board prohibiting deployment shall be meted the same penalties in this section.

For this purpose, the Department of Foreign Affairs, through its foreign posts, shall issue a certification to the POEA, specifying therein the pertinent provisions of the receiving country's labor/social law, or the convention/declaration/resolution, or the bilateral agreement/arrangement which protect the rights of migrant workers.

The State shall also allow the deployment of overseas Filipino workers to vessels navigating the foreign seas or to installations located offshore or on

high seas whose owners/employers are compliant with international laws and standards that protect the rights of migrant workers.

The State shall likewise allow the deployment of overseas Filipino workers to companies and contractors with international operations: Provided, That they are compliant with standards, conditions and requirements, as embodied in the employment contracts prescribed by the POEA and in accordance with internationally-accepted standards.

SECTION 5. *Termination or Ban on Deployment.* — Notwithstanding the provisions of Section 4 hereof, in pursuit of the national interest or when public welfare so requires, the POEA Governing Board, after consultation with the Department of Foreign Affairs, may, at any time, terminate or impose a ban on the deployment of migrant workers.

## **II. Illegal Recruitment**

SECTION 6. *Definition.* — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

- (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance;
- (b) To furnish or publish any false notice or information or document in relation to recruitment or employment;
- (c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or

authority under the Labor Code, or for the purpose of documenting hired workers with the POEA, which include the act of reprocessing workers through a job order that pertains to nonexistent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA;

- (d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
- (e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers' organization;
- (f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;
- (g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;
- (h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;
- (i) To substitute or alter 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 of Labor and Employment;
- (j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;



- (k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;
- (l) Failure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment;
- (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.
- (n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

- (1) Grant a loan to an overseas Filipino worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;
- (2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons;
- (3) Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter's employment contract has been prematurely terminated through no fault of his or her own;

- (4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;
- (5) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;
- (6) For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers' applications; and
- (7) For a recruitment/manning agency or a foreign principal/employer to pass on to the overseas Filipino worker or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker's insurance coverage.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents thereof shall be liable.

In the filing of cases for illegal recruitment or any of the prohibited acts under this section, the Secretary of Labor and Employment, the POEA Administrator or their duly authorized representatives, or any aggrieved person may initiate the corresponding criminal action with the appropriate office. For this purpose, the affidavits and testimonies of operatives or personnel from the Department of Labor and Employment, POEA and other law enforcement agencies who witnessed the acts constituting the offense shall be sufficient to prosecute the accused.

In the prosecution of offenses punishable under this section, the public prosecutors of the Department of Justice shall collaborate with the anti-

illegal recruitment branch of the POEA and, in certain cases, allow the POEA lawyers to take the lead in the prosecution. The POEA lawyers who act as prosecutors in such cases shall be entitled to receive additional allowances as may be determined by the POEA Administrator.

The filing of an offense punishable under this Act shall be without prejudice to the filing of cases punishable under other existing laws, rules or regulations.

#### SECTION 7. *Penalties.* —

- (a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) nor more than Two million pesos (P2,000,000.00).
- (b) The penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) nor more than Five million pesos (P5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

- (c) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Five hundred thousand pesos (P500,000.00) nor more than One million pesos (P1,000,000.00).

If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings.

In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment/manning agency, lending institution, training school or medical clinic.

SECTION 8. *Prohibition on Officials and Employees.* — It shall be unlawful for any official or employee of the Department of Labor and Employment, the Philippine Overseas Employment Administration (POEA), or the Overseas

Workers Welfare Administration (OWWA), or the Department of Foreign Affairs, or other government agencies involved in the implementation of this Act, or their relatives within the fourth civil degree of consanguinity or affinity, to engage, directly or indirectly, in the business of recruiting migrant workers as defined in this Act. The penalties provided in the immediate preceding paragraph shall be imposed upon them.

SECTION 9. *Venue.* — A criminal action arising from illegal recruitment as defined herein shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense: Provided, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts: Provided, however, That the aforestated provisions shall also apply to those criminal actions that have already been filed in court at the time of the effectivity of this Act.

SECTION 10. *Money Claims.* — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall 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.

Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

In case of a final and executory judgment against a foreign employer/principal, it shall be automatically disqualified, without further proceedings, from participating in the Philippine Overseas Employment Program and from recruiting and hiring Filipino workers until and unless it fully satisfies the judgment award.

Noncompliance with the mandatory periods for resolutions of cases provided under this section shall subject the responsible officials to any or all of the following penalties:

- (a) The salary of any such official who fails to render his decision or resolution within the prescribed period shall be, or caused to be, withheld until the said official complies therewith;
- (b) Suspension for not more than ninety (90) days; or
- (c) Dismissal from the service with disqualification to hold any appointive public office for five (5) years.

Provided, however, That the penalties herein provided shall be without prejudice to any liability which any such official may have incurred under other existing laws or rules and regulations as a consequence of violating the provisions of this paragraph.

SECTION 11. *Mandatory Periods for Resolution of Illegal Recruitment Cases.* — The preliminary investigations of cases under this Act shall be terminated within a period of thirty (30) calendar days from the date of their filing. Where the preliminary investigation is conducted by a prosecution officer and a prima facie case is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a prima facie case is found to exist, the corresponding information shall be filed by the proper prosecution officer within forty-eight (48) hours from the date of receipt of the records of the case.

SECTION 12. *Prescriptive Periods.* — Illegal recruitment cases under this Act shall prescribe in five (5) years: Provided, however, That illegal recruitment cases involving economic sabotage as defined herein shall prescribe in twenty (20) years.

SECTION 13. *Free Legal Assistance; Preferential Entitlement Under the Witness Protection Program.* — A mechanism for free legal assistance for victims of illegal recruitment shall be established in the anti-illegal recruitment branch of the POEA including its regional offices. Such mechanism shall include coordination and cooperation with the Department of Justice, the Integrated Bar of the Philippines, and other non-governmental organizations and volunteer groups.

The provisions of Republic Act No. 6981 to the contrary notwithstanding, any person who is a victim of illegal recruitment shall be entitled to the Witness Protection Program provided thereunder.

### **III. Services**

SECTION 14. *Travel Advisory/Information Dissemination.* — To give utmost priority to the establishment of programs and services to prevent illegal recruitment, fraud and exploitation or abuse of Filipino migrant workers, all embassies and consular offices, through the Philippine Overseas Employment Administration (POEA), shall issue travel advisories or disseminate information on labor and employment conditions, migration realities and other facts; and adherence of particular countries to international standards on human and workers' rights which will adequately prepare individuals into making informed and intelligent decisions about overseas employment.

Such advisory or information shall be published in a newspaper of general circulation at least three (3) times in every quarter.

SECTION 15. *Repatriation of Workers; Emergency Repatriation Fund.* — The repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation shall be borne by or charged to the agency concerned and/or its principal. Likewise, the repatriation of remains and transport of the personal belongings of a deceased worker and all costs attendant thereto shall be borne by the principal and/or the local agency. However, in cases where the termination of employment is due solely to the fault of the worker, the principal/employer or agency shall not in any manner be responsible for the repatriation of the former and/or his belongings.

The Overseas Workers Welfare Administration (OWWA), in coordination with appropriate international agencies, shall undertake the repatriation of workers in cases of war, epidemic, disaster or calamities, natural or man-made, and other similar events without prejudice to reimbursement by the responsible principal or agency. However, in cases where the principal or recruitment agency cannot be identified, all costs attendant to repatriation shall be borne by the OWWA.

For this purpose, there is hereby created and established an emergency repatriation fund under the administration, control and supervision of the OWWA, initially to consist of One hundred million pesos (P100,000,000.00), which shall be taken from the existing fund controlled and administered by the OWWA. Thereafter, such fund shall be provided for in the General Appropriations Act from year to year: Provided, That the amount appropriated shall in no case be less than One hundred million pesos (P100,000,000.00), inclusive of outstanding balances.

SECTION 16. *Mandatory Repatriation of Underage Migrant Workers.* — Upon discovery or being informed of the presence of migrant workers whose actual ages fall below the minimum age requirement for overseas deployment, the responsible officers in the foreign service shall without delay repatriate said workers and advise the Department of Foreign Affairs through the fastest means of communication available of such discovery and other relevant information. The license of a recruitment/manning agency which recruited or deployed an underage migrant worker shall

be automatically revoked and shall be imposed a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00). All fees pertinent to the processing of papers or documents in the recruitment or deployment shall be refunded in full by the responsible recruitment/manning agency, without need of notice, to the underage migrant worker or to his parents or guardian. The refund shall be independent of and in addition to the indemnification for the damages sustained by the underage migrant worker. The refund shall be paid within thirty (30) days from the date of the mandatory repatriation as provided for in this Act.

**SECTION 17.** *Establishment of National Reintegration Center for Overseas Filipino Workers.* — A national reintegration center for overseas Filipino workers (NRCO) is hereby created in the Department of Labor and Employment for returning Filipino migrant workers which shall provide a mechanism for their reintegration into the Philippine society, serve as a promotion house for their local employment, and tap their skills and potentials for national development.

The Department of Labor and Employment, the Overseas Workers Welfare Administration (OWWA), and the Philippine Overseas Employment Administration (POEA) shall, within ninety (90) days from the effectivity of this Act, formulate a program that would motivate migrant workers to plan for productive options such as entry into highly technical jobs or undertakings, livelihood and entrepreneurial development, better wage employment, and investment of savings.

For this purpose, the Technical Education and Skills Development Authority (TESDA), the Technology Livelihood Resource Center (TLRC), and other government agencies involved in training and livelihood development shall give priority to returnees who had been employed as domestic helpers and entertainers.

**SECTION 18.** *Functions of the National Reintegration Center for Overseas Filipino Workers.* — The Center shall provide the following services:

- (a) Develop and support programs and projects for livelihood, entrepreneurship, savings, investments and financial literacy for returning Filipino migrant workers and their families in coordination with relevant stakeholders, service providers and international organizations;



- (b) Coordinate with appropriate stakeholders, service providers and relevant international organizations for the promotion, development and the full utilization of overseas Filipino worker returnees and their potentials;
- (c) Institute, in cooperation with other government agencies concerned, a computer-based information system on returning Filipino migrant workers which shall be accessible to all local recruitment agencies and employers, both public and private;
- (d) Provide a periodic study and assessment of job opportunities for returning Filipino migrant workers;
- (e) Develop and implement other appropriate programs to promote the welfare of returning Filipino migrant workers;
- (f) Maintain an internet-based communication system for on-line registration and interaction with clients, and maintain and upgrade computer-based service capabilities of the NRCO;
- (g) Develop capacity-building programs for returning overseas Filipino workers and their families, implementers, service providers, and stakeholders; and
- (h) Conduct research for policy recommendations and program development.

SECTION 19. *Establishment of a Migrant Workers and Other Overseas Filipinos Resource Center.* — Within the premises and under the administrative jurisdiction of the Philippine Embassy in countries where there are large concentrations of Filipino migrant workers, there shall be established a Migrant Workers and Other Overseas Filipinos Resource Center with the following services:

- (a) Counselling and legal services;
- (b) Welfare assistance including the procurement of medical and hospitalization services;

- (c) Information, advisory and programs to promote social integration such as post-arrival orientation, settlement and community networking services and activities for social interaction;
- (d) Institute a scheme of registration of undocumented workers to bring them within the purview of this Act. For this purpose, the Center is enjoined to compel existing undocumented workers to register with it within six (6) months from the effectivity of this Act, under pain of having his/her passport cancelled;
- (e) Human resource development, such as training and skills upgrading;
- (f) Gender sensitive programs and activities to assist particular needs of women migrant workers;
- (g) Orientation program for returning workers and other migrants; and
- (h) Monitoring of daily situations, circumstances and activities affecting migrant workers and other overseas Filipinos.

The establishment and operations of the Center shall be a joint undertaking of the various government agencies. The Center shall be open for twenty-four (24) hours daily including Saturdays, Sundays and holidays, and shall be staffed by Foreign Service personnel, service attaches or officers who represent other Philippine government agencies abroad and, if available, individual volunteers and bona fide non-government organizations from the host countries. In countries categorized as highly problematic by the Department of Foreign Affairs and the Department of Labor and Employment and where there is a concentration of Filipino migrant workers, the government must provide a Shari'a or human rights lawyer, a psychologist and a social worker for the Center. In addition to these personnel, the government must also hire within the receiving country, in such number as may be needed by the post, public relation officers or case officers who are conversant, orally and in writing, with the local language, laws, customs and practices. The Labor Attache shall coordinate the operation of the Center and shall keep the Chief of Mission informed and updated on all matters affecting it.

The Center shall have a counterpart 24-hour information and assistance center at the Department of Foreign Affairs to ensure a continuous network and coordinative mechanism at the home office.

**SECTION 20.** *Establishment of a Shared Government Information System for Migration.* — An interagency committee composed of the Department of Foreign Affairs and its attached agency, the Commission on Filipinos Overseas, the Department of Labor and Employment and its attached concerned agencies, the Department of Tourism, the Department of Justice, the Bureau of Immigration, the National Bureau of Investigation, the Department of the Interior and Local Government, the National Telecommunications Commission, the Commission on Information and Communications Technology, the National Computer Center, the National Statistical and Coordination Board, the National Statistics Office and other government agencies concerned with overseas employment shall be established to implement a shared government information system for migration. The interagency committee shall initially make available to itself the information contained in existing data bases/files. The second phase shall involve linking of computer facilities in order to allow free-flow data exchanges and sharing among concerned agencies.

The inter-agency committee shall be co-chaired by the Department of Foreign Affairs and the Department of Labor and Employment. The National Computer Center shall provide the necessary technical assistance and shall set the appropriate information and communications technology standards to facilitate the sharing of information among the member agencies.

The inter-agency committee shall meet regularly to ensure the immediate and full implementation of this section and shall explore the possibility of setting up a central storage facility for the data on migration. The progress of the implementation of this section shall be included in the report to Congress of the Department of Foreign Affairs and the Department of Labor and Employment under Section 33.

The inter-agency committee shall convene to identify existing data bases which shall be declassified and shared among member agencies. These shared data bases shall initially include, but not be limited to, the following information:

- (a) Masterlists of Filipino migrant workers/overseas Filipinos classified according to occupation/job category, civil status, by country/state of destination including visa classification;
- (b) Inventory of pending legal cases involving Filipino migrant workers and other Filipino nationals, including those serving prison terms;
- (c) Masterlist of departing/arriving Filipinos;
- (d) Statistical profile on Filipino migrant workers/overseas Filipinos/tourists;
- (e) Blacklisted foreigners/undesirable aliens;
- (f) Basic data on legal systems, immigration policies, marriage laws and civil and criminal codes in receiving countries particularly those with large numbers of Filipinos;
- (g) List of labor and other human rights instruments where receiving countries are signatories;
- (h) A tracking system of past and present gender disaggregated cases involving male and female migrant workers, including minors; and
- (i) Listing of overseas posts which may render assistance to overseas Filipinos, in general, and migrant workers, in particular.

SECTION 21. *Migrant Workers Loan Guarantee Fund.* — In order to further prevent unscrupulous illegal recruiters from taking advantage of workers seeking employment abroad, the OWWA, in coordination with government financial institutions, shall institute financing schemes that will expand the grant of pre-departure loan and family assistance loan. For this purpose, a Migrant Workers Loan Guarantee Fund is hereby created and the revolving amount of One hundred million pesos (P100,000,000.00) from the OWWA is set aside as a guarantee fund in favor of participating government financial institutions.

SECTION 22. *Rights and Enforcement Mechanism Under International and Regional Human Rights Systems.* — The Department of Foreign Affairs is mandated to undertake the necessary initiative such as promotions,

acceptance or adherence of countries receiving Filipino workers to multilateral convention, declaration or resolutions pertaining to the protection of migrant workers' rights. The Department of Foreign Affairs is also mandated to make an assessment of rights and avenues of redress under international and regional human rights systems that are available to Filipino migrant workers who are victims of abuse and violation and, as far as practicable and through the Legal Assistant for Migrant Workers Affairs created under this Act, pursue the same on behalf of the victim if it is legally impossible to file individual complaints. If a complaints machinery is available under international or regional systems, the Department of Foreign Affairs shall fully apprise the Filipino migrant workers of the existence and effectiveness of such legal options.

#### **IV. Government Agencies**

**SECTION 23. *Role of Government Agencies.*** — The following government agencies shall perform the following to promote the welfare and protect the rights of migrant workers and, as far as applicable, all overseas Filipinos:

- (a) Department of Foreign Affairs — The Department, through its home office or foreign posts, shall take priority action or make representation with the foreign authority concerned to protect the rights of migrant workers and other overseas Filipinos and extend immediate assistance including the repatriation of distressed or beleaguered migrant workers and other overseas Filipinos;
- (b) Department of Labor and Employment — The Department of Labor and Employment shall see to it that labor and social welfare laws in the foreign countries are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos including the grant of legal assistance and the referral to proper medical centers or hospitals:
  - (b.3) Philippine Overseas Employment Administration. — The Administration shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking

into consideration their welfare and the domestic manpower requirements. It shall be responsible for the regulation and management of overseas employment from the pre-employment stage, securing the best possible employment terms and conditions for overseas Filipino workers, and taking into consideration the needs of vulnerable sectors and the peculiarities of sea-based and land-based workers. In appropriate cases, the Administration shall allow the lifting of suspension of erring recruitment/manning agencies upon the payment of fine of Fifty thousand pesos (P50,000.00) for every month of suspension.

In addition to its powers and functions, the Administration shall inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights. It shall also be responsible for the implementation, in partnership with other law-enforcement agencies, of an intensified program against illegal recruitment activities. For this purpose, the POEA shall provide comprehensive Pre-Employment Orientation Seminars (PEOS) that will discuss topics such as prevention of illegal recruitment and gender-sensitivity.

The Administration shall not engage in the recruitment and placement of overseas workers except on a government-to-government arrangement only.

In the recruitment and placement of workers to service the requirements for trained and competent Filipino workers of foreign governments and their instrumentalities, and such other employers as public interests may require, the administration shall deploy only to countries where the Philippines has concluded bilateral labor agreements or arrangements. Provided, that such countries shall guarantee to protect the rights of Filipino migrant workers; and Provided further, That such countries shall observe and/or comply with the international laws and standards for migrant workers.

- (b.1) Overseas Workers Welfare Administration. — The Welfare officer or in his absence, the coordinating officer shall provide

the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals. In the performance of this function, he shall make representation and may call on the agencies or entities concerned to conferences or conciliation meetings for the purpose of settling the complaints or problems brought to his attention. The OWWA shall likewise formulate and implement welfare programs for overseas Filipino workers and their families while they are abroad and upon their return. It shall also ensure the awareness by the overseas Filipino workers and their families of these programs and other related governmental programs.

In the repatriation of workers to be undertaken by OWWA, the latter shall be authorized to pay repatriation-related expenses, such as fines or penalties, subject to such guidelines as the OWWA Board of Trustees may prescribe.

- (a) Department of Health. — The Department of Health (DOH) shall regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations, hereinafter referred to as health examinations, on Filipino migrant workers as requirement for their overseas employment. Pursuant to this, the DOH shall ensure that:
  - (c.2) The fees for the health examinations are regulated, regularly monitored and duly published to ensure that the said fees are reasonable and not exorbitant;
  - (c.3) The Filipino migrant worker shall only be required to undergo health examinations when there is reasonable certainty that he or she will be hired and deployed to the jobsite and only those health examinations which are absolutely necessary for the type of job applied for or those specifically required by the foreign employer shall be conducted;
  - (c.4) No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations on migrant workers for certain receiving countries;

- (c.5) Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his or her rights as a patient are respected. The decking practice, which requires an overseas Filipino worker to go first to an office for registration and then farmed out to a medical clinic located elsewhere, shall not be allowed;
- (c.6) Within a period of three (3) years from the effectivity of this Act, all DOH regional and/or provincial hospitals shall establish and operate clinics that can serve the health examination requirements of Filipino migrant workers to provide them easy access to such clinics all over the country and lessen their transportation and lodging expenses; and
- (c.7) All DOH-accredited medical clinics, including the DOH-operated clinics, conducting health examinations for Filipino migrant workers shall observe the same standard operating procedures and shall comply with internationally-accepted standards in their operations to conform with the requirements of receiving countries or of foreign employers/principals.

Any foreign employer who does not honor the results of valid health examinations conducted by a DOH-accredited or DOH-operated clinic shall be temporarily disqualified from participating in the overseas employment program, pursuant to POEA rules and regulations.

In case an overseas Filipino worker is found to be not medically fit upon his/her immediate arrival in the country of destination, the medical clinic that conducted the health examination/s of such overseas Filipino worker shall pay for his or her repatriation back to the Philippines and the cost of deployment of such worker.

Any DOH-accredited clinic which violates any provision of this section shall, in addition to any other liability it may have incurred, suffer the penalty of revocation of its DOH accreditation.



Any government official or employee who violates any provision of this subsection shall be removed or dismissed from service with disqualification to hold any appointive public office for five (5) years. Such penalty is without prejudice to any other liability which he or she may have incurred under existing laws, rules or regulations.

- (a) Local Government Units. — In the fight against illegal recruitment, the local government units (LGUs), in partnership with the POEA, other concerned government agencies, and non-government organizations advocating the rights and welfare of overseas Filipino workers, shall take a proactive stance by being primarily responsible for the dissemination of information to their constituents on all aspects of overseas employment. To carry out this task, the following shall be undertaken by the LGUs:
- (d.8) Provide a venue for the POEA, other concerned government agencies and non-government organizations to conduct PEOS to their constituents on a regular basis;
- (d.9) Establish overseas Filipino worker help desk or kiosk in their localities with the objective of providing current information to their constituents on all the processes and aspects of overseas employment. Such desk or kiosk shall, as far as practicable, be fully computerized and shall be linked to the database of all concerned government agencies, particularly the POEA for its updated lists of overseas job orders and licensed recruitment agencies in good standing.

## **V. The Legal Assistant for Migrant Workers Affairs**

SECTION 24. *Legal Assistant for Migrant Workers Affairs.* — There is hereby created the position of Legal Assistant for Migrant Workers Affairs under the Department of Foreign Affairs who shall be primarily responsible for the provision and overall coordination of all legal assistance services to be provided to Filipino migrant workers as well as overseas Filipinos in distress. He shall have the rank, salary and privileges equal to that of an undersecretary of said Department.

The said Legal Assistant for Migrant Workers Affairs, shall be appointed by the President and must be of proven competence in the field of law with at least ten (10) years of experience as a legal practitioner and must not have been a candidate to an elective office in the last local or national elections.

Among the functions and responsibilities of the aforesaid Legal Assistant are:

- (a) To issue the guidelines, procedures and criteria for the provision of legal assistance services to Filipino migrant workers;
- (b) To establish close linkages with the Department of Labor and Employment, the POEA, the OWWA and other government agencies concerned, as well as with non-governmental organizations assisting migrant workers, to ensure effective coordination and cooperation in the provision of legal assistance to migrant workers;
- (c) To tap the assistance of reputable law firms, the Integrated Bar of the Philippines, other bar associations, and other government legal experts on overseas Filipino worker laws to complement the government's efforts to provide legal assistance to our migrant workers;
- (d) To administer the legal assistance fund for migrant workers established under Section 25 hereof and to authorize disbursements therefrom in accordance with the purposes for which the fund was set up; and
- (e) To keep and maintain the information system as provided in Section 20.

The Legal Assistant for Migrant Workers Affairs shall have authority to hire private lawyers, domestic or foreign, in order to assist him in the effective discharge of the above functions.

**SECTION 25. *Legal Assistance Fund.*** — There is hereby established a legal assistance fund for migrant workers, hereinafter referred to as the Legal Assistance Fund, in the amount of One hundred million pesos (P100,000,000.00) to be constituted from the following sources:

- Fifty million pesos (P50,000,000.00) from the Contingency Fund of the President;
- Thirty million pesos (P30,000,000.00) from the Presidential Social Fund;
- Twenty million pesos (P20,000,000.00) from the Welfare Fund for Overseas Workers established under Letter of Instruction No. 537, as amended by Presidential Decree Nos. 1694 and 1809; and

An amount appropriated in the annual General Appropriations Act (GAA) which shall not be less than Thirty million pesos (P30,000,000.00) per year: Provided, That the balance of the Legal Assistance Fund (LAF) including the amount appropriated for the year shall not be less than One hundred million pesos (P100,000,000.00): Provided, further, That the Fund shall be treated as a special fund in the National Treasury and its balance, including the amount appropriated in the GAA, which shall form part of the Fund, shall not revert to the General Fund.

Any balances of existing funds which have been set aside by the government specifically as legal assistance or defense fund to help migrant workers shall, upon effectivity of this Act, be turned over to, and form part of, the Fund created under this Act.

**SECTION 26. *Uses of the Legal Assistance Fund.*** — The Legal Assistance Fund created under the preceding section shall be used exclusively to provide legal services to migrant workers and overseas Filipinos in distress in accordance with the guidelines, criteria and procedures promulgated in accordance with Section 24(a) hereof. The expenditures to be charged against the Fund shall include the fees for the foreign lawyers to be hired by the Legal Assistant for Migrant Workers Affairs to represent migrant workers facing charges or in filing cases against erring or abusive employers abroad, bail bonds to secure the temporary release of workers under detention, court fees and charges and other litigation expenses: Provided, That at the end of every year, the Department of Foreign Affairs shall include in its report to Congress, as provided for under Section 33 of this Act, the status of the Legal Assistance Fund, including the expenditures from the said fund duly audited by the Commission on Audit (COA): Provided, further, That the hiring of foreign legal counsels, when circumstances warrant urgent action, shall be

exempt from the coverage of Republic Act No. 9184 or the Government Procurement Act.

## **VI. Country-Team Approach**

SECTION 27. *Priority Concerns of Philippine Foreign Service Posts.* — The country-team approach, as enunciated under Executive Order No. 74, series of 1993, shall be the mode under which Philippine embassies or their personnel will operate in the protection of the Filipino migrant workers as well as in the promotion of their welfare. The protection of the Filipino migrant workers and the promotion of their welfare, in particular, and the protection of the dignity and fundamental rights and freedoms of the Filipino citizen abroad, in general, shall be the highest priority concerns of the Secretary of Foreign Affairs and the Philippine Foreign Service Posts.

SECTION 28. *Country-Team Approach.* — Under the country-team approach, all officers, representatives and personnel of the Philippine government posted abroad regardless of their mother agencies shall, on a per country basis, act as one country-team with a mission under the leadership of the ambassador. In this regard, the ambassador may recommend to the Secretary of the Department of Foreign Affairs the recall of officers, representatives and personnel of the Philippine government posted abroad for acts inimical to the national interest such as, but not limited to, failure to provide the necessary services to protect the rights of overseas Filipinos.

Upon receipt of the recommendation of the ambassador, the Secretary of the Department of Foreign Affairs shall, in the case of officers, representatives and personnel of other departments, endorse such recommendation to the department secretary concerned for appropriate action. Pending investigation by an appropriate body in the Philippines, the person recommended for recall may be placed under preventive suspension by the ambassador.

In host countries where there are Philippine consulates, such consulates shall also constitute part of the country-team under the leadership of the ambassador.

In the implementation of the country-team approach, visiting Philippine delegations shall be provided full support and information.

## **VII. Deregulation and Phase-Out**

SECTION 29. *Repealed by R.A. 9422.*

SECTION 30. *Repealed by R.A. 9422.*

## **VIII. Professional and Other Highly-Skilled Filipinos Abroad**

SECTION 31. *Incentives to Professionals and Other Highly-Skilled Filipinos Abroad.* — Pursuant to the objective of encouraging professionals and other highly-skilled Filipinos abroad especially in the field of science and technology to participate in, and contribute to national development, the government shall provide proper and adequate incentives and programs so as to secure their services in priority development areas of the public and private sectors.

## **IX. Miscellaneous Provisions**

SECTION 32. *POEA, OWWA and other Boards; Additional Memberships.* — Notwithstanding any provision of law to the contrary, the respective Boards of the POEA and the OWWA shall, in addition to their present composition, have three (3) members each who shall come from the women, sea-based and land-based sectors respectively, to be selected and nominated openly by the general membership of the sector being represented.

The selection and nomination of the additional members from the women, sea-based and land-based sectors shall be governed by the following guidelines:

- (a) The POEA and the OWWA shall launch a massive information campaign on the selection of nominees and provide for a system of consultative sessions for the certified leaders or representatives of the concerned sectors, at least three (3) times, within ninety (90) days before the boards shall be convened, for purposes of selection. The process shall be open, democratic and transparent;
- (b) Only non-government organizations that protect and promote the rights and welfare of overseas Filipino workers, duly registered with the

appropriate Philippine government agency and in good standing as such, and in existence for at least three (3) years prior to the nomination shall be qualified to nominate a representative for each sector to the Board;

- (c) The nominee must be at least twenty-five (25) years of age, able to read and write, and a migrant worker at the time of his or her nomination or was a migrant worker with at least three (3) years experience as such; and
- (d) A final list of all the nominees selected by the OWWA/POEA governing boards, which shall consist of three (3) names for each sector to be represented, shall be submitted to the President and published in a newspaper of general circulation;

Within thirty (30) days from the submission of the list, the President shall select and appoint from the list the representatives to the POEA/OWWA governing boards.

The additional members shall have a term of three (3) years and shall be eligible for reappointment for another three (3) years. In case of vacancy, the President shall, in accordance with the provisions of this Act, appoint a replacement who shall serve the unexpired term of his or her predecessor.

Any executive issuances or orders issued that contravene the provisions of this section shall have no force and effect.

All other government agencies and government-owned or -controlled corporations which require at least one (1) representative from the overseas workers sector to their respective boards shall follow all the applicable provisions of this section.

**SECTION 33. *Report to Congress.*** — In order to inform the Philippine Congress on the implementation of the policy enunciated in Section 4 hereof, the Department of Foreign Affairs and the Department of Labor and Employment shall submit separately to the said body a semi-annual report of Philippine foreign posts located in countries hosting Filipino migrant workers. The mid-year report covering the period January to June shall be submitted not later than October 31 of the same year while the year-end report covering the period July to December shall be submitted not later

than May 31 of the following year. The report shall include, but shall not be limited to, the following information:

- (a) Masterlist of Filipino migrant workers, and inventory of pending legal cases involving them and other Filipino nationals including those serving prison terms;
- (b) Working conditions of Filipino migrant workers;
- (c) Problems encountered by the migrant workers, specifically violations of their rights;
- (d) Initiatives/actions taken by the Philippine foreign posts to address the problems of Filipino migrant workers;
- (e) Changes in the laws and policies of host countries; and
- (f) Status of negotiations on bilateral labor agreements between the Philippines and the host country.

Any officer of the government who fails to submit the report as stated in this section shall be subject to an administrative penalty of dismissal from the service with disqualification to hold any appointive public office for five (5) years.

SECTION 34. *Representation in Congress.* — Pursuant to Section 5(2), Article VI of the Constitution and in line with the objective of empowering overseas Filipinos to participate in the policy-making process to address Filipino migrant concerns, two (2) sectoral representatives for migrant workers in the House of Representatives shall be appointed by the President from the ranks of migrant workers: Provided, That at least one (1) of the two (2) sectoral representatives shall come from the women migrant workers sector: Provided, further, That all nominees must have at least two (2) years experience as a migrant worker.

SECTION 35. *Exemption from Travel Tax, Documentary Stamp Tax and Airport Fee.* — All laws to the contrary notwithstanding, the migrant worker shall be exempt from the payment of travel tax and airport-fee upon proper showing of proof of entitlement by the POEA.

The remittances of all overseas Filipino workers, upon showing of the same proof of entitlement by the overseas Filipino worker's beneficiary or recipient, shall be exempt from the payment of documentary stamp tax.

SECTION 36. *Non-increase of Fees; Abolition of Repatriation Bond.* — Upon approval of this Act, all fees being charged by any government office on migrant workers shall remain at their present levels and the repatriation bond shall be abolished.

SECTION 37. *The Congressional Migrant Workers Scholarship Fund.* — There is hereby created a Congressional Migrant Workers Scholarship Fund which shall benefit deserving migrant workers and/or their immediate descendants below twenty-one (21) years of age who intend to pursue courses or training primarily in the field of science and technology. The initial seed fund of Two hundred million pesos (P200,000,000.00) shall be constituted from the following sources:

- (a) Fifty million pesos (P50,000,000.00) from the unexpended Countrywide Development Fund for 1995 in equal sharing by all Members of Congress; and
- (b) The remaining One hundred fifty million pesos (P150,000,000.00) shall be funded from the proceeds of Lotto draws.

The Congressional Migrant Workers Scholarship Fund as herein created shall be administered by the DOLE in coordination with the Department of Science and Technology (DOST). To carry out the objectives of this section, the DOLE and the DOST shall formulate the necessary rules and regulations.

SECTION 37-A. *Compulsory Insurance Coverage for Agency-Hired Workers.* — In addition to the performance bond to be filed by the recruitment/manning agency under Section 10, each migrant worker deployed by a recruitment/manning agency shall be covered by a compulsory insurance policy which shall be secured at no cost to the said worker. Such insurance policy shall be effective for the duration of the migrant worker's employment contract and shall cover, at the minimum:



- (a) Accidental death, with at least Fifteen thousand United States dollars (US\$15,000.00) survivor's benefit payable to the migrant worker's beneficiaries;
- (b) Natural death, with at least Ten thousand United States dollars (US\$10,000.00) survivor's benefit payable to the migrant worker's beneficiaries;
- (c) Permanent total disablement, with at least Seven thousand five hundred United States dollars (US\$7,500.00) disability benefit payable to the migrant worker. The following disabilities shall be deemed permanent: total, complete loss of sight of both eyes; loss of two (2) limbs at or above the ankles or wrists; permanent complete paralysis of two (2) limbs; brain injury resulting to incurable imbecility or insanity;
- (d) Repatriation cost of the worker when his/her employment is terminated without any valid cause, including the transport of his or her personal belongings. In case of death, the insurance provider shall arrange and pay for the repatriation or return of the worker's remains. The insurance provider shall also render any assistance necessary in the transport including, but not limited to, locating a local and licensed funeral home, mortuary or direct disposition facility to prepare the body for transport, completing all documentation, obtaining legal clearances, procuring consular services, providing death certificates, purchasing the minimally necessary casket or air transport container, as well as transporting the remains including retrieval from site of death and delivery to the receiving funeral home;
- (e) Subsistence allowance benefit, with at least One hundred United States dollars (US\$100.00) per month for a maximum of six (6) months for a migrant worker who is involved in a case or litigation for the protection of his/her rights in the receiving country;
- (f) Money claims arising from employer's liability which may be awarded or given to the worker in a judgement or settlement of his or her case in the NLRC. The insurance coverage for money claims shall be equivalent to at least three (3) months for every year of the migrant worker's employment contract;

In addition to the above coverage, the insurance policy shall also include:

- (g) Compassionate visit. When a migrant worker is hospitalized and has been confined for at least seven (7) consecutive days, he shall be entitled to a compassionate visit by one (1) family member or a requested individual. The insurance company shall pay for the transportation cost of the family member or requested individual to the major airport closest to the place of hospitalization of the worker. It is, however, the responsibility of the family member or requested individual to meet all visa and travel document requirements;
- (h) Medical evacuation. When an adequate medical facility is not available proximate to the migrant worker, as determined by the insurance company's physician and/or a consulting physician, evacuation under appropriate medical supervision by the mode of transport necessary shall be undertaken by the insurance provider; and
- (i) Medical repatriation. When medically necessary as determined by the attending physician, repatriation under medical supervision to the migrant worker's residence shall be undertaken by the insurance provider at such time that the migrant worker is medically cleared for travel by commercial carrier. If the period to receive medical clearance to travel exceeds fourteen (14) days from the date of discharge from the hospital, an alternative appropriate mode of transportation, such as air ambulance, may be arranged. Medical and non-medical escorts may be provided when necessary.

Only reputable private insurance companies duly registered with the Insurance Commission (IC), which are in existence and operational for at least five (5) years, with a net worth of at least Five hundred million pesos (P500,000,000.00) to be determined by the IC, and with a current year certificate of authority shall be qualified to provide for the worker's insurance coverage. Insurance companies who have directors, partners, officers, employees or agents with relatives, within the fourth civil degree of consanguinity or affinity, who work or have interest in any of the licensed recruitment/manning agencies or in any of the government agencies involved in the overseas employment program shall be disqualified from providing this workers' insurance coverage.

The recruitment/manning agency shall have the right to choose from any of the qualified insurance providers the company that will insure the migrant worker it will deploy. After procuring such insurance policy, the recruitment/manning agency shall provide an authenticated copy thereof to the migrant worker. It shall then submit the certificate of insurance coverage of the migrant worker to POEA as a requirement for the issuance of an Overseas Employment Certificate (OEC) to the migrant worker. In the case of seafarers who are insured under policies issued by foreign insurance companies, the POEA shall accept certificates or other proofs of cover from recruitment/manning agencies: Provided, That the minimum coverage under subparagraphs (a) to (i) are included therein.

Any person having a claim upon the policy issued pursuant to subparagraphs (a), (b), (c), (d) and (e) of this section shall present to the insurance company concerned a written notice of claim together with pertinent supporting documents. The insurance company shall forthwith ascertain the truth and extent of the claim and make payment within ten (10) days from the filing of the notice of claim.

Any claim arising from accidental death, natural death or disablement under this section shall be paid by the insurance company without any contest and without the necessity of proving fault or negligence of any kind on the part of the insured migrant worker: Provided, That the following documents, duly authenticated by the Philippine foreign posts, shall be sufficient evidence to substantiate the claim:

- (1) Death Certificate — In case of natural or accidental death;
- (2) Police or Accident Report — In case of accidental death; and
- (3) Medical Certificate — In case of permanent disablement;

For repatriation under subparagraph (d) hereof, a certification which states the reason/s for the termination of the migrant worker's employment and the need for his or her repatriation shall be issued by the Philippine foreign post or the Philippine Overseas Labor Office (POLO) located in the receiving country.

For subsistence allowance benefit under subparagraph (e), the concerned labor attache or, in his absence, the embassy or consular official shall issue a

certification which states the name of the case, the names of the parties and the nature of the cause of action of the migrant worker.

For the payment of money claims under subparagraph (f), the following rules shall govern:

- (1) After a decision has become final and executory or a settlement/compromise agreement has been reached between the parties at the NLRC, an order shall be released mandating the respondent recruitment/manning agency to pay the amount adjudged or agreed upon within thirty (30) days;
- (2) The recruitment/manning agency shall then immediately file a notice of claim with its insurance provider for the amount of liability insured, attaching therewith a copy of the decision or compromise agreement;
- (3) Within ten (10) days from the filing of notice of claim, the insurance company shall make payment to the recruitment/manning agency the amount adjudged or agreed upon, or the amount of liability insured, whichever is lower. After receiving the insurance payment, the recruitment/manning agency shall immediately pay the migrant worker's claim in full, taking into account that in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay the balance thereof;
- (4) In case the insurance company fails to make payment within ten (10) days from the filing of the claim, the recruitment/manning agency shall pay the amount adjudged or agreed upon within the remaining days of the thirty (30)-day period, as provided in the first subparagraph hereof;
- (5) If the worker's claim was not settled within the aforesaid thirty (30)-day period, the recruitment/manning agency's performance bond or escrow deposit shall be forthwith garnished to satisfy the migrant worker's claim;
- (6) The provision of compulsory worker's insurance under this section shall not affect the joint and solidary liability of the foreign employer and the recruitment/manning agency under Section 10;

- (7) Lawyers for the insurance companies, unless the latter is impleaded, shall be prohibited to appear before the NLRC in money claims cases under this section.

Any question or dispute in the enforcement of any insurance policy issued under this section shall be brought before the IC for mediation or adjudication.

In case it is shown by substantial evidence before the POEA that the migrant worker who was deployed by a licensed recruitment/manning agency has paid for the premium or the cost of the insurance coverage or that the said insurance coverage was used as basis by the recruitment/manning agency to claim any additional fee from the migrant worker, the said licensed recruitment/manning agency shall lose its license and all its directors, partners, proprietors, officers and employees shall be perpetually disqualified from engaging in the business of recruitment of overseas workers. Such penalty is without prejudice to any other liability which such persons may have incurred under existing laws, rules or regulations.

For migrant workers recruited by the POEA on a government-to-government arrangement, the POEA shall establish a foreign employers guarantee fund which shall be answerable to the workers' monetary claims arising from breach of contractual obligations. For migrant workers classified as rehires, name hires or direct hires, they may opt to be covered by this insurance coverage by requesting their foreign employers to pay for the cost of the insurance coverage or they may pay for the premium themselves. To protect the rights of these workers, the Department of Labor and Employment and the POEA shall provide them adequate legal assistance, including conciliation and mediation services, whether at home or abroad.

At the end of every year, the Department of Labor and Employment and the IC shall jointly make an assessment of the performance of all insurance providers, based upon the report of the NLRC and the POEA on their respective interactions and experiences with the insurance companies, and they shall have the authority to ban or blacklist such insurance companies which are known to be evasive or not responsive to the legitimate claims of migrant workers. The Department of Labor and Employment shall include such assessment in its year-end report to Congress.

For purposes of this section, the Department of Labor and Employment, IC, NLRC and the POEA, in consultation with the recruitment/manning agencies and legitimate non-government organizations advocating the rights and welfare of overseas Filipino workers, shall formulate the necessary implementing rules and regulations.

The foregoing provisions on compulsory insurance coverage shall be subject to automatic review through the Congressional Oversight Committee immediately after three (3) years from the effectivity of this Act in order to determine its efficacy in favor of the covered overseas Filipino workers and the compliance by recruitment/manning agencies and insurance companies, without prejudice to an earlier review if necessary and warranted for the purpose of modifying, amending and/or repealing these subject provisions.

**SECTION 37-B. *Congressional Oversight Committee.*** — There is hereby created a Joint Congressional Oversight Committee composed of five (5) Senators and five (5) Representatives to be appointed by the Senate President and the Speaker of the House of Representatives, respectively. The Oversight Committee shall be co-chaired by the chairpersons of the Senate Committee on Labor and Employment and the House of Representatives Committee on Overseas Workers Affairs. The Oversight Committee shall have the following duties and functions:

- (a) To set the guidelines and overall framework to monitor and ensure the proper implementation of Republic Act No. 8042, as amended, as well as all programs, projects and activities related to overseas employment;
- (b) To ensure transparency and require the submission of reports from concerned government agencies on the conduct of programs, projects and policies relating to the implementation of Republic Act No. 8042, as amended;
- (c) To approve the budget for the programs of the Oversight Committee and all disbursements therefrom, including compensation of all personnel;
- (d) To submit periodic reports to the President of the Philippines and Congress on the implementation of the provisions of Republic Act No. 8042, as amended;

- (e) To determine weaknesses in the law and recommend the necessary remedial legislation or executive measures; and
- (f) To perform such other duties, functions and responsibilities as may be necessary to attain its objectives.

The Oversight Committee shall adopt its internal rules of procedure, conduct hearings and receive testimonies, reports, and technical advice, invite or summon by subpoena ad testificandum any public official or private citizen to testify before it, or require any person by subpoena duces tecum documents or other materials as it may require consistent with the provisions of Republic Act No. 8042, as amended.

The Oversight Committee shall organize its staff and technical panel, and appoint such personnel, whether on secondment from the Senate and the House of Representatives or on temporary, contractual, or on consultancy, and determine their compensation subject to applicable civil service laws, rules and regulations with a view to ensuring a competent and efficient secretariat.

The members of the Oversight Committee shall not receive additional compensation, allowances or emoluments for services rendered thereto except traveling, extraordinary and other necessary expenses to attain its goals and objectives.

The Oversight Committee shall exist for a period of ten (10) years from the effectivity of this Act and may be extended by a joint concurrent resolution.

**SECTION 38. *Appropriation and Other Sources of Funding.*** — The amount necessary to carry out the provisions of this Act shall be provided for in the General Appropriations Act of the year following its enactment into law and thereafter.

**SECTION 39. *Migrant Workers Day.*** — The day of signing by the President of this Act shall be designated as the Migrant Workers Day and shall henceforth be commemorated as such annually.

**SECTION 40. *Implementing Rules and Regulations.*** — The departments and agencies charged with carrying out the provisions of this Act shall, within

ninety (90) days after the effectivity of this Act, formulate the necessary rules and regulations for its effective implementation.

SECTION 41. *Repealing Clause.* — All laws, decrees, executive orders, rules and regulations, or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 42. *Separability Clause.* — If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

SECTION 43. *Effectivity Clause.* — This Act shall take effect after fifteen (15) days from its publication in the Official Gazette or in at least two (2) national newspapers of general circulation whichever comes earlier.

Approved: June 7, 1995



OMNIBUS RULES AND REGULATIONS

IMPLEMENTING THE MIGRANT WORKERS  
AND OVERSEAS FILIPINOS ACT OF 1995  
AS AMENDED BY REPUBLIC ACT 10022



# **Omnibus Rules and Regulations**

## **Implementing the Migrant Workers and Overseas Filipinos Act of 1995 as Amended by Republic Act 10022**

Pursuant to the authority vested by law on the Secretary of Foreign Affairs, Secretary of Labor and Employment, Secretary of Health, the Chairman of the National Labor Relations Commission, and the Insurance Commissioner, and in the light of Republic Act No. 10022, An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and For Other Purposes, the following Implementing Rules and Regulations are hereby promulgated:

### **RULE I GENERAL PROVISIONS**

#### *Section 1. Declaration of Policies.*

- (a) In the pursuit of an independent foreign policy and while considering national sovereignty, territorial integrity, national interest and the right to self-determination paramount in its relations with other states, the State shall, at all times, uphold the dignity of its citizens whether in the country or overseas, in general, and Filipino migrant workers, in particular, continuously monitor international conventions, adopt/be signatory to and ratify those that guarantee protection to our migrant workers, and endeavor to enter into bilateral agreements with countries receiving overseas Filipino workers.

- (b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.
- (c) While recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated. The State, therefore, shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development.
- (d) The State affirms the fundamental equality before the law of women and men and the significant role of women in nation building. Recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers.
- (e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, whether regular/ documented or irregular/undocumented, are adequately protected and safeguarded.
- (f) The right of Filipino migrant workers and all overseas Filipinos to participate in the democratic decision-making processes of the State and to be represented in institutions relevant to overseas employment is recognized and guaranteed.
- (g) The State recognizes that the most effective tool for empowerment is the possession of skills by migrant workers. The government shall expand

access of migrant workers to free skills development and enhancement programs through guidelines on scholarships, training subsidies/grants of the concerned agencies.

Pursuant to this and as soon as practicable, the government shall deploy and/or allow the deployment only of skilled Filipino workers.

- (h) The State recognizes that non-governmental organizations, trade unions, workers associations, stakeholders and other similar entities duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect. The significant contribution of recruitment and manning agencies shall form part of this partnership.

## **RULE II**

### **DEFINITION OF TERMS**

#### *Section 1. Definitions.*

- (a) Act – refers to the “Migrant Workers and Overseas Filipinos Act of 1995,” as amended by Republic Act No. 9422 and Republic Act No. 10022.
- (b) Authority – refers to a document issued by the Secretary of Labor and Employment authorizing the officers, personnel, agents or representatives of a licensed recruitment/manning agency to conduct recruitment and placement activities in a place stated in the license or in a specified place.
- (c) BI – Bureau of Immigration
- (d) Bona fide Non-Government Organizations (NGOs) – refer to non-government, civil society or faith-based organizations duly recognized by the Philippine Embassy as active partners of the Philippine Government in the protection of Filipino migrant workers and the promotion of their welfare.
- (e) CICT – Commission on Information and Communications Technology

- (f) Contracted workers – refer to Filipino workers with employment contracts already processed by the POEA for overseas deployment.
- (g) DFA - Department of Foreign Affairs
- (h) DILG – Department of the Interior and Local Government
- (i) Direct Hires – refer to workers directly hired by employers for overseas employment as authorized by the Secretary of Labor and Employment and processed by the POEA, including:
  - 1. Those hired by international organizations;
  - 2. Those hired by members of the diplomatic corps; and
  - 3. Name hires or workers who are able to secure overseas employment opportunities with employers without the assistance or participation of any agency.
- (j) DOH – Department of Health
- (k) DOJ - Department of Justice
- (l) OLE - Department of Labor and Employment
- (m) DOST - Department of Science and Technology
- (n) DOT – Department of Tourism
- (o) Employment Contract – refers to the following:
  - 1. For land-based workers hired by private recruitment/employment agencies – an individual written agreement between the foreign principal/employer and the worker based on the master employment contract approved by the Administration; and
  - 2. For seafarers – the written standard POEA-approved employment contract stipulating a specific period of employment and formulated through tripartite consultation,

3. individually adopted and agreed upon by the principal/employer and the seafarer.
- (p) Filipino Service Contractor – refers to any person, partnership or corporation duly licensed as a private recruitment agency by the Secretary of Labor and Employment to recruit workers for its accredited projects or contracts overseas.
  - (q) Gender Sensitivity – refers to cognizance of the inequalities and inequities prevalent in society between women and men and a commitment to address issues with equal concern for the respective interest of the sexes.
  - (r) Head or manage – refers to any of the following acts:
    1. Control and supervise the operations of the recruitment/manning agency or branch thereof of which they are employed; or
    2. Exercise the authority to hire or fire employees and lay down and execute management policies of the recruitment/manning agency or branch thereof.
  - (s) Joint and several liability – refers to the liability of the principal/employer and the recruitment/manning agency, for any and all claims arising out of the implementation of the employment contract involving Filipino workers for overseas deployment. If the recruitment/manning agency is a juridical being, the corporate officers and directors and partners, as the case may be, shall themselves be jointly and severally liable with the corporation or partnership for the aforesaid claims and damages.
  - (t) IC – Insurance Commission
  - (u) Irregular/Undocumented Filipino migrant workers – refer to the following:
    1. Those who acquired their passports through fraud or misrepresentation;
    2. Those who possess expired visas or permits to stay;
    3. Those who have no travel document whatsoever;

4. Those who have valid but inappropriate visas; or
  5. Those whose employment contracts were not processed by the POEA or subsequently verified and registered on-site by the POLO, if required by law or regulation.
- (v) Labor Code - Presidential Decree No. 442, as amended
- (w) License – refers to the document issued by the Secretary of Labor and Employment authorizing a person, partnership or corporation to operate a private recruitment/manning agency.
- (x) LGU – Local Government Unit
- (y) Manning Agency – refers to any person, partnership or corporation duly licensed by the Secretary of Labor and Employment to engage in the recruitment and placement of seafarers for ships plying international waters and for related maritime activities.
- (z) NBI- National Bureau of Investigation
- (aa) NCC- National Computer Center
- (bb)NLRC - National Labor Relations Commission
- (cc) Non-licensee – refers to any person, partnership or corporation with no valid license to engage in recruitment and placement of overseas Filipino workers or whose license is revoked, cancelled, terminated, expired or otherwise delisted from the roll of licensed recruitment/manning agencies registered with the POEA.
- (dd)NRCO – National Reintegration Center for Overseas Filipino Workers
- (ee)NSCB – National Statistical and Coordination Board
- (ff)NSO – National Statistics Office
- (gg)NTC – National Telecommunications Commission



- (hh) Overseas Filipinos – refer to migrant workers, other Filipino nationals and their dependents abroad.
- (ii) Overseas Filipino in distress – refers to an Overseas Filipino who has a medical, psycho-social or legal assistance problem requiring treatment, hospitalization, counseling, legal representation as specified in Rule IX of these Rules or any other kind of intervention with the authorities in the country where he or she is found.
- (jj) Overseas Filipino Worker or Migrant Worker – refers to a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes, or on an installation located offshore or on the high seas. A “person to be engaged in a remunerated activity” refers to an applicant worker who has been promised or assured employment overseas.
- (kk) OWWA – Overseas Workers Welfare Administration
- (ll) Placement Fees – refer to any and all amounts charged by a private recruitment agency from a worker for its recruitment and placement services as prescribed by the Secretary of Labor and Employment.
- (mm) POEA – Philippine Overseas Employment Administration, shall be used interchangeably with the term “Administration”.
- (nn) POLO – Philippine Overseas Labor Office
- (oo) Principal – refers to an employer or foreign placement agency hiring or engaging Filipino workers for overseas employment through a licensed private recruitment/manning agency.
- (pp) Private Recruitment/Employment Agency – refers to any person, partnership or corporation duly licensed by the Secretary of Labor and Employment to engage in the recruitment and placement of workers for overseas employment for a fee which is charged, directly or indirectly, from the workers or employers or both.

(qq) Rehires – refer to land –based workers who renewed their employment contracts with the same principal.

(rr) Regular/Documented Filipino Migrant Workers – Refer to the following:

1. Those who possess valid passports and appropriate visas or permits to stay and work in the receiving country; and
2. Those whose contracts of employment have been processed by the POEA, or subsequently verified and registered on-site by the POLO, if required by law or regulation.

(ss) Seafarer – refers to any person who is employed or engaged in overseas employment in any capacity on board a ship other than a government ship used for military or non-commercial purposes. The definition shall include fishermen, cruise ship personnel and those serving on mobile offshore and drilling units in the high seas.

(tt) Skilled Filipino Workers – refer to those who have obtained an academic degree, qualification, or experience, or those who are in possession of an appropriate level of competence, training and certification, for the job they are applying, as may be determined by the appropriate government agency.

(uu) TESDA - Technical Education and Skills Development Authority

(vv) Underage Migrant Workers – refer to those who are below 18 years or below the minimum age requirement for overseas employment as determined by the Secretary of Labor and Employment.

### **RULE III**

### **DEPLOYMENT OF MIGRANT WORKERS**

#### *Section 1. Guarantees of Migrant Workers' Rights.*

The State shall allow the deployment of OFWs only in countries where the rights of Filipino migrant workers are protected. The government recognizes

any of the following as a guarantee on the part of the receiving country for the protection of the rights of OFWs:

- (a) It has existing labor and social laws protecting the rights of workers, including migrant workers; or
- (b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; or
- (c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers;

Provided, that the receiving country is taking positive and concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b), and (c) hereof.

“Positive and concrete measures” shall include legislative or executive initiatives, diplomatic negotiations, judicial decisions, programs, projects, activities and such other acts by the receiving country aimed at protecting the rights of migrant workers.

For purposes of the preceding paragraphs, the DFA shall issue a certification that a receiving country complies with any of the guarantees under subparagraphs (a), (b), and (c) hereof, and that the receiving country is taking such positive and concrete measures to protect workers, including migrant workers. The DFA shall issue such certification to the POEA, specifying therein the pertinent provisions of the receiving country’s labor/social law, or the convention/declaration/resolution, or the bilateral agreement/arrangement which protect the rights of migrant workers.

Such a certification shall be subject to review by the DFA as often as may be deemed necessary.

The POEA Governing Board shall, in a Resolution, allow only the deployment of OFWs to receiving countries which have been certified by the DFA as compliant with the above stated guarantees.

The POEA shall register OFWs only for receiving countries allowed by the POEA Governing Board, subject to existing standards on accreditation of foreign employers/principals and qualification requirements for workers.

*Section 2. Liability of the Members of the POEA Governing Board, Government Officials and Employees.*

The members of the POEA Governing Board who actually voted in favor of a Resolution allowing the deployment of migrant workers without the DFA certification referred to in the preceding section shall suffer the penalties of removal or dismissal from service with disqualification to hold any appointive public office for five (5) years. Further, the government official or employee responsible for the issuance of the permit or for allowing the deployment of migrant workers in violation of this section and in direct contravention of a Resolution by the POEA Governing Board prohibiting deployment shall be meted the same penalties in this section.

*Section. 3. Deployment of OFWs to Ocean-Going Ships.*

The State shall also allow the deployment of OFWs to ships navigating the foreign seas or to installations located offshore or on high seas whose owners/employers are compliant with international laws and standards that protect the rights of migrant workers.

*Section. 4. Deployment to Companies and Contractors with International Operations.*

The State shall likewise allow the deployment of OFWs to companies and contractors with international operations: Provided, that they are compliant with standards, conditions and requirements, as embodied in the employment contracts prescribed by the POEA and in accordance with internationally-accepted standards.

*Section. 5. Deployment of Skilled Workers.*

As soon as adequate mechanisms for determination of skills are in place and consistent with national interest, the Secretary of Labor and Employment shall allow the deployment only of skilled Filipino workers.

## Section 6. *Termination or Ban on Deployment.*

Notwithstanding the provisions of Sections 1 and 5 of this Rule, in pursuit of the national interest or when public welfare so requires, the POEA Governing Board, after consultation with the DFA, may, at any time, terminate or impose a ban on the deployment of migrant workers.

The POEA Governing Board may, after consultation with the DFA, grant exceptions to the ban or lift the ban.

## Section. 7. *Travel Advisory.*

The DFA shall issue travel advisories as the need arises. A “travel advisory” is a notice to the traveling public normally for a security reason and based on the prevailing peace and order situation in a specific destination.

## Section. 8. *Labor Situationer.*

The POEA, in consultation with the DFA, shall disseminate information on labor and employment conditions, migration realities and other facts, as well as adherence of particular countries to international standards on human and workers rights which will adequately prepare individuals into making informed and intelligent decisions about overseas employment. The POEA shall publish, in a timely manner, such advisory in a newspaper of general circulation.

The POEA may undertake other programs or resort to other modes of information and dissemination campaigns, such as the conduct of nationwide, comprehensive and sustainable Pre-Employment Orientation Seminars.

# **RULE IV ILLEGAL RECRUITMENT**

## Section 1. *Definition.*

For purposes of the Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for

employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, that any such non- licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

- (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance;
- (b) To furnish or publish any false notice or information or document in relation to recruitment or employment;
- (c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code, or for the purpose of documenting hired workers with the POEA, which include the act of reprocessing workers through a job order that pertains to non-existent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA;
- (d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
- (e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers' organization;
- (f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

- (g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;
- (h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;
- (i) To substitute or alter 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 of Labor and Employment;
- (j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;
- (k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing Rules and Regulations;
- (l) Failure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment;
- (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault; and
- (n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.

## Section. 2. *Crime Involving Economic Sabotage.*

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one

another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

### Section. 3. *Other Prohibited Acts.*

In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

- (a) Grant a loan to an OFW with interest exceeding eight (8%) percent per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;
- (b) Impose a compulsory and exclusive arrangement whereby an OFW is required to avail of a loan only from specifically designated institutions, entities, or persons;
- (c) Refuse to condone or renegotiate a loan incurred by an OFW after the latter's employment contract has been prematurely terminated through no fault of his/her own;
- (d) Impose a compulsory and exclusive arrangement whereby an OFW is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;
- (e) Impose a compulsory and exclusive arrangement whereby an OFW is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory training mandated by principals/shipowners where the latter shoulder the cost of such trainings;
- (f) For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers' applications;
- (g) For a recruitment/manning agency or a foreign principal/employer to pass-on to the OFW or deduct from his/her salary the payment of the



cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker's insurance coverage.

#### Section. 4. *Persons Responsible.*

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/ agents thereof shall be liable.

#### Section. 5. *Penalties.*

- (a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One Million Pesos (Php1,000,000.00) nor more than Two Million Pesos (Php2,000,000.00).
- (b) The penalty of life imprisonment and a fine of not less than Two Million Pesos (Php2,000,000.00) nor more than Five Million Pesos (Php5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

Provided, however, that the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

- (c) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Five Hundred Thousand Pesos (Php500,000.00) nor more than One Million Pesos (Php1,000,000.00).

If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings.

In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment/manning agency, lending institutions, training school or medical clinic

## Section. 6. *Venue.*

A criminal action arising from illegal recruitment as defined under this Rule shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense; Provided, that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

## Section. 7. *Prescription.*

Illegal recruitment cases under this Rule shall prescribe in five (5) years: Provided, however, that illegal recruitment cases involving economic sabotage shall prescribe in twenty (20) years.

## Section. 8. *Independent Action.*

The filing of an offense punishable under this section shall be without prejudice to the filing of cases punishable under other existing laws, rules or regulations.

# **RULE V PROHIBITION OF GOVERNMENT PERSONNEL**

## Section 1. *Disqualification.*

The following personnel shall be prohibited from engaging directly or indirectly in the business of recruitment of migrant workers:

- (a) Any official or employee of the DOLE, POEA, OWWA, DFA, DOJ, DOH, BI, IC, NLRC, TESDA, CFO, NBI, Philippine National Police (PNP), Manila International Airport Authority (MIAA), Civil Aviation Authority of the Philippines (CAAP), and other government agencies involved in the implementation of the Act, regardless of the status of his/her employment; and
- (b) Any of his/her relatives within the fourth civil degree of consanguinity or affinity.

Any government official or employee found to be violating this section shall be charged administratively, according to Civil Service Rules and Regulations without prejudice to criminal prosecution.

The government agency concerned shall monitor and initiate, upon its initiative or upon the petition of any private individual, action against erring officials and employees, and/or their relatives.

## **RULE VI**

### **ANTI-ILLEGAL RECRUITMENT PROGRAMS**

#### *Section. 1. POEA Anti-Illegal Recruitment Programs.*

The POEA adopts policies and procedures, prepares and implements intensified programs and strategies towards the eradication of illegal recruitment activities such as, but not limited to the following:

- (a) Providing legal assistance to victims of illegal recruitment and related cases which are administrative or criminal in nature, such as but not limited to documentation and counseling;
- (b) Prosecution of illegal recruiters, during preliminary investigation and during trial in collaboration with the DOJ prosecutors;
- (c) Special operations such as surveillance and closure of establishment or entities suspected to be engaged in illegal recruitment; and
- (d) Information and education campaign.

Whenever necessary, the POEA shall coordinate with other appropriate entities in the implementation of said programs.

#### *Section. 2. Legal Assistance.*

The POEA shall provide free legal service to victims of illegal recruitment and related cases which are administrative or criminal in nature in the form of legal advice, assistance in the preparation of complaints and supporting documents, institution of criminal actions.

### Section. 3. *Receiving of Complaints for Illegal Recruitment.*

Victims of illegal recruitment and related cases which are administrative or criminal in nature may file with the POEA a report or complaint in writing and under oath for assistance purposes.

In regions outside the National Capital Region, complaints and reports involving illegal recruitment may be filed with the appropriate regional office of the POEA or DOLE.

The complaints and reports received by the DOLE shall be endorsed to the POEA for proper evaluation.

### Section. 4. *Endorsement of Case to the Proper Prosecution Office.*

The POEA, after evaluation and proper determination that sufficient evidence exists for illegal recruitment and other related cases, shall endorse the case to the proper Prosecution Office for the conduct of preliminary investigation.

During preliminary investigation, the complainant may avail of legal assistance or counseling from the POEA.

### Section. 5. *Institution of Criminal Action.*

The Secretary of Labor and Employment, the POEA Administrator or the DOLE Regional Director, or their duly authorized representatives, or any aggrieved person, may initiate the corresponding criminal action with the appropriate office.

### Section. 6. *Affidavits and Testimonies of Operatives.*

Affidavits and testimonies of operatives or personnel from the DOLE, POEA, and law enforcement agencies who witnessed the acts constituting the offense shall be sufficient basis to prosecute the accused.

### Section 7. *Legal Assistance During Trial.*

In the prosecution of offenses punishable under Section 6 of the Act, the Anti-Illegal Recruitment Branch of the POEA shall collaborate with the

public prosecutors of the DOJ and, in certain cases, allow the POEA lawyers to take the lead in prosecution.

Section. 8. *Special Allowance for Lawyers of the Prosecution Division.*

The POEA lawyers who act as special counsels during preliminary investigation and/or as collaborating attorneys of the public prosecutors of the DOJ during court hearings shall be entitled to receive additional allowances in such amounts as may be determined by the Administrator.

Section. 9. *Action on the Complaint/Report.*

Where the complaint/report alleges that illegal recruitment activities are ongoing, surveillance shall be undertaken at the premises where the alleged illegal recruitment activities are conducted. If illegal recruitment activities are confirmed, the POEA Director of the Licensing and Regulation Office (LRO) shall recommend to the POEA Administrator the institution of criminal action and/or the issuance of a closure order or order of preventive suspension.

Section. 10. *Surveillance.*

The POEA and/or designated officials in the DOLE regional offices may, on their own initiative, conduct surveillance on the alleged illegal recruitment activities.

Within two (2) days from the termination of surveillance, a report supported by an affidavit shall be submitted to the Director-LRO or the Regional Director concerned, as the case may be.

Section. 11. *Issuance of Closure Order.*

The POEA Administrator or the concerned DOLE Regional Director may conduct an ex parte preliminary examination to determine whether the activities of a non-licensee constitute a danger to national security and public order or will lead to further exploitation of job seekers. For this purpose, the POEA Administrator or the Regional Director concerned or their duly authorized representatives, may examine personally the complainants and/or their witnesses in the form of searching questions and answers and shall take their testimony under oath. The testimony of the complainants and/or

witnesses shall be reduced in writing and signed by them and attested by an authorized officer.

If based on a surveillance report, or preliminary examination of the complainants, the POEA Administrator or DOLE Regional Director, or their authorized representative is satisfied that such danger or exploitation exists, a written order shall be issued by the POEA Administrator for the closure of the establishment being used for illegal recruitment activity.

In case of a business establishment whose license or permit to operate a business was issued by the local government, the Secretary of Labor and Employment, the POEA Administrator or the Regional Director concerned shall likewise recommend to the granting authority the immediate cancellation/revocation of the license or permit to operate its business.

#### Section. 12. *Implementation of Closure Order.*

A closure order shall be served upon the offender or the person in charge of the subject establishment. The closure shall be effected by sealing and padlocking the establishment and posting of notice of such closure in bold letters at a conspicuous place in the premises of the establishment. Whenever necessary, the assistance and support of the appropriate law enforcement agencies may be requested for this purpose.

#### Section. 13. *Report on Implementation.*

A report on the implementation of the closure order executed under oath, stating the details of the proceedings undertaken shall be submitted to the Director-LRO or the Regional Director concerned, as the case may be, within two (2) days from the date of implementation.

#### Section. 14. *Institution of Criminal Action Upon Closure Order.*

The POEA Administrator or the DOLE Regional Director, or their duly authorized representatives, or any law enforcement agencies or any aggrieved person may initiate the corresponding criminal action with the appropriate prosecutor's office.

Section. 15. *Effect of Closure Order.*

All officers and responsible employees of the entity engaged in illegal recruitment activities shall be ordered included in the List of Persons with Derogatory Record and be disqualified/barred from participating in the overseas employment program of the government.

Section. 16. *Who May File a Motion to Reopen the Establishment.*

The motion to re-open may be filed only by the following:

- (a) The owner of the building or his/her duly authorized representative;
- (b) The building administrator or his/her duly authorized representative;
- (c) Any other person or entity legitimately operating within the premises closed/padlocked whose operations/activities are distinct from the recruitment activities of the person/entity subject of the closure order.

Section. 17. *Grounds for Reopening the Establishment.*

That the office is not the subject of the closure order;

That the contract of lease with the owner of the building or the building administrator has already been cancelled or terminated. The request to re-open shall be duly supported by an affidavit of undertaking either of the owner of the building or the building administrator that the same will not be leased/rented to any other person/entity for recruitment purposes without the necessary license from the POEA;

That the office is shared by a person/entity not involved in illegal recruitment activities, whether directly or indirectly; or

Any other analogous ground that the POEA may consider as valid and meritorious.

Section. 18. *Motion to Lift a Closure Order.*

A motion to lift a closure order which has already been implemented may be entertained only when filed with the Licensing and Regulation Office

(LRO) within ten (10) calendar days from the date of implementation. The motion shall be verified and shall clearly state the grounds upon which it is based, attaching supporting documents. A motion to lift which does not conform to the requirements herein set forth shall be denied.

Section. 19. *Who May File Motion to Lift a Closure Order.*

The verified motion to lift closure order may be filed only by the person or entity against whom the closure order was issued and implemented or a duly authorized representative.

Section. 20. *Grounds for Lifting a Closure Order.*

Lifting of the closure order may be granted on any of the following grounds:

- (a) The person/entity is later found out or has proven that it is not involved in illegal recruitment activities, whether directly or indirectly; or
- (b) Any other analogous ground that the POEA may consider as valid and meritorious.

Lifting of a closure order is without prejudice to the filing of criminal complaints with the appropriate office against the person alleged to have conducted illegal recruitment activities.

Section. 21. *Appeal.*

The order of the POEA Administrator denying the motion to lift a closure order and/or motion to re-open may be appealed to the Secretary of Labor and Employment within ten (10) days from receipt thereof.

Section. 22. *Monitoring of Establishments.*

The POEA shall monitor establishments that are subject of closure orders.

Where a re-opened office is subsequently confirmed as still being used for illegal recruitment activities, a new closure order shall be issued which shall not be subject to a motion to lift.



Section. 23. *Pre-Employment Orientation Seminar (PEOS).*

The POEA shall strengthen its comprehensive Pre-Employment Orientation Program through the conduct of seminars that will discuss topics such as legal modes of hiring for overseas employment, rights, responsibilities and obligations of migrant workers, health issues, prevention and modus operandi of illegal recruitment, and gender sensitivity.

The POEA shall inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights.

Section. 24. *Partnership with LGUs, other Government Agencies and NGO*

The POEA shall maintain and strengthen its partnership with LGUs, other government agencies and NGOs advocating the rights and welfare of OFWs for the purpose of dissemination of information on all aspects of overseas employment.

For this purpose, the POEA shall continuously provide the concerned entities with updated lists of licensed agencies and entities and information materials such as brochures, pamphlets, posters, as well as recent anti-illegal recruitment laws and regulations for distribution to their respective constituents.

## **RULE VII MONEY CLAIMS**

Section 1. *Jurisdiction of Labor Arbiters.*

Notwithstanding any provision of law to the contrary, the Labor Arbiters of the NLRC shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

## Section. 2. *Updates in the Global Services Industry.*

Consistent with the mandate in the preceding section, the NLRC shall:

- (a) Endeavor to update and keep abreast with the developments in the global services industry; and
- (b) Participate in international or local conferences involving migration issues and in relevant overseas missions.

## Section.3. *Joint and Several Liability.*

The liability of the principal/employer and the recruitment/placement agency on any and all claims under this Rule shall be joint and several. This liability shall 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 severally 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 of the contract made locally or in a foreign country.

## Section. 4. *Compromise Agreement.*

Any compromise, amicable settlement or voluntary agreement on money claims inclusive of damages under this Rule shall be paid within thirty (30) days from the approval of the settlement by the appropriate authority, unless a different period is agreed upon by the parties and approved by the appropriate authority.

#### Section. 5. *Effect of Illegal Termination and/or Deduction.*

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deduction from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee with interest of twelve per cent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or three (3) months for every year of the unexpired term, whichever is less.

In case of any unauthorized deduction, the worker shall be entitled to the refund of the deductions made, with interest of twelve per cent (12%) per annum, from the date the deduction was made.

#### Section. 6. *Effect of Final and Executory Judgment.*

In case of final and executory judgment against a foreign employer/principal, it shall be automatically disqualified, without further proceedings, from participating in the Philippine Overseas Employment Program and from recruiting and hiring Filipino workers until and unless it fully satisfies the judgment award.

For this purpose, the NLRC or any party in interest shall furnish the POEA a certified true copy of the sheriff's return indicating the failure to fully satisfy a final and executory judgment against a foreign employer/principal.

Should the disqualified foreign employer/principal fully satisfy the judgment award, the NLRC or any party in interest shall furnish the POEA a certified true copy of the sheriff's return indicating full compliance with the judgment which may be a basis to lift the disqualification.

#### Section. 7. *Voluntary Arbitration.*

For OFWs with collective bargaining agreements, the case shall be submitted for voluntary arbitration in accordance with Articles 261 and 262 of the Labor Code.

## **RULE VIII**

### **ROLE OF DFA**

#### *Section 1. Assistance to Nationals as the Third Pillar of Philippine Foreign Policy.*

Assistance to nationals is the third pillar of Philippine foreign policy. Pursuant to the Philippine Foreign Service Act of 1991 and the Migrant Workers and Overseas Filipinos Act, as amended, the DFA is mandated to formulate and implement policies and programs to promote and protect the rights and welfare of Filipino migrants, and provide consular and legal assistance to overseas Filipinos in distress.

#### *Section. 2. International, Regional and Bilateral Initiatives to Protect Overseas Filipino Workers.*

The DFA shall continue to advocate in international and regional fora the protection and promotion of the rights and welfare of overseas Filipino workers by taking the lead and/or actively participating in the crafting of international and regional conventions/declarations/ agreements that protect their rights and promote their welfare.

The DFA, through its foreign service posts, shall endeavor to improve the conditions of overseas Filipino workers. It shall establish harmonious working relations with the receiving countries through, among others, the forging of bilateral agreements/arrangements or other forms of cooperation.

#### *Section. 3. One Country-Team Approach.*

Under the country-team approach, all officers, representatives and personnel posted abroad, regardless of their mother agencies shall, on a per country basis, act as one country-team with a mission under the leadership of the ambassador.

In receiving countries where there are Philippine consulates, such consulates shall also constitute part of the country-team under the leadership of the ambassador.

In the implementation of the country-team approach, visiting Philippine delegations shall be provided full support and information.

#### Section. 4. *Negotiations of International Agreements.*

The DFA shall be the lead agency that shall advise and assist the President in planning, organizing, directing, coordinating and evaluating the total national effort in the field of foreign relations pursuant to the Revised Administrative Code (Executive Order No. 292).

### **RULE IX LEGAL ASSISTANT FOR MIGRANT WORKERS AFFAIRS**

#### Section 1. *Function and Responsibilities.*

The Legal Assistant for Migrant Workers Affairs under the Department of Foreign Affairs shall be primarily responsible for the provision and over-all coordination of all legal assistance services to Filipino Migrant Workers as well as Overseas Filipinos in distress. In the exercise of these primary responsibilities, he/she shall discharge the following duties and functions:

- (a) Issue the guidelines, procedures and criteria for the provision of legal assistance services to Filipino Migrant Workers;
- (b) Establish close linkages with the DOLE, POEA, OWWA and other government agencies concerned, as well as with non-governmental organizations assisting migrant workers, to ensure effective coordination in providing legal assistance to migrant workers;
- (c) When necessary, tap the assistance of the Integrated Bar of the Philippines (IBP), other bar associations, legal experts on labor, migration and human rights laws, reputable law firms, and other civil society organizations, to complement government services and resources to provide legal assistance to migrant workers;
- (d) Administer the Legal Assistance Fund for Migrant Workers and to authorize its disbursement, subject to approved guidelines and procedures, governing its use, disposition and disbursement;
- (e) Keep and maintain an information system for migration as provided in Section 20 of the Act;

- (f) Prepare its budget for inclusion in the Department of Foreign Affairs' budget in the annual General Appropriations Act; and
- (g) Perform such other functions and undertake other responsibilities as may be useful, necessary or incidental to the performance of his/her mandate.

### Section. 2. *Qualifications and Authority.*

The Legal Assistant for Migrant Workers Affairs shall be headed by a lawyer of proven competence in the field of law with at least ten (10) years experience as a legal practitioner and who must not have been a candidate to an elective office in the last local or national elections. He/she shall be appointed by the President of the Philippines. He/she shall have the title, rank, salary, and privileges of an Undersecretary of Foreign Affairs, and shall head the Office of the Undersecretary for Migrant Workers' Affairs (OUMWA) of the Department of Foreign Affairs.

He/She shall have authority to hire private lawyers, domestic or foreign, in order to assist him/her in the effective discharge of the functions of his/her Office.

### Section. 3. *Legal Assistance Fund.*

The Legal Assistance Fund created under the Act shall be used exclusively to provide legal services for Migrant Workers and Overseas Filipinos in distress in accordance with approved guidelines, criteria and procedures of the DFA.

It shall be used inter alia for the following specific purposes:

- (a) In the absence of a counsel de oficio or court-appointed lawyer, payment of attorney's fees to foreign lawyers for their services in representing migrant workers facing criminal and labor cases abroad, or in filing cases against erring or abusive employers abroad, provided, that no amount shall be disbursed for the appeal of cases except when the penalty meted is life imprisonment or death or under meritorious circumstances as determined by the Undersecretary for Migrant Workers Affairs;

- (b) Bail bonds to secure the temporary release of workers under detention upon the recommendation of the lawyer and the foreign service post concerned; and
- (c) Court fees, charges and other reasonable litigation expenses when so recommended by their lawyers.

## **RULE X ROLE OF DOLE**

### **Section 1. *On-Site Protection.***

The DOLE shall see to it that labor and social welfare laws in the foreign countries are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos, including the grant of legal assistance and the referral to proper medical centers or hospitals.

### **Section. 2. *POLO Functions.***

The DOLE overseas operating arm shall be the POLO, which shall have the following functions and responsibilities:

- (a) Ensure the promotion and protection of the welfare and interests of OFWs and assist them in all problems arising out of employer-employee relationships;
- (b) Coordinate the DOLE's employment promotion mandate, consistent with the principles of the Act;
- (c) Verify employment contracts and other employment-related documents;
- (d) Monitor and report to the Secretary of Labor and Employment on situations and policy developments in the receiving country that may affect OFWs in particular and Philippine labor policies, in general;
- (e) Supervise and coordinate the operations of the Migrant Workers and Other Overseas Filipinos Resource Center; and

- (f) Such other functions and responsibilities as may be assigned by the Secretary of Labor and Employment.

## **A. POEA**

### *Section. 3. Regulation of Private Sector.*

The POEA shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements. It shall be responsible for the regulation and management of overseas employment from the pre- employment stage, securing the best possible employment terms and conditions for overseas Filipino workers, and taking into consideration the needs of vulnerable sectors and the peculiarities of sea-based and land-based workers.

### *Section. 4. Hiring through the POEA.*

The Administration shall recruit and place workers primarily on government-to -government arrangements. In the recruitment and placement to service the requirements for trained and competent Filipino workers of foreign governments and their instrumentalities, and such other employers as public interests may require, the Administration shall deploy only to countries where the Philippines has concluded bilateral agreements or arrangements: Provided that such countries shall guarantee to protect the rights of Filipino migrant workers; and provided further that such countries shall observe and/or comply with the international laws and standards for migrant workers.

### *Section. 5. Foreign Employers Guarantee Fund.*

For migrant workers recruited by the POEA on a government to government arrangement, the POEA shall, through relevant guidelines, establish and administer a Foreign Employers Guarantee Fund which shall be answerable for the workers' monetary claims arising from breach of contractual obligations.



## Section. 6. *Jurisdiction of the POEA.*

The POEA shall exercise original and exclusive jurisdiction to hear and decide:

- (a) all pre-employment/recruitment violation cases which are administrative in character, involving or arising out of violations of Rules and Regulations relating to licensing and registration, including refund of fees collected from the workers or violation of the conditions for issuance of license or authority to recruit workers; and
- (b) disciplinary action cases and other special cases, which are administrative in character, involving employers, principals, contracting partners and OFWs processed by the POEA.

## Section. 7. *Venue.*

Pre-employment/recruitment violation cases may be filed with the POEA Adjudication Office or at any DOLE/POEA regional office of the place where the complainant applied or was recruited, at the option of the complainant. The office where the complaint was first filed shall take cognizance of the case.

Disciplinary action cases and other special cases shall be filed with the POEA Adjudication Office.

## Section. 8. *Who may file.*

Any aggrieved person may file a complaint in writing and under oath for violation of the Labor Code and the POEA Rules and Regulations and other issuances.

For this purpose, an aggrieved person is one who is prejudiced by the commission of a violation or any of the grounds for disciplinary actions provided in the POEA Rules and Regulations.

However, the Administration, on its own initiative, may conduct proceedings based on reports of violations or any of the grounds for disciplinary actions provided in the POEA Rules and Regulations and other issuances on overseas employment, subject to preliminary evaluation.

#### Section. 9. *Prescriptive Period.*

All pre-employment/recruitment violation and disciplinary action cases shall be barred if not commenced or filed with the Administration within three (3) years after such cause of action accrued.

#### Section. 10. *Imposition of Administrative Penalty.*

For pre-employment/recruitment violation cases, the Administrator, in the exercise of adjudicatory power, may impose the penalty of reprimand, suspension, or cancellation or revocation of license.

Where the penalty of suspension is imposed, the Administrator shall, in appropriate cases, allow the lifting of suspension of erring recruitment/manning agencies upon the payment of fine of Fifty Thousand Pesos (Php50,000.00) for every month of suspension.

For disciplinary action cases against employers, the Administrator may impose disqualification from the overseas employment program. For disciplinary action cases against workers, the Administrator may likewise impose suspension or disqualification.

#### Section. 11. *Appeal.*

The decision of the Administrator may be appealed to the Secretary of Labor and Employment within fifteen (15) days from the receipt of the Decision.

### **B. OWWA**

#### Section. 12. *Programs and Services.*

The OWWA shall continue to formulate and implement welfare programs for overseas Filipino workers and their families in all phases of overseas employment. It shall also ensure the awareness by the OFWs and their families of these programs and other related governmental programs.

### Section. 13. *Assistance in the Enforcement of Contractual Obligations.*

In the implementation of OWWA welfare programs and services and in line with the One-Country Team Approach for on-site services, the Welfare Officer or in his/her absence, the coordinating officer shall:

1. Provide the Filipino migrant worker and his/her family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals; and
2. Make representation and may call on the agencies or entities concerned to conferences or conciliation meetings for the purpose of settling the complaints or problems brought to his/her attention. If there is no final settlement at the jobsite and the worker is repatriated back to the Philippines, conciliation may continue at the OWWA Central Office, or in any OWWA Regional Welfare Office.

## **C. NRCO**

Section. 14. *Establishment of the National Reintegration Center for OFWs.* The NRCO is hereby created in the Department of Labor and Employment for returning Filipino migrant workers, which shall provide the mechanism of their reintegration into Philippine society, serve as a promotion house for their local employment, and tap their skills and potentials for national development.

The NRCO shall, in coordination with appropriate government and non-government agencies, serve as a One-Stop Center that shall address the multi-faceted needs of OFW-returnees and their families.

For this purpose, TESDA, the Technology Resource Center (TRC), and other government agencies involved in training and livelihood development shall give priority to household service workers and entertainers.

The NRCO shall be attached to the Office of the Administrator of OWWA for supervision and policy guidance.

Section. 15. *Functions of the NRCO.*

The NRCO shall undertake the following:

- (a) Develop and support programs and projects for livelihood, entrepreneurship, savings, investments and financial literacy for returning Filipino migrant workers and their families in coordination with relevant stakeholders, service providers and international organizations;
- (b) Coordinate with appropriate stakeholders, service providers and relevant international organizations for the promotion, development and the full utilization of overseas Filipino worker returnees and their potentials;
- (c) Institute, in cooperation with other government agencies concerned, a computer-based information system on returning Filipino migrant workers which shall be accessible to all local recruitment agencies and employers, both public and private;
- (d) Provide a periodic study and assessment of job opportunities for returning Filipino migrant workers;
- (e) Develop and implement other appropriate programs to promote the welfare of returning Filipino migrant workers;
- (f) Maintain an internet-based communication system for on-line registration of returning OFWs and interaction with clients, and maintain and upgrade computer-based service capabilities of the NRCO;
- (g) Develop capacity-building programs for returning overseas Filipino workers and their families, implementers, service providers, and stakeholders;
- (h) Conduct research for policy recommendations and program development; and
- (i) Undertake other programs and activities as may be determined by the Secretary of Labor and Employment.

#### Section. 16. *Formulation of Program.*

The DOLE, OWWA, TESDA, and POEA shall, within sixty (60) days from effectivity of these Rules, formulate a program that would motivate migrant workers to plan for productive options such as entry into highly technical jobs or undertakings, livelihood and entrepreneurial development, better wage employment, and investment of savings.

### **D. Migrant Workers and Other Overseas**

#### **Filipinos Resource Center**

#### Section. 17. *Establishment of Migrant Workers and other Overseas Filipinos Resource Center.*

A Migrant Workers and other Overseas Filipinos Resource Center shall be established in countries where there are large concentration of OFWs, as determined by the Secretary of Labor and Employment. It shall be established within the premises of the Philippine Embassy or the Consulate and be under the administrative jurisdiction of the Philippine Embassy.

When the Migrant Workers and other Overseas Filipinos Resource Center is established outside the premises of the Embassy or Consulate, the Department of Foreign Affairs shall exert its best effort to secure appropriate recognition from the receiving government in accordance with applicable laws and practices.

#### Section 18. *Services.*

The Migrant Workers and other Overseas Filipinos Resource Center shall provide the following services:

- (a) Counseling and legal services;
- (b) Welfare assistance including the procurement of medical and hospitalization services;
- (c) Information, advisory programs to promote social integration such as post-arrival orientation, settlement and community networking services and activities for social interaction;

- (d) Registration of irregular/undocumented workers to bring them within the purview of the Act;
- (e) Implementation of DOLE and OWWA Programs;
- (f) Human resource development, such as training and skills upgrading;
- (g) Gender-sensitive programs and activities to assist particular needs of migrant workers;
- (h) Orientation program for returning workers and other migrants;
- (i) Monitoring of the daily situation, circumstances and activities affecting migrant workers and other overseas Filipinos;
- (j) Ensuring that labor and social welfare laws in the receiving country are fairly applied to migrant workers and other overseas Filipinos; and
- (k) Conciliation of disputes arising from employer-employee relationship, in accordance with this Rule.

#### Section. 19. *Personnel.*

Each Migrant Workers and Other Overseas Filipinos Resource Center shall be staffed by Foreign Service personnel, a Labor Attaché and other service attachés or officers who represent Philippine government agencies abroad.

The following personnel may be assigned to the Center:

- a. Psychologists, Social Workers, and a Shari'a or Human Rights Lawyer, in highly problematic countries as categorized by the DFA and DOLE and where there is a concentration of Filipino migrant workers;
- b. Individual volunteers and representatives from bona fide non-government organizations from the receiving countries, if available and necessary as determined by the Labor Attaché in consultation with the Chief of Mission;
- c. Public Relations Officer or Case Officer conversant, orally and in writing, with the local language, laws, customs and practices; and/or

- d. Legal Officers (POEA/NLRC/DOLE) and such other professionals deemed necessary by the Secretary of Labor and Employment.

Section. 20. *Administration of the Center.*

The POLO through the Labor Attaché shall supervise and coordinate the operations of the Migrant Workers and other Overseas Filipinos Resource Center and shall keep the Chief of Mission informed and updated on all matters affecting it at least quarterly through a written report addressed to the Chief of Mission.

Section. 21. *Round-the Clock Operations.*

The Migrant Workers and other Overseas Filipino Resource Center shall operate on a 24-hour basis including Saturdays, Sundays and holidays. A counterpart 24-hour Information and Assistance Center to ensure a continuous network and coordinative mechanism shall be established at the DFA and the DOLE/OWWA.

Section. 22. *Budget.*

The establishment, yearly maintenance and operating costs of the Migrant Workers and other Overseas Filipinos Resource Centers, including the costs of services and programs not specially funded under the Act, shall be sourced from the General Appropriations Act (GAA) and shall be included in the annual budget of the DOLE.

However, the salaries and allowances of overseas personnel shall be sourced from the respective agencies' budgets.

## **RULE XI ROLE OF DOH**

Section 1. *Regulation of Medical Clinics.*

The Department of Health (DOH) shall regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations, hereinafter referred to as health examinations, on Filipino migrant workers as requirement for their

overseas employment. Pre-Employment Medical Examinations (PEME) for overseas work applicants shall be performed only in DOH-accredited medical clinics and health facilities utilizing the standards set forth by DOH. Pursuant to this, the DOH shall ensure that:

- (a) The fees for the health examinations are regulated, regularly monitored and duly published to ensure that the said fees are reasonable and not exorbitant. The DOH shall set a minimum and maximum range of fees for the different examinations to be conducted, based on a thorough and periodic review of the cost of health examinations and after consultation with concerned stakeholders. The applicant-worker shall pay directly to the DOH-accredited medical clinics or health facilities where the PEME is to be conducted.
- (b) The Filipino migrant workers shall only be required to undergo health examinations when there is reasonable certainty as certified by the hiring recruitment/manning agency pursuant to POEA Rules and Regulations that he/she will be hired and deployed to the jobsite and only those health examinations which are absolutely necessary for the type of job applied for or those specifically required by the foreign employer shall be conducted;
- (c) No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations on migrant workers for certain receiving countries;
- (d) Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his/her rights as a patient are respected. The decking practice, which requires overseas Filipino workers to go first to an office for registration and then farmed out to a medical clinic located elsewhere, shall not be allowed;
- (e) Within a period of three (3) years from the effectivity of the Act, all DOH regional and/or provincial hospitals under local government units shall establish and operate clinics that can serve the health examination requirements of Filipino migrant workers to provide them easy access to such clinics all over the country and lessen their transportation and lodging expenses; and



- (f) All DOH-accredited medical clinics, including the DOH-operated clinics, conducting health examinations for Filipino migrant workers shall observe the same standard operating procedures and shall comply with internationally-accepted standards in their operations to conform with the requirements of receiving countries or of foreign employers/principals.

#### Section. 2. *Temporary Disqualification of Foreign Employers.*

Any foreign employer who does not honor the results of valid health examinations conducted by a DOH-accredited or DOH-operated clinic shall be temporarily disqualified from participating in the overseas employment program, pursuant to POEA Rules and Regulations. The temporary disqualification of the employer may be lifted only upon the latter's unqualified acceptance of the result of the examination.

#### Section. 3. *Liability of Medical Clinic or Health Facility.*

In case an OFW is found to be not medically fit within fifteen (15) days upon his/her arrival in the country of destination, the medical clinic or health facility that conducted the health examination/s of such OFW shall pay for his/her repatriation back to the Philippines and the cost of deployment of such worker.

Any DOH-accredited clinic which violates any provisions of this section shall, in addition to any other liability it may have incurred, suffer the penalty of revocation of its DOH-accreditation if after investigation, the medical reason for repatriation could have been detected at the time of examination using the DOH PEME package as required by the employer/principal or the receiving country.

#### Section. 4. *Liability of Government Personnel for Nonfeasance and Malfeasance of their Duties under the Act.*

Any government official or employee who violates any provision of this Rule shall be removed or dismissed from service with disqualification to hold any appointive public office for five (5) years. Such penalty is without prejudice to any other liability which he/she may have incurred under existing laws, rules or regulations.

## Section. 5. *Issuance of Guidelines.*

Within sixty (60) days from effectivity of these Rules, the DOH shall issue the pertinent guidelines to implement the provisions of this Rule.

## **RULE XII** **ROLE OF LGUs**

### *Section 1. Role in Anti-Illegal Recruitment and the Overseas Employment Program.*

In the fight against illegal recruitment, the local government units (LGUs) and the Department of the Interior and Local Government (DILG), in partnership with the POEA, other concerned government agencies, and non-government organizations advocating the rights and welfare of OFWs, shall take a proactive stance by being primarily responsible for the dissemination of information to their constituents on all aspects of overseas employment. To carry out this task, the following shall be undertaken by the LGUs:

- (a) Launch an aggressive campaign against illegal recruitment. They shall provide legal assistance to victims of illegal recruitment and, when necessary, coordinate with appropriate government agencies regarding the arrest and/or prosecution of illegal recruiters. They shall report any illegal recruitment activity to the POEA for appropriate action;
- (b) Provide a venue for the POEA, other government agencies, NGOs, and trained LGU personnel to conduct Pre-Employment Orientation Seminars (PEOS) to their constituents on a regular basis;
- (c) Establish OFW help desks or kiosks in their localities with the objective of providing current information to their constituents on all the processes and aspects of overseas employment. Such desks or kiosks shall, as far as practicable, be fully computerized and shall be linked to the database of all concerned government agencies, particularly the POEA for its updated lists of overseas job orders and licensed agencies in good standing; and
- (d) Establish and maintain a database pertaining to a master list of OFWs residing in their respective localities, classified according to occupation,

job category, civil status, gender, by country or state of destination, including visa classification, name, address, and contact number of the employer.

## **RULE XIII**

### **REPATRIATION OF WORKERS**

#### *Section 1. Primary Responsibility for Repatriation.*

The repatriation of the worker or his/her remains, and the transport of his/her personal effects shall be the primary responsibility of the principal, employer or agency that recruited or deployed him/her abroad. All costs attendant thereto shall be borne by the principal, employer or the agency concerned.

#### *Section. 2. Obligation to Advance Repatriation Costs.*

Notwithstanding the provisions of Section 37-A of the Act, the primary responsibility to repatriate entails the obligation on the part of the principal or agency to advance the repatriation and other attendant costs, including plane fare, deployment cost of the principal, and immigration fines and penalties, to immediately repatriate the worker should the need for it arise, without a prior determination of the cause of the termination of the worker's employment. However, after the worker has returned to the country, the principal or agency may recover the cost of repatriation from the worker if the termination of employment was due solely to his/her fault.

In countries where there is a need to secure an exit visa for the worker's repatriation, the principal or employer shall be primarily responsible for securing the visa at no cost to the worker. The agency shall coordinate with the principal or employer in securing the visa.

Every contract for overseas employment shall provide for the primary responsibility of the principal or employer and agency to advance the cost of plane fare, and the obligation of the worker to refund the cost thereof in case his/her fault is determined by the Labor Arbiter.

### Section. 3. *Repatriation Procedure.*

When a need for repatriation arises and the foreign employer fails to provide for its cost, the POLO or responsible personnel on-site shall simultaneously notify OWWA and the POEA of such need. The POEA shall issue a notice requiring the agency concerned to provide, within 48 hours from such notice, the plane ticket or the prepaid ticket advice (PTA) to the POLO or Philippine Embassy. The agency shall notify the POEA of such compliance, which shall then inform OWWA of the action of the agency.

In case there is a need to secure an exit visa for the repatriation of the worker, the employer or principal shall have fifteen (15) days from notice to secure such an exit visa. Moreover, any agency involved in the worker's recruitment, processing, and/or deployment shall coordinate with the principal or employer in securing the visa.

### Section. 4. *Action on Non-Compliance.*

If the employment agency fails to provide the ticket or PTA within 48 hours from receipt of the notice, the POEA shall suspend the documentary processing of the agency or impose such sanctions as it may deem necessary. Upon notice from the POEA, OWWA shall advance the costs of repatriation with recourse to the agency or principal. The administrative sanction shall not be lifted until the agency reimburses the OWWA of the cost of repatriation with legal interest.

If the principal or employer and/or agency fail to secure the exit visa within a period of fifteen (15) days from receipt of the POEA notice, the POEA shall suspend the employer or principal from participating in the overseas employment program, and may impose suspension of documentary processing on the agency, if warranted.

### Section. 5. *Emergency Repatriation.*

The OWWA, in coordination with DFA, and in appropriate situations, with international agencies, shall undertake the repatriation of workers in cases of war, epidemic, disasters or calamities, natural or man-made, and other similar events, without prejudice to reimbursement by the responsible principal or agency within sixty (60) days from notice. In such case, the POEA shall simultaneously identify and give notice to the agencies concerned.

## Section. 6. *Mandatory Repatriation of Underage Migrant Workers.*

Upon discovery or upon being informed of the presence of migrant workers whose actual ages fall below the minimum age requirement for overseas deployment, the responsible officers in the Foreign Service shall without delay repatriate said workers and advise the DFA through the fastest means of communication available of such discovery and other relevant information.

In addition to requiring the recruitment/manning agency to pay or reimburse the costs of repatriation, the POEA shall cancel the license of the recruitment/manning agency that deployed an underage migrant worker after notice and hearing and shall impose a fine of not less than Five Hundred Thousand Pesos (Php500,000.00) but not more than One Million Pesos (Php1,000,000.00). The POEA shall also order the recruitment/manning agency to refund all fees pertinent to the processing of papers or documents in the deployment, to the underage migrant worker or to his parents or guardian in a summary proceeding conducted.

The refund shall be independent of and in addition to the indemnification for the damages sustained by the underage migrant worker. The refund shall be paid within thirty (30) days from the date the POEA is officially informed of the mandatory repatriation as provided for in the Act.

## Section. 7. *Other Cases of Repatriation.*

In all cases where the principal or agency of the worker cannot be identified, cannot be located or had ceased operations, and the worker is in need and without means, the OWWA personnel at the jobsite, in coordination with the DFA, shall cause the repatriation in appropriate cases. All costs attendant to repatriation borne by the OWWA may be charged to the Emergency Repatriation Fund provided in the Act, without prejudice to the OWWA requiring the agency/employer/insurer or the worker to reimburse the cost of repatriation.

## Section. 8. *Emergency Repatriation Fund.*

When repatriation becomes immediate and necessary, the OWWA shall advance the needed costs from the Emergency Repatriation Fund without prejudice to reimbursement by the deploying agency and/or principal, or the worker in appropriate cases. Simultaneously, the POEA shall ask the

concerned agency to work towards reimbursement of costs advanced by the OWWA. In cases where the cost of repatriation shall exceed One Hundred Million Pesos (Php100,000,000.00), the OWWA shall make representation with the Office of the President for immediate funding in excess of said amount.

Section. 9. *Prohibition on Bonds and Deposits.*

In no case shall a private recruitment/manning agency require any bond or cash deposit from the worker to guarantee performance under the contract or his/her repatriation.

**RULE XIV**  
**SHARED GOVERNMENT INFORMATION SYSTEM**  
**FOR MIGRATION**

Section 1. *Composition.*

An Inter-Agency Committee shall be established to implement a shared government information system for migration. The Inter-Agency Committee shall be composed of the following agencies:

- a) Department of Foreign Affairs;
- b) Department of Labor and Employment and concerned attached agencies;
- c) Department of Justice;
- d) Department of the Interior and Local Government;
- e) Department of Health and concerned attached agencies;
- f) Department of Social Welfare and Development;
- g) Department of Tourism;
- h) Insurance Commission;

- i) Commission on Filipinos Overseas;
- j) Bureau of Immigration;
- k) National Bureau of Investigation;
- l) National Telecommunications Commission;
- m) Commission on Information and Communications Technology;
- n) National Computer Center;
- o) National Statistical and Coordination Board;
- p) National Statistics Office;
- q) Home Development Mutual Fund; and
- r) Other government agencies concerned with overseas employment.

#### Section. 2. *Availability, Accessibility and Linkaging of Computer Systems.*

Initially, the Inter-Agency Committee shall make available to itself the information contained in existing data bases/files of its member agencies. The second phase shall involve linkaging of computer facilities systems in order to allow the free-flow data exchanges and sharing among concerned agencies.

#### Section. 3. *Chair and Technical Assistance.*

The Inter-Agency Committee shall be co-chaired by the Department of Foreign Affairs and the Department of Labor and Employment. The National Computer Center shall provide the necessary technical assistance and shall set the appropriate information and communications technology standards to facilitate the sharing of information among the member agencies.

#### Section. 4. *Declassification and Sharing of Existing Information.*

The Inter-Agency Committee shall convene to identify existing databases, which shall be declassified and shared among member agencies. These

shared databases shall initially include, but not be limited to, the following information:

- a) Master lists of Filipino migrant workers/overseas Filipinos classified according to occupation/job category, civil status, by country/state of destination including visa classification;
- b) Inventory of pending legal cases involving Filipino migrant workers and other Filipino migrant workers and other Filipino nationals, including those serving prison terms;
- c) Master list of departing/arriving Filipinos;
- d) Statistical profile on Filipino migrant workers/overseas Filipinos/tourists;
- e) Blacklisted foreigners/undesirable aliens;
- f) Basic data on legal systems, immigration policies, marriage laws and civil and criminal codes in receiving countries particularly those with large numbers of Filipinos;
- g) List of labor and other human rights instruments where receiving countries are signatories;
- h) A tracking system of past and present gender disaggregated cases involving male and female migrant workers, including minors;
- i) List of overseas posts, which may render assistance to overseas Filipinos in general, and migrant workers, in particular;
- j) List of licensed recruiters and recruitment agencies;
- k) List of accredited foreign employers;
- l) List of recruiters and recruitment agencies with decided/pending criminal/civil/administrative cases, and their dispositions; and
- m) Such other information as may be deemed necessary by the Inter-Agency Committee.



The Inter-Agency Committee shall establish policies, guidelines, and procedures in implementing this Rule, including declassification of information.

Section. 5. *Confidentiality of Information.*

Information and data acquired through this shared information system shall be treated as confidential and shall only be used for official and lawful purposes, related to the usual functions of the Inter-Agency Committee members, and for purposes envisioned by the Act.

Section. 6. *Regular Meetings.*

The Inter-Agency Committee shall meet regularly to ensure the immediate and full implementation of Section 20 of the Act and shall explore the possibility of setting up a central storage facility for the data on migration. The progress of the implementation shall be included in the report of the DFA and the DOLE under Section 33 of the Act.

The Inter-Agency Committee shall convene thirty (30) days from effectivity of these Rules to prioritize the discussion of the following, inter alia: data to be shared, frequency of reporting, and timeliness and availability of data.

Section. 7. *Secretariat.*

A secretariat, which shall provide administrative and support services to the Inter-Agency Committee shall be based in the DFA.

Section. 8. *Funds.*

The Philippine Charity Sweepstakes Office shall allocate an initial amount of P10 Million to carry out the provisions of this Rule. Thereafter, the actual budget of the Inter-Agency Committee shall be drawn from the General Appropriations Act in accordance with Section 26 of Republic Act No. 10022.

The E-Government Fund may be tapped for purposes of fund sourcing by the Inter-Agency Committee.

## **RULE XV**

### **MIGRANT WORKERS LOAN GUARANTEE FUND**

#### *Section 1. Definitions.*

- (a) Pre-Departure Loans - refer to loans granted to departing migrant workers covered by new contracts to satisfy their pre-departure requirements such as payments for placement/processing fees, airplane fare, subsistence allowance, cost of clothing and pocket money.
- (b) Family Assistance Loans - refer to loans granted to currently employed migrant workers or their eligible dependents/families in the Philippines to tide them over during emergency situations.
- (c) Guarantee Agreement - refers to a contract between the participating financial institution and OWWA whereby the latter pledges to pay a loan obtained by a migrant worker from the former in case the worker defaults.
- (d) GFIs - refer to government financial institutions.

#### *Section. 2. Loan Guarantee Fund.*

The Migrant Workers Loan Guarantee Fund is hereby established:

- (a) to prevent any recruiter from taking advantage of workers seeking employment abroad by expanding the grant of Pre-Departure and Family Assistance Loans to covered migrant workers;
- (b) to establish and operate a guarantee system in order to provide guarantee cover on the pre-departure and family assistance loans of migrant workers who lack or have insufficient collateral or securities; and
- (c) to ensure the participation of GFIs in extending loan assistance to needy migrant workers who are to be engaged or is engaged for a remunerated activity abroad.

### Section. 3. *Coverage and Scope.*

All departing migrant workers who need financial assistance to pay or satisfy their pre-departure expenses may avail of the Pre-Departure Loans.

Currently employed migrant workers or their eligible dependents who need emergency financing assistance may avail of the Family Assistance Loan.

### Section. 4. *Administration of the Fund.*

Pursuant to Section 21 of the Act, the amount of One Hundred Million Pesos (Php100,000,000.00) from the Capital Funds of OWWA shall constitute the Migrant Workers Loan Guarantee Fund. The Fund, which shall be administered by the OWWA, shall be used exclusively to guarantee the repayment of Pre-Departure and Family Assistance Loans granted by participating GFIs.

All existing revolving funds earmarked for the Pre-Departure and Family Assistance Loans shall revert back to the OWWA Capital Fund.

### Section. 5. *Financing Scheme.*

The OWWA shall initiate arrangements with GFIs to implement mutually agreed financing schemes that will expand the Pre-Departure and Family Assistance Loans.

### Section. 6. *Guarantee Agreement.*

No loan shall be considered covered by a guarantee unless a Guarantee Agreement has been prepared and approved by both the participating financial institution and the OWWA.

## RULE XVI

### COMPULSORY INSURANCE COVERAGE FOR AGENCY- HIRED WORKERS

#### Section 1. *Migrant Workers Covered.*

In addition to the performance bond to be filed by the recruitment/manning agency under Section 10 of the Act, each migrant worker deployed by a recruitment/manning agency shall be covered by a compulsory insurance policy which shall be secured at no cost to the said worker.

#### Section. 2. *Policy Coverage.*

Such insurance policy shall be effective for the duration of the migrant worker's employment contract and shall cover, at the minimum:

- (a) Accidental death, with at least Fifteen Thousand United States Dollars (US\$ 15,000.00) survivor's benefit payable to the migrant worker's beneficiaries;
- (b) Natural death, with at least Ten Thousand United States Dollars (US\$ 10,000.00) survivor's benefit payable to the migrant worker's beneficiaries;
- (c) Permanent total disablement, with at least Seven Thousand Five Hundred United States Dollars (US\$7,500) disability benefit payable to the migrant worker. The following disabilities shall be deemed permanent: total, complete loss of sight of both eyes; loss of two limbs at or above the ankles or wrists; permanent complete paralysis of two limbs; brain injury resulting to incurable imbecility or insanity;
- (d) Repatriation cost of the worker when his/her employment is terminated by the employer without any valid cause, or by the employee with just cause, including the transport of his/her personal belongings. In case of death, the insurance provider shall arrange and pay for the repatriation or return of the worker's remains. The insurance provider shall also render any assistance necessary in the transport, including but not limited to, locating a local and licensed funeral home, mortuary or direct disposition facility to prepare the body for transport, completing all documentation, obtaining legal clearances, procuring consular services,

providing death certificates, purchasing the minimally necessary casket or air transport container, as well as transporting the remains including retrieval from site of death and delivery to the receiving funeral home. This provision shall be without prejudice to the provisions of Rule XIII of these Rules and Regulations;

- (e) Subsistence allowance benefit, with at least One Hundred United States Dollars (US\$100) per month for a maximum of six (6) months for a migrant worker who is involved in a case or litigation for the protection of his/her rights in the receiving country;
- (f) Money claims arising from employer's liability which may be awarded or given to the worker in a judgment or settlement of his/her case in the NLRB. The insurance coverage for money claims shall be equivalent to at least three (3) months salaries for every year of the migrant worker's employment contract;
- (g) Compassionate visit. When a migrant worker is hospitalized and has been confined for at least seven (7) consecutive days, he shall be entitled to a compassionate visit by one (1) family member or a requested individual. The insurance company shall pay for the transportation cost of the family member or requested individual to the major airport closest to the place of hospitalization of the worker. It is, however, the responsibility of the family member or requested individual to meet all visa and travel document requirements;
- (h) Medical evacuation. When an adequate medical facility is not available proximate to the migrant worker, as determined by the insurance company's physician and/or a consulting physician, evacuation under appropriate medical supervision by the mode of transport necessary shall be undertaken by the insurance provider; and
- (i) Medical repatriation. When medically necessary as determined by the attending physician, repatriation under medical supervision to the migrant worker's residence shall be undertaken by the insurance provider at such time that the migrant worker is medically cleared for travel by commercial carrier. If the period to receive medical clearance to travel exceeds fourteen (14) days from the date of discharge from the hospital, an alternative appropriate mode of transportation, such as air ambulance, may be arranged. Medical and non-medical escorts may be

provided when necessary. This provision shall be without prejudice to the provisions of Rule XIII of these Rules and Regulations.

### Section. 3. *Duty to Disclose and Assist.*

It shall be the duty of the recruitment/manning agency, in collaboration with the insurance provider, to sufficiently explain to the migrant worker, before his/her departure, and to at least one of his/her beneficiaries the terms and benefits of the insurance coverage, including the claims procedure.

Also, in filing a claim with the insurance provider, it shall be the duty of the recruitment/manning agency to assist the migrant worker and/or the beneficiary and to ensure that all information and documents in the custody of the agency necessary for the claim must be readily accessible to the claimant.

### Section. 4. *Qualification of Insurance Companies.*

Only reputable private insurance companies duly registered with the IC, which are in existence and operational for at least five (5) years, with a net worth of at least Five Hundred Million Pesos (Php500,000,000.00) to be determined by the IC, and with a current year certificate of authority shall be qualified to provide for the worker's insurance coverage. Insurance companies who have directors, partners, officers, employees or agents with relatives, within the fourth civil degree of consanguinity or affinity, who work or have interest in any of the licensed recruitment/manning agencies or in any of the government agencies involved in the overseas employment program shall be disqualified from providing this workers' insurance coverage. It shall be the duty of the said directors, partners, officers, employees or agents to disclose any such interest to the IC and POEA.

### Section. 5. *Requirement for Issuance of OEC.*

The recruitment/manning agency shall have the right to choose from any of the qualified insurance providers the company that will insure the migrant worker it will deploy. After procuring such insurance policy, the recruitment/manning agency shall provide an authenticated copy thereof to the migrant worker. It shall then submit the certificate of insurance coverage of the migrant worker to POEA as a requirement for the issuance of Overseas Employment Certificate (OEC) to the migrant worker. In the

case of seafarers who are insured under policies issued by foreign insurance companies, the POEA shall accept certificates or other proofs of cover from recruitment/manning agencies: Provided, that the minimum coverage under sub-paragraphs (a) to (i) are included therein. For this purpose, foreign insurance companies shall include entities providing indemnity cover to the vessel.

#### Section. 6. *Notice of Claim.*

Any person having a claim upon the policy issued pursuant to subparagraphs (a), (b), (c), (d) and (e) of Section 2 of this Rule shall present to the insurance company concerned a written notice of claim together with pertinent supporting documents. The insurance company shall forthwith ascertain the truth and extent of the claim and make payment within ten (10) days from the filing of the notice of claim.

#### Section. 7. *Documentary Requirements for Accidental or Natural Death or Disablement Claims.*

Any claim arising from accidental death, natural death or permanent total disablement under Section 2 (a), (b) and (c) shall be paid by the insurance company without any contest and without the necessity of proving fault or negligence of any kind on the part of the insured migrant worker: Provided the following documents, duly authenticated by the Philippine foreign posts, shall be sufficient evidence to substantiate the claim:

Death Certificate – in case of natural or accidental death;

Police or Accident Report – in case of accidental death; and

Medical Certificate – in case of permanent disablement.

In the case of a seafarer, the amounts provided in Section 2 (a), (b), or (c), as the case may be, shall, within ten (10) days from submission of the above-stated documents, be paid by the foreign insurance company through its Philippine representative to the seafarer/beneficiary without any contest and without any necessity of proving fault or negligence on the part of the seafarer. Such amount received by the seafarer/beneficiary shall form part of and be deducted from whatever benefits the seafarer/beneficiary may be entitled to under the provisions of the POEA-Standard Employment

Contract or collective bargaining agreement (CBA). Any claim in excess of the amount paid pursuant to the no contest, no fault or negligence provision of this section shall be determined in accordance with the POEA-SEC or CBA.

Section. 8. *Documentary Requirement for Repatriation Claim.*

For repatriation under subparagraph (d) of Section 2 of this Rule, a certification which states the reason/s for the termination of the migrant worker's employment and the need for his/her repatriation shall be issued by the Philippine foreign post or the Philippine Overseas Labor Office (POLO) located in the receiving country. Such certification shall be solely for the purpose of complying with this section.

Section. 9. *Documentary Requirements for Subsistence Allowance Benefit Claim.*

For subsistence allowance benefit under sub-paragraph (e) of Section 2 of this Rule, the concerned Labor Attaché or, in his absence, the embassy or consular official shall issue a certification which states the title of the case, the names of the parties and the nature of the cause of action of the migrant worker.

Section. 10. *Settlement of Money Claims.*

For the payment of money claims under sub-paragraph (f) of Section 2 of this Rule, the following rules shall govern:

- (1) After a decision has become final and executory or a settlement/ compromise agreement has been reached between the parties at the NLRC, the Labor Arbiter shall, motu proprio or upon motion, and following the conduct of pre-execution conference, issue a writ of execution mandating the respondent recruitment/manning agency to pay the amount adjudged or agreed upon within thirty (30) days from receipt thereof;
- (2) The recruitment/manning agency shall then immediately file a notice of claim with its insurance provider for the amount of liability insured, attaching therewith a certified true copy of the decision or compromise agreement;



- (3) Within ten (10) days from the filing of notice of claim, the insurance company shall make payment to the recruitment/manning agency the amount adjudged or agreed upon, or the amount of liability insured, whichever is lower. After receiving the insurance payment, the recruitment/manning agency shall immediately pay the migrant worker's claim in full, taking into account that in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay the balance thereof;
- (4) In case the insurance company fails to make payment within ten (10) days from the filing of the claim, the recruitment/manning agency shall pay the amount adjudged or agreed upon within the remaining days of the thirty-day period, as provided in the first sub-paragraph hereof;
- (5) If the worker's claim was not settled within the aforesaid thirty-day period, the recruitment/manning agency's performance bond or escrow deposit shall be forthwith garnished to satisfy the migrant worker's claim;
- (6) The provision of compulsory worker's insurance under this section shall not affect the joint and several liability of the foreign employer and the recruitment/manning agency under Section 10 of the Act;
- (7) Lawyers for the insurance companies, unless the latter are impleaded, shall be prohibited to appear before the NLRC in money claims cases under Rule VII.

#### Section. 11. *Disputes in the Enforcement of Insurance Claims.*

Any question or dispute in the enforcement of any insurance policy issued under this Rule shall be brought before the IC for mediation or adjudication.

Notwithstanding the preceding paragraph, the NLRC shall have the exclusive jurisdiction to enforce against the recruitment/manning agency its decision, resolution or order that has become final and executory or a settlement/compromise agreement reached between the parties.

#### Section. 12. *Liability of Recruitment/Manning Agency.*

In case it is shown by substantial evidence before the POEA that the migrant worker who was deployed by a licensed recruitment/manning agency has

paid for the premium or the cost of the insurance coverage or that the said insurance coverage was used as basis by the recruitment/manning agency to claim any additional fee from the migrant worker, the said licensed recruitment/manning agency shall lose its license and all its directors, partners, proprietors, officers and employees shall be perpetually disqualified from engaging in the business of recruitment of overseas workers. Such penalty is without prejudice to any other liability which such persons may have incurred under existing laws, rules or regulations.

#### Section. 13. *Foreign Employers Guarantee Fund.*

For migrant workers recruited by the POEA on a government-to-government arrangement, the POEA Foreign Employers Guarantee Fund referred to under Section 5, Rule X of these Rules shall be answerable for the workers' monetary claims arising from breach of contractual obligations.

#### Section. 14. *Optional Coverage.*

For migrant workers classified as rehires, name hires or direct hires, they may opt to be covered by this insurance coverage by requesting their foreign employers to pay for the cost of the insurance coverage or they may pay for the premium themselves. To protect the rights of these workers, the DOLE and POEA shall provide them adequate legal assistance, including conciliation and mediation services, whether at home or abroad.

#### Section. 15. *Formulation of Implementing Rules and Regulations.*

Within thirty (30) days from the effectivity of these Rules, and pursuant to Section 37-A of the Act, the IC, as the lead agency, shall, together with DOLE, NLRC, and POEA, in consultation with the recruitment/manning agencies and legitimate non-government organizations advocating the rights and welfare of OFWS, issue the necessary implementing rules and regulations, which shall include the following:

1. Qualifications of participating insurers;
2. Accreditation of insurers;
3. Uniform Standard Policy format;

4. Premium rate;
5. Benefits;
6. Underwriting Guidelines;
7. Claims procedure;
8. Dispute settlement;
9. Administrative monitoring and supervision; and
10. Other matters deemed necessary.

Within five (5) days from effectivity of these Rules, the IC shall convene the inter-agency committee to commence the formulation of the aforesaid necessary rules and regulations.

*Section. 16. Assessment of Performance of Insurance Providers.*

At the end of every year, the DOLE and the IC shall jointly make an assessment of the performance of all insurance providers, based upon the report of NLRC and POEA on their respective interactions and experiences with the insurance companies, and they shall have the authority to ban or blacklist such insurance companies which are known to be evasive or not responsive to the legitimate claims of migrant workers. The DOLE shall include such assessment in its year-end report to Congress.

*Section. 17. Automatic Review.*

The foregoing provisions on mandatory insurance coverage shall be subject to automatic review through the Congressional Oversight Committee immediately after three (3) years from the effectivity of the Act in order to determine its efficacy in favor of the covered OFWs and the compliance by recruitment/manning agencies and insurance companies, without prejudice to an earlier review if necessary and warranted for the purpose of modifying, amending and/or repealing these subject provisions.

## **RULE XVII**

### **MISCELLANEOUS PROVISIONS**

#### Section 1. *POEA, OWWA, and other Boards.*

Notwithstanding any provision of law to the contrary, the respective boards of the POEA and the OWWA shall have three (3) members each who shall come from the women, sea-based and land-based sectors respectively, to be selected and nominated openly by the general membership of the sector being represented.

The selection and nomination of the additional members from the women, sea-based and land-based sectors shall be governed by the following guidelines:

- (a) The POEA and OWWA shall launch a massive information campaign on the selection of nominees and provide for a system of consultative sessions for the certified leaders or representatives of the concerned sectors, at least three (3) times, within ninety days (90) before the Boards shall be convened, for purposes of selection. The process shall be open, democratic and transparent;
- (b) Only non-government organizations that protect and promote the rights and welfare of overseas Filipino workers, duly registered with the appropriate Philippine government agency and in good standing as such, and in existence for at least three (3) years prior to the nomination shall be qualified to nominate a representative for each sector to the Board;
- (c) The nominee must be at least 25 years of age, able to read and write, and a migrant worker at the time of his/her nomination or was a migrant worker with at least three (3) years experience as such;
- (d) A Selection and Screening Committee shall be established within the POEA and OWWA by the Secretary of Labor and Employment to formulate the procedures on application, screening and consultation, and shall be responsible to provide the list of qualified nominees to their respective Governing Boards; and
- (e) The final list of all the nominees selected by the OWWA/POEA Governing Boards, which shall consist of three (3) names for each sector

to be represented, shall be submitted to the President and published in a newspaper of general circulation.

Incumbent representatives appointed pursuant to this section and who are eligible for re-appointment shall be automatically included in the list referred to under subsection (d).

Within thirty (30) days from the submission of the final list referred to under subsection (e), the President shall select and appoint from the list the representatives to the POEA/OWWA Governing Boards.

The members shall have a term of three (3) years and shall be eligible for reappointment for another three (3) years. In case of vacancy, the President shall, in accordance with the provisions of the Act, appoint a replacement who shall serve the unexpired term of his/her predecessor.

All other government agencies and government-owned or controlled corporations which require at least one (1) representative from the overseas workers sector to their respective boards shall follow all the applicable provisions of this section, subject to the respective Charters, Implementing Rules and Regulations, and internal policies of such agencies and corporations.

The existing members of the Governing Boards of POEA and OWWA representing the women, land-based, or sea-based sectors shall serve the remaining portion of their three-year terms. Thereafter, their positions shall be deemed vacant, and the process of selection of their replacements shall be in accordance with this section. If the incumbent is eligible for re-appointment, he/she shall continue to serve until re-appointed or another person is appointed in accordance with this section.

Incumbent representatives in the Governing Board with no fixed term shall remain in holdover capacity, until a replacement is appointed in accordance with this section.

## Section. 2. *Report to Congress.*

In order to inform the Philippine Congress on the implementation of the policy enunciated in Section 4 of the Act, the DFA and the DOLE shall submit separately to the said body a semi-annual report of Philippine foreign

posts located in, or exercising consular jurisdiction over, countries receiving Filipino migrant workers. The mid-year report covering the period January to June shall be submitted not later than October 31 of the same year while the year-end report covering the period July to December shall be submitted not later than May 31 of the following year. The report shall include, but shall not be limited to, the following information:

- (a) Master list of Filipino migrant workers, and inventory of pending cases involving them and other Filipino nationals including those serving prison terms;
- (b) Working conditions of Filipino migrant workers;
- (c) Problems encountered by the migrant workers, specifically violations of their rights;
- (d) Initiatives/actions taken by the Philippine foreign posts to address the problems of Filipino migrant workers;
- (e) Changes in the laws and policies of receiving countries; and
- (f) Status of negotiations on bilateral labor agreements between the Philippines and the receiving country.

### Section. 3. *Effect on Failure to Report.*

Any officer of the government who has the legal duty to report, yet fails to submit the aforesaid Report to Congress, without justifiable cause, shall be subject to an administrative penalty of dismissal from the service with disqualification to hold any appointive public office for five (5) years.

### Section. 4. *Government Fees, Administrative Costs and Taxes.*

All fees for services being charged by any government agency on migrant workers prevailing at the time of the effectivity of this Rule shall not be increased. All other services rendered by the DOLE and other government agencies in connection with the recruitment and placement of and assistance to migrant workers shall be rendered free. The administrative cost thereof shall not be borne by the worker.

The migrant worker shall be exempt from the payment of travel tax and airport fee upon proper showing of the Overseas Employment Certificate (OEC) issued by the POEA.

The remittances of all OFWs, upon showing of the OEC or valid OWWA Membership Certificate by the OFW beneficiary or recipient, shall be exempt from the payment of documentary stamp tax (DST) as imposed under Section 181 of the National Internal Revenue Code, as amended.

In addition to the original copy, a duplicate copy or a certified true copy of the valid proof of entitlement referred to above shall be secured by the OFW from the POEA or OWWA, which shall be held and used by his/her beneficiary in the availment of the DST exemption.

In case of OFWs whose remittances are sent through the banking system, credited to beneficiaries or recipient's account in the Philippines and withdrawn through an automatic teller machine (ATM), it shall be the responsibility of the OFW to show the valid proof of entitlement when making arrangement for his/her remittance transfers.

A proof of entitlement that is no longer valid shall not entitle an OFW to DST payment exemption.

The Bureau of Internal Revenue (BIR), under the Department of Finance, may promulgate revenue regulations deemed necessary and appropriate for the effective implementation of the exemption of OFWs from DST and travel tax.

*Section. 5. Establishment of the Congressional Migrant Workers Scholarship Fund.*

There is hereby created a Congressional Migrant Workers Scholarship Fund which shall benefit deserving migrant workers and/or their immediate descendants who intend to pursue courses or training primarily in the field of science and technology, as defined by the DOST.

The fund of One Hundred Fifty Million Pesos (P150,000,000.00) shall be sourced from the proceeds of Lotto draws.

Section. 6. *Creation of the Scholarship Fund Committee.*

There is hereby created a Scholarship Fund Committee to be composed of representatives from the DOLE, DOST, POEA, OWWA, TESDA and two (2) representatives of migrant workers to be appointed by the Secretary of Labor and Employment.

Section. 7. *Functions of the Scholarship Fund Committee.*

- (a) To set the coverage, criteria and standards of admission to the Scholarship Program;
- (b) To determine the amount of availment;
- (c) To monitor and evaluate the program;
- (d) To identify/accredit training and testing institutions; and
- (e) To perform such other functions necessary to attain the purpose of the Fund.

Section. 8. *Implementing Agency.*

The OWWA shall be the Secretariat of the Scholarship Fund Committee. As such, it shall administer the Scholarship Program, in coordination with the DOST.

## **RULE XVIII FUNDING**

Section 1. *Sources of Funds.*

The departments, agencies, instrumentalities, bureaus, offices and government-owned and controlled corporations charged with carrying out the provisions of the Act shall include in their respective programs the implementation of the Act, the funding of which shall be included in the General Appropriations Act.



## **RULE XIX**

### **MIGRANT WORKERS DAY**

#### Section 1. *Commemoration.*

The DOLE shall lead and enlist the cooperation of other government agencies in the commemoration of a Migrant Workers Day on 7 June of every year.

## **RULE XX**

### **TRANSITORY PROVISIONS**

#### Section 1. *Applicability of Criteria for Receiving Countries.*

In compliance with Section 4 of the Act, the DFA shall, within ninety (90) days from effectivity of these Rules and Regulations, issue the certification for countries where the Philippines maintains an embassy.

In countries where the Philippine Embassy exercises concurrent jurisdiction and where the Ambassador is non-resident, the DFA shall have one hundred twenty days (120) from the effectivity of these Rules to issue the certification required in Section 4 of the Act. Prior to the expiration of the aforesaid period, the Secretary of Foreign Affairs, in consultation with the Secretary of Labor and Employment, shall allow the reasonable extension of the period for the issuance of the certification upon a determination that there is a need therefor.

Pending the issuance of the required certifications of compliance or determinations of non-compliance and within the periods mentioned in the preceding paragraphs, the deployment of migrant workers overseas shall proceed on a status quo basis.

For purposes of issuance of the certifications, the DFA shall, in consultation with the POEA, issue a standard format to be accomplished by all Foreign Service posts.

Section. 2. *Effectivity of Compulsory Insurance Requirement.*

All OFWs who were issued Overseas Employment Certificates prior to the effectivity of the necessary rules and regulations referred to under Section 15 of Rule XVI shall not be covered by the compulsory insurance requirement.

**RULE XXI**  
**FINAL PROVISIONS**

Section. 1. *Repealing Clause.*

All Department Orders, Circulars and implementing Rules and Regulations inconsistent with these Omnibus Rules and Regulations are hereby repealed or amended accordingly.

Section 2. *Effectivity.*

The provisions of these Rules and Regulations shall take effect fifteen days (15) after publication in two (2) newspapers of general circulation.

INSURANCE GUIDELINES ON RULE  
XVI OF THE OMNIBUS RULES AND  
REGULATIONS

IMPLEMENTING REPUBLIC ACT 8042  
(THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT  
OF 1995),  
AS AMENDED BY REPUBLIC ACT 10022

RELATIVE TO COMPULSORY INSURANCE COVERAGE FOR  
AGENCY-HIRED OVERSEAS FILIPINO WORKERS



# **Insurance Guidelines on Rule XVI of the Omnibus Rules and Regulations**

**IMPLEMENTING REPUBLIC ACT 8042  
(THE MIGRANT WORKERS AND OVERSEAS FILIPINOS  
ACT OF 1995),  
AS AMENDED BY REPUBLIC ACT 10022**

**RELATIVE TO COMPULSORY INSURANCE COVERAGE  
FOR AGENCY-HIRED OVERSEAS FILIPINO WORKERS**

## **AUTHORITY**

Pursuant to the authority vested by law in the Insurance Commission (IC), the Department of Labor and Employment (DOLE), the Philippine Overseas Employment Administration (POEA) and the National Labor Relations Commission (NLRC) and in compliance with Section 15, Rule XVI of the Omnibus Rules and Regulations Implementing Republic Act 8042 as amended by Republic Act 10022, the following Insurance Guidelines which should be read with reference to the Omnibus Rules are hereby promulgated.

## **GUIDELINE I GENERAL PROVISIONS**

### *Section 1. Policy Statement and General Principles*

- (a) It is the policy of the State to afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all and to provide

adequate and timely social, economic and legal services to Filipino migrant workers.

- (a) It is the policy of the State to provide adequate protection to the overseas Filipino workers (OFWs) by ensuring coverage under the compulsory insurance requirement in Section 37-A of the Migrant Workers and Overseas Filipinos Act of 1995, as amended. This mandatory insurance coverage of OFWs is exceptionally different and distinct from the ordinary and usual insurance contracts provided by insurance providers in the Philippines.
- (b) It is the policy of the State to ensure the due execution and performance of insurance contracts not only for the sound development of the national economy and business enterprises but also for the protection of the interests and welfare of the OFWs and their families. This is because insurance is imbued with public interest.

## Section 2. *Rules on Interpretation*

The terms and conditions of the policy issued in favor of the OFWs in compliance with the Migrant Workers and Overseas Filipinos Act of 1995, as amended, are liberally construed in favor of the insured. All ambiguities in an insurance contract are construed against the insurer and are resolved in favor of coverage.

## Section 3. *Migrant Workers Covered*

Each migrant worker to be deployed by a recruitment/manning agency shall be covered by a compulsory insurance contract which shall be secured at no cost to the said worker. Seafarers already covered by entities providing indemnity cover to the vessel pursuant to Section 5, Rule XVI of the Omnibus Rules shall be governed by pertinent POEA Rules and Regulations and the POEA-Standard Employment Contract for Seafarers. These Guidelines shall apply to principals/shipowners which obtained insurance cover from local insurance companies.

## **GUIDELINE II**

### **DEFINITION OF TERMS**

Whenever used in these Insurance Guidelines, the following terms shall have their respective meanings hereinafter defined:

- (a) Act – the “Migrant Workers and Overseas Filipinos Act of 1995” or Republic Act 8042 as amended by Republic Acts 9422 and 10022.
- (b) Certificate of Authority (CA) – the license issued by the IC to an insurance company authorized to transact insurance business.
- (c) Composite insurance company – an insurance company duly authorized by the IC to issue both life and non-life insurance policies.
- (d) Insurance Contract – an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.
- (e) Insurer or Insurance Provider – one that makes, proposes or provides an insurance contract.
- (f) Life insurance company – an insurance company authorized to issue life insurance policies.
- (g) Migrant Workers’ Compulsory Insurance Coverage –the compulsory insurance policy bought by the recruitment/manning agency from a reputable insurance company duly authorized by the Insurance Commission in favor of a migrant worker with the minimum coverage enumerated under Section 37-A of the Act;
- (h) Non-life insurance company – an insurance company authorized to issue non-life insurance policies.
- (i) Omnibus Rules – the Implementing Rules and Regulations (IRR) of the Act.

All other terms not defined in these Insurance Guidelines shall have their respective meanings defined in the Omnibus Rules. Hence, these Insurance

Guidelines must be read with reference to the Definition of Terms under the Omnibus Rules.

### **GUIDELINE III**

#### **QUALIFICATIONS OF PARTICIPATING INSURERS**

##### *Section 1. General Qualifications*

Only reputable private life, non-life and composite insurance companies duly licensed by IC which are in existence and operational for at least five (5) years, with a net worth of at least Five Hundred Million Pesos (Php500,000,000.00) based on the audited financial statements for the immediately preceding year, with a current year certificate of authority, and with an IC-approved standard policy, shall be qualified to provide for the Migrant Workers' Compulsory Insurance Coverage.

##### *Section 2. Disqualification.*

Insurance companies who have directors, partners, officers, employees, or agents with relatives within the fourth civil degree of consanguinity or affinity who work or have interest in any of the licensed recruitment/manning agencies or in any of the government agencies involved in the overseas employment program shall be disqualified from providing the migrant worker's insurance coverage. It shall be the duty of the said directors, partners, officers, employees or agents to disclose any such interest to the IC and POEA.

##### *Section 3. Scope of Writing Authority*

The following shall be written only by life insurance companies:

- (a) Natural death insurance with a supplementary accidental death and permanent total disablement benefits.

The following shall be written only by non-life insurance companies:

- (a) Permanent total disablement insurance;
- (b) Repatriation cost insurance;



- (c) Subsistence allowance insurance;
- (d) Money claims insurance;
- (e) Compassionate visit insurance;
- (f) Medical evacuation insurance; and g) Medical repatriation insurance.

Accidental death insurance may be written by both life and non-life companies. Composite insurance companies may write all of the above insurance coverages.

#### Section 4. *Specific Qualifications*

##### A. Computer and Other Services

The insurance provider must possess the capability of a fully computerized operation on an on-line, real-time basis of its transactions. For this purpose, the IC must be equipped with a computerized monitoring link of all the insurance provider's transactions including complaints, payment of benefits, and remittance of taxes due the government.

##### B. Representative Office Requirements

The insurance provider must have branches near the vicinity where the POEA offices are located all over the country.

##### C. Accessible Hotlines/Assistance Centers

The insurance providers must have an established 24-hour call/assistance centers to provide immediate assistance and entertain complaints and inquiries from migrant workers and/or their beneficiaries, recruitment/manning agencies, and other stakeholders. These providers must have an established agreement with international assistance providers that have access in all the countries where the migrant workers are located. Further, these insurance companies must have their own company representatives stationed in host countries to provide in-country assistance for claims servicing of the migrant workers relative to their insurance coverage, in the following cases:

- (1) In countries where the migrant workers insured under the program numbering at least twenty thousand (20,000) are located. Such representatives shall be stationed near the vicinity where POLO offices, if any, are located;
- (2) In countries with more than one POLO, there shall be as many representatives as there are POLOs provided that the number of migrant workers insured under the program reaches at least forty thousand (40,000) in the host country; and
- (3) In circumstances other than the preceding subparagraphs (1) and (2), where the presence of a company representative is necessary as determined by the Inter-Agency Committee created under these Guidelines.

## **GUIDELINE IV**

### **ACCREDITATION OF INSURERS**

#### *Section 1. General Requirements*

The IC shall furnish the POEA a list of insurance providers qualified to provide the mandatory insurance coverage. Said list must be updated every time an inclusion or disqualification is made by the IC.

Each qualified insurance provider shall be issued a certification that it is authorized to issue the compulsory insurance. The Certification shall be displayed prominently in the main and representative offices of the insurance provider.

The POEA shall not issue an Overseas Employment Certificate (OEC) or any equivalent clearance to the OFW if the insurance contract bears the name of an insurance company not included in the list of qualified insurance providers furnished by the IC.

#### *Section 2. Exclusive Option*

The recruitment/manning agency shall have the right to choose from any of the qualified insurance providers that will insure the migrant worker it will deploy.

No government agency shall direct, dictate, interfere or influence, in any way, any recruitment/manning agency in choosing or selecting from any accredited insurance company for the mandatory insurance coverage of its OFWs. A violation of this provision by any government official or employee shall be subject to proper administrative penalties under the Code of Ethical Standards for Government Employees, the Anti-Graft and Corruption Law and other relevant laws.

### Section 3. *Joint Assessment by DOLE and IC*

At the end of every year, the DOLE and the IC shall jointly make an assessment of the performance of all insurance providers, based upon the report of NLRC and POEA on their respective interactions and experiences with insurance companies, and they shall have the authority to ban or blacklist such insurance companies which are known to be evasive or not responsive to the legitimate claims of migrant workers. The DOLE shall include such assessment in its year-end report to Congress. Based on the joint DOLE and IC assessment, the IC shall have the authority to ban, blacklist, disqualify or revoke the accreditation of the insurance provider.

The IC shall have the duty to see that all laws relating to insurance, insurance companies and other insurance matters are faithfully executed and to perform the duties imposed upon it by the Guidelines. It may issue such rulings, instructions, circulars, orders and decisions as it may deem necessary to secure the enforcement of the provisions of these Guidelines. Moreover, IC is hereby authorized, at its discretion, to impose upon insurance companies, their directors and/or officers and/or agents, for any willful failure or refusal to comply with, or violation of any provision of these Guidelines, or any order, instruction, regulation, or ruling of the IC, or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the IC, the following:

- (a) fines; and
- (b) suspension, or after due hearing, removal of directors and/or officers and/or agents.

## **GUIDELINE V**

### **POLICY FORMS**

#### *Section 1. Approval of Policy Forms*

In accordance with Section 226 of the Insurance Code, no policy, certificate or contract of insurance, application form, rider, clause, warranty or endorsement to be used under the Act shall be issued without the approval of the IC. The use of an unauthorized policy format shall result in the disqualification of the participating insurance provider.

For control purposes, every policy, whether individual or master policy and certificate of cover, must have a special serial number.

#### *Section 2. Application Form and Title of the Policy*

There shall be an application form which shall form part of the insurance policy.

The policy shall be uniformly labeled as “COMPULSORY INSURANCE COVERAGE FOR AGENCY-HIRED MIGRANT WORKERS”.

Insurers shall be uniformly called “insurance providers”. The migrant worker insured under the program shall be uniformly called “insured migrant worker”. All other relevant terms used in the policy must be sufficiently defined in the policy in understandable language and avoiding, as much as possible, the use of technical terms.

The policy should mention that in enforcing the migrant worker’s rights, reference may be made to Section 23 of RA 10022, Rule XVI of its Omnibus Rules, and these Insurance Guidelines.

#### *Section 3. Policy Duration, Coverage and Benefits*

Such insurance policy shall be effective for the duration of the migrant worker’s employment contract, and shall cover, at the minimum the benefits mentioned in Guideline VII of these Insurance Guidelines. In case of group insurance, a Proof of Cover, which shall also be pre-approved by the IC, shall be issued to the individual insured migrant worker. The policy shall state

that the monetary benefits shall be directly payable to the insured migrant workers or their beneficiaries, as the case may be.

#### Section 4. *Premium Rate*

The premium rate for insurance shall be clearly stated in the policy, separately showing the purely insurance premium, taxes and other allowed charges in accordance with the provisions of Guideline VIII of these Insurance Guidelines. It shall also be clearly stated that the premium is payable by the recruitment/manning agency and not by the insured migrant worker.

#### Section 5. *Accessibility of the Master Policy*

In case of group insurance, the following statement must appear on the face of the Proof of Cover:

“The master policy may be viewed at and printed thru any of the websites of the IC, POEA, insurance providers and recruitment agencies.”

#### Section 6. *Authorized Signatories to the Policy*

The policy shall be signed by the President of the insurance provider. It shall be countersigned by the president of the recruitment/manning agency.

#### Section 7. *Non-Applicability of the Incontestable and Suicide Clauses*

The incontestable and suicide clauses under the Insurance Code shall not apply to compulsory life insurance coverage under the Act.

#### Section 8. *Place of Payment of Claims*

Claims shall be paid at the home office of the insurance provider or in any of its branches or assistance centers, taking into consideration the circumstances of the insured migrant worker or the beneficiary at the time of payment.

#### Section 9. *Legal Remedies*

The policy shall provide for the legal remedy of the insured migrant workers and other affected parties in case they intend to dispute the non-payment or short-payment of their benefits, with specific reference to the provisions

of Guideline X of these Insurance Guidelines. It shall contain the following important notice clause:

“The Insurance Commission of the Philippines, with offices in Manila, Cebu, and Davao, is the government office in charge of the enforcement of all laws relating to insurance companies. It is ready at all times to render assistance in settling any controversy between an insurance company and an insured migrant worker or beneficiaries relating to insurance matters. The POEA and the POLO may likewise assist the insured migrant workers in submitting their complaints to the IC.”

#### Section 10. *Additional Clauses*

Each additional clause to be introduced by the insurance provider shall also be subject to the prior approval of the IC.

#### Section 11. *Interpretation*

In case of doubt, the provisions of the policy shall be interpreted liberally in favor of the migrant workers and in accordance with the intent of the Act, its Omnibus Rules and these Insurance Guidelines.

## **GUIDELINE VI PREMIUM RATE AND PAYMENT**

#### Section 1. *Premium Rates*

Premium rates shall be fair, reasonable, adequate, transparent, and prudent taking into consideration estimated claims for the first year and actual loss experience for the succeeding years, reasonable profit and underwriting expenses. An annual review of the premium rates shall be done in relation to the loss experience to determine whether an adjustment is necessary. Premium rates and any adjustments thereon shall be subject to the approval of the IC.

The applicable premium shall be paid by the recruitment/manning agency responsible for the deployment of the migrant worker. In no case shall this premium be charged by the recruitment/manning agency or the foreign employer directly or indirectly to the migrant worker.

The premium rates herein mentioned shall apply only to the minimum coverages under the law. Higher coverages with corresponding increase in premium shall require separate approval from the IC.

### Section 2. *Manner of Premium Payment*

The premium must be paid in full to the insurance provider by the recruitment/manning agencies on a cash and carry basis at no cost to the worker.

### Section 3. Proportionate Return of Premium

When the worker decides to voluntarily pre-terminate his employment contract abroad and returns to the Philippines out of his own volition and free will, there shall be a proportionate amount of return of premium for the benefit of the recruitment/manning agency corresponding to the unexpired term of the insurance contract.

## **GUIDELINE VII BENEFITS**

### Section 1. *Minimum Benefits*

The minimum insurance benefits contemplated herein shall include the following:

- (a) Accidental death, with at least Fifteen Thousand United States Dollars (US\$15,000.00) benefit payable to the migrant worker's beneficiaries;
- (b) Natural death, with at least Ten Thousand United States Dollars (US\$10,000.00) benefit payable to the migrant worker's beneficiaries;
- (c) Permanent total disablement, with at least Seven Thousand Five Hundred United States Dollars (US\$7,500.00) disability benefits payable to the disabled migrant worker. The following disabilities shall be deemed permanent: total complete loss of sight of both eyes; loss of two limbs at or above the ankles or wrists; permanent complete paralysis of two limbs; brain injury resulting to incurable imbecility or insanity;

All such disabilities must be due to accident or by any health-related cause or sickness or ailment suffered during the duration of the migrant worker's employment.

Service in the armed forces in any country or international authority, whether in peace or war, shall serve as the only exclusion to the limits of liability under this sub- paragraph.

- (d) Repatriation cost of the worker when his/her employment is terminated by the employer without any valid cause, or by the employee with just cause, including transport of his/her personal belongings. In case of death, the insurance provider shall arrange and pay for the repatriation of the worker's remains and belongings. The insurance provider shall also render any assistance necessary in the transport, including but not limited to locating a local and licensed funeral home, mortuary or direct disposition facility to prepare the body for transport, completing all documentations, obtaining legal clearances, procuring consular services, providing death certificates, purchasing the minimally necessary casket or air transport container, as well as transporting the remains including retrieval from site of death and delivery to the receiving funeral home and back to the residence of the insured worker in the Philippines or to any place in the Philippines in accordance with the worker's will, if there is any. This provision shall be without prejudice to the provisions of Rule XIII of the Omnibus Rules. The extent of the said benefits shall be regardless of the cost, the primary test of compliance being the complete repatriation of the worker or his/her remains, as the case may be, and his/her personal belongings.
- (e) Subsistence allowance benefit, with at least one hundred United States Dollars (US\$100.00) per month for a maximum of six (6) months for a migrant worker who is involved in a case or litigation for the protection of his/her rights in the receiving country;
- (f) Money claims arising from the employer's liability which may be awarded or given to the worker in a judgment or settlement of his/her case in the NLRC. The insurance coverage for money claims shall be equivalent to at least three (3) months salaries for every year of the migrant worker's employment contract, the maximum amount per month of which is One Thousand United States Dollars (US\$1,000.00) or the amount of salary under the employment contract, whichever is



lower. In case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, the recruitment/manning agency is liable to pay the balance thereof.

- (g) **Compassionate visit.** When a migrant worker is hospitalized and has been confined or will be confined as determined by the attending physician and the insurance company physician for at least seven (7) consecutive days, he shall be entitled to a compassionate visit by one (1) family member or a requested individual. The insurance company shall pay for the transportation cost of the family member or requested individual to the major airport closest to the place of hospitalization of the worker. It is, however, the responsibility of the family member or requested individual to meet all visa and travel document requirements. The extent of the said benefits shall be regardless of the cost, the primary test of compliance being the complete transport of the visitor from and back to the Philippines.
- (h) **Medical evacuation.** When an adequate medical facility is not available proximate to the migrant worker, as determined by the insurance company's physician and the consulting physician, evacuation under appropriate medical supervision by the mode of transport necessary shall be undertaken by the insurance provider. The extent of the said benefits shall be regardless of the cost, the primary test of compliance being the completion of the said medical evacuation.
- (i) **Medical repatriation.** When medically necessary as determined by the insurance company physician and the consulting physician, repatriation under medical supervision to the migrant worker's residence shall be undertaken by the insurance provider at such time that the migrant worker is medically cleared for travel by commercial carrier. If the period to receive medical clearance to travel exceeds fourteen (14) days from the date of discharge from the hospital, an alternative appropriate mode of transportation, such as air ambulance, may be arranged. Medical and non-medical escorts may be provided when necessary. This provision shall be without prejudice to the provisions of Rule XIII of the Omnibus Rules. The extent of the said benefits shall be regardless of the cost, the primary test of compliance being the complete repatriation of the migrant worker under medical supervision to his/her residence.

The above assistance benefits must be performed or paid immediately by the insurance provider. The insured migrant worker or his heirs should not be made to advance expenses.

The assistance benefits should be in force while the insured migrant worker is in the country of assignment for the duration of the policy.

The benefits mentioned in sub-paragraphs (a), (b), (c), (e), and (f) may be paid in Peso equivalent subject to the consent of the insured migrant worker or the beneficiaries, as the case may be. In no case shall the settlement be less than the mentioned Dollar equivalent at the time of the payment of the benefits.

## **GUIDELINE VIII UNDERWRITING GUIDELINES**

In underwriting the insurance policy, the insurance provider shall not distinguish the migrant workers based on occupation, sex, or place of work.

This compulsory insurance coverage may be underwritten on individual or group basis.

Insurers are required to maintain at all times separate registers of policies/proofs of cover issued, claims register, and a production register containing the amounts of retention and reinsurance distribution as well as its respective reinsurers.

Such registers shall be open to inspection and examination by duly authorized representatives of the Insurance Commissioner at any time during business hours.

## **GUIDELINE IX CLAIMS PROCEDURE**

### *Section 1. Notice of Claims*

Any person having a claim upon the policy issued pursuant to subparagraphs (a), (b), (c), (d) and (e) of Section 2 of Rule XVI of the Omnibus Rules

shall present to the insurance company concerned a written notice of claim together with pertinent supporting documents. The insurance company shall forthwith ascertain the truth and extent of the claim and make payment within ten (10) days from the filing of the notice of claim and submission of the complete claim documents.

### *Section 2. Documentary Requirements for Accidental or Natural Death or Disablement Claim*

Any claim arising from accidental death, natural death or permanent total disablement under Section 2 (a), (b) and (c) shall be paid by the insurance company without the necessity of proving fault or negligence of any kind on the part of the insured migrant worker: Provided that the following documents, duly authenticated by the Philippine foreign posts, shall be sufficient evidence to substantiate the claim:

- 1) Death Certificate – in case of natural or accidental death;
- 2) Police or Accident Report – in case of accident; and
- 3) Medical Certificate –in case of permanent disablement.

For the purpose of identifying the legitimate and/or designated beneficiaries, the following claim documents shall also be submitted:

- 1) Birth Certificate of insured, if beneficiary is a parent or a child;
- 2) Marriage Contract of insured and spouse, if beneficiary is the spouse;
- 3) Affidavit of Legal Guardianship, if beneficiary is a minor; and
- 4) Other documents as may be necessary to establish identity of claimants

### *Section 3. Documentary Requirement for Repatriation Claim*

For repatriation under Section 2(d) of Rule XVI of the Omnibus Rules, a certification which states the reason/s for the termination of the migrant worker's employment and the need for his/her repatriation shall be issued by the Philippine foreign post or the POLO located in the receiving

country. Such certification shall be solely for the purpose of complying with this Section.

#### Section 4. *Documentary Requirements for Subsistence Allowance Benefit Claim*

For subsistence allowance benefit under Section 2(e) of Rule XVI of the Omnibus Rules, the concerned Labor Attaché or, in his absence, the embassy or consular official shall issue a certification which states the title of the case, the names of the parties and the nature of the cause of action of the migrant worker.

#### Section 5. *Settlement of Money Claims*

For the payment of money claims under Section 2(f) of Rule XVI of the Omnibus Rules, the following rules shall govern:

- (1) After a decision has become final and executory or a settlement/ compromise agreement has been reached between the parties at the NLRC, the Labor Arbiter shall motu proprio or upon motion, and following the conduct of pre-execution conference, issue a writ of execution mandating the respondent recruitment/manning agency to pay the amount adjudged or agreed upon within thirty (30) days from receipt thereof;
- (2) The recruitment/manning agency shall then immediately file a notice of claim with its insurance provider for the amount of the liability insured, attaching therewith a certified true copy of the decision or compromise agreement;
- (3) Within ten (10) days from the filing of the notice of claim, the insurance company shall make payment to the recruitment/manning agency the amount adjudged or payment should be made direct to the OFW or migrant worker or beneficiary agreed upon, or the amount of liability insured, whichever is lower. After receiving the insurance payment, the recruitment/manning agency shall immediately pay the migrant worker's claim in full, taking into account that in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay the balance thereof.

- (4) In case the insurance company fails to make payment within ten (10) days from the filing of the claim, the recruitment/manning agency shall pay the amount adjudged or agreed upon within the remaining days of the thirty-day period, as provided in the first subparagraph hereof;
- (5) If the worker's claim was not settled within the aforesaid thirty-day period, the recruitment/manning agency's performance bond or escrow deposit shall be forthwith garnished to satisfy the migrant worker's claim;
- (6) The provision on compulsory worker's insurance under the Omnibus Rules shall not affect the joint and several liability of the foreign employer and the recruitment/manning agency under Section 10 of the Act;
- (7) Lawyers for the insurance companies, unless the latter are impleaded, shall be prohibited to appear before the NLRC in money claims cases under Rule VII of the Omnibus Rules.

#### Section 6. *Duty to Disclose and Assist*

It shall be the duty of the recruitment/manning agency, in collaboration with the insurance provider, to sufficiently explain to the migrant worker before his/her departure, and to at least one of his/her beneficiaries, the terms and benefits of the insurance coverage, including the claims procedure.

Also, in filing a claim with the insurance provider, it shall be the duty of the recruitment/manning agency to assist the migrant worker and/or the beneficiary and to ensure that all information and documents in the custody of the agency necessary for the claim are readily accessible to the claimant.

## **GUIDELINE X DISPUTE SETTLEMENT**

### *Section 1. Applicable Procedure in Settling Disputes in the Enforcement of Insurance Claims*

Any question or dispute in the enforcement of any insurance policy issued under these Guidelines, regardless of the amount, shall be brought before

the IC for mediation or adjudication pursuant to the applicable provisions of the Insurance Code or circulars issued by the IC. The existing claims adjudication procedures of the IC shall apply in the settlement of insurance claims disputes under these Insurance Guidelines, taking into consideration the special procedures and periods provided in Section 37-A of the Act, and these Insurance Guidelines. The IC may issue the pertinent circulars for this purpose.

The preceding paragraph applies to seafarers employed/hired by principals/shipowners which obtained insurance cover from insurance companies authorized to do business in the Philippines.

## *Section 2. Enforcement of NLRC Decisions*

Notwithstanding Section 1 hereof, the NLRC shall have the exclusive jurisdiction to enforce against the recruitment/manning agency/insurance provider its decision, resolution or order that has become final and executory or where a settlement/compromise agreement has been reached between the parties.

## *Section 3. Enforcement of Seafarers' Claims*

Any dispute in the enforcement of money claims under the seafarers' standard employment contract covering the minimum benefits under Section 2 Rule XVI of the Omnibus IRR shall be filed before the NLRC. For seafarers covered by collective bargaining agreements, the cases shall be submitted to voluntary arbitration.

Any complaint against a principal/shipowner and/or manning agent for a violation of the standard employment contract or the provisions of pertinent POEA rules and regulations, covering the minimum benefits under Section 2, Rule XVI of the Omnibus IRR, shall be filed with the POEA. An erring principal/shipowner and/or manning agent may be meted the corresponding administrative penalty pursuant to POEA rules and regulations.

## **GUIDELINE XI**

### **ADMINISTRATIVE MONITORING AND SUPERVISION**

#### *Section 1. Regular Reportorial Requirements*

For the purpose of monitoring the compliance with these Insurance Guidelines and evaluating the performance of the insurance program, the IC shall require the submission of the following from the insurance providers:

- (a) Production/premium report;
- (b) Claims payment report;
- (c) Claims denial report;
- (d) Reinsurance report;
- (e) Statistical report; and
- (f) Other reports as may be determined necessary by the IC.

The IC shall formulate the report formats and determine the reasonable frequency of submission of the above requirements.

#### *Section 2. Inter-Agency Committee*

There is hereby created an Inter Agency Committee composed of representatives from DOLE, IC, POEA and NLRC, which shall formulate a program for the effective enforcement and monitoring compliance with this Act, the Omnibus Rules and these Insurance Guidelines. The Committee shall be co-chaired by DOLE and IC.

#### *Section 3. Regular Examination*

The Inter-Agency Committee shall, with the IC as the lead, determine the control and examination procedures to be applied to assure regulatory compliance and effective performance of the insurance program. The IC shall also determine the other reports to be required of the insurance providers. It shall coordinate with the POEA and other relevant agencies to align its objectives and procedures with them.

## **GUIDELINE XII**

### **OTHER MATTERS**

#### *Section 1. Requirements for the Issuance of the OEC*

After procuring such insurance policy, the recruitment/manning agency shall provide an authenticated copy of the individual insurance application with original proof of cover of life and non-life coverage for each migrant worker. It shall then submit the proof of insurance coverage of the migrant worker to POEA as a requirement for the issuance of the OEC to the migrant worker.

In the case of seafarers who will be employed on board vessels with indemnity insurance coverage issued by foreign insurance companies, the POEA shall accept certificates or other proofs of cover from recruitment/manning agencies; Provided, that the minimum benefits under Section 2, Rule XVI of Omnibus Rules are included therein. For this purpose, foreign insurance companies shall include entities providing indemnity cover to the vessel.

#### *Section 2. Liability of Recruitment/Manning Agency*

In case it is shown by substantial evidence before the POEA that the migrant worker who was deployed by a licensed recruitment/manning agency has paid for the premium or the cost of the insurance coverage or that the said insurance coverage was used as basis by the recruitment/manning agency to claim any additional fee from the migrant worker, the said licensed recruitment/manning agency shall lose its license and all its directors, partners, proprietors, officers and employees shall be perpetually disqualified from engaging in the business of recruitment of overseas workers. Such penalty is without prejudice to any other liability which such persons may have incurred under existing laws, rules or regulations.

For this purpose, insurance companies shall not accept any payment of premiums from agency-hired migrant workers.

#### *Section 3. Optional Coverage*

Migrant workers classified as rehires, name hires or direct hires may opt to be covered by this insurance coverage by requesting their foreign employers



to pay for the cost of the insurance coverage or they may pay for the premium themselves. They shall have the right to choose from any of the qualified insurance providers. To protect the rights of these workers, the DOLE, POEA and, for insurance issues, the IC, shall provide them adequate legal assistance, including conciliation and mediation services, whether at home or abroad.

#### Section 4. *Automatic Review*

The foregoing provisions on mandatory insurance coverage shall be subject to automatic review through the Congressional Oversight Committee immediately after three (3) years from the effectivity of the Act in order to determine its efficacy in favor of the covered OFWs and the compliance by recruitment/manning agencies and insurance companies, without prejudice to an earlier review if necessary and warranted for the purpose of modifying, amending and/or repealing these subject provisions.

#### Section 5. *Duty of the Insurance Commissioner to Issue Circulars*

The Insurance Commissioner shall, from time to time, issue Circular Letters to supplement these Insurance Guidelines. The Commission's existing one-circular-one-subject-matter rule shall apply. The said circulars shall be sent to all accredited insurance companies, licensed recruitment/manning agencies, NGOs representing the migrant workers, and other parties affected by the specific circular at the time of issuance. Each circular shall take effect after fifteen (15) days from the date of issuance unless otherwise stated in the said circular. It shall also be posted in the IC's and POEA's official websites. Hence, all accredited insurance companies and licensed recruitment/manning agencies are hereby required to regularly visit the said agencies' official websites for circular updates. The Commissioner may devise such other circular distribution methods as he may deem effective and speedy. He may accredit industry associations as official representatives of their members for the purpose of receiving the circulars.

## **GUIDELINE XIII**

### **FINAL PROVISIONS**

#### *Section 1. Repealing Clause*

All Department Orders, Circulars and Implementing Rules and Regulations inconsistent with these Insurance Guidelines are hereby repealed or amended accordingly.

#### *Section 2. Effectivity*

The provisions of these Insurance Guidelines shall take effect five (5) days after publication in a newspaper of general circulation.

Done in the City of Manila, this 8th day of September 2010.

POEA RULES AND REGULATIONS  
GOVERNING THE RECRUITMENT  
AND EMPLOYMENT  
OF LAND-BASED OVERSEAS WORKERS



# **POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers**

## **PART I GENERAL PROVISIONS**

### **RULE I. STATEMENT OF POLICY**

It is the policy of the Administration:

- a. To uphold the dignity and fundamental human rights of Filipino migrant workers and promote full employment and equality of employment opportunities for all;
- b. To protect every citizen desiring to work overseas by securing the best possible terms and conditions of employment;
- c. To allow the deployment of Filipino migrant workers only in countries where their rights are protected;
- d. To provide an effective gender-sensitive mechanism that can adequately protect and safeguard the rights and interest of Filipino migrant workers;
- e. To disseminate and allow free flow of information which will properly prepare individuals into making informed and intelligent decisions about overseas employment;
- f. To ensure careful selection of Filipino workers for overseas employment in order to protect the good name of the Philippines abroad;
- g. To institute a system to guarantee that migrant workers possess the necessary skills, knowledge or experience for their overseas jobs;

- h. To recognize the participation of the private sector in the recruitment and placement of overseas workers to serve national development objectives;
- i. To deregulate recruitment activities progressively taking into account emerging circumstances which may affect the welfare of migrant workers;
- j. To support programs for the reintegration of returning migrant workers into Philippine society; and
- k. To cooperate with duly registered non-government organizations, in a spirit of trust and mutual respect, in protecting and promoting the welfare of Filipino migrant workers

## **RULE II. DEFINITION OF TERMS**

For purposes of these Rules, the following terms are defined as follows:

- 1. Accreditation – shall refer to the grant of authority to a foreign principal to recruit and hire Filipino workers through a licensed agency for overseas employment.
- 2. Administration – shall refer to the Philippine Overseas Employment Administration (POEA).
- 3. Administrator – shall refer to the Administrator of the POEA.
- 4. Agency – shall refer to a private employment agency as defined herein.
- 5. Corporate Recruitment – shall refer to the act of providing the required manpower for all facets of an overseas project.
- 6. Department – shall refer to the Department of Labor and Employment (DOLE).
- 7. Derogatory record – refers to the existence of negative information such as, but not limited to, illegal recruitment, falsification, swindling or estafa, and/or conviction for crimes involving moral turpitude.

8. Documentation cost – shall refer to actual cost incurred in the documentation of an applicant- worker in relation to his/her application for overseas employment, such as, but not limited to passport, NBI/ Police/Barangay clearance, authentication, birth certificate, Medicare, PDOS, trade test, inoculation and medical examination fees.
9. Employment Contract – shall refer to an individual written agreement between the foreign principal/employer and the worker which is based on the master employment contract.
10. Foreign Placement Agency – shall refer to a foreign principal indirectly engaging the services of overseas Filipino Workers.
11. Joint and Solidary Liability – refers to the nature of liability of the principal/employer and the recruitment/placement agency, for any and all claims arising out of the implementation of the employment contract involving Filipino workers for overseas deployment. It shall likewise refer to the nature of liability of officers, directors, partners with the company over claims arising from employer-employee relationship.
12. License – shall refer to the document issued by the Secretary or his duly authorized representative authorizing a person, partnership or corporation to operate a private employment agency.
13. Master Employment Contract – shall refer to the model employment agreement submitted by the foreign principal for verification and approval which contains the terms and conditions of employment of each worker hired by such principal.
14. Name Hire – shall refer to a worker who is able to secure an overseas employment opportunity with an employer without the assistance or participation of any agency.
15. New Market – shall refer to a principal or a foreign placement agency which is not in the active list of registered or accredited principals/ foreign placement agencies for the past six months or more or which has never been registered or accredited to any licensed landbased agency; Provided that in the case of a foreign placement agency, its direct employer(s) are identified and are likewise not in the active list of registered or accredited employer of any licensed landbased agency for

the past six months or more or has not been registered or accredited to any licensed landbased agency;

16. NLRC – shall refer to the National Labor Relations Commission.
17. Non-Licensee – shall refer to any person, partnership or corporation who has no valid license to engage in recruitment and placement of Overseas Filipino Workers or whose license is suspended.
18. Overseas Employment – shall refer to employment of a Filipino worker outside the Philippines covered by a valid contract.
19. Overseas or Migrant Filipino Worker – shall refer to any person, eighteen years of age or above, as provided in RA 8042, who is to be engaged, or is engaged or has been engaged in a remunerated activity in a state of which the worker is not a legal resident;
20. Placement Fee – shall refer to the amount charged by a private employment agency from a worker for its recruitment and placement services, as prescribed by the Secretary.
21. Principal – shall refer to a foreign person, partnership, or corporation hiring Filipino workers through a licensed agency.
22. Private Employment Agency – shall refer to any person, partnership or corporation engaged in the recruitment and placement of workers for a fee, which is charged, directly or indirectly, from the workers or employers or both.
23. Provisional License – refers to a license issued to a new agency with a limited period of one (1) year within which an applicant shall comply with its undertaking to deploy 100 workers to its new market.
24. Recruitment Agreement – shall refer to an agreement by and between the principal and the private employment agency or the Administration defining their rights and obligations.
25. Recruitment and Placement – shall refer to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising for



employment abroad, whether for profit or not; provided that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

26. Registration – shall refer to the act of recognizing and entering in the official records of the Administration the existence of a foreign principal/ employer or project whose documents have been verified in the job site by the appropriate officials of the Philippine government. It shall also refer to the act of entering in the official records of the Administration the names of name hires and workers on leave who will depart for overseas employment.
27. SEC – shall refer to the Securities and Exchange Commission.
28. Secretary – shall refer to the Secretary of Labor and Employment.
29. Service Contractor – shall refer to any person, partnership or corporation duly licensed by the Secretary of Labor and Employment to recruit workers for its accredited projects or contracts overseas.
30. Service Fee – shall refer to the amount charged by a licensee from its foreign principal as payment for actual services rendered in relation to the recruitment and placement of workers.
31. Special Recruitment Authority – shall refer to the authority granted to an agency to conduct recruitment outside its registered business address approved by the Administration.
32. Valid Employment Contract – shall refer to an individual written agreement between the foreign principal/employer and the worker which is based on the master employment contract approved by the Administration.
33. Verification – shall refer to the act performed by a Philippine Overseas Labor Officer, or any other officer designated by the Secretary of Labor and Employment in the Philippine Embassy or Consulate, in reviewing and verifying the recruitment documents of foreign principals, including the employment contracts of Filipino nationals, with the view to establish the existence of the employing person, company or project, its

capability to hire workers at the acceptable rates, and at desirable working conditions in conformity with the minimum standards prescribed by the Administration and taking into consideration the labor laws and legislations of the host government.

34. Worker-on-Leave – shall refer to an overseas worker who is on vacation or on leave and is returning to the same employer.

## **PART II**

### **LICENSING AND REGULATION**

#### **RULE I. PARTICIPATION OF THE PRIVATE SECTOR IN THE OVERSEAS EMPLOYMENT PROGRAM**

Section 1. *Qualifications.* Only those who possess the following qualifications may be permitted to engage in the business of recruitment and placement of Filipino workers:

- a. Filipino citizens, partnerships or corporations at least seventy five percent (75%) of the authorized capital stock of which is owned and controlled by Filipino citizens;
- b. A minimum capitalization of Two Million Pesos (P2,000,000.00) in case of a single proprietorship or partnership and a minimum paid-up capital of Two Million Pesos (P2,000,000.00) in case of a corporation; Provided that those with existing licenses shall, within four years from effectivity hereof, increase their capitalization or paid up capital, as the case may be, to Two Million Pesos (P2,000,000.00) at the rate of Two Hundred Fifty Thousand Pesos (P250,000.00) every year.
- c. Those not otherwise disqualified by law or other government regulations to engage in the recruitment and placement of workers for overseas employment.

Section 2. *Disqualification.* The following are not qualified to engage in the business of recruitment and placement of Filipino workers overseas:

- a. Travel agencies and sales agencies of airline companies;
- b. Officers or members of the Board of any corporation or members in a partnership engaged in the business of a travel agency;
- c. Corporations and partnerships, when any of its officers, members of the board or partners, is also an officer, member of the board or partner of a corporation or partnership engaged in the business of a travel agency;
- d. Persons, partnerships or corporations which have derogatory records, such as but not limited to the following:
  - 1) Those certified to have derogatory record or information by the National Bureau of Investigation or by the Anti-Illegal Recruitment Branch of the POEA;
  - 2) Those against whom probable cause or prima facie finding of guilt for illegal recruitment or other related cases exists;
  - 3) Those convicted for illegal recruitment or other related cases and/or crimes involving moral turpitude; and
  - 4) Those agencies whose licenses have been previously revoked or cancelled by the Administration for violation of RA 8042, PD 442 as amended and their implementing rules and regulations as well as these rules and regulations.

All applicants for issuance/renewal of license shall be required to submit clearances from the National Bureau of Investigation and Anti-illegal Recruitment Branch, POEA, including clearances for their respective officers and employees.

- e. Any official or employee of the DOLE, POEA, OWWA, DFA and other government agencies directly involved in the implementation of R.A. 8042, otherwise known as Migrant Workers and Overseas Filipino Act of 1995 and/or any of his/her relatives within the fourth civil degree of consanguinity or affinity; and

- f. Persons or partners, officers and Directors of corporations whose licenses have been previously cancelled or revoked for violation of recruitment laws.

## **RULE II. ISSUANCE OF LICENSE**

Section 1. *Requirements for Licensing.* Every applicant for license to operate a private employment agency shall submit a written application together with the following requirements:

- a. A certified copy of the Articles of Incorporation or of Partnership duly registered with the Securities and Exchange Commission (SEC), in the case of corporation or partnership or Certificate of Registration of the firm or business name with the Department of Trade and Industry (DTI), in the case of a single proprietorship;
- b. Proof of financial capacity: In the case of a single proprietorship or partnership, verified income tax returns of the proprietors or partners for the past two (2) years and a savings account certificate showing a maintaining balance of not less than P500,000.00, provided that the applicant should submit an authority to examine such bank deposit.
- c. In the case of a newly organized corporation, savings account certificate showing a maintaining balance of not less than P500,000.00 with authority to examine the same. For an existing corporation, submission of a verified financial statement, corporate tax returns for the past two (2) years and savings account certificate showing a maintaining balance of not less than P500,000.00 with the corresponding authority to examine such deposit.
- d. Proof of marketing capability
  - 1. A duly executed Special Power of Attorney and/or a duly concluded. Recruitment/ Service Agreement;
  - 2. Manpower request(s) or visa certification from new employer(s)/ principal(s) for not less than one hundred (100) workers; and

3. Certification from Pre-Employment Services Office of POEA on the existence of new market.
- e. Clearance of all members of the Board of Directors, partner, or proprietor of the applicant agency from the National Bureau of Investigation (NBI) and other government agencies as may be required; appropriate clearance in case of persons with criminal cases; provided that where the member or partner concerned is a foreigner, clearance from his country of origin shall be required.
- f. A verified undertaking stating that the applicant:
  1. Shall select only medically and technically qualified recruits;
  2. Shall assume full and complete responsibility for all claims and liabilities which may arise in connection with the use of the license;
  3. Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriations;
  4. Shall guarantee compliance with the existing labor and social legislations of the Philippines and of the country of employment of the recruited workers;
  5. Shall assume full and complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement;
  6. Shall negotiate for the best terms and conditions of employment;
  7. Shall disclose the full terms and conditions of employment to the applicant workers;
  8. Shall deploy at least 100 workers to its new markets within one (1) year from the issuance of its license;

9. Shall provide orientation on recruitment procedures, terms and conditions and other relevant information to its workers and provide facilities therefor; and
10. Shall repatriate the deployed workers and his personal belongings when the need arises.

For the purpose of compliance with item (1), the agency may require the worker to undergo trade testing and medical examination only after the worker has been pre-qualified for employment.

- g. In case of corporation or partnership, verified undertaking by its officers, directors, partners that they will be jointly and severally liable with the company over claims arising from employer- employee relationship.
- h. Individual income tax return of the proprietor, partners, stockholders/ incorporators, as the case may be, for the past two (2) years.
- i. Proof of possession by the sole proprietor, partner or chief executive officer, as the case may be, of a bachelor's degree and three years business experience.
- j. List of all officials and personnel involved in the recruitment and placement, together with their appointment, bio-data and two (2) copies of their passport-size pictures as well as their clearances from the National Bureau of Investigation and the Anti-illegal Recruitment Branch of the Administration.
- k. Copy of contract of lease or proof of building ownership, indicating the office address, providing for an office space of at least one hundred (100) square meters.
- l. Proof of publication of notice of the application with the names of the proprietor, partners, incorporators and officers.
- m. Certificate of attendance of owner and/or chief executive officer in a pre-application seminar conducted by the Administration.

Only applications with complete supporting documents shall be processed.

Section 2. *Payment of filing fee.* Upon receipt of an application with complete requirements, the Administration shall require payment of a non-refundable filing fee of P10,000.00 and submission of proof of payment thereof.

Section 3. *Action upon the application.* Within fifteen (15) calendar days from receipt of an application with complete requirements including proof of payment of the filing fee of P10,000.00, the Administration shall evaluate the pertinent documents, inspect the offices and equipment and determine whether or not to grant or deny the application. Denial of an application will result in the forfeiture of the filing fee.

Section 4. *Payment of Fees and Posting of Bonds.* Upon approval of the application, the applicant shall pay a license fee of P50,000.00. It shall submit an Escrow Agreement in the amount of P1,000,000.00, confirmation of escrow deposit with an accredited reputable bank and a surety bond of P100,000.00 from a bonding company acceptable to the Administration and accredited with the Insurance Commission.

Agencies with existing licenses shall, within four years from effectivity hereof, increase their Escrow Deposit to One Million Pesos.

The bonds and escrow shall answer for all valid and legal claims arising from violations of the conditions for the grant and use of the license, and/or accreditation and contracts of employment. The bonds and escrow shall likewise guarantee compliance with the provisions of the Code and its implementing rules and regulations relating to recruitment and placement, the Rules of the Administration and relevant issuances of the Department and all liabilities which the Administration may impose. The surety bonds shall include the condition “that notice to the principal is notice to the surety and that any judgment against the principal in connection with matters falling under POEA’s/NLRC’s jurisdiction shall be binding and conclusive on the surety. The surety bonds shall cover the validity period of the license.

Section 5. *Provisional License.* Applicants for new license shall be issued a provisional license which shall be valid for a limited period of one (1) year within which the applicant should be able to comply with its undertaking to deploy 100 workers to its new principal. The license of a complying agency shall be upgraded to a full license entitling them to another three years of

operation. Non-complying agencies will be notified of the expiration of their license.

Section 6. *Validity of the License.* Except in case of a provisional license, every license shall be valid for four (4) years from the date of issuance unless sooner cancelled, revoked or suspended for violation of applicable Philippine law, these rules and other pertinent issuances. Such license shall be valid only at the place/s stated therein and when used by the licensed person, partnership or corporation.

Section 7. *Non-Transferability of License.* No license shall be transferred, conveyed or assigned to any person, partnership or corporation. It shall not be used directly or indirectly by any person, partnership or corporation other than the one in whose favor it was issued.

In case of death of the sole proprietor and to prevent disruption of operation to the prejudice of the interest of legitimate heirs, the license may be extended upon request of the heirs, to continue only for the purpose of winding up business operations.

Section 8. *Change of Ownership/Relationship of Single Proprietorship or Partnership.* Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment shall cause the automatic revocation of the license.

A change in the relationship of the partners in a partnership duly licensed to engage in overseas employment which materially interrupts the course of the business or results in the actual dissolution of the partnership shall likewise cause the automatic revocation of the license.

Section 9. *Upgrading of Single Proprietorship or Partnerships.* License holders which are single proprietorships or partnerships may, subject to the guidelines of the Administration, convert into corporation for purposes of upgrading or raising their capabilities to respond adequately to developments/changes in the international labor market and to enable them to better comply with their responsibilities arising from the recruitment and deployment of workers overseas.



The approval of merger, consolidation or upgrading shall automatically revoke or cancel the licenses of the single proprietorships, partnerships or corporations so merged, consolidated or upgraded.

Section 10. *Derogatory Record After Issuance/Renewal of License.* The license of a single proprietorship or a partnership shall be suspended until cleared by the Administration should any derogatory record be found to exist against the single proprietorship or any or all of the partners, as the case may be. The appointment of any officer or employee of any licensed agency may be cancelled or revoked at any time with due notice to the agency concerned, whenever said officer or employee is found to have any derogatory record, as herein contemplated.

Section 11. *Appointment/Change of Officers and Personnel.* Every appointment of agents or representatives of a licensed agency shall be subject to prior approval or authority of the Administration. The acknowledgment or approval may be issued upon submission of or compliance with the following:

- a. proposed appointment or special power of attorney;
- b. clearances of the proposed representative or agent from National Bureau of Investigation (NBI)/Anti-Illegal Recruitment Branch, POEA; and
- c. sworn or verified statement by the designating or appointing person or company assuming full responsibility for all acts of the agent or representative done in connection with the recruitment and placement of workers.

Every change in the composition of the Board of Directors of a corporation, appointment or termination of officers and personnel shall be registered with the Administration within thirty (30) calendar days from the date of such change. The agency shall be required to submit the minutes of proceedings duly certified by SEC in case of election of new members of the Board of Directors with their bio-data, ID pictures and clearances.

The Administration reserves the right to deny the acknowledgment or appointment of officers, employees and representatives who were directly involved in recruitment irregularities.

Section 12. *Publication of Change of Directors/Other Officers and Personnel/Revocation or Amendment of Appointment of Representatives.* In addition to the requirement of registration with and submission to the Administration, every change in the membership of the Board of Directors, termination for cause of other officers and personnel, revocation or amendment of appointment of representatives shall be published at least once in a newspaper of general circulation, in order to bind third parties. Proof of such publication shall be submitted to the Administration.

Section 13. *Transfer of Business Address.* Any transfer of business address shall be effected only with prior authority or approval of the Administration. The approval shall be issued only upon formal notice of the intention to transfer with the following attachments:

- a. In the case of a corporation, a Board Resolution duly registered with the SEC authorizing the transfer of business address; and
- b. Copy of the contract of lease or proof of building ownership.

The new office shall be subject to the regular ocular inspection procedures by duly authorized representatives of the Administration.

A notice to the public of the new address shall be published in a newspaper of general circulation.

Section 14. *Establishment of additional offices.* Additional offices may be established subject to the prior approval of the Administration.

Section 15. *Conduct of Recruitment Outside of Registered Office.* No licensed agency shall conduct any provincial recruitment, jobs fair or recruitment activities of any form outside of the address stated in the license or approved additional office(s) without first securing prior authority from the Administration.

Section 16. *Renewal of License.* An agency shall submit an application for the renewal of its license on or before its expiration. Such application shall be supported by the following documents:

- a. Surety bond duly renewed or revalidated;
- b. Renewed escrow agreement in the amount of P1,000,000.00 with a commercial bank to primarily answer for valid and legal claims of recruited workers as a result of recruitment violations or money claims;
- c. Audited financial statements for the past two years with verified corporate or individual tax returns. In case the equity of the agency is below the minimum capitalization requirement, it shall be given thirty (30) days from release of the renewed license to submit proof(s) of capital infusion, such as SEC certification of such infusion or bank certification corresponding to the amount infused and treasurer's affidavit duly received by the SEC. Otherwise, the license shall be suspended until it has complied with the said requirement;
- d. Clearances from the National Bureau of Investigation and the Anti-illegal Recruitment Branch for the Board of Directors and responsible officers; and
- e. Other requirements as may be imposed by the Administration.

Section 17. *Monitoring Compliance with Conditions of License.* The Administration shall monitor the compliance of the agencies with their undertakings in connection with the issuance or renewal of the license. Appropriate sanctions shall be imposed for non-compliance with any of their undertakings.

Section 18. *Non-expiration of License.* Where the license holder has made timely and sufficient application for renewal, the existing license shall not expire until the application shall have been finally determined by the Administration. For this purpose, an application shall be considered sufficient if the applicant has substantially complied with the requirements for renewal.

Section 19. *Action on Renewal of License.* Within forty eight (48) hours from receipt of the application for renewal with the complete requirements, the

Administration shall undertake evaluation and inspection and determine the grant or denial of the application. Licenses of agencies which fail to meet the requirements set by the Administration shall not be renewed.

Only applications for renewal submitted with complete requirements shall be processed.

Section 20. *Late Filing of Renewal.* Any agency which failed to file an application for renewal of license may be allowed to renew within thirty (30) days from expiry thereof but shall pay a fine of P10,000.00.

Section 21. *Escrow Deposit as Garnished.* As soon as an Order or Notice of Garnishment is served upon the Bank, and the same is correspondingly earmarked, the deposit in escrow of an agency shall no longer be considered sufficient. The Administration shall forthwith serve the agency a notice to replenish its escrow deposit.

Section 22. *Replenishment of Surety Bonds/Deposit in Escrow.* Within fifteen (15) calendar days from date of receipt of notice from the Administration that the bonds/deposit in escrow, or any part thereof had been garnished, the agency shall replenish the same. Failure to replenish such bonds/deposit in escrow within the said period shall cause the suspension of the license.

Section 23. *Release of Deposit in Escrow.* A licensed agency which voluntarily surrenders its license shall be entitled to the release of the deposit in escrow, only after posting a surety bond of similar amount valid for four (4) years from expiration of license and submission of the necessary clearances from the National Labor Relations Commission (NLRC) and the Administration.

Section 24. *Classification, Ranking and Incentives.* The Administration shall undertake the classification and ranking of agencies. In recognition of their exemplary performance, the Administration shall issue guidelines for entitlement of agencies to schemes for incentives and rewards such as extension of validity of license, express processing and in-house documentation

### **RULE III. INSPECTION OF AGENCIES**

Section 1. *Inspection for Purposes of Establishment/Transfer of Office.* Before issuance of a license, the Administration shall conduct an inspection of the premises and facilities including the pertinent documents of the applicant. Inspection shall likewise be conducted on the new premises in case of transfer of office.

Section 2. *Routine/Regular Inspection.* All agencies shall be subject to periodic inspection of offices, studios or pre-departure orientation seminar (PDOS) venues by the Administration to determine compliance with existing rules and regulations.

Section 3. *Spot Inspection.* Inspection may be conducted by the Administration upon receipt of a complaint or report of violation of existing rules and regulation.

Section 4. *Authority to Inspect.* An authority to inspect shall be issued by the Administration before any inspection may be conducted.

Such authority, stating the purpose and subject of inspection, shall be presented to the agency before inspection.

Section 5. *Scope of Inspection.* Depending on the purpose of inspection, the Administrator or his duly authorized representative may inspect the premises and require the presentation of necessary documents, records and books of accounts of the agency and examine the same.

Section 6. *Inspection Program and Procedures.* The Administration shall conduct inspection in accordance with the Inspection Program and Procedures of the POEA.

Section 7. *Violations Found in the Course of Inspection.* Violations found in the course of inspection such as non-compliance with the existing laws, rules and regulations, shall be grounds for the imposition of appropriate sanction or for the denial of application for issuance or renewal of license. A copy of the results of inspection shall be endorsed to the appropriate unit for the conduct of necessary proceedings.

## **RULE IV. LICENSING OF POCB - REGISTERED COMPANIES**

Section 1. *Issuance of License.* POCB-registered companies with overseas projects duly accredited by the POCB may apply for a license subject to the following requirements:

- a. Articles of incorporation
- b. A certified true copy of its POCB certificate of registration;
- c. Proof of payment of non-refundable filing fee of P10,000.00

However, application for a license by POCB-registered companies without POCB-accredited overseas projects shall be subject to the usual requirements for issuance/renewal of license as prescribed in Rule II, Part 2 of these Rules.

Section 2. *Payment of Fees.* Upon approval of the application, the contractor company shall:

- a. Pay a license fee of P50,000.00; and
- b. Post a surety bond in the amount of P50,000.00 and escrow deposit of P200,000.00.

Section 3. *Validity of License.* The license shall be valid for four (4) years from date of issuance and co-terminus with the validity of the POCB registration, unless sooner cancelled, revoked by the Secretary of Labor and Employment, or suspended by the Administration for violation of the Labor Code and its rules relevant decrees, orders and issuances and rules and regulations of the Department of Labor and Employment. Such license shall be valid only at the place stated therein and when used by the licensee or authorized POCB registered company.

Section 4. *Requisites for Renewal.* Upon expiration of the license, the POCB registered company shall submit a written application together with the following requirements:

- a. Certified copy of POCB Certificate of Renewal of Registration;
- b. Proof of renewed surety bond of P50,000.00; and
- c. Certificate from the bank that the escrow deposit of P200,000.00 is still intact.

## **RULE V. FEES, COSTS AND CONTRIBUTIONS**

Section 1. *Service Fee.* Agencies shall charge from their principals a service fee to cover services rendered in the recruitment, documentation and placement of workers. The Administration shall provide incentives to agencies and employers who are able to comply with this rule.

Section 2. *Fees and Costs Chargeable to Principals.* Unless otherwise provided, the principal shall be responsible for the payment of the following:

- a. visa fee;
- b. airfare
- c. POEA processing fee; and d. OWWA membership fee

Section 3. *Fees/Costs Chargeable to the Workers.* Except where the prevailing system in the country where the worker is to be deployed, either by law, policy or practice, do not allow the charging or collection of placement and recruitment fee, a landbased agency may charge and collect from its hired workers a placement fee in an amount equivalent to one month salary, exclusive of documentation costs.

Documentation costs to be paid by the worker shall include, but not limited to, expenses for the following:

- a. Passport
- b. NBI/Police/Barangay Clearance c. Authentication
- c. Birth Certificate
- d. Medicare
- e. Trade Test, if necessary
- f. Inoculation, when required by host country
- g. Medical Examination fees

In the event that the recruitment agency agrees to perform documentation services, the worker shall pay only the actual cost of the document which shall be covered by official receipts.

The above-mentioned placement and documentation costs are the only authorized payments that may be collected from a hired worker. No other charges in whatever form, manner or purpose, shall be imposed on and be paid by the worker without prior approval of the POEA.

Such fees shall be collected from a hired worker only after he has obtained employment through the facilities of the recruitment agency.

## **RULE VI. RECRUITMENT OUTSIDE REGISTERED OFFICE**

Section 1. *Conduct of Recruitment Outside Registered Office.* Except for recruitments conducted under the Public Employment Service Office Act of 1999 (RA 8759), no licensed agency shall conduct recruitment activities of any form outside of the address stated in the license or acknowledged additional office(s) without securing prior approval from the Administration. A special recruitment authority shall be issued upon compliance with the documentary requirements prescribed by the Administration.



Section 2. *Venue.* Recruitment activities outside the registered office of the agency shall be conducted only at venues authorized by the Administration, and shall be supervised by the Administration, the DOLE, or the appropriate local government unit.

Section 3. *Validity of Special Recruitment Authority.* The special authority granted to an agency to conduct recruitment activities outside of its registered office based on its manpower requirements shall be valid for a specified period unless otherwise extended, modified or revoked by this Administration or any of its regional offices concerned.

Section 4. *Cancellation of Authority.* The Administration reserves the right to cancel a special recruitment authority issued to an agency for violation of the conditions set in the authority such as venue, representative, duration and compliance with these rules.

Section 5. *Submission of Report.* The agency shall submit a terminal report to the Administration within thirty (30) days from termination of the recruitment activity conducted outside its registered office. No subsequent authority shall be issued until the agency has submitted its report.

## **RULE VII. ADVERTISEMENT FOR OVERSEAS JOBS**

Section 1. *Advertisement for Actual Job Vacancies.* Licensed agencies may advertise for actual job vacancies without prior approval from the Administration if covered by manpower requests of registered/accredited foreign principals and projects. The advertisements shall indicate the following information:

- a. Name, address and POEA license number of the agency;
- b. Work site of prospective principal/project;
- c. Skill categories and qualification standards; and
- d. Number of available positions

Section 2. *Advertisement for Manpower Pooling.* Licensed agencies may advertise for manpower pooling without prior approval from the Administration subject to the following conditions:

- a. The advertisement should indicate in bold letters that it is for manpower pooling only and that no fees will be collected from the applicants; and
- b. The advertisement indicates the name, address and POEA license number of the agency, name and worksite of the prospective registered/ accredited principal and the skill categories and qualification standards.

Section 3. *Foreign Advertisers for Overseas Job Vacancies.* Foreign principals/ employers who wish to advertise overseas job vacancies may do so only through a POEA-licensed agency or through the Administration.

## **RULE VIII. SKILLS TEST AND MEDICAL EXAMINATION FOR OVERSEAS EMPLOYMENT**

Section 1. *When to Refer for Skills Test.* An applicant for overseas employment shall be referred for skills test to a TESDA-accredited skills-testing center only after the agency and/or its foreign principal or employer has interviewed and pre-qualified him to an existing overseas position duly covered by an approved job order by the Administration.

Section 2. *Scope of Skills Test.* The agency shall ensure that the test shall only be for the skill category that the worker has applied for.

Section 3. *When to Refer for Medical Examination.* The agency shall refer an applicant for overseas employment medical test to a DOH-accredited medical clinic only after the agency and/or its foreign principal or employer has interviewed him and pre-qualified him for an existing overseas position duly covered by an approved job order by the Administration.

Section 4. *Scope of Medical Examination.* The agency shall ensure that the medical examination shall be conducted in accordance with the requirements of the employer.

## **RULE IX. DEPARTURE AND ARRIVAL OF OVERSEAS FILIPINO WORKERS**

Section 1. *Departure of Workers.* All departing OFWs shall be monitored through the POEA assistance centers established by the Administration at international airports and other exit points in the country to ensure that they are properly documented before proceeding to their overseas job sites. Workers without proper documents shall not be cleared by the center.

Section 2. *Overseas Employment Certificate (OEC) Issuance at the Center.* Departing overseas Filipino workers may secure overseas employment certificate at the labor assistance centers under such circumstances as may be determined by the Administration. POEA shall cease issuing OECs as soon as the computerized ID system is implemented.

Section 3. *Arrival of Workers.* The LAC shall support OWWA and other government agencies in providing assistance to arriving workers particularly those who are in distress.

Section 4. *POEA Clearance for Special Cases.* The POEA shall issue special clearances for travel abroad in accordance with guidelines which may be issued by the Administration.

## **RULE X. LEGAL ASSISTANCE AND ENFORCEMENT MEASURES**

Section 1. *Acts Constituting Illegal Recruitment.* Illegal Recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority. Provided, that any such non-licensee or non-holder who, in any manner, offer or promises for a fee employment abroad to two or more persons shall be deemed so engaged.

It shall likewise include the following acts committed by any person whether or not a holder of a license or authority:

- a. To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary or to make a worker pay the recruiter or its agents any amount greater than that actually loaned or advanced to him;
- b. To furnish or publish any false notice or information or document in relation to recruitment or employment;
- c. To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;
- d. To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
- e. To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;
- f. To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines as may be prohibited by law or duly constituted authority;
- g. To obstruct or attempt to obstruct inspection by the Secretary or by his/her duly authorized representative;
- h. To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary under penalty of law;
- i. To substitute or alter to the prejudice of the worker, employment contract approved and verified by the DOLE 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 DOLE;
- j. For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel

agency or to be engaged directly or indirectly in the management of a travel agency;

- k. To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;
- l. To fail to actually deploy without valid reason as determined by the DOLE; and
- m. To fail to reimburse expenses incurred by the worker in connection with his/her documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault.

Section 2. *Anti-Illegal Recruitment Programs.* The Administration shall adopt policies and procedures, prepare and implement programs toward the eradication of illegal recruitment activities such as, but not limited to the following:

- a. Providing legal assistance to victims of illegal recruitment and related cases;
- b. Assistance in the prosecution of suspected illegal recruiters;
- c. Special operations such as surveillance of persons and entities suspected to be engaged in illegal recruitment; and
- d. Information and education campaign.

Whenever necessary, the Administration shall coordinate with other appropriate entities in the implementation of said programs.

Section 3. *Legal Assistance.* The Administration shall provide free legal assistance to victims of illegal recruitment and related cases including but not limited to, legal advice, assistance in the preparation of complaints and supporting documents, institution of criminal actions and whenever necessary, provide counseling during preliminary investigation and hearings.

Section 4. *Receiving Complaints for Illegal Recruitment.* Victims of illegal recruitment and related cases may file with the Administration a report or complaint in writing and under oath for assistance purposes.

In regions outside the National Capital Region, complaints and reports involving illegal recruitment may be filed with the appropriate regional office of the Administration or DOLE.

Section 5. *Action on the Complaint/Report.* Where the complaint/report alleges that illegal recruitment activities are on-going, surveillance shall be conducted and if such activities are confirmed in the preliminary examination, issuance of closure order may be recommended to the POEA Administrator through the Director of the Licensing and Regulation Office (Director-LRO).

If sufficient basis for criminal action is found, the case shall be immediately forwarded to the appropriate office for such action.

Section 6. *Surveillance.* The Administrator and/or designated official in the DOLE regional offices may, on his own initiative, conduct surveillance on the alleged illegal recruitment activities.

Within two (2) days from the termination of surveillance, a report supported by an affidavit, shall be submitted to the Director-LRO or the Regional Director concerned, as the case may be.

Section 7. *Issuance of Closure Order.* The Secretary or the Administrator or the DOLE Regional Director of the appropriate regional office outside the National Capital Region, or their duly authorized representatives, may conduct an ex-parte preliminary examination to determine whether the activities of a non-licensee constitute a danger to national security and public order or will lead to further exploitation of job seekers. For this purpose, the Secretary, the Administrator or the Regional Director concerned or their duly authorized representatives, may examine personally the complainants and/or their witnesses in the form of searching questions and answers and shall take their testimony under oath. The testimony of the complainants and/or witnesses shall be reduced in writing and signed by them.

If upon the preliminary examination or surveillance, the Secretary, the Administrator or DOLE Regional Director is satisfied that such danger or exploitation exists, a written order may be issued for the closure of the establishment being used for illegal recruitment activity.

In case of a business establishment whose license or permit to operate a business was issued by the local government, the Secretary, the Administrator or the Regional Director concerned shall likewise recommend to the granting authority the immediate cancellation/ revocation of the license or permit to operate its business.

Section 8. *Implementation of Closure Order.* Closure order shall be served upon the offender or the person in charge of the establishment subject thereof. The closure shall be effected by sealing the establishment and posting a notice of such closure in bold letters in a conspicuous place in the premises of the establishment. Whenever necessary, the assistance and support of the appropriate law enforcement agencies may be requested for this purpose.

Section 9. *Report on Implementation.* A report on the implementation of the closure order executed under oath, stating the details of the proceedings undertaken shall be submitted to the Director-LRO or the Regional Director concerned, as the case may be, within two (2) days from the date of implementation.

Section 10. *Institution of Criminal Action.* The Secretary, the Administrator or the Regional Director concerned, or their duly authorized representatives or any aggrieved person, may initiate the corresponding criminal action with the appropriate office.

Where a complaint is filed with the Administration and the same is proper for preliminary investigation, it shall file the corresponding complaint with the appropriate officer, with the supporting documents.

Section 11. *Motion to Lift A Closure Order.* A motion to lift a closure order which has already been implemented may be entertained only when filed with the Licensing and Regulation Office (LRO) within ten (10) calendar days from the date of implementation thereof. The motion shall clearly state the grounds upon which it is based, attaching thereto the documents in support thereof. A motion to lift which does not conform with the requirements herein set forth shall be denied.

Section 12. *Who May File.* The motion to lift a closure order may be filed only by the following:

- a. The owner of the building or his/her duly authorized representative;
- b. The building administrator or his/her duly authorized representative;
- c. The person or entity against whom the closure order was issued and implemented or the duly authorized representative; or
- d. Any other person or entity legitimately operating within the premises closed/padlocked and whose operations/activities are distinct from the recruitment activities of the person/entity subject of the closure order.

Section 13. *Grounds for Lifting/Re-Opening.* Lifting of the closure order and/or re-opening of the office closed or padlocked may be granted on any of the following grounds:

- a. That the office is not the subject of the closure order;
- b. That the contract of lease with the owner of the building or the building administrator has already been cancelled or terminated. The request to re-open shall be duly supported by an affidavit of undertaking either of the owner of the building or the building administrator that the same will not be leased/rented to any other person/entity for recruitment purposes without the necessary license from the Administration;
- c. That the office is shared by a person/entity not involved in illegal recruitment activities, whether directly or indirectly; or
- d. Any other ground that the Administration may consider as valid and meritorious.

Lifting of a closure order is without prejudice to the filing of a criminal complaint with the appropriate office against the person alleged to have conducted illegal recruitment activities.

Section 14. *Appeal.* The order of the POEA Administrator denying the motion to lift may be appealed to the Secretary within ten (10) days from the service or receipt thereof.



Section 15. *Re-Padlocking of Office.* Where a re-opened office was subsequently confirmed to be used for illegal recruitment activities, a new closure order shall be issued which shall no longer be subject to a motion to lift.

### **PART III**

#### **PLACEMENT BY THE PRIVATE SECTOR**

#### **RULE I. VERIFICATION OF DOCUMENTS AND REGISTRATION OF FOREIGN PRINCIPALS, EMPLOYERS AND PROJECTS**

Section 1. *Verification of Documents.* Recruitment documents of foreign principals, employers and projects shall undergo verification at the work site prior to registration with POEA. The Philippine Overseas Labor Office (POLO) nearest the worksite shall review and verify the recruitment documents, including the master employment contract with the view to establish the existence of the employing person, company or project, its capability to hire workers at the applicable rates and at desirable working conditions that are in conformity with the minimum standards prescribed by the Administration and/or with the labor laws and legislations of the host country.

Section 2. *Documentary Requirements for Verification.* The following documents shall be submitted to the POLO for verification:

- a. Special Power of Attorney issued by the principal or employer to the licensed Philippine agency, or recruitment agreement or service agreement;
- b. Master employment contract which incorporates, among others the minimum provisions of employment contracts of land based workers, as follows:
  1. Guaranteed wages for regular work hours and overtime pay, which shall not be lower than the prescribed minimum wage in the host country or not lower than the appropriate minimum wage standards set forth in a bilateral agreement or international convention, if

applicable, or not lower than the minimum wage in the country, whichever is highest;

2. Free transportation to and from the worksite, or offsetting benefit;
  3. Free food and accommodation, or offsetting benefit;
  4. Just/authorized causes for termination of the contract or of the services of the workers taking into consideration the customs, traditions, mores, practices, company policies and the labor laws and social legislations of the host country;
- c. Manpower request indicating the position and salary of the workers to be hired;
- d. Valid business license, registration certificate or equivalent document.

Section 3. *Application for Registration of Foreign Principals and Projects.* Only duly licensed entities may file for the registration of foreign principals and projects.

Section 4. *Documentary Requirements for Registration of Principals/Projects.* The following verified documents shall be submitted to the POEA, through the Philippine licensed agent for registration of the principal, employer or project:

- a. Special power of attorney or recruitment agreement, or service agreement, as the case may be;
- b. Master employment contract of the foreign principal; and
- c. Manpower request of the foreign principal indicating the position and salary of the workers to be hired;

POCB-registered projects shall also be registered with the Administration without however undergoing the foregoing procedures, subject to guidelines as may be prescribed.

Subsequent manpower requests from the registered principal/project shall be submitted to the Administration.

Section 5. *Registration of Foreign Placement Agencies.* Foreign placement agencies or similar entities may be registered as principals if they are authorized to operate as such in their respective countries and subject to such guidelines as may be prescribed by the Administration.

Section 6. *Validity of Registration of Foreign Principals and Projects.* Upon compliance with the documentary requirements, the foreign principal or project shall be registered by the POEA valid for a maximum of four (4) years, unless sooner revoked or cancelled by the Administration on any of the following grounds:

- a. Expiration of the principal's business license;
- b. Upon written mutual agreement by the parties to pre-terminate the agreement;
- c. False documentation or misrepresentation in connection with the application for registration; and
- d. Final judgment in a disciplinary action against the foreign principal.

Provisional registration may be granted for a period of ninety (90) days for a principal that substantially meets the registration requirements.

The expiration of the agency's license shall not cause the automatic expiration or cancellation of the registration which shall only be suspended until the renewal of the license.

Section 7. *Renewal of Registration.* The registration shall be renewed upon request by the agency provided that the documents required for initial registration are still valid.

Section 8. *Open Registration.* A foreign principal that acts as direct employer may be registered to more than one Philippine agency, provided that

- a. A uniform compensation package shall be adopted by the principal and the agency; and
- b. The principal has a verified job order of at least 50 workers; or

- c. That the principal must have hired at least 50 workers within a period of one year immediately preceding the registration;

Section 8. *Dual Registration.* A principal that is licensed to operate as foreign placement agency by its government may be registered to a maximum of two (2) Philippine agencies, provided that:

- a. A uniform compensation package shall be adopted by the principal and the agency; and
- b. The principal has a verified job order of at least 50 workers; or
- c. That the principal must have hired at least 50 workers within a period of one year immediately preceding the registration;

Section 9. *Transfer of Registration.* The registration of a foreign placement agency may be transferred to another agency provided the compensation package previously approved by the Administration shall be maintained; and provided further the transferee shall assume full and complete responsibility for all contractual obligations of the principals to its workers originally recruited and processed by the former agency.

Section 10. *Action on Application for Registration of Principals With Outstanding Obligations.* Claims for money or enforcement of obligations arising out of business relations between principals and their existing agencies may be conciliated by the Administration. However, the pendency of the conciliation shall not prevent the Administration from acting on the request for registration, if public interest so requires.

Section 11. *Registration of Principals in Countries with Special Conditions of Employment.* The registration of principals in countries with unique or special conditions of employment shall be governed by guidelines prescribed by the Administration.

## **RULE II. ACCREDITATION OF FOREIGN PRINCIPALS EMPLOYERS AND PROJECTS**

Section 1. *Accreditation of Foreign Principals Employers and Projects.* Foreign principals, employer or projects in countries or work sites where there are no POLOS to verify recruitment documents shall undergo accreditation at the POEA.

Section 2. *Documentary Requirements for Accreditation.* The principal/employer shall submit the following documents to the POEA through the Philippine licensed agency for evaluation and accreditation:

- a. Special power of attorney or recruitment agreement, or service agreement with the Philippine licensed agency;
- b. Master employment contract of the direct employer or foreign placement agency containing the minimum requirements for contracts of employment of land based workers as provided for in Section 2(b), Rule 1, Part III of these Rules.
- c. Manpower request indicating the position and salary of the workers to be hired;
- d. Valid business license, registration certificate or equivalent document or proof of existence of project validated or certified by the issuing authority in the host country; and
- e. Visa assurance or any equivalent document validated by the issuing authority.

Section 3. *Validity of Accreditation.* The accreditation of a foreign principal, employer or project shall be valid for four (4) years unless sooner revoked or cancelled by the POEA on any of the following grounds:

- a. Expiration of the principal's business license;
- b. Upon written mutual agreement by the parties to pre-terminate the Agreement;

- c. False documentation or misrepresentation in connection with the application for registration; and d. Final judgment in a disciplinary action against the foreign principal.

Section 4. *Renewal of Accreditation.* The accreditation shall be renewed upon request by the agency provided that the documents required for initial accreditation are still valid.

Section 5. *Open Accreditation.* A foreign principal that acts as direct employer may be accredited to more than one Philippine agency, provided that:

- a. A uniform compensation package shall be adopted by the principal and the agency; and
- b. The principal has a verified job order of at least 50 workers; or
- c. That the principal must have hired at least 50 workers within a period of one year immediately preceding the accreditation.

Section 6. *Dual Accreditation.* A principal that is licensed to operate as foreign placement agency by its government may be accredited to a maximum of two (2) Philippine agencies, provided that:

- a. A uniform compensation package shall be adopted by the principal and the agency; and
- b. The principal has a verified job order of at least 50 workers; or
- c. That the principal must have hired at least 50 workers within a period of one year immediately preceding the accreditation.

### **RULE III. DOCUMENTATION OF LANDBASED WORKERS BY THE PRIVATE SECTOR**

Section 1. *Documentation of New Hires.* Based on the master employment contract, request for processing should include the names, positions and salaries of workers using the prescribed form of the Administration. The

agency shall provide every worker a copy of the approved employment contract or service contract.

Section 2. *Payment of Documentation Fees.* Payment of the required documentation fees shall be made to the Administration upon request for processing.

Section 3. *Period to Deploy.* An agency shall deploy its recruited/hired workers within sixty days (60) days from the date of issuance of the overseas employment certificate.

Section 4. *Cancellation of Worker's Documents.* If the deployment of the worker does not materialize within thirty (30) days from the lapse of the period to deploy, the agency shall report the non- deployment and the reasons therefor and apply to the Administration for the cancellation of the worker's processed documents.

If the deployment of the worker does not materialize due to his fault, the agency may charge the worker for actual expenses incurred in connection with his recruitment, duly supported by official receipts.

Section 5. *Registration of Worker-on-Leave.* Workers who are considered as Workers-on-Leave as defined in these Rules, shall submit the following documents to the Administration or to its designated centers or units in the country or overseas for registration:

- a. valid passport; and
- b. re-entry visa, work permit, or any equivalent document.

Section 6. *Registration of Name Hires.* Name hires, as defined in these Rules, shall be registered by the Administration, subject to such guidelines as the Administration may prescribe, and upon submission of the following documents:

- a. employment contract
- b. valid passport
- c. employment visa or work permit, or equivalent document

- d. certificate of medical fitness
- e. certificate of attendance to the required employment orientation/briefing

The Administration shall ensure that the worker is made fully aware of the terms and conditions of his employment.

The Administration reserves the right to disapprove employment contracts which are contrary to law, morals, and public policy.

The Administration shall transmit on a regular basis the list of registered name hires to the various Philippine Embassies/Consulates or POLOs in countries that host overseas Filipino workers for proper monitoring.

*Section 7. Payment of Registration Fees.* Payment of the prescribed fees shall be made upon registration by the name hire or the Worker-on-Leave.

*Section 8. Ban on Direct Hires.* No foreign principal or employer may hire a Filipino worker for overseas employment except through the boards and entities authorized by the Secretary. Direct hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary is exempt from this provision.

*Section 9. In-House Processing Facility.* The Administration shall extend to qualified agencies an in- house processing facility for the documents of workers who are scheduled for deployment. Agencies that qualify to enjoy the privilege shall comply with the documentary requirements.

The agencies shall be subject to regular audit and/or inspection by the Administration to ensure compliance with the prescribed guidelines on in-house processing facility.

The Administration reserves the right to recall the privilege and incentive being enjoyed by an agency should there be an established case of violation of POEA rules and regulations. Automatic preventive suspension shall be imposed in case of violation of the prescribed guidelines.

The agencies shall submit a monthly report on the utilized or missing overseas employment certificates to the Administration.



Section 10. *One Stop Shop Processing Center.* A one stop shop-processing center shall be established to house all governmental activities pertaining to overseas employment.

## **PART IV PLACEMENT BY THE ADMINISTRATION**

### **RULE I. RECRUITMENT AND PLACEMENT THROUGH THE ADMINISTRATION**

Section 1. *Hiring through the Administration.* The Administration shall recruit and place workers primarily on government-to-government arrangements and shall therefore service the hiring of foreign government instrumentalities. It shall also recruit and place workers for foreign employers in such sectors as the policy may dictate. In pursuance thereof, the Administration shall, among others:

- a. Administer programs and projects that may support the employment development objectives of the Administration;
- b. Set parameters in servicing other foreign clients; and
- c. Undertake, in coordination with POEA Regional Centers and Extension Units as well as Regional Offices of the Department of Labor and Employment and concerned local government units, organized recruitment activities in the provinces in aid of the employment dispersal efforts of the government.

Section 2. *Recruitment and Placement of Workers.* All employers, whether government or private, hiring through the Administration shall undertake the recruitment and placement of workers through the facilities of the Administration. The activities shall include but not be limited to interview and selection; referral to medical examination; processing of contracts; assistance in securing of passport and appropriate visas; pre-employment orientation; pre-departure orientation; and travel arrangements.

Section 3. *Foreign Employer's Guarantee Trust Fund.* A Guarantee Trust Fund shall be established for all workers hired on a government-to-government arrangement for the purpose of covering monetary claims of the workers arising from breach of contractual obligations.

## **PART V**

### **EMPLOYMENT STANDARDS**

#### **RULE I. FORMULATION OF EMPLOYMENT STANDARDS**

Section 1. *Employment Standards.* The Administration shall determine, formulate and review employment standards in accordance with the market development thrusts and welfare objectives of the overseas employment program and the prevailing market conditions.

Section 2. *Minimum Provisions of Employment Contract.* Consistent with its welfare and employment facilitation objectives, the following shall be considered the minimum requirements for contracts of employment of landbased workers:

- a. Guaranteed wages for regular work hours and overtime pay, as appropriate, which shall not be lower than the prescribed minimum wage in the host country, not lower than the appropriate minimum wage standard set forth in a bilateral agreement or international convention duly ratified by the host country and the Philippines or not lower than the minimum wage in the Philippines, whichever is highest;
- b. Free transportation to and from the worksite, or offsetting benefit;
- c. Free food and accommodation, or offsetting benefit;
- d. Just/authorized causes for termination of the contract or of the services of the workers taking into consideration the customs, traditions, norms, mores, practices, company policies and the labor laws and social legislations of the host country;

- e. The Administration may also consider the following as basis for other provisions of the contract:
1. Existing labor and social laws of the host country;
  2. Relevant agreements, conventions, delegations or resolutions;
  3. Relevant bilateral and multilateral agreements or arrangements with the host country; and
  4. Prevailing condition/realities in the market.

Section 3. *Freedom to Stipulate.* Parties to overseas employment contracts are allowed to stipulate other terms and conditions and other benefits not provided under these minimum requirements; provided the whole employment package should be more beneficial to the worker than the minimum; provided that the same shall not be contrary to law, public policy and morals, and provided further, that Philippine agencies shall make foreign employers aware of the standards of employment adopted by the Administration.

Section 4. *Disclosure of Terms and Conditions of Employment.* The agency and the worker shall fully disclose all relevant information in relation to the recruitment and employment of the worker in accordance with the guidelines set by the Administration.

## **PART VI**

### **RECRUITMENT VIOLATION AND RELATED CASES**

#### **RULE I. JURISDICTION AND VENUE**

Section 1. *Jurisdiction.* The Administration shall exercise original and exclusive jurisdiction to hear and decide all cases which are administrative in character, involving or arising out of violations of recruitment rules and regulations including refund of fees collected from workers and violation of the conditions for issuance of license to recruit workers.

## Section 2. *Grounds for imposition of administrative sanctions:*

- a. 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;
- b. 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;
- c. 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.
- d. Collecting any fee from a worker without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made;
- e. 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;
- f. 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;
- g. Influencing or attempting to influence any person or entity not to employ any worker who has not applied for employment through his agency;
- h. Obstructing or attempting to obstruct inspection by the Secretary, the Administrator or their duly authorized representatives;
- i. Substituting or altering to the prejudice of the worker, employment contracts approved and verified by the Administration 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 Administration;

- j. Failure to submit reports related to overseas recruitment and employment within the specified time, as may be required by the Secretary or the Administration;
- k. 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;
- l. Withholding or denying travel or other pertinent documents from workers for considerations other than those authorized under existing laws and regulations;
- m. Engaging in recruitment activities in places other than that specified in the license without previous authorization from the Administration;
- n. Appointing or designating agents, representatives or employees without prior approval from the Administration;
- o. Falsifying or altering travel documents of applicant worker in relation to overseas recruitment activities;
- p. Deploying workers whose employment and travel documents were not processed by the Administration or those agencies authorized by it;
- q. Deploying workers to principals not accredited by the Administration.
- r. Failure to deploy a worker within the prescribed period without valid reason;
- s. Disregard of orders, notices and other legal processes issued by the Administration;
- t. Coercing workers to accept prejudicial arrangements in exchange for certain benefits that rightfully belong to the workers;
- u. Withholding of workers' salaries or remittances without justifiable reasons or shortchanging of remittances;
- v. Deploying underage workers;

- w. Engaging in act/s of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false information or documents;
- x. 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;
- y. Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment;
- z. 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;
- aa. Failure to comply with the undertaking to deploy the required number of workers within the period provided in these Rules;
- ab. Failure to comply with the undertaking to provide Pre-Departure Orientation Seminar to workers
- ac. Non-compliance with any other undertaking in connection with the issuance or renewal of the license;
- ad. 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
- ae. 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;

Section 3. *Venue*. Any complaint arising out of recruitment violation or violation of conditions of license may be filed with the Adjudication Office of this Administration or at the POEA Regional Centers/Extension Units exercising territorial jurisdiction over the place where the complainant was recruited at the option of the complainant. The Office with which the complaint was first filed shall take cognizance of the case.

Where the complainant was recruited within the National Capital Region, the complaint shall be filed with the Adjudication Office of the Administration.

In the case of reports received by the Administration, the report shall be investigated by the Adjudication Office, or by the appropriate Regional Center/Extension Unit of the Administration.

However, the venue of cases filed with the Adjudication Office of the Administration may be transferred to the POEA Regional Center/Extension Unit before the respondent files its answer upon request of either party and approved by the Administration.

For the purpose of hearing and receiving of evidence, the DOLE Regional Office exercising territorial jurisdiction over the place where the complainant was recruited may be deputized by the Secretary of Labor to take cognizance of the case for submission of its findings and recommendations to the Administrator.

## **RULE II. FILING OF COMPLAINTS**

Section 1. *Who May File.* Any aggrieved person may file a complaint in writing and under oath for violation of the Labor Code and the POEA Rules and Regulations and other issuances relating to recruitment.

For this purpose, an aggrieved person is one who is prejudiced by the commission of a violation. However, the Administration, on its own initiative, may conduct proceedings based on reports of violation POEA Rules and Regulations and other issuances on overseas employment subject to Preliminary evaluation.

Section 2. *Contents of Complaint.* All complaints must contain, among others, the following:

- a. The name/s and address/es of the complainant/s; b. The name/s and address/es of the respondent/s; c. The nature of the complaint;
- b. The substance, cause/grounds of the complaint;

- c. When and where the action complained of happened;
- d. The amount of claim, if any;
- e. The relief/s sought.

The complaint shall be under oath and must be accompanied by supporting documents and a certificate of non-forum shopping.

Section 3. *Docket and Assignment of Cases.* Complaints duly received shall be docketed and raffled for investigation and hearing.

### **RULE III. ACTION UPON COMPLAINT**

Section 1. *Answer.* Upon receipt of the complaint, the Administration shall issue an order, together with the complaint and supporting documents, if any, directing the respondent/s to file a verified Answer and not a Motion to Dismiss within ten (10) calendar days from receipt, attaching proof that a copy was sent to the complainant.

Section 2. *Failure to File Answer.* In case of failure to file Answer, the investigation /hearing shall proceed.

An Answer filed out of time shall not be admitted except on meritorious grounds and upon motion.

Section 3. *Motion for Extension.* Only one motion for extension of time to file Answer shall be allowed. The OE Adjudicator, upon receipt of such motion may, upon meritorious grounds, grant a non-extendible period of ten (10) calendar days. Except where allegations in the complaint refers to facts or circumstances which occurred abroad making it necessary to verify with the concerned foreign principal, a longer period may be granted. A ruling on the motion may be made by the OE Adjudicator during the proceedings and entered in the minutes or sent by personal service or by registered mail.

Section 4. *Proof and Completeness of Service.* The contents of the return shall be proof of the facts stated therein. Service by registered mail is complete upon receipt by the addressee or agent; but if the addressee or agent fails to claim his mail from the postmaster, service shall take effect after the date



of the last notice. Where the present location of the addressee is unknown, service made at the last known address shall be sufficient.

Personal service made in any registered office or officer or personnel of the private recruitment agency shall likewise be sufficient.

Section 5. *Nature of Proceedings.* The proceedings shall comply with the requirements of due process without strictly adhering to the technical rules of procedure and evidence applicable to judicial proceedings. The OE Adjudicator may avail himself of all reasonable means to ascertain the facts of the case.

Section 6. *Preliminary Hearing.* The OE Adjudicator shall set the date, time and place of the preliminary hearing with due notice to the parties, with the end view of arriving at an amicable settlement and for purposes of simplifying the issues, marking of evidence and stipulation of facts.

Section 7. *Clarificatory Questions.* At any stage of the proceedings and before the case is submitted for resolution, the OE Adjudicator may initiate clarificatory questions to the parties or their witnesses to further elicit relevant facts or information.

The OE Adjudicator may set a hearing where the parties shall be given an opportunity to be present but without right to examine or cross-examine. If the parties so desire, they may submit questions to the OE Adjudicator who may ask the parties or witnesses concerned.

Section 8. *Service of Order to Appear/To Produce Documents.* The Administration may issue an order to appear/to produce documents specified in the order.

The process server who personally served the order to appear/produce documents, notice order, resolution or decision shall submit his return within five (5) calendar days from the date of his service thereof, stating legibly in the return his name, the mode/s of service, the name/s of the other person/s to whom it was served and the date/s of receipt. If no service was effected, the serving officer shall state the reason. The return shall form part of the records of the case.

Section 9. *Failure or Refusal to Obey Order to Appear/to Produce Documents.* The license of any agency whose officers or employers fail or refuse to comply with an order to appear/to produce documents without justifiable reason shall be suspended until other wise ordered. This is without prejudice to the outcome of the investigation where the proper penalty may be imposed.

Section 10. *Summary Judgment.* Should the OE Adjudicator find, upon consideration of the complaint, answers and evidence submitted, that resolution/decision may be rendered, the case shall be deemed submitted and a summary judgment shall be issued.

Section 11. *Effects of Withdrawal of Complaint/ Desistance.* The withdrawal of complaint/ desistance shall not bar the Administration from proceeding with the investigation of the recruitment violation/s. The Administration shall resolve the case on the merits and impose the appropriate penalties.

Section 12. *Resolution of the Case.* Except as provided in Section 16 hereof and Section 6, Rule II, Part VII, the OE Adjudicator shall, within ninety (90) calendar days from the filing of the case, submit his findings and recommendations in the form of a draft order.

Section 13. *Who May Issue Orders.* The Administrator may issue orders of reprimand, suspension of documentary processing, suspension, cancellation or revocation of license, or dismissal on the merits of the case.

All other orders or resolutions shall be signed by the Director, Adjudication Office of the Administration

Section 14. *Contents of Orders/Resolutions.* Orders/ Resolutions issued by the Administration shall be clear and concise and shall include a brief statement of the following:

- a. facts of the case;
- b. issue/s involved;
- c. applicable law/s or rule/s;
- d. conclusions and reasons therefor; and
- e. specific remedy/ies or relief/s granted or sanction/s.

Section 15. *Suspension of Documentary Processing.* The Administration may order the suspension of the processing of documents of a respondent agency for violation of any provision of these Rules, Orders, and Regulations. Such is without prejudice to the outcome of the investigation wherein the proper penalty may be imposed.

Section 16. *Preventive Suspension.* Pending investigation of the recruitment violation/s, the license of the respondent agency may be suspended for a period not exceeding the imposable penalties under the revised schedule of penalties, on the following grounds:

- a. There exist reasonable grounds to believe that the continued operation of the agency will lead to further violation or exploitation of the workers being recruited or adversely affect friendly relations with any country or otherwise prejudice national interest; and
- b. There is a prima facie evidence of a case for violation of the pertinent provisions of the Labor Code, its implementing rules and regulations, POEA Rules and Regulations or any issuance of the Administration where the evidence of guilt is strong.

The Administrator may issue an order lifting or modifying the order of preventive suspension as the circumstances may warrant.

Where an Order of Preventive Suspension is issued by the Administration, the OE Adjudicator shall, within sixty (60) calendar days from filing of the case, submit his findings and recommendations in the form of a draft order.

Section 17. *Effects of Orders of Suspension, Revocation or Cancellation of License.* An order of suspension, cancellation or revocation of license shall have the effect of suspending or terminating all activities of the agency which fall under the definition of recruitment and placement.

Section 18. *Fines.* The Administration may also impose fines for failure to comply with a final order.

## **RULE IV. CLASSIFICATION OF OFFENSES AND SCHEDULE OF PENALTIES**

Section 1. *Classification of Offenses.* Administrative offenses are classified into serious, less serious and light, depending on their gravity. The Administration shall impose the appropriate administrative penalties for every recruitment violation.

A. The following are serious offenses with their corresponding penalties:

1. Deploying underage workers

1st Offense – Cancellation of License

2. Engaging in act/s of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false information or documents

1st Offense – Cancellation of License

3. 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

1st Offense – Cancellation of License

4. Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment

1st Offense – Cancellation of License

5. 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.

1st Offense – Cancellation of License plus refund of the placement fee charged or collected from the worker

The penalty shall carry the accessory penalty of refund of the fee collected from the worker

6. 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

1st Offense – Cancellation of License plus refund of the placement fee charged or collected from the worker

The penalty shall carry the accessory penalty of refund of the excessive fee charged or collected from the worker.

B. The following are less serious offenses with their corresponding penalties:

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

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

### 3rd Offense – Cancellation of License

The penalty shall carry the accessory penalty of refund of the fee charged or collected from the worker, in case of non-deployment.

2. Collecting any fee from a worker without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

### 3rd Offense – Cancellation of License

3. 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

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

### 3rd Offense – Cancellation of License

4. Obstructing or attempting to obstruct inspection by the Secretary, the Administrator or their duly authorized representatives

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

5. Substituting or altering to the prejudice of the worker, employment contracts approved and verified by the Administration 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 Administration

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

6. Withholding or denying travel or other pertinent documents from workers for reasons other than those authorized under existing laws and regulations.

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

7. Engaging in recruitment activities in places other than that specified in the license without previous authorization from the Administration

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

8. Appointing or designating agents, representatives or employees without prior approval from the Administration

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

9. Falsifying or altering travel documents of applicant worker in relation to recruitment activities

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

10. Deploying workers whose employment and travel documents were not processed by the Administration or those agencies authorized by it

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

11. Deploying workers to principals not accredited by the Administration.

1st Offense – Suspension of License (Two Months to Six Months)



2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

12. Withholding of workers' salaries or remittances without justifiable reasons or shortchanging of remittances

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

The penalty shall carry the accessory penalty of immediate release of the salaries or remittances being claimed

13. 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

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

14. 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

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

The penalty shall carry the accessory penalty of immediate refund of expenses incurred by the worker

15. Failure to comply with the undertaking to provide Pre-Departure Orientation Seminar to workers

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

16. Non-compliance with any other undertaking in connection with the issuance or renewal of the license

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months and One day to One year)

3rd Offense – Cancellation of License

C. The following are light offenses with their corresponding penalties:

1. 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

1st Offense – Reprimand

2nd Offense – Suspension of License (One Month to Three Months)

3rd Offense – Suspension of License (Three Months and One day to Six Months)

4th Offense – Cancellation of License

2. 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

1st Offense – Reprimand

2nd Offense – Suspension of License (One Month to Three Months)

3rd Offense – Suspension of License (Three Months and One day to Six Months)

4th Offense – Cancellation of License

3. Influencing or attempting to influence any person or entity not to employ any worker who has not applied for employment through his agency

1st Offense – Reprimand

2nd Offense – Suspension of License (One Month to Three Months)

3rd Offense – Suspension of License (Three Months and One day to Six Months)

4th Offense – Cancellation of License

4. Failure to deploy a worker within the prescribed period without valid reason

1st Offense – Reprimand

2nd Offense – Suspension of License (One Month to Three Months)

3rd Offense – Suspension of License (Three Months and One day to Six Months)

4th Offense – Cancellation of License

5. Coercing workers to accept prejudicial arrangements in exchange for certain benefits that rightfully belong to the workers

1st Offense – Reprimand

2nd Offense – Suspension of License (One Month to Three Months)

3rd Offense – Suspension of License (Three Months and One day to Six Months)

4th Offense – Cancellation of License

6. Disregard of orders, notices and other legal processes issued by the Administration

1st Offense – Reprimand

2nd Offense – Suspension of License (One Month to Three Months)

3rd Offense – Suspension of License (Three Months and One day to Six Months)

4th Offense – Cancellation of License

7. Failure to submit reports related to overseas recruitment and employment within the specified time as may be required by the Secretary or the Administration

1st Offense – Reprimand

2nd Offense – Suspension of License (One Month to Three Months)

3rd Offense – Suspension of License (Three Months and One day to Six Months)

4th Offense – Cancellation of License

8. 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

1st Offense – Reprimand

2nd Offense – Suspension of License (One Month to Three Months)

3rd Offense – Suspension of License (Three Months and One day to Six Months)

4th Offense – Cancellation of License

Money claims arising from recruitment violation may be awarded in addition to the administrative penalties imposed.

Section 2. *Imposition of Fines.* In addition or in lieu of the penalty of suspension of license, the Administration may impose the penalty of fine which shall be computed at P10,000.00 for every month of suspension.

Section 3. *Mitigating, Aggravating or Alternative Circumstances.* In the determination of the penalties to be imposed, the following mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered:

- a. First Offender;
- b. Admission of guilt and voluntary restitution, where applicable;
- c. Good faith;
- d. Exemplary Performance;
- e. Recidivism;
- f. Prejudice to the worker;
- g. Gross negligence;
- h. Other analogous circumstances.

Section 4. *Manner of Imposition.* When applicable, the imposition of the penalty may be made in accordance with the manner provided below:

- a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.
- b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.
- c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
- d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied where there are more aggravating circumstances.

Section 5. *Penalty for Cases Involving Five or More Complainants.* A respondent found guilty of committing an offense, regardless of the number or nature of charges, against five (5) or more complainant in a single case shall be imposed the penalty of cancellation of license.

## **RULE V. APPEAL/PETITION FOR REVIEW**

Section 1. *Jurisdiction.* The Secretary of Labor and Employment shall have exclusive jurisdiction to act on appeals/petitions for review of recruitment violation cases and other related cases decided by the Administration.

Section 2. *Period to Appeal.* The party aggrieved by a decision of the Administration may appeal the same to the Secretary of Labor and Employment within fifteen (15) calendar days from receipt of a copy of the decision. Failure of the aggrieved party to perfect his appeal within the reglementary period shall render the decision of the Administration final and executory.

Section 3. *Requirements for Appeal.* The appealing party shall file a Notice of Appeal and an Appeal Memorandum with the Adjudication Office or the Regional Office of the Administration, as the case may be. In case a fine and/or a monetary award is imposed against the appealing party, he shall also file a supersedeas bond in the amount of such fine and/or monetary award, in cash or in surety bond posted by a surety company acceptable to the Administration. The Appeal Memorandum shall clearly point out the errors of law and/or fact in the decision appealed from and shall be verified. Any appeal that does not comply with these requirements shall not be acted upon and the Administration shall issue forthwith an order for the execution of the decision for which the appeal is sought.

Section 4. *Transmittal of the Records of the Case on Appeal.* Within twenty-four (24) hours from receipt of the appeal seasonably filed with the corresponding requirements, the Adjudication Office shall transmit the entire records of the case to the Office of the Secretary of Labor and Employment.

Section 5. *Stay of Execution.* The decision of the Administration shall be stayed during the pendency of the appeal; Provided that where the penalty imposed carries the maximum penalty of twelve months suspension or

cancellation of license, the decision shall be immediately executory despite the pendency of the appeal.

Provided further that where the penalty imposed is suspension of license for one month or less, the decision shall be immediately executory and may only be appealed on ground of grave abuse of discretion.

Section 6. *Period to Resolve the Appeal.* Appeals from the decision of the Administrator shall be resolved by the Office of the Secretary for Labor and Employment within sixty (60) calendar days from receipt of the transmittal of the entire records of the case.

## **RULE VI. EXECUTION OF DECISIONS**

Section 1. *Issuance of Writ of Execution.* Unless otherwise provided in these Rules, after the Order has become final and executory, the Administration, upon motion or on its own initiative, shall issue a writ of execution requiring the Enforcement Officer to enforce a monetary award and/or fine imposed in the decision.

Section 2. *Issuance, Form and Contents of a Writ of Execution.* The writ of execution must be issued in the name of the Republic of the Philippines, requiring the Enforcement Officer to execute the Orders of the Administrator or the Secretary or his duly authorized representative, as the case may be.

The writ of execution must contain the dispositive portion of the order or decision sought to be executed. It must require the Enforcement Officer to serve the writ upon the losing party or upon any other person required by law to obey the same before proceeding to satisfy the judgment.

Execution shall proceed against the assets of the losing party in the following order:

- a. escrow deposit
- b. surety bond
- c. personal property



d. real property

A writ of execution shall not be necessary for the enforcement of Orders in the following cases:

- a. For the return of travel and other related documents. A copy of the order served upon the losing party or upon any other required by law to obey such order is sufficient; and
- b. Where the agency had earlier posted a cash or surety bond in relation to an appeal/petition for review. Certified copies of the final and executory order and official receipt of the cash or surety bond shall be sufficient basis for the preparation of the voucher for the release of the amount to be refunded, or for the confiscation/forfeiture of the amount equivalent to the fine.

The writ of execution shall be valid and effective for a period of sixty (60) calendar days from issuance thereof.

Section 3. *Motion to Cancel Writ of Execution.* Within five (5) days from receipt of a copy of Writ of Execution, the judgment debtor may file a Motion to Cancel the Writ of Execution on meritorious ground. The filing of such motion shall not stay the execution of the writ unless a cash or surety bond is posted equivalent to the judgment award and/or fine which shall answer for the same in the event that the motion is denied.

An Order denying a Motion to Quash the Writ of Execution is final and no further motions of similar nature shall be entertained.

Section 4. *Enforcement of Writs.* In executing an Order, the Enforcement Officer shall be guided strictly by the Manual of Instructions for Enforcement Officers of the POEA which the Administration will adopt.

Section 5. *Garnishment.* In cases where several writs of execution are issued against the same agency, satisfaction of the claims of workers against the escrow deposit or surety bond shall be on a “first-come, first-served” basis, irrespective of the date of filing of the case or date of the decision or date of the writ of execution. Provided that where the orders of garnishment are served simultaneously, the escrow deposit or surety bond shall be pro-rated among the claimants.

Section 6. *Return of Writ of Execution.* The Enforcement Officer implementing the writ of execution shall submit his return immediately upon the satisfaction of the claim. Regardless, however, of the outcome of his implementation, he shall submit his return not later than sixty (60) calendar days from date of issuance thereof. The return shall state the mode/s of service, the name/s of the person/s served and the date/s of receipt. The return shall also indicate legibly the full name of the serving officer. The return shall form part of the records of the case.

Section 7. *Execution Pending Petition for Certiorari.* Once a petition for certiorari has been filed with and given due course by the appellate court, the execution of the order insofar as the monetary award to private claimant is concerned shall be stayed.

## **PART VII**

### **DISCIPLINARY ACTION CASES**

#### **RULE I. JURISDICTION AND VENUE**

Section 1. *Jurisdiction.* The Administration shall exercise original and exclusive jurisdiction to hear and decide disciplinary action cases against migrant workers, foreign employers and principals that are administrative in character.

Section 2. *Venue.* Any complaint involving disciplinary action cases shall be filed with the Adjudication Office of the Administration.

#### **RULE II. DISCIPLINARY ACTIONS AGAINST**

##### **PRINCIPALS/EMPLOYERS**

Section 1. *Grounds for Disciplinary Action Against Foreign Principals/Employers*

- a. Default on its contractual obligations to the migrant worker and/or to its Philippine agent;
- b. Gross violation of laws, rules and regulations on overseas employment;

- c. Gross negligence leading to serious injury or illness or death of the worker;
- d. Grave misconduct;
- e. Conviction of an offense involving moral turpitude;
- f. Any other case analogous to the foregoing.

Section 2. *Filing of Complaint.* Any aggrieved person may file a complaint in writing and under oath for disciplinary action against a principal/ employer with the Administration.

The Administration may, on its own initiative, conduct proceedings against principals/employers based on verifiable or official reports.

Section 3. *Contents and Form of Complaint.* All complaints shall be under oath and must contain the following:

- a. Name/s and address/es of the complainant/s;
- b. Name/s and address/es of the respondent/s;
- c. Specific acts or omissions constituting the alleged offense;
- d. Place where the offense was committed;
- e. Date when the offense was committed;
- f. Relief sought.

All supporting documents must be attached to the complaint, whenever possible.

Section 4. *Temporary disqualification.* A foreign employer/ principal against whom a complaint for disciplinary action has been filed shall be temporarily disqualified from participating in the overseas employment program until the respondent submits to the jurisdiction of the Administration.

Section 5. *Effect of Filing an Answer.* Upon filing of an answer, the respondent employer shall be qualified to participate in the overseas employment program without prejudice to the outcome of the investigation whereby the proper penalty shall be imposed.

Section 6. *Preventive Suspension.* A principal/employer may be suspended from participating in the overseas employment program pending investigation of the disciplinary action case when the evidence of guilt is strong and there is reasonable ground to believe that the continued deployment to the principal/employer will result to further violation or exploitation of migrant workers.

The Hearing Officer shall, within sixty (60) calendar days from the filing of the case, submit his findings and recommendations in the form of a draft order.

Section 7. *Handling of Cases.* The procedure provided in this Book shall also apply to disciplinary action cases involving foreign employers/principals.

Section 8. *Disqualification of Foreign Employers/ Principals.* Foreign employers/principals against whom the penalty of suspension or disqualification had been imposed through an order, decision or resolution shall be disqualified from participating in the overseas employment program unless cleared by the Administration or the penalty imposed is lifted.

### **RULE III. DISCIPLINARY ACTION AGAINST OVERSEAS WORKERS**

Section 1. *Grounds for Disciplinary Action.* Commission by a migrant worker of any of the offenses enumerated below or of similar offenses shall be a ground for disciplinary action:

#### **A. Pre-Employment Offenses**

1. Using, providing, or submitting false information or documents for purposes of job application or employment.

2. Unjustified refusal to depart for the worksite after all employment and travel documents have been duly approved by the appropriate government agency/ies.

B. Offenses during Employment

1. Commission of a felony or crime punishable by Philippine Laws or by the laws of the host country;
2. Unjustified breach of employment contract;
3. Embezzlement of company funds or monies and/or properties of a fellow worker entrusted for delivery to kin or relatives in the Philippines; and
4. Violation/s of the sacred practices of the host country.

Section 2. *Filing of Complaint.* Any person may file a complaint in writing and under oath for disciplinary action against a migrant worker with the Administration.

The Administration may, on its own initiative, conduct proceedings against a migrant worker on the basis of verifiable or official reports.

Section 3. *Contents and Form of Complaint.* All complaints shall be under oath and must contain, among others, the following:

- a. Name/s and address/es of the complainant/s;
- b. Name/s and address/es of the respondent/s;
- c. Specific act/s or omission/s constituting the alleged offense;
- d. Place where the offense was committed;
- e. Date when the offense was committed; and
- f. The relief/s sought.

All supporting documents must be attached to the complaint, whenever possible.

Section 4. *Exempting Circumstances.* The following considerations shall be legitimate reasons for the refusal of a worker to depart for the worksite, or to abandon or withdraw from employment:

- a. Exposure to hazardous, demeaning working and living conditions;
- b. Refusal of the employer or principal to grant, release or remit wages and other benefits due the worker;
- c. War, plague or other calamities at the worksite; and
- d. Violation of labor laws of the Philippines, the host country or international labor laws;

Section 5. *Handling of Cases.* The procedures provided in this Book shall apply in disciplinary cases involving workers.

Section 6. *Temporary disqualification from overseas employment.* A respondent worker subject of a pending complaint for disciplinary action, as provided in Section 1 (A&B) of Rule III, Part VII of these Rules, or those against whom a warrant of arrest or hold departure order is issued by competent authority shall be disqualified from overseas employment unless temporarily cleared.

Section 7. *Effect of Filing of an Answer.* Upon filing of an answer, the respondent worker shall be qualified for overseas employment without prejudice to the outcome of the investigation whereby the proper penalty may be imposed.

Section 8. *Disqualification from Overseas Employment.* Migrant workers against whom suspension or disqualification has been imposed through an order, decision, or resolution shall be disqualified from overseas employment unless cleared by the Administration or the penalty imposed had been lifted.

Section 9. *Preventive Suspension.* A migrant worker may be preventively suspended when the evidence of guilt is strong and the charge involves a serious offense.

## **RULE IV. CLASSIFICATION OF OFFENSES AND SCHEDULE OF PENALTIES**

Section 1. *Classification of Offenses.* Administrative offenses committed by the worker are classified into serious, less serious, depending on their gravity. The Administration shall impose the appropriate administrative penalties for every violation.

A. The following are serious offenses with their corresponding penalties:

1. Commission of a felony or crime punishable by Philippine laws or by the laws of the host country.

1st Offense: Six months and one day to One (1) year suspension from participation in the overseas employment program

2nd Offense: Permanent Disqualification

2. Unjust refusal to depart for the worksite after all employment and travel documents have been duly approved by the appropriate government agency/ies.

1st Offense: Six months and one day to One (1) year suspension from participation in the overseas employment program

2nd Offense: Permanent Disqualification

B. The following are less serious offenses with their corresponding penalties:

1. Submission/furnishing or using false information or documents for purposes of job application or employment.

1st Offense: Two months to Six months suspension from participation in the overseas employment program

2nd Offense: Six months and one day to One (1) year suspension from participation in the overseas employment program

3rd Offense: Permanent Disqualification

2. Unjustified breach of employment contract

1st Offense: Two months to Six months suspension from participation in the overseas employment program

2nd Offense: Six months and one day to One (1) year suspension from participation in the overseas employment program

3rd Offense: Permanent Disqualification

3. Embezzlement of company funds or monies and/or properties of a fellow worker entrusted for delivery to kin or relatives in the Philippines

1st Offense: Two months to Six months suspension from participation in the overseas employment program

2nd Offense: Six months and one day to One (1) year suspension from participation in the overseas employment program

3rd Offense: Permanent Disqualification

4. Violation/s of the sacred practices of the host country

1st Offense: Two months to Six months suspension from participation in the overseas employment program

2nd Offense: Six months and one day to One (1) year suspension from participation in the overseas employment program

3rd Offense: Permanent Disqualification

## **RULE V. APPEAL/PETITION FOR REVIEW**

Section 1. *Jurisdiction.* The Secretary shall have the exclusive jurisdiction to act on appeals/petitions for review of disciplinary action cases decided by the Administration.



Section 2. *Filing of Appeal/Petition.* Appeals/Petitions for Review shall be filed with the Administration within fifteen (15) calendar days from receipt of the decision by the appealing or petitioning party.

## **RULE VI. COMMON PROVISIONS**

Section 1. *Records of Proceedings.* The records of all proceedings before the Hearing Officer shall be summarized in writing by the OE Adjudicator, including the substance of the evidence presented. The minutes of proceedings shall be signed by the parties and shall form part of the records. Where any of the parties refuse to sign, the refusal and reason/s given must be indicated by the OE Adjudicator in the minutes, which must be chronologically arranged and appropriately paged.

Section 2. *Appearances.* An attorney appearing for a party is presumed to be properly authorized for that purpose.

Appearances may be made orally or in writing. In both cases, the complete name and office and the adverse party of his counsel/representative properly advised.

Any change in the address of counsel/representative should be filed with the records of the case and furnished the adverse party or counsel.

Any change or withdrawal of counsel/representative shall be made in accordance with the Rules of Court.

Section 3. *Action on Motions.* The Hearing Officer shall have the authority to rule on motions which may be done in writing or orally during the proceedings/conferences.

Section 4. *Consolidation of Cases.* Where there are two (2) or more cases pending before different

OE Adjudicators, involving the same respondent/s and issues, the case which was filed last may be consolidated with the first to avoid unnecessary cost or delay. Such cases shall be handled by the OE Adjudicator to whom the first case was assigned.

Section 5. *Discovery of Another Offense.* When in the course of investigation on the alleged recruitment violation/s on pre-employment cases, another offense is uncovered, the Administration may issue the necessary show cause order or inform the respondent/s of the charge/s during the investigation and enter the same in the minutes. The Administration shall allow the parties the requisite period within which to file an Answer.

Section 6. *Discovery of Another Respondent.* When in the course of the investigation on recruitment violation/s alleged and/or uncovered, another agency or person is found to have committed a violation, the OE Adjudicator shall automatically implead said agency or person in the records of case pending, subject of investigation. For this purpose, show cause order shall be issued to the agency or person in accordance with the Rules.

Section 7. *Prescription.* All recruitment violation cases enumerated in these Rules shall be barred if not commenced or filed with the Administration within three (3) years after such cause of action accrued.

Likewise, disciplinary action shall be barred if not commenced or filed with the Administration within three (3) years after such cause of action occurred.

Section 8. *Applicability of the Rules of Court.* The Revised Rules of Court of the Philippines shall, whenever practicable, supplement these Rules in similar or analogous character in proceedings brought before the Administration.

## **PART VIII**

### **WELFARE SERVICES**

#### **RULE I. ASSISTANCE TO WORKERS**

Section 1. *Responsibility to Workers.* The Administration shall ensure that workers deployed overseas are amply protected and that their interest, well being and welfare are promoted. Agencies shall be responsible for the faithful compliance by their foreign principals of all obligations under the employment contract.

Section 2. *Request for Assistance.* The Administration shall take cognizance of any request for assistance from the worker and/or his family on matters relating to overseas employment.

Section 3. *Call for Action and Submission of Reports.* The Administration shall require an agency to act on complaints or problems brought to its attention or to submit reports on the status or condition of the worker.

Section 4. *Administrative Sanctions.* Deliberate failure by agencies and/or employers to act on requests for assistance and/or complaints of workers and/or families shall warrant imposition by the Administration of such sanctions as it may deem appropriate.

Section 5. *Welfare Programs and Activities.* The Administration, in coordination with other institutions, shall initiate and undertake such projects and activities that will enhance the welfare and promote the interest of workers and their families including those that will facilitate the psychosocial and economic reintegration of OFWs who have decided to return home for good.

## **RULE II. CONCILIATION OF COMPLAINTS**

Section 1. *Conciliation of Complaints.* The Administration may conciliate any complaint involving a worker, licensed agency, or foreign principal/employer relating to overseas employment.

Section 2. *Conciliation Proceedings.* Within 5 days upon receipt of the complaint, the Administration shall notify the respondent and schedule a conference between the parties to discuss the possibility of arriving at an amicable settlement.

Where an amicable settlement is reached, the Administration shall approve the same and the settlement shall be final and binding upon the parties.

Where efforts for amicable settlement fail, the conciliation proceedings shall be terminated and the complaint shall be referred to the appropriate office immediately.

Likewise, if after evaluation of complaints and supporting documents, the employer or principal is found to be remiss in the performance of its contractual obligations to its workers, the Administration shall disqualify said employer or principal from participating in the overseas employment program

Section 3. *Administrative Sanction.* Unjustified failure by agencies to appear or make proper representations during conciliation proceedings, or to abide by the terms of the approved settlement shall warrant the suspension of documentary processing until compliance.

### **RULE III. REPATRIATION OF WORKERS**

Section 1. *Repatriation of Workers.* The repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation shall be borne or be charged to the agency concerned and/or its principal. Likewise, the repatriation of remains and transport of the personal belongings of the deceased worker and all costs attendant thereto shall be borne by the principal and/or the local agency. However, in cases where termination of employment is due solely to the fault of the worker, the principal/employer or agency shall not in any manner be responsible for the repatriation of the former and/or his belongings.

Section 2. *Repatriation Costs When Employment is Terminated.* The principal or agency shall advance the cost of plane fare without a prior determination of the cause of the termination of the workers employment. However, the principal/agency may recover the cost of repatriation from the worker upon his return to the Philippines if termination of employment is due solely to worker's fault.

Section 3. *Repatriation Procedure.* When the need for repatriation arises and the principal fails to provide for the costs, the Philippine Embassy/ Consulate/ Overseas Labor Office at worksite shall simultaneously notify the Administration and OWWA of such need. The Administration shall require the agency to provide the plane ticket or a pre-paid ticket advice to the Philippine Embassy/Consulate / Overseas Labor Office and to report its compliance to the Administration which shall advise OWWA accordingly.

Section 4. *Administrative Sanction for Non-Compliance.* If the employment agency fails to provide the ticket or pre-paid ticket advice within 48 hours from receipt of notice, the Administration shall suspend the documentary processing of the agency or impose such sanctions, as it may deem necessary. The Administration may request OWWA to advance the costs of repatriation with recourse to the agency and/or employer. The administrative sanction shall be lifted after the agency or employer shall have reimbursed OWWA of the costs of repatriation.

## **RULE IV. WAR RISK INSURANCE AND WAR RISK PREMIUM PAY**

Section 1. *Declaration of War Risk Areas.* In order to protect seafarers, fishermen and cruise ship personnel from the hazards of war or war-like operations, the Administration shall, pursuant to prior declaration by the competent authorities, declare specific areas, territorial waters or portions of the high seas as war risk areas.

Section 2. *Mandatory War Risk Insurance for Landbased Workers.* All landbased workers bound for areas declared as war risk areas shall be provided with war risk insurance coverage of not less than P200,000.00. This war risk insurance shall be provided by the employer at no cost to the worker.

Section 3. *War Risk Premium Pay.* Workers who work on areas declared as war risk areas shall be entitled to premium pay or its equivalent, the form of which shall be determined by the Administration.

## **RULE V. EDUCATION PROGRAM ON OVERSEAS EMPLOYMENT**

Section 1. *Workers Education Program.* In accordance with the policy of full disclosure, the Administration shall provide a comprehensive and integrated education program on overseas employment and shall be undertaken in partnership with other relevant organizations and government entities. Such education program shall cover all stages of recruitment and employment and provide information useful for overseas workers.

Section 2. *Program Development Administration and Linkages.* The Administration shall develop and administer the program in partnership with concerned government agencies, industry associations, civic-oriented groups and non-government organizations.

Section 3. *Orientation Programs.* The Administration shall conduct regular orientation programs that are country and skills-specific .

Section 4. *Information Campaign.* The Administration shall conduct a nationwide, multi-media and sustainable grassroots information campaign to create public awareness on the realities of overseas employment.

Section 5. *Orientation of Licensed Agencies Representatives.* The Administration shall provide continuing orientation programs to officers and staff of licensed agencies.

Section 6. *Orientation of Foreign Employers.* The Administration shall provide orientation to foreign employers on the requirements, standards, laws and regulations in the recruitment and employment of Filipino workers.

## **RULE VI. MANPOWER REGISTRATION**

Section 1. *Manpower Registry.* The Administration shall adopt a system of registration of landbased workers and maintain a registry of qualified applicants in accordance with the requirements of their occupations.

Section 2. *Manpower Sourcing from the Registry.* Aside from the in-house placement facility of the Administration, private recruitment agencies may source their manpower requirements from the POEA registry.

Section 3. *Referral of Qualified Applicants.* The Administration may refer qualified applicants from the registry to agencies for possible placement.

Section 4. *Agency Manpower Pool.* An agency may maintain its own manpower pool provided no fee shall be charged to the applicant nor services be required of him in consideration of membership in the manpower pool.

## **RULE VII. MANPOWER RESEARCH AND DEVELOPMENT**

Section 1. *Research Studies.* The Administration, in coordination with other entities, shall conduct periodic researches and studies on labor supply especially as it relates to the monitoring of the outflow of critical skills.

Section 2. *Manpower Development Program for Overseas Workers.* The Administration shall extend technical support and establish linkages with government agencies and other concerned sectors in the development and provision of assistance programs in the training of overseas workers for overseas jobs as well as in enabling them to transfer their skills and learning, upon their return.

Section 3. *Training Programs and Standards.* The Administration shall coordinate with private entities, government agencies, and employers concerned in the formulation of training programs and standards.

## **PART IX TRANSITORY PROVISIONS**

Section 1. *Transfer of Welfare Services Provisions to OWWA.* All provisions pertaining to the welfare of migrant workers, shall be transferred to OWWA within three (3) months from the effectivity of these rules. In the meantime, POEA shall continue to perform welfare services.

## **PART X GENERAL AND MISCELLANEOUS PROVISIONS**

Section 1. *Authority to Administer Oaths.* The Administrator, or any person authorized under existing laws, shall have the authority to administer oaths and require the attendance of witnesses or the production of any book, paper, correspondence, memoranda and other documents relevant or material to the case or inquiry.

Section 2. *Construction.* These Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and the Laws pertaining to overseas employment and to assist the parties in obtaining just, expeditious and inexpensive settlement of disputes. All

doubts in the implementation or interpretation of these Rules shall be resolved in favor of labor.

Section 3. *Transfer of Cash Bond.* Placement agencies shall be allowed to withdraw their existing cash bonds so that the same may be used to comply with the escrow deposit requirement under Section 4, Rule II, Part II of these rules.

Section 4. *Separability Clause.* The provisions of these Rules and Regulations are declared to be separable and if any provision or the application thereof is held invalid or unconstitutional, the validity of the other provisions shall not be affected.

Section 5. *Repealing Clause.* All policies, issuances, rules and regulations inconsistent with these Rules are hereby repealed or modified accordingly.

Section 6. *Effectivity.* These Rules shall take effect fifteen (15) days from publication in a newspaper of general circulation.

Done in the City of Mandaluyong, Republic of the Philippines, this 4th day of February 2002.



# 2011 NLRC Rules of Procedure



# **2011 NLRC Rules of Procedure**

Published in Malaya on July 22, 2011  
and The Daily Tribune on July 23, 2011.

Pursuant to the provisions of Article 218 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, the following Revised Rules of Procedure governing arbitration proceedings before the Labor Arbiters and the Commission are hereby adopted and promulgated:

## **RULE I TITLE AND CONSTRUCTION**

**SECTION 1. TITLE OF THE RULES.** – These Rules shall be known as the “2011 NLRC Rules of Procedure.” (1a)

**SECTION 2. CONSTRUCTION.** – These Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining just, expeditious and inexpensive resolution and settlement of labor disputes.

**SECTION 3. SUPPLETORY APPLICATION OF THE RULES OF COURT.** – In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, the pertinent provisions of the Rules of Court of the Philippines may, in the interest of expeditious dispensation of labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.

## **RULE II**

### **DEFINITION OF TERMS**

SECTION 1. DEFINITIONS. – The terms and phrases defined in Article 212 of the Labor Code, as amended, shall be given the same meanings when used herein. As used herein, “Regional Arbitration Branch” shall mean any of the regional arbitration branches or sub-regional branches of the Commission.

## **RULE III**

### **PLEADINGS, NOTICES AND APPEARANCES**

#### SECTION 1. COMPLAINT.

- a) A complaint or petition is a pleading alleging the cause or causes of action of the complainant or petitioner. The names and addresses of all complainants or petitioners and respondents must be stated in the complaint or petition. It shall be signed under oath by the complainant or petitioner, with a declaration of non-forum shopping.
- b) A party having more than one cause of action against the other party, arising out of the same relationship, shall include all of them in one complaint or petition. (1a)

SECTION 2. CAPTION AND TITLE. – In all cases filed with the Commission or with any of its Regional Arbitration Branches, the party initiating the action shall be called the “Complainant” or “Petitioner”, and the opposing party the “Respondent”.

The full names of all the real parties in interest, whether natural or juridical persons or entities authorized by law, shall be stated in the caption of the complaint or petition, as well as in the decisions, resolutions or orders of the Labor Arbiter or the Commission.

SECTION 3. FILING AND SERVICE OF PLEADINGS. – All pleadings in connection with a case shall be filed with the appropriate docketing unit of the Regional Arbitration Branch or the Commission, as the case may be.

The party filing a pleading shall serve the opposing parties with a copy and its supporting documents. No pleading shall be considered without proof of service to the opposing parties except if filed simultaneously during a schedule set before the Labor Arbiter. (5a)

#### SECTION 4. SERVICE OF NOTICES, RESOLUTIONS, ORDERS AND DECISIONS.

- a) Notices and copies of resolutions or orders, shall be served personally upon the parties by the bailiff or duly authorized public officer within three (3) days from his/her receipt thereof or by registered mail or by private courier;
- b) In case of decisions and final awards, copies thereof shall be served on both parties and their counsel or representative by registered mail or by private courier; Provided that, in cases where a party to a case or his/her counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected as herein provided. Where parties are numerous, service shall be made on counsel and upon such number of complainants, as may be practicable and shall be considered substantial compliance with Article 224 (a) of the Labor Code, as amended.

For purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record.

- c) The bailiff or officer serving the notice, order, or resolution shall submit his/her return within two (2) days from date of service thereof, stating legibly in his/her return his/her name, the names of the persons served and the date of receipt, which return shall be immediately attached and shall form part of the records of the case. In case of service by registered mail or by private courier, the name of the addressee and the date of receipt of the notice, order or resolution shall be written in the return card or in the proof of service issued by the private courier. If no service was effected, the reason thereof shall be so stated. (6a)

**SECTION 5. PROOF AND COMPLETENESS OF SERVICE.** – The return is prima facie proof of the facts indicated therein. Service by registered mail or by private courier is complete upon receipt by the addressee or his/

her agent. If the addressee fails to claim his/her mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time. (7a)

## SECTION 6. APPEARANCES.

- a) A lawyer appearing for a party is presumed to be properly authorized for that purpose. In every case, he/she shall indicate in his/her pleadings and motions his/her Attorney's Roll Number, as well as his/her PTR and IBP numbers for the current year and MCLE compliance.
- b) A non-lawyer may appear in any of the proceedings before the Labor Arbiter or Commission only under the following conditions:
  - (1) he/she represents himself/herself as party to the case;
  - (2) he/she represents a legitimate labor organization, as defined under Article 212 and 242 of the Labor Code, as amended, which is a party to the case: Provided, that he/she presents to the Commission or Labor Arbiter during the mandatory conference or initial hearing:
    - (i) a certification from the Bureau of Labor Relations (BLR) or Regional Office of the Department of Labor and Employment attesting that the organization he/she represents is duly registered and listed in the roster of legitimate labor organizations; (ii) a verified certification issued by the secretary and attested to by the president of the said organization stating that he/she is authorized to represent the said organization in the said case; and (iii) a copy of the resolution of the board of directors of the said organization granting him such authority;
  - (3) he/she represents a member or members of a legitimate labor organization that is existing within the employer's establishment, who are parties to the case: Provided, that he/she presents: (i) a verified certification attesting that he/she is authorized by such member or members to represent them in the case; and (ii) a verified certification issued by the secretary and attested to by the president of the said organization stating that the person or persons he/she is representing are members of their organization which is existing in the employer's establishment;

- (4) he/she is a duly-accredited member of any legal aid office recognized by the Department of Justice or Integrated Bar of the Philippines: Provided, that he/she (i) presents proof of his/her accreditation; and (ii) represents a party to the case;
  - (5) he/she is the owner or president of a corporation or establishment which is a party to the case: Provided, that he/she presents: (i) a verified certification attesting that he/she is authorized to represent said corporation or establishment; and (ii) a copy of the resolution of the board of directors of said corporation, or other similar resolution or instrument issued by said establishment, granting him/her such authority.
- c) Appearances of a non-lawyer in contravention of this section shall not be recognized in any proceedings before the Labor Arbiter or the Commission.
  - d) Appearances may be made orally or in writing. In both cases, the complete name and office address of counsel or authorized representative shall be made of record and the adverse party or his counsel or authorized representative properly notified.
  - e) In case of change of address, the counsel or representative shall file a notice of such change, copy furnished the adverse party and counsel or representative, if any.
  - f) Any change or withdrawal of counsel or authorized representative shall be made in accordance with the Rules of Court. (8a)

**SECTION 7. AUTHORITY TO BIND PARTY.-** Counsel or other authorized representatives of parties shall have authority to bind their clients in all matters of procedure; but they cannot, without a special power of attorney or express consent, enter into a compromise agreement with the opposing party in full or partial discharge of a client's claim. (9a)

**RULE IV**  
**VENUE, ASSIGNMENT AND DISPOSITION OF CASES AT**  
**THE REGIONAL ARBITRATION BRANCH**

**SECTION 1. VENUE.**

- a) All cases which Labor Arbiters have authority to hear and decide may be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complainant or petitioner.

For purposes of venue, the workplace shall be understood as the place or locality where the employee is regularly assigned at the time the cause of action arose. It shall include the place where the employee is supposed to report back after a temporary detail, assignment, or travel. In case of field employees, as well as ambulant or itinerant workers, their workplace is where they are regularly assigned, or where they are supposed to regularly receive their salaries and wages or work instructions from, and report the results of their assignment to, their employers.

- b) Where two (2) or more Regional Arbitration Branches have jurisdiction over the workplace of the complainant or petitioner, the Branch that first acquired jurisdiction over the case shall exclude the others.
- c) When venue is not objected to before the filing of position papers such issue shall be deemed waived.
- d) The venue of an action may be changed or transferred to a different Regional Arbitration Branch other than where the complaint was filed by written agreement of the parties or when the Commission or Labor Arbiter before whom the case is pending so orders, upon motion by the proper party in meritorious cases.
- e) Cases involving overseas Filipino workers may be filed before the Regional Arbitration Branch having jurisdiction over the place where the complainant resides or where the principal office of any of the respondents is situated, at the option of the complainant.



## SECTION 2. RAFFLE AND ASSIGNMENT OF CASES.

- a) All complaints and petitions filed with the docket unit of the Regional Arbitration Branch shall be immediately raffled and assigned to a Labor Arbiter from receipt thereof.
- b) The Executive Labor Arbiter shall be responsible for the immediate raffle and assignment of all complaints and petitions filed with his/her Regional Arbitration Branch, and the immediate forwarding of all subsequent pleadings and motions.
- c) All pleadings and motions subsequent to the filing of the complaint shall be forwarded to the Labor Arbiter before whom the case is pending within twenty-four (24) hours from receipt thereof.

SECTION 3. CONSOLIDATION OF CASES AND COMPLAINTS. - Where there are two or more cases or complaints pending before different Labor Arbiters in the same Regional Arbitration Branch involving the same employer and common principal causes of action, or the same parties with different causes of action, the subsequent cases or complaints shall be consolidated with the first to avoid unnecessary costs or delay. Such consolidated cases or complaints shall be disposed of by the Labor Arbiter to whom the first case was assigned.

In case of objection to the consolidation, the same shall be resolved by the Executive Labor Arbiter. An order resolving a motion or objection to consolidation shall be inappealable.

SECTION 4. DISPOSITION OF CASES. - Subject to the provisions of Article 263 (g) of the Labor Code, as amended, when a case is assigned to a Labor Arbiter, the entire case and any or all incidents thereto shall be considered assigned to him/her; and the same shall be disposed of in the same proceedings to avoid multiplicity of suits or proceedings.

When the Secretary of Labor and Employment has assumed jurisdiction over a strike or lockout or certified the same to the Commission, the parties to such disputes shall immediately inform the Secretary or the Commission, as the case may be, of all cases directly related to the dispute between them pending before any Regional Arbitration Branch, and the Labor Arbiters handling the same of such assumption or certification. The Labor Arbiter

concerned shall forward within two (2) days from notice the entire records of the case to the Commission or to the Secretary of Labor, as the case may be, for proper disposition.

## **RULE V**

### **PROCEEDINGS BEFORE LABOR ARBITERS**

SECTION 1. JURISDICTION OF LABOR ARBITERS. - Labor Arbiters shall have original and exclusive jurisdiction to hear and decide the following cases involving all workers, whether agricultural or non-agricultural:

- a) Unfair labor practice cases;
- b) Termination disputes;
- c) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
- d) Claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations;
- e) Cases arising from any violation of Article 264 of the Labor Code, as amended, including questions involving the legality of strikes and lockouts;
- f) Except claims for employees compensation not included in the next succeeding paragraph, social security, medicare, and maternity benefits, all other claims arising from employer employee relations, including those of persons in domestic or household service, involving an amount exceeding Five Thousand Pesos (P5,000.00), whether or not accompanied with a claim for reinstatement;
- g) Wage distortion disputes in unorganized establishments not voluntarily settled by the parties pursuant to Republic Act No. 6727;
- h) Enforcement of compromise agreements when there is non-compliance by any of the parties pursuant to Article 227 of the Labor Code, as amended;

- i) Money claims arising out of employer-employee relationship or by virtue of any law or contract, involving Filipino workers for overseas deployment, including claims for actual, moral, exemplary and other forms of damages as provided by Section 10 of RA 8042, as amended by RA 10022; and
- j) Other cases as may be provided by law.

Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration, as may be provided in said agreements. (1a)

**SECTION 2. NATURE OF PROCEEDINGS.** – The proceedings before the Labor Arbiter shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto. The Labor Arbiter may avail himself/herself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons.

**SECTION 3. ISSUANCE OF SUMMONS.** – Within two (2) days from receipt of a complaint or amended complaint, the Labor Arbiter shall issue the required summons, attaching thereto a copy of the complaint or amended complaint and its annexes, if any. The summons shall specify the date, time and place of the mandatory conciliation and mediation conference in two (2) settings. (3a, RIII).

**SECTION 4. SERVICE OF SUMMONS** – Summons shall be served personally upon the parties by the bailiff or a duly authorized public officer within three (3) days from his/her receipt thereof, or by registered mail, or by private courier authorized by the Commission; Provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court.

The bailiff or officer serving the summons shall submit his/her return within two (2) days from date of service thereof, stating legibly in his/her return his/her name, the names of the persons served and the date of receipt, which return shall be immediately attached to the records and shall be part

thereof. If no service was effected, the reason thereof shall be stated in the return.

In case of service by registered mail or by private courier, the names of the addressees and the dates of receipt of the summons shall be written in the return card or in the proof of service issued by the private courier. If no service was effected, the reason thereof shall be so stated. (n)

SECTION 5. PROHIBITED PLEADINGS AND MOTIONS. - The following pleadings and motions shall not be allowed and acted upon nor elevated to the Commission:

- a) Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matter, improper venue, res judicata, prescription and forum shopping;
- b) Motion for a bill of particulars;
- c) Motion for new trial;
- d) Petition for Relief from Judgment
- e) Motion to declare respondent in default;
- f) Motion for reconsideration of any decision or any order of the Labor Arbiter;
- g) Appeal from any interlocutory order of the Labor Arbiter, such as but not limited to, an order:
  - 1) denying a motion to dismiss;
  - 2) denying a motion to inhibit;
  - 3) denying a motion for issuance of writ of execution; or
  - 4) denying a motion to quash writ of execution.
- h) Appeal from the issuance of a certificate of finality of decision by the Labor Arbiter;

- i) Appeal from orders issued by the Labor Arbiter in the course of execution proceedings.
- j) Such other pleadings, motions and petitions of similar nature intended to circumvent above provisions. (5a, RIII)

SECTION 6. MOTION TO DISMISS. – Before the date set for the mandatory conciliation and mediation conference, the respondent may file a motion to dismiss on grounds provided under Section 5, paragraph (a) hereof. Such motion shall be immediately resolved by the Labor Arbiter through a written order. An order denying the motion to dismiss, or suspending its resolution until the final determination of the case, is not appealable. (6a)

SECTION 7. EFFECT OF FAILURE TO FILE. – No motion to dismiss shall be allowed or entertained after the lapse of the period provided in Section 6 hereof. (n)

#### SECTION 8. MANDATORY CONCILIATION AND MEDIATION CONFERENCE.

- a) The mandatory conciliation and mediation conference shall be called for the purpose of (1) amicably settling the case upon a fair compromise; (2) determining the real parties in interest; (3) determining the necessity of amending the complaint and including all causes of action; (4) defining and simplifying the issues in the case; (5) entering into admissions or stipulations of facts; and (6) threshing out all other preliminary matters. The Labor Arbiter shall personally preside over and take full control of the proceedings and may be assisted by the Labor Arbitration Associate in the conduct thereof.
- b) Conciliation and mediation efforts shall be exerted by the Labor Arbiters all throughout the mandatory conferences. Any agreement entered into by the parties whether in partial or full settlement of the dispute shall be reduced into writing and signed by the parties and their counsel or the parties' authorized representatives, if any.
- c) In any case, the compromise agreement shall be approved by the Labor Arbiter, if after explaining to the parties, particularly to the complainants, the terms, conditions and consequences thereof, he/she is satisfied that they understand the agreement, that the same was entered into freely

and voluntarily by them, and that it is not contrary to law, morals, and public policy.

- d) A compromise agreement duly entered into in accordance with this Section shall be final and binding upon the parties and shall have the force and effect of a judgment rendered by the Labor Arbiter.
- e) The mandatory conciliation and mediation conference shall, except for justifiable grounds, be terminated within thirty (30) calendar days from the date of the first conference.
- f) No motion for postponement shall be entertained except on meritorious grounds and when filed at least three (3) days before the scheduled hearing. (3a)

SECTION 9. EFFECT OF FAILURE OF SETTLEMENT. – If the parties fail to agree on an amicable settlement, either in whole or in part, during the mandatory conciliation and mediation conference, the Labor Arbiter shall proceed to the other purposes of the said conference as enumerated in Section 8(a) hereof. (4a)

SECTION 10. NON-APPEARANCE OF PARTIES. – The non-appearance of the complainant or petitioner during the two (2) settings for mandatory conciliation and mediation conference scheduled in the summons, despite due notice thereof, shall be a ground for the dismissal of the case without prejudice.

In case of non-appearance by the respondent during the first scheduled conference, the second conference as scheduled in the summons shall proceed. If the respondent still fails to appear at the second conference despite being duly served with summons, he/she shall be considered to have waived his/her right to file position paper. The Labor Arbiter shall immediately terminate the mandatory conciliation and mediation conference and direct the complainant or petitioner to file a verified position paper and submit evidence in support of his/her causes of action and thereupon render his/her decision on the basis of the evidence on record. (5a)

## SECTION 11. SUBMISSION OF POSITION PAPER AND REPLY.

- a) Subject to Sections 9 and 10 of this Rule, the Labor Arbiter shall direct the parties to submit simultaneously their verified position papers with supporting documents and affidavits, if any, on a date set by him/her within ten (10) calendar days from the date of termination of the mandatory conciliation and mediation conference.
- b) No amendment of the complaint or petition shall be allowed after the filing of position papers, unless with leave of the Labor Arbiter.
- c) The position papers of the parties shall cover only those claims and causes of action stated in the complaint or amended complaint, accompanied by all supporting documents, including the affidavits of witnesses, which shall take the place of their direct testimony, excluding those that may have been amicably settled.
- d) Within ten (10) days from receipt of the position paper of the adverse party, a reply may be filed on a date agreed upon and during a schedule set before the Labor Arbiter. The reply shall not allege and/or prove facts and any cause or causes of action not referred to or included in the original or amended complaint or petition or raised in the position paper. (7a)

SECTION 12. DETERMINATION OF NECESSITY OF HEARING OR CLARIFICATORY CONFERENCE. - Immediately after the submission by the parties of their position paper or reply, as the case may be, the Labor Arbiter shall, *motu proprio*, determine whether there is a need for a hearing or clarificatory conference. At this stage, he/she may, at his/her discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any, from any party or witness. (8a)

## SECTION 13. ROLE OF THE LABOR ARBITER IN HEARING AND CLARIFICATORY CONFERENCE.

- a) The Labor Arbiter shall take full control and personally conduct the hearing or clarificatory conference and may ask questions for the purpose of clarifying points of law or facts involved in the case. The

Labor Arbiter may allow the presentation of testimonial evidence with right of cross-examination by the opposing party and shall limit the presentation of evidence to matters relevant to the issue before him/her and necessary for a just and speedy disposition of the case.

- b) The Labor Arbiter shall make a written summary of the proceedings, including the substance of the evidence presented, in consultation with the parties. The written summary shall be signed by the parties and shall form part of the records. (9a)

#### SECTION 14. NON-APPEARANCE OF PARTIES, AND POSTPONEMENT OF HEARINGS AND CLARIFICATORY CONFERENCES.

- a) The parties and their counsels appearing before the Labor Arbiter shall be prepared for continuous hearing or clarificatory conference. No postponement or continuance shall be allowed by the Labor Arbiter, except upon meritorious grounds and subject to the requirement of expeditious disposition of cases. The hearing or clarificatory conference shall be terminated within thirty (30) calendar days from the date of the initial clarificatory conference.
- b) In case of non-appearance of any of the parties during the hearing or clarificatory conference despite due notice, proceedings shall be conducted ex-parte. Thereafter, the case shall be deemed submitted for decision.
- c) Paragraph (a) of this Section notwithstanding, in cases involving overseas Filipino workers, the aggregate period for conducting the mandatory conciliation and mediation conference, including hearing on the merits or clarificatory conference, shall not exceed sixty (60) days, which shall be reckoned from the date of acquisition of jurisdiction by the Labor Arbiter over the person of the respondents. (10a)

**SECTION 15. SUBMISSION OF THE CASE FOR DECISION.** - Upon the submission by the parties of their position papers or replies, or the lapse of the period to submit the same, the case shall be deemed submitted for decision unless the Labor Arbiter calls for a hearing or clarificatory conference in accordance with Section 12 and 14(a) of this Rule, in which case, notice of hearing or clarificatory conference shall be immediately sent



to the parties. Upon termination of the said hearing or conference, the case is deemed submitted for decision. (11a)

**SECTION 16. INHIBITION.** – A Labor Arbiter may voluntarily inhibit himself/herself from the resolution of a case and shall so state in writing the legal justifications therefor. Upon motion of a party, either on the ground of relationship within the fourth civil degree of consanguinity or affinity with the adverse party or counsel, or on question of partiality or other justifiable grounds, the Labor Arbiter may inhibit himself/herself from further hearing and deciding the case. Such motion shall be resolved within five (5) days from the filing thereof. An order denying or granting a motion for inhibition is inappealable. (12a)

**SECTION 17. PERIOD TO DECIDE CASE.** – The Labor Arbiter shall render his/her decision within thirty (30) calendar days, without extension, after the submission of the case by the parties for decision, even in the absence of stenographic notes; Provided however, that cases involving overseas Filipino workers shall be decided within ninety (90) calendar days after the filing of the complaint. (13a)

**SECTION 18. CONTENTS OF DECISIONS.** – The decisions and orders of the Labor Arbiter shall be clear and concise and shall include a brief statement of the: a) facts of the case; b) issues involved; c) applicable laws or rules; d) conclusions and the reasons therefor; and e) specific remedy or relief granted. In cases involving monetary awards, the decisions or orders of the Labor Arbiter shall contain the amount awarded.

In case the decision of the Labor Arbiter includes an order of reinstatement, it shall likewise contain: a) a statement that the reinstatement aspect is immediately executory; and b) a directive for the employer to submit a report of compliance within ten (10) calendar days from receipt of the said decision. (14a)

**SECTION 19. FINALITY OF THE DECISION OR ORDER AND ISSUANCE OF CERTIFICATE OF FINALITY.**

- a) **Finality of the Decision or Order of the Labor Arbiter.** – If no appeal is filed with the Commission within the time provided under Article 223 of the Labor Code, as 10 amended, and Section 1, Rule VI of these Rules, the decision or order of the Labor Arbiter shall become final

and executory after ten (10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative.

- b) Certificate of Finality. – Upon expiration of the period provided in paragraph (a) of this Section, the Labor Arbiter shall issue a certificate of finality. In the absence of return cards, certifications from the post office or courier or other proofs of service to the parties, the Labor Arbiter may issue a certificate of finality after sixty (60) calendar days from date of mailing. (n)

**SECTION 20. REVIVAL AND RE-OPENING OR RE-FILING OF DISMISSED CASE and LIFTING OF WAIVER.** – A party may file a motion to revive or re-open a case dismissed without prejudice, within ten (10) calendar days from receipt of notice of the order dismissing the same; otherwise, the only remedy shall be to re-file the case. A party declared to have waived his/her right to file position paper may, at any time after notice thereof and before the case is submitted for decision, file a motion under oath to set aside the order of waiver upon proper showing that his/her failure to appear was due to justifiable and meritorious grounds. (16a)

## **RULE VI APPEALS**

**SECTION 1. PERIODS OF APPEAL.** – Decisions, awards, or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions or resolutions of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.

No motion or request for extension of the period within which to perfect an appeal shall be allowed. (1a)

SECTION 2. GROUNDS. – The appeal may be entertained only on any of the following grounds:

- a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter or Regional Director;
- b) If the decision, award or order was secured through fraud or coercion, including graft and corruption;
- c) If made purely on questions of law; and/or
- d) If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant. (2a)

SECTION 3. WHERE FILED. – The appeal shall be filed with the Regional Arbitration Branch or Regional Office where the case was heard and decided.

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL.

- a) The appeal shall be:
  - (1) filed within the reglementary period provided in Section 1 of this Rule;
  - (2) verified by the appellant himself/herself in accordance with Section 4, Rule 7 of the Rules of Court, as amended;
  - (3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, award or order;
  - (4) in three (3) legibly typewritten or printed copies; and
  - (5) accompanied by:
    - i) proof of payment of the required appeal fee and legal research fee;

- ii) posting of a cash or surety bond as provided in Section 6 of this Rule; and
  - iii) proof of service upon the other parties.
- b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.
- c) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed, his/her answer or reply to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his/her answer or reply within the said period may be construed as a waiver on his/her part to file the same.
- d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal. (4a)

SECTION 5. APPEAL FEE. – The appellant shall pay the prevailing appeal fee and legal research fee to the Regional Arbitration Branch or Regional Office of origin, and the official receipt of such payment shall form part of the records of the case. (5a)

SECTION 6. BOND. – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by original or certified true copies of the following:

- a) a joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.

- b) an indemnity agreement between the employer-appellant and bonding company;
- c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security;
- d) a certificate of authority from the Insurance Commission;
- e) certificate of registration from the Securities and Exchange Commission;
- f) certificate of accreditation and authority from the Supreme Court; and
- g) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

The Commission through the Chairman may on justifiable grounds blacklist a bonding company, notwithstanding its accreditation by the Supreme Court.

A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.

The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal. (6a)

**SECTION 7. RECORDS OF CASE ON APPEAL.** – The records of a case shall have a corresponding index of its contents which shall include the following: a) the original copy of the complaint; b) other pleadings and motions; c) minutes of the proceedings, notices, transcripts of stenographic notes, if any; d) decisions, orders, and resolutions as well as proof of service thereof, if available; e) the computation of the award; f) memorandum of appeal and the reply or answer thereto, if any, and proof of service, if available; g) official receipt of the appeal fee; and h) the appeal bond, if any.

The records shall be chronologically arranged and paged prominently.

**SECTION 8. TRANSMITTAL OF RECORDS OF CASE ON APPEAL.** – Within forty-eight (48) hours after the filing of the appeal, the records of the case shall be transmitted by the Regional Arbitration Branch or office of origin to the Commission.

**SECTION 9. FILING OF APPEAL; EFFECT.** – Without prejudice to immediate reinstatement pending appeal under Section 6 of Rule XI, once an appeal is filed, the Labor Arbiter loses jurisdiction over the case. All pleadings and motions pertaining to the appealed case shall thereafter be addressed to and filed with the Commission. (9a)

**SECTION 10. FRIVOLOUS OR DILATORY APPEALS.** – No appeal from an interlocutory order shall be entertained. To discourage frivolous or dilatory appeals, including those taken from interlocutory orders, the Commission after hearing may censure or cite in contempt the erring parties and their counsels, or subject them to reasonable fine or penalty. (10a)

**SECTION 11. APPEALS FROM DECISION OF OTHER AGENCIES.** – The Rules provided herein governing appeals from the decisions or orders of Labor Arbiters shall apply to appeals to the Commission from decisions or orders of the other offices or agencies appealable to the Commission according to law.

## **RULE VII**

### **PROCEEDINGS BEFORE THE COMMISSION**

**SECTION 1. JURISDICTION OF THE COMMISSION.** - The Commission shall exercise exclusive, original, and appellate jurisdiction in accordance with law.

**SECTION 2. COMPOSITION AND INTERNAL FUNCTIONS OF THE COMMISSION EN BANC AND ITS DIVISIONS.**

- a) **Composition.** - Unless otherwise provided by law, the Commission shall be composed of the Chairman and of twenty three (23) Commissioners.
- b) **Commission En Banc.** -The Commission shall sit en banc only for purposes of promulgating rules and regulations governing the hearing and disposition of cases before its Divisions and Regional Arbitration Branches, and for the formulation of policies affecting its administration and operations. It may, on temporary or emergency basis, allow cases within the jurisdiction of any Division to be heard by any other Division whose docket allows the additional workload and such transfer will not expose litigants to unnecessary additional expense.
- c) **Divisions.** - Unless otherwise provided by law, the Commission shall exercise its adjudicatory and all other powers, functions and duties through its eight (8) Divisions. Each Division shall consist of one member from the public sector who shall act as the Presiding Commissioner and one member each from the workers and employers sectors, respectively.

Of the eight (8) Divisions, the First, Second, Third, Fourth, Fifth and Sixth Divisions shall have exclusive territorial jurisdiction over appealed cases coming from Luzon; the Seventh Division, appealed cases from the Visayas Region; and the Eighth Division, appealed cases from Mindanao including those from the Autonomous Region for Muslim Mindanao.

- d) **Headquarters.** - As provided by law, the Commission and its First, Second, Third, Fourth, Fifth and Sixth Divisions for Luzon shall have their main offices in the National Capital Region, and the Seventh and Eighth Divisions for Visayas and Mindanao, in the cities of Cebu and Cagayan de Oro, respectively. (2a)

SECTION 3. THE CHAIRMAN. – The Chairman shall preside over all sessions of the Commission en banc. He/she is the Presiding Commissioner of the First Division. In case of the effective absence or incapacity of the Chairman, the Presiding Commissioner of the Second Division shall be the Acting Chairman. The Chairman, aided by the Executive Clerk of the Commission, shall have administrative supervision over the Commission and its Regional Arbitration Branches and all its personnel including the Executive Labor Arbiters and Labor Arbiters.

SECTION 4. COMMISSION EN BANC SESSION, QUORUM AND VOTE.

- a) Commission En Banc. – The Chairman shall call the Commission to an en banc session at least twice a year, preferably on the first week of June and the first week of December, to deliberate and decide on any matter before it. However, a majority of all the members of the Commission may call a special en banc session to discuss and decide on urgent and vital matters which need immediate action.
- b) Quorum. – The presence of a majority of all the members of the Commission shall be necessary to constitute a quorum. The vote or concurrence of the majority of the members constituting a quorum shall be the decision or resolution of the Commission en banc.
- c) Division. – The presence of at least two (2) Commissioners of a Division shall constitute a quorum. The concurrence of two (2) Commissioners of a Division shall be necessary for the pronouncement of a judgment or resolution.

Whenever the required membership in a Division is not complete and/or the concurrence of two (2) Commissioners cannot be obtained to arrive at a judgment or resolution, the Chairman shall designate such number of additional Commissioners belonging to the same sector from the other Divisions as may be necessary. In the event that all the members of a division inhibit themselves from resolving a case, the Chairman may create a Special Division or assign the case to any of the other Divisions.

- d) Role of Chairman in the Division. – The Chairman of the Commission may convene and preside over the session of any Division to consider any case pending before it and participate in its deliberations, if in his/



her judgment, his/her presence therein will best serve the interests of labor justice. He/she shall not however, participate in the voting by the Division, except when he/she is acting as Presiding Commissioner of the Division in the absence of the regular Presiding Commissioner. (4a)

**SECTION 5. CONSULTATION.** – The conclusions of a Division on any case or matter submitted to it for decision shall be reached in consultation before the case is assigned to a member for the writing of the opinion. It shall be mandatory for the Division to meet for the purpose of the consultation ordained herein. A certification to this effect signed by the Presiding Commissioner of the Division shall be issued and a copy thereof attached to the record of the case and served upon the parties.

**SECTION 6. DISSENTING OPINION.** – Should any member of a Division indicate his/her intention to write a dissenting opinion, he/she may file the same within the period prescribed for deciding or resolving the appeal; otherwise, such written dissenting opinion shall not be considered part of the records of the case.

**SECTION 7. INHIBITION.** – No motion to inhibit the entire Division of the Commission shall be entertained. However, any Commissioner may inhibit himself/herself from the consideration and resolution of any case or matter before the Division and shall so state in writing the legal or justifiable grounds therefor. In the event that a member inhibits himself/herself, the case shall be raffled by the Executive Clerk or Deputy Executive Clerk to either of the two (2) remaining Commissioners. In case two (2) Commissioners in a Division inhibit themselves in a case or matter before it, the Chairman shall, as far as practicable, appoint two (2) Commissioners from other Divisions representing the sector of the Commissioners who inhibited themselves.

**SECTION 8. ABSTENTION.** – In the event of an abstention, and the concurrence of two (2) Commissioners to arrive at a judgment or resolution cannot be obtained, Section 4 (c), second paragraph, of this Rule shall apply.

**SECTION 9. CONSOLIDATION OF CASES.** – Appealed and injunction cases involving the same parties, issues, or related questions of fact or law shall be consolidated before the Commissioner to whom the case with the lowest case number is assigned. Notice of the consolidation shall be given

by the Executive Clerk or Deputy Executive Clerk to the other members of the concerned Divisions.

**SECTION 10. TECHNICAL RULES NOT BINDING.** – The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

In any proceeding before the Commission, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner to exercise complete control of the proceedings at all stages.

**SECTION 11. CONCILIATION AND MEDIATION.** – In the exercise of its exclusive, original and appellate jurisdiction, the Commission may exert all efforts towards the amicable settlement of a labor dispute. The settlement of cases on appeal, to be valid and binding between the parties, shall be approved by the Commission. (11a)

**SECTION 12. ROLE OF THE LABOR ARBITER ASSIGNED TO THE COMMISSION.** – In the resolution of cases on appeal, and those mentioned in Rules VIII and X, the Commission, in the exigency of the service, shall be assisted by a Labor Arbiter who may be directed to study, review, hear and receive evidence, and submit reports thereon. (12a)

**SECTION 13. FORM OF DECISION, RESOLUTION AND ORDER.** – The decision, resolution and order of the Commission shall state clearly and distinctly the findings of facts, issues, and conclusions of law on which it is based, and the relief granted, if any. If the decision, resolution or order involves monetary awards, the same shall contain the specific amount awarded as of the date the decision is rendered.

**SECTION 14. FINALITY OF DECISION OF THE COMMISSION AND ENTRY OF JUDGMENT.**

- a) Finality of the Decisions, Resolutions or Orders of the Commission. – Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten

(10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative.

- b) Entry of Judgment. – Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.

In the absence of return cards, certifications from the post office or the courier or other proofs of service to the parties, the Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from date of mailing. (14a)

**SECTION 15. MOTIONS FOR RECONSIDERATION.** – Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained. (15a)

## **RULE VIII CERTIFIED CASES**

**SECTION 1. POLICY.** – It is the declared policy of certification of labor disputes for compulsory arbitration to ensure and maintain industrial peace based on social justice and national interest by having a full, complete and immediate settlement or adjudication of all labor disputes between the parties, as well as issues that are relevant to or incidents of the certified issues.

**SECTION 2. CERTIFIED LABOR DISPUTES.** – Certified labor disputes are cases certified to the Commission for compulsory arbitration under Article 263 (g) of the Labor Code.

**SECTION 3. EFFECTS OF CERTIFICATION.**

- a) Upon certification, the intended or impending strike or lockout is automatically enjoined, notwithstanding the filing of any motion for reconsideration of the certification order nor the non resolution of any

such motion which may have been duly submitted to the Office of the Secretary of Labor and Employment. If a work stoppage has already taken place at the time of the certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.

- b) All cases between the same parties, except where the certification order specifies otherwise the issues submitted for arbitration which are already filed or may be filed, and are relevant to or are proper incidents of the certified case, shall be considered subsumed or absorbed by the certified case, and shall be decided by the appropriate Division of the Commission.

Subject to the second paragraph of Section 4 of Rule IV, the parties to a certified case, under pain of contempt, shall inform their counsels and the Division concerned of all cases pending with the Regional Arbitration Branches and the Voluntary Arbitrators relative or incident to the certified case before it.

- c) Whenever a certified labor dispute involves a business entity with several workplaces located in different regions, the Division having territorial jurisdiction over the principal office of the company shall acquire jurisdiction to decide such labor dispute; unless the certification order provides otherwise.

**SECTION 4. EFFECTS OF DEFIANCE.** – Non-compliance with the certification order of the Secretary of Labor and Employment shall be considered as an illegal act committed in the course of the strike or lockout, and shall authorize the Commission to enforce the same under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and/or other affirmative relief, even criminal prosecution against the liable parties.

The Commission may also seek the assistance of law enforcement agencies to ensure compliance and enforcement of its orders and resolutions.

## SECTION 5. PROCEDURE IN CERTIFIED CASES. –

- a) When there is no need to conduct a clarificatory hearing, the Commission shall resolve all certified cases within thirty (30) calendar days from receipt by the assigned Commissioner of the complete records, which shall include the position papers of the parties and the order of the Secretary of Labor and Employment denying the motion for reconsideration of the certification order, if any.
- b) Where a clarificatory hearing is needed, the Commission shall, within five (5) calendar days from receipt of the records, issue a notice to be served on the parties through the fastest means available, requiring them to appear and submit additional evidence, if any. All certified cases shall be resolved by the Commission within sixty (60) calendar days from receipt of the complete records by the assigned Commissioner.
- c) No motion for extension or postponement shall be entertained. (5a)

SECTION 6. EXECUTION OF JUDGMENT IN CERTIFIED CASE. – Upon issuance of the entry of judgment, the Commission, *motu proprio* or upon motion by the proper party, may cause the execution of the judgment in the certified case.

## **RULE IX CONTEMPT**

SECTION 1. DIRECT CONTEMPT. – The Chairman or any Commissioner or Labor Arbiter may summarily adjudge guilty of direct contempt any person committing any act of misbehavior in the presence of or so near the Chairman or any Commissioner or Labor Arbiter as to obstruct or interrupt the proceedings before the same, including disrespect toward said officials, offensive acts toward others, or refusal to be sworn or to answer as a witness or to subscribe to an affidavit or deposition when lawfully required to do so. If the offense is committed against the Commission or any member thereof, the same shall be punished by a fine not exceeding Five Hundred Pesos (P500.00) or imprisonment not exceeding five (5) days, or both; and, if the offense is committed against any Labor Arbiter, the same shall be punished by a fine not exceeding One Hundred Pesos (P100.00) or imprisonment not exceeding one (1) day, or both.

Any person adjudged guilty of direct contempt by a Labor Arbiter may, within a period of five (5) calendar days from notice of the judgment, appeal the same to the Commission and the execution of said judgment shall be suspended pending resolution of the appeal upon the filing by said person of a bond on condition that he will abide by and perform the judgment should the appeal be decided against him/her. A judgment of the Commission on direct contempt shall be immediately executory and inappealable.

**SECTION 2. INDIRECT CONTEMPT.** – The Commission or any Labor Arbiter pursuant to Article 218 (d) of the Labor Code may cite any person for indirect contempt and impose the appropriate penalty under any of the following grounds:

- a) Misbehavior of any officer or employee in the performance of his/her official duties or in his/her official transaction;
- b) Disobedience of, or resistance to, a lawful writ, order or decision;
- c) Any abuse of, or any unlawful interference with the processes or proceedings not constituting direct contempt;
- d) Any improper conduct tending, directly or indirectly, to impede, obstruct or degrade the administration of justice;
- e) Assuming to be an attorney or a representative of party without authority;
- f) Failure to obey a subpoena duly served; or
- g) Other grounds analogous to the foregoing.

**A. Where charge to be filed.**– Where the charge for indirect contempt has been committed against the Commission or against an Officer appointed by it, the charge may be filed with the Commission. Where such contempt has been committed against the Labor Arbiter, the charge may be filed with the Regional Arbitration Branch subject to appeal to the Commission in the same manner as provided in Section 1 of this Rule.

**B. How proceedings commenced.**– Proceedings for indirect contempt may be initiated *motu proprio* by the Commission or any Labor Arbiter by

an order or any other formal charge requiring the respondent to show cause why he/she should not be punished for contempt.

In all other cases, a charge for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings in the Commission. If the contempt charge arose out of or is related to a principal action pending in the Commission or Regional Arbitration Branch, the petition for contempt shall allege that fact but said petition shall be consolidated, heard, and decided separately, unless the Commission or Labor Arbiter in its/his/her discretion, orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

C. Hearing.- Upon the date set for hearing, the Commission or Labor Arbiter shall proceed to investigate the charge and consider such comment, answer, defense or testimony as the respondent may make or offer. Failure to attend the scheduled hearing and to give a satisfactory explanation in writing to the Commission or Labor Arbiter will result in the waiver of the respondent to be present during the hearing.

D. Punishment for indirect contempt.- If the respondent is adjudged guilty of indirect contempt committed against the Commission or any member thereof, he/she may be punished by a fine of One Thousand (P1,000.00) Pesos per day for every act of indirect contempt; and, if the offense is committed against any Labor Arbiter, the same may be punished by a fine of Five Hundred (P500.00) Pesos per day for every act of indirect contempt. Each day of defiance of, or disobedience to, or non-enforcement of a final order, resolution, decision, ruling, injunction, or processes, shall constitute an indirect contempt of the Commission. If the contempt consists of the violation of an injunction or omission to do an act which is within the power of the respondent to perform, the respondent shall, in addition, be made liable for damages as a consequence thereof. The damages shall be measured by the extent of the loss or injury sustained by the aggrieved party by reason of the acts or omissions of which the contempt is being prosecuted, and the costs of the proceedings, including payment of interest on damages.

E. A writ of execution may be issued to enforce the decision imposing such fine and/or consequent damages as punishment for indirect contempt.  
(2a)

## **RULE X INJUNCTION**

### **SECTION 1. INJUNCTION IN ORDINARY LABOR DISPUTES.**

- A preliminary injunction or restraining order may be granted by the Commission through its Divisions pursuant to the provisions of paragraph (e) of Article 218 of the Labor Code, as amended, when it is established on the basis of the sworn allegations in the petition that the acts complained of involving or arising from any labor dispute before the Commission, which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party.

A certification of non-forum shopping shall accompany the petition for injunction. The writ of preliminary injunction or temporary restraining order shall become effective only upon posting of the required cash bond in the amount to be determined by the Commission to answer for any damage that may be suffered by the party enjoined, if it is finally determined that the petitioner is not entitled thereto.

**SECTION 2. INJUNCTION IN STRIKES OR LOCKOUTS.** - A preliminary or permanent injunction may be granted by the Commission only after hearing the testimony of witnesses and with opportunity for cross-examination in support of the allegations of the complaint or petition made under oath, and testimony by way of opposition thereto, if offered, and only after a finding of fact by the Commission:

- a) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof.



- b) That substantial and irreparable injury to petitioner's property will follow;
- c) That as to each item of relief to be granted, greater injury will be inflicted upon the petitioner by the denial of relief than will be inflicted upon respondents by the granting of relief;
- d) That petitioner has no adequate remedy at law; and
- e) That the public officers charged with the duty to protect petitioner's property are unable or unwilling to furnish adequate protection.

SECTION 3. HEARING; NOTICE THEREOF. - Hearings shall be held after due and personal notice thereof has been served, in such manner as the Commission shall direct, to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful acts have been threatened or committed charged with the duty to protect petitioner's property.

SECTION 4. RECEPTION OF EVIDENCE; DELEGATION. - The reception of evidence for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters who shall conduct such hearings in such places as he/she may determine to be accessible to the parties and their witnesses, and shall thereafter submit his/her report and recommendation to the Commission within fifteen (15) days from such delegation.

SECTION 5. OCULAR INSPECTION. - The Chairman, any Commissioner, Labor Arbiter or their duly authorized representatives, may, at any time during working hours, conduct an ocular inspection on any establishment, building, ship or vessel, place or premises, including any work, material, implement, machinery, appliance or any object therein, and ask any employee, laborer, or any person, as the case may be, for any 20 information or data concerning any matter or question relative to the object of the petition.

The ocular inspection reports shall be submitted to the appropriate Division within twenty-four (24) hours from the conduct thereof.

## SECTION 6. TEMPORARY RESTRAINING ORDER; REQUISITES.

- If the petitioner shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to petitioner's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, or by affidavits of the petitioner's witnesses, sufficient, if sustained, to justify the Commission in the issuance thereof.

SECTION 7. CASH BOND. - No temporary restraining order or writ of preliminary injunction shall be issued except on the condition that petitioner shall first file an undertaking to answer for the damages and post a cash bond in the amount of Fifty Thousand Pesos (P50,000.00), or such higher amount as may be determined by the Commission, to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission.

SECTION 8. EFFECTIVITY OF TEMPORARY RESTRAINING ORDER. - A temporary restraining order shall be effective for no longer than twenty (20) days reckoned from the posting of the cash bond required under the preceding section. During the said period, the parties shall be required to present evidence to substantiate their respective positions in the main petition.

SECTION 9. EFFECTS OF DEFIANCE. - The order or resolution enjoining the performance of illegal acts shall be immediately executory in accordance with the terms thereof. In case of non-compliance, the Commission shall impose such sanctions, and shall issue such orders, as may be necessary to implement the said order or resolution, including the enlistment of law enforcement agencies having jurisdiction over the area for the purpose of enforcing the same.

SECTION 10. ORDINARY REMEDY IN LAW OR IN EQUITY. - Nothing in this Rule shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his/her ordinary remedy by suit at law or in equity.

## **RULE XI**

### **EXECUTION PROCEEDINGS**

#### **SECTION 1. EXECUTION UPON FINALITY OF DECISION OR ORDER. –**

- a) A writ of execution may be issued *motu proprio* or on motion, upon a decision or order that has become final and executory.
- b) If an appeal has been duly perfected and finally resolved by the Commission, a motion for execution may be filed before the Labor Arbiter, when the latter has possession of the case records or upon submission of certified true copies of the decisions or final order/s sought to be enforced including notice of decision or order and the entry of judgment, copy furnished the adverse party.
- c) Except that, as provided for in Section 18 of Rule V in relation to Section 9 of this Rule, and in those cases where partial execution is allowed by law, the Labor 21 Arbiter shall retain duplicate original copies of the decision to be implemented and proof of service thereof for the purpose of immediate enforcement. (1a)

**SECTION 2. EXECUTION BY MOTION OR BY INDEPENDENT ACTION. –** Pursuant to Art. 224 of the Labor Code, a decision or order may be executed on motion within five (5) years from the date it becomes final and executory. After the lapse of such period, the judgment shall become dormant, and may only be enforced by an independent action before the Regional Arbitration Branch of origin and within a period of ten (10) years from date of its finality. (8a)

**SECTION 3. EFFECT OF PERFECTION OF APPEAL ON EXECUTION. –** The perfection of an appeal shall stay the execution of the decision of the Labor Arbiter except execution for reinstatement pending appeal. (9a)

**SECTION 4. EFFECT OF PETITION FOR CERTIORARI ON EXECUTION. –** A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts. (10a)

SECTION 5. PRE-EXECUTION CONFERENCE. - Within two (2) working days from receipt of a motion for the issuance of a writ of execution which shall be accompanied by a computation of a judgment award, if necessary, the Commission or the Labor Arbiter may schedule a pre-execution conference to thresh out matters relevant to execution including the final computation of monetary award. The preexecution conference shall not exceed fifteen (15) calendar days from the initial schedule, unless the parties agreed to an extension.

Any order issued by the Labor Arbiter in the pre-execution conference is not appealable, subject to the remedies available under Rule XII. (2a)

SECTION 6. ISSUANCE, CONTENTS AND EFFECTIVITY OF A WRIT OF EXECUTION. - The writ of execution shall issue in the name of the Republic of the Philippines signed by the Commission or Labor Arbiter ordering the Sheriff to execute the decision, order, or award of the Commission or Labor Arbiter, and must contain the complete name of the party, whether natural or juridical, against whom the writ of execution was issued, the dispositive portion thereof, the amount, if any, to be demanded, and all legal fees to be collected from the losing party or any other person required by law to obey the same.

A writ of execution shall be effective for a period of five (5) years from issuance thereof. In case of partial satisfaction of judgment during the lifetime of the writ, the Labor Arbiter shall *motu proprio* issue an updated writ reflecting the amount collected and the remaining balance. (3a)

SECTION 7. ENFORCEMENT OF WRIT OF EXECUTION. - In executing a decision, resolution or order, the Sheriff, or other authorized officer acting as Sheriff of the Commission, shall serve the writ within three (3) days from receipt of the same, subject to the requirements of Sections 12 and 13 of this Rule and shall be guided strictly by these Rules and by the Manual on Execution of Judgment, which shall form part of these Rules. In the absence of applicable rules, the Rules of Court, as amended, shall be applied in a suppletory manner. (7a)

## SECTION 8. MANNER OF EXECUTION OF MONETARY JUDGMENT.

- a) Immediate payment on demand. – The Sheriff shall enforce a monetary judgment by demanding the immediate payment of the full amount stated in the writ of execution and all legal fees from the losing party or any other person required by law to obey the same.
- b) In the event of failure or refusal of the losing party to pay the judgment award, the Sheriff shall immediately proceed against the cash deposit or surety bond posted by the losing party, if any;
- c) If the bonding company refuses to pay or the bank holding the cash deposit of the losing party refuses to release the garnished amount despite the order or pertinent processes issued by the Labor Arbiter or the Commission, the president or the responsible officers or authorized representatives of the said bonding company or the bank who resisted or caused the non-compliance shall be either cited for contempt, or held liable for resistance and disobedience to a person in authority or the agents of such person as provided under the pertinent provision of the Revised Penal Code. This rule shall likewise apply to any person or party who unlawfully resists or refuses to comply with the break open order issued by the Labor Arbiter or the Commission.

For this purpose, the Labor Arbiter or the Commission may issue an order directing the sheriff to request the assistance of law enforcement agencies to ensure compliance with the writ of execution, orders or processes.

A bonding company cited for contempt, or for an offense defined and punishable under the pertinent provision of the Revised Penal Code shall be barred from transacting business with the Commission.

- d) Should the cash deposit or surety bond be insufficient, or in case the surety bond cannot be proceeded against for any reason, the Sheriff shall, within five (5) days from demand, execute the monetary judgment by garnishing bank deposits, credits, receivables, and other personal property not capable of manual delivery, if the same is not enough, proceed to levy the personal property of the losing party, and if still insufficient, against the real property not exempt from execution, sufficient to cover

the judgment award, which may be disposed of for value at a public auction to the highest bidder.

- e) Proceeds of execution shall be deposited with the Cashier of the concerned Division or Regional Arbitration Branch, or with an authorized depositary bank. Where payment is made in the form of a check, the same shall be payable to the Commission.
- f) For monetary judgment on cases involving overseas Filipino workers, the manner of execution shall be in accordance with Republic Act No. 10022. (5a)

**SECTION 9. EXECUTION OF REINSTATEMENT PENDING APPEAL.** – In case the decision includes an order of reinstatement, and the employer disobeys the directive under the second paragraph of Section 18 of Rule V or refuses to reinstate the dismissed employee, the Labor Arbiter shall immediately issue writ of execution, even pending appeal, directing the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such non-reinstatement in the amount specified in the decision.

The Sheriff shall serve the writ of execution upon the employer or any other person required by law to obey the same. If he/she disobeys the writ, such employer or person may be cited for contempt in accordance with Rule IX. (6a)

**SECTION 10. RESOLUTION OF MOTION TO QUASH.** – A motion to quash shall be resolved by the Labor Arbiter within ten (10) working days from submission of said motion for resolution. The mere filing of a motion to quash shall not stay execution proceedings. (11a)

**SECTION 11. THIRD PARTY CLAIM.**

- a) If the property levied is claimed by any person other than the losing party, such person may file a third party claim not later than five (5) days from the last day of posting or publication of the notice of execution sale, otherwise the claim shall be forever barred. Such third party claim must comply with the following requirements:

- (1) An affidavit stating title to property or right to the possession thereof with supporting evidence;
  - (2) Posting of a bond equivalent to the amount of the claim or judgment award, whichever is lower; and
  - (3) Payment of prevailing filing fee.
- b) Where filed - The third party claim shall be filed with the Commission or Labor Arbiter where the execution proceeding is pending, with proof of service of copies thereof to the Sheriff and the prevailing party.
  - c) Effect of Filing. - The filing of a third party claim that has complied with the requirements set forth under paragraph (a) of this Section shall automatically suspend the proceedings with respect to the execution of the properties subject of the third party claim.

Upon approval of the bond, the Labor Arbiter shall issue an order releasing the levied property or a part thereof subject of the claim unless the prevailing party posts a counter bond in an amount not less than the value of the levied property.

The Labor Arbiter may require the posting of additional bond upon showing by the other party that the bond is insufficient.

- d) Proceedings. -The propriety of the third party claim shall be resolved within ten (10) working days from submission of the claim for resolution. The decision of the Labor Arbiter is not appealable but may be elevated to the Commission and resolved in accordance with Rule XII hereof. Pending resolution thereof, execution shall proceed against all other properties not subject of the third party claim. (12a)

**SECTION 12. SHERIFF'S RETURN AND REPORT.** - The writ of execution shall be returned to the Commission or Labor Arbiter immediately after the full satisfaction of the judgment award. In case of partial or non-satisfaction of the judgment, the sheriff enforcing the writ shall submit a report updating the Commission or Labor Arbiter who issued the writ of execution on the status of the enforcement thereof, not later than thirty (30) days from receipt of such writ and every thirty (30) days thereafter during

the lifetime of the writ unless fully satisfied. A copy of the report shall be furnished the Chairman and the Executive Labor Arbiter.

Failure on the part of the Sheriff to submit the report or return required under Section 12 of this Rule within the stated period shall subject him/her to administrative fine under Rule XIV of this Rule, or suspension for fifteen (15) days without pay, or both. (13a, 14a)

**SECTION 13. DESIGNATION OF SPECIAL SHERIFFS** - The Chairman of the Commission may designate special Sheriffs and take any measure, under existing laws, to ensure compliance with the decisions, resolutions or orders of the Commission and those of Labor Arbiters. (15a)

**SECTION 14. EFFECT OF REVERSAL OF EXECUTED JUDGMENT.** – Where the executed judgment is totally or partially reversed or annulled by the Court of Appeals or the Supreme Court, the Labor Arbiter shall, on motion, issue such orders of restitution of the executed award, except wages paid during reinstatement pending appeal.

## **RULE XII EXTRAORDINARY REMEDIES**

**SECTION 1. VERIFIED PETITION.** – A party aggrieved by any order or resolution of the Labor Arbiter including those issued during execution proceedings may file a verified petition to annul or modify such order or resolution. The petition may be accompanied by an application for the issuance of a temporary restraining order and/or writ of preliminary or permanent injunction to enjoin the Labor Arbiter, or any person acting under his/her authority, to desist from enforcing said resolution or order.

**SECTION 2. GROUNDS.** - The petition filed under this Rule may be entertained only on any of the following grounds:

- a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter.
- b) If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the petitioner.



- c) If a party by fraud, accident, mistake or excusable negligence has been prevented from taking an appeal;
- d) If made purely on questions of law; or
- e) If the order or resolution will cause injustice if not rectified.

SECTION 3. WHEN AND WHERE FILED. – Not later than ten (10) calendar days from receipt of the order or resolution of the Labor Arbiter, the aggrieved party may file a petition with the Commission furnishing a copy thereof to the adverse party.

SECTION 4. REQUISITES OF THE PETITION. – The petition filed under this Rule shall:

- a) be accompanied by a clear original or certified true copy of the order or resolution assailed, together with clear copies of documents relevant or related to the said order or resolution for the proper understanding of the issue/s involved;
- b) contain the arbitral docket number and appeal docket number, if any;
- c) state the material date showing the timeliness of the petition;
- d) be verified by the petitioner himself/herself in accordance with Section 4, Rule 7 of the Rules of Court, as amended;
- e) be in the form of a memorandum which shall state the ground/s relied upon, the argument/s in support thereof and the reliefs prayed for;
- f) be in three (3) legibly written or printed copies; and
- g) be accompanied by:
  - i) certificate of non-forum shopping;
  - ii) proof of service upon the other party/ies and the Labor Arbiter who issued the order or resolution being assailed or questioned; and
  - iii) proof of payment of the required fees.

**SECTION 5. THE PUBLIC AND PRIVATE RESPONDENTS IMPEADED IN THE PETITION.** – The Labor Arbiter shall be jointly impleaded with the private respondent as a public respondent in a nominal capacity. As used in this Rule, the private respondent refers to the party interested in sustaining the order or resolution of the Labor Arbiter. It shall be the duty of the private respondent to appear and defend, both in his/her behalf and that of the public respondent, and the cost awarded in such proceedings in favor of the petitioner shall be against the private respondent only. The public respondent shall not appear or file an answer or comment to the petition or any pleading therein.

**SECTION 6. SERVICE AND FILING OF PLEADINGS.** – The party filing the pleadings shall serve the other party with copies thereof in accordance with Rule 13 of the Rules of Court furnishing the Labor Arbiter with a copy.

If the last day to serve and file a pleading falls on a Saturday, Sunday or holiday, the pleading shall be served and filed on the first working day immediately following such Saturday, Sunday or Holiday.

**SECTION 7. ANSWER TO THE PETITION.** – Within ten(10) calendar days from the receipt of the petition, the private respondent shall file his/her answer therein stating the ground/s why the petition should be denied. Failure on the part of the private respondent, to file his/her answer within the said period may be construed as a waiver to file the same.

**SECTION 8. OPPOSITION TO THE INJUNCTIVE RELIEF; WHEN FILED.** – In case the petitioner also prays for an injunctive relief, the private respondent may file his/her verified opposition or comment to the application for injunctive relief not later than five (5) calendar days from receipt of a copy of the petition.

**SECTION 9. EFFECT OF FILING OF PETITION.** – Upon filing of the petition, the proceedings before the Labor Arbiter shall continue unless restrained. In case of execution, the proceedings in accordance with Rule XI of these Rules shall not be suspended, but no money collected or credit garnished may be released or properties levied upon be sold by public auction within fifteen (15) calendar days from the filing of the petition. If

no temporary restraining order or writ of preliminary injunction is issued within the said period, the money collected or credit garnished shall be released and/or the properties levied upon sold by public auction and the proceeds of the sale applied, to satisfy the judgment.

In case of execution proceedings, the Labor Arbiter shall immediately inform in writing the Commission or the Division where the petition is pending of the satisfaction of the judgment, and, if circumstances warrant, the Commission shall dismiss the petition for being moot.

The records of the case shall not be elevated to the Commission unless otherwise ordered.

**SECTION 10. VERIFIED APPLICATION, ISSUANCE OF TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION; BOND:** – Upon the filing of a verified application for injunctive relief, together with supporting affidavits and documents, the Commission may issue a writ of a preliminary injunction based on any of the applicable grounds provided for in Section 3, Rule 58 of the Rules of Court for the preservation of the rights of the parties pending resolution of the petition. The writ of preliminary injunction shall be effective for a non-extendible period of sixty (60) calendar days from service on the private respondent.

If it shall appear from facts shown by the verified application and affidavits that great and irreparable damage and/or injury would result to the petitioner before the petition can be resolved, the Commission may issue a temporary restraining order *ex parte* effective for a non-extendible period of twenty (20) calendar days from service on the private respondent.

In the issuance of a temporary restraining order or writ of preliminary injunction, the Commission shall require the posting of a cash bond in the amount of Fifty Thousand Pesos (P50,000.00), or such higher amount as may be determined by the Commission, to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs.

An additional cash bond may be required by the Commission in the issuance of a writ of preliminary injunction.

## SECTION 11. EFFECTIVITY OF TEMPORARY RESTRAINING ORDER OR WRIT OF PRELIMINARY INJUNCTION.

The temporary restraining order or writ of preliminary injunction shall become effective only upon posting of the required cash bond. In the event that the application for a writ of preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated.

The application for a temporary restraining order or a writ of preliminary injunction may be denied, or if granted, may be dissolved, on any grounds provided for in Section 6, Rule 58 of the Rules of Court.

SECTION 12. EFFECT OF INJUNCTION. – The issuance of a temporary restraining order or a writ of preliminary injunction, unless otherwise declared by the Commission, shall not suspend the proceedings before the Labor Arbiter or stay the implementation of the writ of execution but shall only restrain or enjoin such particular act/s as therein decreed to be restrained or enjoined.

SECTION 13. RESOLUTION OF PETITION. – If the Commission finds that the allegations of the petition are true, it shall:

- a) render judgment for the relief prayed for or to which the petitioner is entitled, and/or
- b) grant a final injunction perpetually enjoining the Labor Arbiter or any person acting under his/her authority from the commission of the act/s or confirming the preliminary injunction.

However, the Commission may dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

SECTION 14. RECOVERY FROM THE INJUNCTION BOND. – The amount of damages that may be recovered by the private respondent from the injunction bond of the petitioner shall be ascertained and awarded in the decision/order/resolution finally disposing of the issue on the application for injunction.

SECTION 15. NO APPEAL FROM THE ORDER OR RESOLUTION OF THE LABOR ARBITER ARISING FROM EXECUTION PROCEEDINGS OR OTHER INCIDENTS. – Except by way of a petition filed in accordance with this Rule, no appeal from the order or resolution issued by the Labor Arbiter during the execution proceedings or in relation to incidents other than a decision or disposition of the case on the merits, shall be allowed or acted upon by the Commission.

### **RULE XIII**

#### **COMMISSION SEAL AND RECORDS, AND POWERS AND DUTIES OF COMMISSION OFFICIALS**

SECTION 1. SEAL OF THE COMMISSION. – The seal of the National Labor Relations Commission shall be of standard size, circular, with the inscription, running from left to right on the upper outside edge, the words “NATIONAL LABOR RELATIONS COMMISSION”, and the lower outside edge, the words “REPUBLIC OF THE PHILIPPINES”, with a design at the center containing the coat of arms of the Department of Labor and Employment.

SECTION 2. THE EXECUTIVE CLERK. – The Executive Clerk shall assist the Commission when sitting en banc and when acting through the First Division, and shall perform such similar or equivalent functions and duties as are discharged by the Clerk of Court of the Court of Appeals.

SECTION 3. DEPUTY EXECUTIVE CLERKS. – The Deputy Executive Clerks of the other Divisions shall assist the Commission when acting through its Division, and shall perform similar functions and duties as discharged by the Deputy Clerks of Court of the Court of Appeals, and as enumerated herein as functions of the Executive Clerk relative to their respective Divisions. (3a)

SECTION 4. DUTIES AND FUNCTIONS OF THE EXECUTIVE CLERK AND DEPUTY EXECUTIVE CLERKS. –

- a) Custody of Seal and Books. – He/she shall keep in his/her care and custody the Seal of the Commission, together with all the books necessary for the recording of the proceedings of the Commission, including the records, files and exhibits;

- b) Filing of Pleadings. – He/she shall receive and file all cases and pleadings and documents indicating thereon the date and time filed. All pleadings shall be filed in three (3) legibly typewritten copies in legal size;
- c) Raffle and Assignment of Cases. – He/she shall assign appealed cases for study or report strictly by raffle or as directed by the Chairman. In this connection, the raffle of cases for study or report must be attended by the duly designated representative of the Members of the appropriate Division;
- d) Service of Processes, Orders and Decisions. – He/she shall serve parties and counsel processes, notices of hearings, copies of decisions, resolutions or orders issued by the Commission by registered mail, by courier or by personal service and immediately attach the returns or proofs of delivery thereof to the records;
- e) Commission Calendar and Minutes Book. – He/she shall prepare the Commission or Division calendars of sessions, attend such sessions personally and immediately prepare the minutes thereof. For this purpose, he/she shall keep a minutes book;
- f) General Docket. – The Executive Clerk shall keep a general docket for the Commission, each page of which shall be numbered and prepared for receiving all the entries in a single page, and shall enter therein all original and appealed cases before it, numbered consecutively in the order in which they were received and, under the heading of each case, the date and hour of each pleading filed, of each order, decision or resolution entered, and of each other step or action taken in the case; so that, by reference to any single page, the history of the case may be known;
- g) Promulgation and Promulgation Book. – He/she shall promulgate decisions and final resolutions on the same date the same is filed with his/her office and indicate the date and time of promulgation and attest the same by his/her signature on the first page thereof. He/she shall immediately furnish the Chairman with a copy of such decision, resolution, or order with a summary of the nature thereof and the issue involved therein. He/she shall keep a promulgation book which indicates the date and time of promulgation, the case number, title of the case, the ponente, the nature of the decision or final resolution and

the action taken by the Commission by quoting the dispositive portion thereof. Notices of said decisions, resolutions or orders shall be sent in sealed envelopes to parties and their counsel within forty-eight (48) hours from promulgation;

- h) Entry of Judgment. – He shall keep a book of entries of judgment, decisions, resolutions and orders containing in chronological order the entries of all final decisions, resolutions and orders of the Commission;
- i) Disposition and Remand of Records. – Upon entry of judgment, he/she shall immediately remand the records of the case to the Regional Arbitration Branch of origin, Regional Director or his/her duly authorized officer, as the case may be. The Records Unit shall immediately post said records without delay within two (2) working days;
- j) Monthly Accomplishment Reports. – He/she shall submit a monthly accomplishment report of the Commission or Division not later than the 7th day of the following month;
- k) Other Functions. – He/she shall perform other functions as directed by the Chairman or the Commission en banc. (4a)

SECTION 5. BOARD SECRETARIES. – The Board Secretaries of the Commission shall assist the Executive Clerk or Deputy Executive Clerks in the performance of their duties and functions relative to the Commission or their respective Divisions.

SECTION 6. ISSUANCE OF CERTIFIED COPIES. – Unless otherwise restricted by Section 8 hereof, the Executive Clerk, Deputy Executive Clerks, and the authorized officers of the Regional Arbitration Branches shall prepare, for any person asking for the same, a certified copy, under the Seal of the Commission, of any paper, record, decision, resolution, order or entry by and in his/her office, proper to be certified, after payment of the standard fees to the Commission duly receipted for; Provided, that a pauper litigant, as defined by law, shall be exempted from paying any fee for certified copies of any document, including transcripts of stenographic notes.

SECTION 7. POWER TO ADMINISTER OATH. – The Chairman, Members of the Commission, the Executive Clerk, the Deputy Executive

Clerks, the Executive Labor Arbiters, the Labor Arbiters, and other persons designated or commissioned by the Chairman of the Commission, shall have the power to administer oath on all matters or proceedings related to the performance of their duties.

**SECTION 8. ACCESS TO COMMISSION RECORDS.** - All official records of the Commission shall be open to the public during regular office hours, except those kept by it in the nature of confidential reports, records or communications which cannot be divulged without violating private rights or prejudicing the public interest. Minutes of hearings or sessions may not be divulged until after promulgation of the decision or resolution.

## **RULE XIV ADMINISTRATIVE SANCTIONS**

**SECTION 1. IMPOSITION OF FINES.** The Commission and Labor Arbiters, by authority of the Chairman, may after hearing, impose administrative fines which shall not be less than Five Hundred Pesos (P500.00) nor more than Ten Thousand Pesos (P10,000.00) to ensure compliance with decisions, orders or awards.

The imposition thereof may be enforced through issuance of a writ of execution. (n)

## **RULE XV EFFECTIVITY**

**SECTION 1. EFFECTIVITY.** - .These Rules shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation.

Signed this 31st day of May 2011 at Davao City, Philippines.



REPUBLIC ACT 9208

ANTI-TRAFFICKING IN PERSONS ACT  
OF 2003

AS AMENDED BY REPUBLIC ACT 10364



# Republic Act 9208

## **Anti-Trafficking in Persons Act of 2003 as amended by Republic Act 10364**

**An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for Its Violations, and for Other Purposes**

SECTION 1. Title. — This Act shall be known as the “Anti-Trafficking in Persons Act of 2003.”

SECTION 2. Declaration of Policy. — It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

It shall be a State policy to recognize the equal rights and inherent human dignity of women and men as enshrined in the United Nations Universal Declaration on Human Rights, United Nations Convention on the Elimination of All Forms of Discrimination Against Women, United Nations Convention on the Rights of the Child, United Nations Convention on the Protection of Migrant Workers and their Families, United Nations Convention Against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women

and Children and all other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.

**SECTION 3. Definition of Terms. — As used in this Act:**

- (a) **Trafficking in Persons** — refers to the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph.

- (b) **Child** — refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.
- (c) **Prostitution** — refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.
- (d) **Forced Labor** — refers to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception including any work or service extracted from any person under the menace of penalty.

- (e) Slavery — refers to the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
- (f) Involuntary Servitude — refers to a condition of enforced and compulsory service induced by means of any scheme, plan or pattern, intended to cause a person to believe that if he or she did not enter into or continue in such condition, he or she or another person would suffer serious harm or other forms of abuse or physical restraint, or threat of abuse or harm, or coercion including depriving access to travel documents and withholding salaries, or the abuse or threatened abuse of the legal process.
- (g) Sex Tourism — refers to a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.
- (h) Sexual Exploitation — refers to participation by a person in prostitution, pornography or the production of pornography, in exchange for money, profit or any other consideration or where the participation is caused or facilitated by any means of intimidation or threat, use of force, or other forms of coercion, abduction, fraud, deception, debt bondage, abuse of power or of position or of legal process, taking advantage of the vulnerability of the person, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or in sexual intercourse or lascivious conduct caused or facilitated by any means as provided in this Act.
- (i) Debt Bondage — refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.
- (j) Pornography — refers to any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes.

- (k) Council — shall mean the Inter-Agency Council Against Trafficking created under Section 20 of this Act.

SECTION 4. Acts of Trafficking in Persons. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

- (a) To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation;
- (b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;
- (d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
- (e) To maintain or hire a person to engage in prostitution or pornography;
- (f) To adopt persons by any form of consideration for exploitative purposes or to facilitate the same for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (g) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (h) To recruit, hire, adopt, transport, transfer, obtain, harbor, maintain, provide, offer, receive or abduct a person, by means of threat or use of

force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person;

- (i) To recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive or adopt a child to engage in armed activities in the Philippines or abroad;
- (j) To recruit, transport, transfer, harbor, obtain, maintain, offer, hire, provide or receive a person by means defined in Section 3 of this Act for purposes of forced labor, slavery, debt bondage and involuntary servitude, including a scheme, plan, or pattern intended to cause the person either:
  - (1) To believe that if the person did not perform such labor or services, he or she or another person would suffer serious harm or physical restraint; or
  - (2) To abuse or threaten the use of law or the legal processes; and
- (k) To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt or receive a child for purposes of exploitation or trading them, including but not limited to, the act of buying and/or selling a child for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include:
  - (1) All forms of slavery or practices similar to slavery, involuntary servitude, debt bondage and forced labor, including recruitment of children for use in armed conflict;
  - (2) The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances;
  - (3) The use, procuring or offering of a child for the production and trafficking of drugs; and
  - (4) The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals; and
- (l) (l) To organize or direct other persons to commit the offenses defined as acts of trafficking under this Act.

SECTION 4-A. Attempted Trafficking in Persons. — Where there are acts to initiate the commission of a trafficking offense but the offender failed to or did not execute all the elements of the crime, by accident or by reason of some cause other than voluntary desistance, such overt acts shall be deemed as an attempt to commit an act of trafficking in persons. As such, an attempt to commit any of the offenses enumerated in Section 4 of this Act shall constitute attempted trafficking in persons.

In cases where the victim is a child, any of the following acts shall also be deemed as attempted trafficking in persons:

- (a) Facilitating the travel of a child who travels alone to a foreign country or territory without valid reason therefor and without the required clearance or permit from the Department of Social Welfare and Development, or a written permit or justification from the child's parent or legal guardian;
- (b) Executing, for a consideration, an affidavit of consent or a written consent for adoption;
- (c) Recruiting a woman to bear a child for the purpose of selling the child;
- (d) Simulating a birth for the purpose of selling the child; and
- (e) Soliciting a child and acquiring the custody thereof through any means from among hospitals, clinics, nurseries, daycare centers, refugee or evacuation centers, and low-income families, for the purpose of selling the child.

SECTION 4-B. Accomplice Liability. — Whoever knowingly aids, abets, cooperates in the execution of the offense by previous or simultaneous acts defined in this Act shall be punished in accordance with the provisions of Section 10(c) of this Act.

SECTION 4-C. Accessories. — Whoever has the knowledge of the commission of the crime, and without having participated therein, either as principal or as accomplices, take part in its commission in any of the following manners:



- (a) By profiting themselves or assisting the offender to profit by the effects of the crime;
- (b) By concealing or destroying the body of the crime or effects or instruments thereof, in order to prevent its discovery;
- (c) (By harboring, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his or her public functions or is known to be habitually guilty of some other crime.

Acts defined in this provision shall be punished in accordance with the provision of Section 10(d) as stated thereto.

**SECTION 5. Acts that Promote Trafficking in Persons.** — The following acts which promote or facilitate trafficking in persons shall be unlawful:

- (a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;
- (b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers, overseas employment certificates or other certificates of any government agency which issues these certificates, decals and such other markers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;
- (c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;
- (d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;

- (e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;
- (f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and
- (g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.
- (h) To tamper with, destroy, or cause the destruction of evidence, or to influence or attempt to influence witnesses, in an investigation or prosecution of a case under this Act;
- (i) To destroy, conceal, remove, confiscate or possess, or attempt to destroy, conceal, remove, confiscate or possess, any actual or purported passport or other travel, immigration or working permit or document, or any other actual or purported government identification, of any person in order to prevent or restrict, or attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel in order to maintain the labor or services of that person; or
- (j) To utilize his or her office to impede the investigation, prosecution or execution of lawful orders in a case under this Act.

SECTION 6. Qualified Trafficking in Persons. — Violations of Section 4 of this Act shall be considered as qualified trafficking:

- (a) When the trafficked person is a child;
- (b) When the adoption is effected through Republic Act No. 8043, otherwise known as the "Inter-Country Adoption Act of 1995" and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

- (c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;
- (d) When the offender is a spouse, an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
- (e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
- (f) When the offender is a member of the military or law enforcement agencies; and
- (g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS).
- (h) When the offender commits one or more violations of Section 4 over a period of sixty (60) or more days, whether those days are continuous or not; and
- (i) When the offender directs or through another manages the trafficking victim in carrying out the exploitative purpose of trafficking.

SECTION 7. Confidentiality. — At any stage of the investigation, rescue, prosecution and trial of an offense under this Act, law enforcement officers, prosecutors, judges, court personnel, social workers and medical practitioners, as well as parties to the case, shall protect the right to privacy of the trafficked person. Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. The name and personal circumstances of the trafficked person or any other information tending to establish the identity of the trafficked person and his or her family shall not be disclosed to the public.

It shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or electronic information technology to cause publicity of the name, personal circumstances, or any information tending to establish the identity of the trafficked person except when the trafficked person in a written statement duly notarized knowingly, voluntarily and willingly waives said confidentiality.

Law enforcement officers, prosecutors, judges, court personnel, social workers and medical practitioners shall be trained on the importance of maintaining confidentiality as a means to protect the right to privacy of victims and to encourage victims to file complaints.

#### SECTION 8. Initiation and Prosecution of Cases. —

- (a) Initiation of Investigation. — Law enforcement agencies are mandated to immediately initiate investigation and counter-trafficking-intelligence gathering upon receipt of statements or affidavit from victims of trafficking, migrant workers, or their families who are in possession of knowledge or information about trafficking in persons cases.
- (b) Prosecution of Cases. — Any person who has personal knowledge of the commission of any offense under this Act, such as the trafficked person, the parents, spouse, siblings, children or legal guardian may file a complaint for trafficking.
- (c) Affidavit of Desistance. — Cases involving trafficking in persons should not be dismissed based on the affidavit of desistance executed by the victims or their parents or legal guardians. Public and private prosecutors are directed to oppose and manifest objections to motions for dismissal.

Any act involving the means provided in this Act or any attempt thereof for the purpose of securing an Affidavit of Desistance from the complainant shall be punishable under this Act.

SECTION 9. Venue. — A criminal action arising from violation of this Act shall be filed where the offense was committed, or where any of its elements occurred, or where the trafficked person actually resides at the time of the

commission of the offense: Provided, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

SECTION 10. Penalties and Sanctions. — The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

- (a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);
- (b) Any person found guilty of committing any of the acts enumerated in Section 4-A of this Act shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);
- (c) Any person found guilty of Section 4-B of this Act shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment agency involved in trafficking. The license of a recruitment agency which trafficked a child shall be automatically revoked.

- (d) Any person found guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);
- (e) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00);
- (f) Any person who violates Section 7 hereof shall suffer the penalty of imprisonment of six (6) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

- (g) If the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;
- (h) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishments in a different name;
- (i) If the offender is a foreigner, he or she shall be immediately deported after serving his or her sentence and be barred permanently from entering the country;
- (j) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His or her retirement and other benefits shall likewise be forfeited; and
- (k) Conviction, by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption.

**SECTION 11. Use of Trafficked Persons.** — Any person who buys or engages the services of a trafficked person for prostitution shall be penalized with the following: Provided, That the Probation Law (Presidential Decree No. 968) shall not apply:

- (a) Prison Correccional in its maximum period to prison mayor or six (6) years to twelve (12) years imprisonment and a fine of not less than Fifty thousand pesos (P50,000.00) but not more tthan One hundred

thousand pesos (P100,000.00): Provided, however, That the following acts shall be exempted thereto:

- (1) If an offense under paragraph (a) involves sexual intercourse or lascivious conduct with a child, the penalty shall be reclusion temporal in its medium period to reclusion perpetua or seventeen (17) years to forty (40) years imprisonment and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);
  - (2) If an offense under paragraph (a) involves carnal knowledge of, or sexual intercourse with, a male or female trafficking victim and also involves the use of force or intimidation, to a victim deprived of reason or to an unconscious victim, or a victim under twelve (12) years of age, instead of the penalty prescribed in the subparagraph above the penalty shall be a fine of not less than One million pesos (P1,000,000.00) but not more than Five million pesos (P5,000,000.00) and imprisonment of reclusion perpetua or forty (40) years imprisonment with no possibility of parole; except that if a person violating paragraph (a) of this section knows the person that provided prostitution services is in fact a victim of trafficking, the offender shall not be likewise penalized under this section but under Section 10 as a person violating Section 4; and if in committing such an offense, the offender also knows a qualifying circumstance for trafficking, the offender shall be penalized under Section 10 for qualified trafficking. If in violating this section the offender also violates Section 4, the offender shall be penalized under Section 10 and, if applicable, for qualified trafficking instead of under this section;
- (b) Deportation. — If a foreigner commits any offense described by paragraph (1) or (2) of this section or violates any pertinent provision of this Act as an accomplice or accessory to, or by attempting any such offense, he or she shall be immediately deported after serving his or her sentence and be barred permanently from entering the country; and
- (c) Public Official. — If the offender is a public official, he or she shall be dismissed from service and shall suffer perpetual absolute disqualification to hold public office, in addition to any imprisonment or fine received pursuant to any other provision of this Act.

SECTION 12. Prescriptive Period. — Trafficking cases under this Act shall prescribe in ten (10) years: Provided, however, That trafficking cases committed by a syndicate or in a large scale as defined under Section 6, or against a child, shall prescribe in twenty (20) years.

The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage, or in the case of a child victim, from the day the child reaches the age of majority, and shall be interrupted by the filing of the complaint or information and shall commence to run again when the proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.

SECTION 13. Exemption from Filing Fees. — When the trafficked person institutes a separate civil action for the recovery of civil damages, he/she shall be exempt from the payment of filing fees.

SECTION 14. Confiscation and Forfeiture of the Proceeds and Instruments Derived from Trafficking in Persons. — In addition to the penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act: Provided, however, That all awards for damages shall be taken from the personal and separate properties of the offender: Provided further, That if such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties.

When the proceeds, properties and instruments of the offense have been destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offense.

SECTION 15. Trust Fund. — All fines imposed under this Act and the proceeds and properties forfeited and confiscated pursuant to Section 14 hereof shall accrue to a Trust Fund to be administered and managed by the Council to be used exclusively for programs that will prevent acts of trafficking and protect, rehabilitate, reintegrate trafficked persons into the



mainstream of society. Such programs shall include, but not limited to, the following:

- (a) Provision for mandatory services set forth in Section 23 of this Act;
- (b) Sponsorship of a national research program on trafficking and establishment of a data collection system or monitoring and evaluation purposes;
- (c) Provision of necessary technical and material support services to appropriate government agencies and non-government organizations (NGOs);
- (d) Sponsorship of conferences and seminars to provide venue for consensus building amongst the public, the academe, government, NGOs and international organizations; and
- (e) Promotion of information and education campaign on trafficking.

**SECTION 16. Programs That Address Trafficking in Persons.** — The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs:

- (a) Department of Foreign Affairs (DFA) — shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs. It shall provide Filipino victims of trafficking overseas with free legal assistance and counsel to pursue legal action against his or her traffickers, represent his or her interests in any criminal investigation or prosecution, and assist in the application for social benefits and/or regular immigration status as may be allowed or provided for by the host country. The DFA shall repatriate trafficked Filipinos with the consent of the victims.

The DFA shall take necessary measures for the efficient implementation of the Electronic Passporting System to protect the integrity of Philippine

passports, visas and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

In coordination with the Department of Labor and Employment, it shall provide free temporary shelters and other services to Filipino victims of trafficking overseas through the migrant workers and other overseas Filipinos resource centers established overseas under Republic Act No. 8042, as amended.

- (b) Department of Social Welfare and Development (DSWD) — shall implement rehabilitative and protective programs for trafficked persons. It shall provide counseling and temporary shelter to trafficked persons and develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community. It shall establish free temporary shelters, for the protection and housing of trafficked persons to provide the following basic services to trafficked persons:
  - (1) Temporary housing and food facilities;
  - (2) Psychological support and counseling;
  - (3) 24-hour call center for crisis calls and technology-based counseling and referral system;
  - (4) Coordination with local law enforcement entities; and
  - (5) Coordination with the Department of Justice, among others.

The DSWD must conduct information campaigns in communities and schools teaching parents and families that receiving consideration in exchange for adoption is punishable under the law. Furthermore, information campaigns must be conducted with the police that they must not induce poor women to give their children up for adoption in exchange for consideration.

- (c) Department of Labor and Employment (DOLE) — shall ensure the strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas. It shall

likewise monitor, document and report cases of trafficking in persons involving employers and labor recruiters.

- (d) Department of Justice (DOJ) — shall ensure the prosecution of persons accused of trafficking and designate and train special prosecutors who shall handle and prosecute cases of trafficking. It shall also establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups.
- (e) Philippine Commission on Women (PCW) — shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women's issues.
- (f) Bureau of Immigration (BI) — shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the guidance and counseling requirement as provided for in this Act.
- (g) Philippine National Police (PNP) and National Bureau of Investigation (NBI) — shall be the primary law enforcement agencies to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. They shall closely coordinate with each other and with other law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. They shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.
- (h) Philippine Overseas Employment Administration (POEA) and Overseas Workers and Welfare Administration (OWWA) — POEA shall implement Pre-Employment Orientation Seminars (PEOS) while Pre-Departure Orientation Seminars (PDOS) shall be conducted by the OWWA. It shall likewise formulate a system of providing free legal assistance to trafficked persons, in coordination with the DFA.

The POEA shall create a blacklist of recruitment agencies, illegal recruiters and persons facing administrative, civil and criminal complaints for trafficking filed in the receiving country and/or in the Philippines and those agencies, illegal recruiters and persons involved in cases of trafficking who have been rescued by the DFA and DOLE in the receiving country or in the Philippines even if no formal administrative, civil or criminal complaints have been filed: Provided, That the rescued victims shall execute an affidavit attesting to the acts violative of the anti-trafficking law. This blacklist shall be posted in conspicuous places in concerned government agencies and shall be updated bi-monthly.

The blacklist shall likewise be posted by the POEA in the shared government information system, which is mandated to be established under Republic Act No. 8042, as amended.

The POEA and OWWA shall accredit NGOs and other service providers to conduct PEOS and PDOS, respectively. The PEOS and PDOS should include the discussion and distribution of the blacklist.

The license or registration of a recruitment agency that has been blacklisted may be suspended by the POEA upon a review of the complaints filed against said agency.

- (i) Department of the Interior and Local Government (DILG) — shall institute a systematic information and prevention campaign in coordination with pertinent agencies of government as provided for in this Act. It shall provide training programs to local government units, in coordination with the Council, in ensuring wide understanding and application of this Act at the local level.
- (j) Commission on Filipinos Overseas — shall conduct pre-departure counseling services for Filipinos in intermarriages. It shall develop a system for accreditation of NGOs that may be mobilized for purposes of conducting pre-departure counseling services for Filipinos in intermarriages. As such, it shall ensure that the counselors contemplated under this Act shall have the minimum qualifications and training of guidance counselors as provided for by law

It shall likewise assist in the conduct of information campaigns against trafficking in coordination with local government units, the Philippine Information Agency, and NGOs.

- (k) Local government units (LGUs) — shall monitor and document cases of trafficking in persons in their areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with the DILG, Philippine Information Agency (PIA), Commission on Filipinos Overseas (CFO), NGOs and other concerned agencies. They shall encourage and support community-based initiatives which address the trafficking in persons.

In implementing this Act, the agencies concerned may seek and enlist the assistance of NGOs, people's organizations (POs), civic organizations and other volunteer groups.

**SECTION 16-A. Anti-Trafficking in Persons Database.** — An anti-trafficking in persons central database shall be established by the Inter-Agency Council Against Trafficking created under Section 20 of this Act. The Council shall submit a report to the President of the Philippines and to Congress, on or before January 15 of every year, with respect to the preceding year's programs and data on trafficking-related cases.

All government agencies tasked under the law to undertake programs and render assistance to address trafficking in persons shall develop their respective monitoring and data collection systems, and databases, for purposes of ensuring efficient collection and storage of data on cases of trafficking in persons handled by their respective offices. Such data shall be submitted to the Council for integration in a central database system.

For this purpose, the Council is hereby tasked to ensure the harmonization and standardization of databases, including minimum data requirements, definitions, reporting formats, data collection systems, and data verification systems. Such databases shall have, at the minimum, the following information:

- (a) The number of cases of trafficking in persons, sorted according to status of cases, including the number of cases being investigated, submitted for prosecution, dropped, and filed and/or pending before the courts and the number of convictions and acquittals;
- (b) The profile/information on each case;
- (c) The number of victims of trafficking in persons referred to the agency by destination countries/areas and by area of origin; and
- (d) Disaggregated data on trafficking victims and the accused/defendants.

**SECTION 17. Legal Protection to Trafficked Persons.** — Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such, shall not be penalized for unlawful acts committed as a direct result of, or as an incident or in relation to, being trafficked based on the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.

Victims of trafficking for purposes of prostitution as defined under Section 4 of this Act are not covered by Article 202 of the Revised Penal Code and as such, shall not be prosecuted, fined, or otherwise penalized under the said law.

**SECTION 17-A. Temporary Custody of Trafficked Victims.** — The rescue of victims should be done as much as possible with the assistance of the DSWD or an accredited NGO that services trafficked victims. A law enforcement officer, on a reasonable suspicion that a person is a victim of any offense defined under this Act including attempted trafficking, shall immediately place that person in the temporary custody of the local social welfare and development office, or any accredited or licensed shelter institution devoted to protecting trafficked persons after the rescue.

SECTION 17-B. Irrelevance of Past Sexual Behavior, Opinion Thereof or Reputation of Victims and of Consent of Victims in Cases of Deception, Coercion and Other Prohibited Means. — The past sexual behavior or the sexual predisposition of a trafficked person shall be considered inadmissible in evidence for the purpose of proving consent of the victim to engage in sexual behavior, or to prove the predisposition, sexual or otherwise, of a trafficked person. Furthermore, the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the means set forth in Section 3(a) of this Act has been used.

SECTION 17-C. Immunity from Suit, Prohibited Acts and Injunctive Remedies. — No action or suit shall be brought, instituted or maintained in any court or tribunal or before any other authority against any: (a) law enforcement officer; (b) social worker; or (c) person acting in compliance with a lawful order from any of the above, for lawful acts done or statements made during an authorized rescue operation, recovery or rehabilitation/intervention, or an investigation or prosecution of an anti-trafficking case: Provided, That such acts shall have been made in good faith.

The prosecution of retaliatory suits against victims of trafficking shall be held in abeyance pending final resolution and decision of criminal complaint for trafficking.

It shall be prohibited for the DFA, the DOLE, and the POEA officials, law enforcement officers, prosecutors and judges to urge complainants to abandon their criminal, civil and administrative complaints for trafficking.

The remedies of injunction and attachment of properties of the traffickers, illegal recruiters and persons involved in trafficking may be issued *motu proprio* by judges.

SECTION 18. Preferential Entitlement Under the Witness Protection Program. — Any provision of Republic Act No. 6981 to the contrary notwithstanding, any trafficked person shall be entitled to the witness protection program provided therein.

SECTION 19. Trafficked Persons Who are Foreign Nationals. — Subject to the guidelines issued by the Council, trafficked persons in the Philippines who are nationals of a foreign country shall also be entitled to appropriate protection, assistance and services available to trafficked persons under

this Act: Provided, That they shall be permitted continued presence in the Philippines for a length of time prescribed by the Council as necessary to effect the prosecution of offenders.

SECTION 20. Inter-Agency Council Against Trafficking. — There is hereby established an Inter-Agency Council Against Trafficking, to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson and shall have the following as members:

- (a) Secretary, Department of Foreign Affairs;
- (b) Secretary, Department of Labor and Employment;
- (c) Secretary, Department of the Interior and Local Government;
- (d) Administrator, Philippine Overseas Employment Administration;
- (e) Commissioner, Bureau of Immigration;
- (f) Chief, Philippine National Police;
- (g) Chairperson, Philippine Commission on Women;
- (h) Chairperson, Commission on Filipinos Overseas;
- (i) Executive Director, Philippine Center for Transnational Crimes; and
- (j) Three (3) representatives from NGOs, who shall include one (1) representative each from among the sectors representing women, overseas Filipinos, and children, with a proven record of involvement in the prevention and suppression of trafficking in persons. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three (3) years.

The members of the Council may designate their permanent representatives who shall have a rank not lower than an assistant secretary or its equivalent to meetings, and shall receive emoluments as may be



determined by the Council in accordance with existing budget and accounting rules and regulations.

SECTION 21. Functions of the Council. — The Council shall have the following powers and functions:

- (a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;
- (c) Monitor and oversee the strict implementation of this Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons,
- (e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the LGUs, concerned agencies, and NGOs;
- (f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;
- (g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;
- (h) Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;
- (i) Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;
- (j) Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the

“Migrant Workers and Overseas Filipinos Act of 1995” with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;

- (k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;
- (l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;
- (m) Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the internet;
- (n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;
- (o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and
- (p) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.

SECTION 22. Secretariat to the Council. — The Department of Justice shall establish the necessary Secretariat for the Council.

The secretariat shall provide support for the functions and projects of the Council. The secretariat shall be headed by an executive director, who shall be appointed by the Secretary of the DOJ upon the recommendation of the Council. The executive director must have adequate knowledge on, training and experience in the phenomenon of and issues involved in trafficking in persons and in the field of law, law enforcement, social work, criminology, or psychology.

The executive director shall be under the supervision of the Inter-Agency Council Against Trafficking through its Chairperson and Co-Chairperson, and shall perform the following functions:

- (a) Act as secretary of the Council and administrative officer of its secretariat;
- (b) Advise and assist the Chairperson in formulating and implementing the objectives, policies, plans and programs of the Council, including those involving mobilization of government offices represented in the Council as well as other relevant government offices, task forces, and mechanisms;
- (c) Serve as principal assistant to the Chairperson in the overall supervision of council administrative business;
- (d) Oversee all council operational activities;
- (e) Ensure an effective and efficient performance of council functions and prompt implementation of council objectives, policies, plans and programs;
- (f) Propose effective allocations of resources for implementing council objectives, policies, plans and programs;
- (g) Submit periodic reports to the Council on the progress of council objectives, policies, plans and programs;
- (h) Prepare annual reports of all council activities; and
- (i) Perform other duties as the Council may assign.

SECTION 23. Mandatory Services to Trafficked Persons. — To ensure recovery, rehabilitation and reintegration into the mainstream of society; concerned government agencies shall make available the following services to trafficked persons:

- (a) Emergency shelter or appropriate housing;
- (b) Counseling;

- (c) Free legal services which shall include information about the victims' rights and the procedure for filing complaints, claiming compensation and such other legal remedies available to them, in a language understood by the trafficked person;
- (d) Medical or psychological services;
- (e) Livelihood and skills training; and
- (f) Educational assistance to a trafficked child.

Sustained supervision and follow through mechanism that will track the progress of recovery, rehabilitation and reintegration of the trafficked persons shall be adopted and carried out.

#### SECTION 24. Other Services for Trafficked Persons. —

- (a) Legal Assistance. — Trafficked persons shall be considered under the category “Overseas Filipino in Distress” and may avail of the legal assistance created by Republic Act No. 8042, subject to the guidelines as provided by law.
- (b) Overseas Filipino Resource Centers. — The services available to overseas Filipinos as provided for by Republic Act No. 8042 shall also be extended to trafficked persons regardless of their immigration status in the host country.
- (c) The Country Team Approach. — The country team approach under Executive Order No. 74 of 1993, shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons insofar as the promotion of their welfare, dignity and fundamental rights are concerned.

SECTION 25. Repatriation of Trafficked Persons. — The DFA, in coordination with DOLE and other appropriate agencies, shall have the primary responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented.

If, however, the repatriation of the trafficked persons shall expose the victims to greater risks, the DFA shall make representation with the

host government for the extension of appropriate residency permits and protection, as may be legally permissible in the host country.

SECTION 26. Extradition. — The DOJ, in consultation with DFA, shall endeavor to include offenses of trafficking in persons among extraditable offenses.

SECTION 26-A. Extra-Territorial Jurisdiction. — The State shall exercise jurisdiction over any act defined and penalized under this Act, even if committed outside the Philippines and whether or not such act or acts constitute an offense at the place of commission, the crime being a continuing offense, having been commenced in the Philippines and other elements having been committed in another country, if the suspect or accused:

- (a) Is a Filipino citizen; or
- (b) Is a permanent resident of the Philippines; or
- (c) Has committed the act against a citizen of the Philippines.

No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the Philippines, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Secretary of Justice.

The government may surrender or extradite persons accused of trafficking in the Philippines to the appropriate international court if any, or to another State pursuant to the applicable extradition laws and treaties.

SECTION 27. Reporting Requirements. — The Council shall submit to the President of the Philippines and to Congress an annual report of the policies, programs and activities relative to the implementation of this Act.

SECTION 28. Funding. — The amount necessary to implement the provisions of this Act shall be charged against the current year's appropriations of the Inter-Agency Council Against Trafficking under the budget of the DOJ and the appropriations of the other concerned departments. Thereafter,

such sums as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act.

SECTION 28-A. Additional Funds for the Council. — The amount collected from every penalty, fine or asset derived from any violation of this Act shall be earmarked as additional funds for the use of the Council. The fund may be augmented by grants, donations and endowment from various sources, domestic or foreign, for purposes related to their functions, subject to the existing accepted rules and regulations of the Commission on Audit.

SECTION 29. Implementing Rules and Regulations. — The Council shall promulgate the necessary implementing rules and regulations within sixty (60) days from the effectivity of this Act.

SECTION 30. Non-restriction of Freedom of Speech and of Association, Religion and the Right to Travel. — Nothing in this Act shall be interpreted as a restriction of the freedom of speech and of association, religion and the right to travel for purposes not contrary to law as guaranteed by the Constitution.

SECTION 31. Separability Clause. — If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

SECTION 32. Repealing Clause. — Article 202 of the Revised Penal Code, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly: Provided, That this Act shall not in any way amend or repeal the provisions of Republic Act No. 7610, otherwise known as the ‘Special Protection of Child Against Child Abuse, Exploitation and Discrimination Act.’

SECTION 33. Effectivity. — This Act shall take effect fifteen (15) days following its complete publication in at least two (2) newspapers of general circulation.

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REPUBLIC ACT 8239

PHILIPPINE PASSPORT ACT OF 1996





# Republic Act 8239

## Philippine Passport Act of 1996

SECTION 1. Short Title. — This Act will be called as the “Philippine Passport Act of 1996.”

SECTION 2. Statement of Policy. — The people’s constitutional right to travel is inviolable. Accordingly, the government has the duty to issue passport or any travel document to any citizen of the Philippines or individual who complies with the requirement of this Act. The right to travel may be impaired only when national security, public safety, or public health requires. To enhance and protect the unimpaired exercise of this right, only minimum requirements for the application and issuance of passports and other travel documents shall be prescribed. Action on such application and the issuance shall be expedited.

SECTION 3. Definitions. — As used in this Act:

- a) Department means the Department of Foreign Affairs;
- b) Secretary means the Secretary of Foreign Affairs;
- c) Post means a Philippine diplomatic and consular post such as an Embassy or Consulate;
- d) Passport means a document issued by the Philippine government to its citizens and requesting other governments to allow its citizens to pass safely and freely, and in case of need to give him/her all lawful aid and protection;
- e) Travel Document means a certification or identifying document containing the description and other personal circumstances of its bearer, issued for direct travel to and from the Philippines valid for short

periods or a particular trip. It is issued only to persons whose claim to Philippine citizenship is doubtful or who fall under the category enumerated in Section 13 of this Act;

- f) Supporting Documents mean any paper or document which is required to be submitted with the passport application supporting claims to Filipino citizenship to complete the application for a passport without which such application would be deemed incomplete or otherwise become subject to denial by the issuing authority;
- g) Ambassadors mean those who have been appointed as chiefs of mission and have served as Ambassador Extraordinary and Plenipotentiary.

SECTION 4. Authority to Issue, Deny, Restrict or Cancel. — Upon the application of any qualified Filipino citizen, the Secretary of Foreign Affairs or any of his authorized consular officer may issue passports in accordance with this Act.

Philippine consular officers in a foreign country shall be authorized by the Secretary to issue, verify, restrict, cancel or refuse a passport in the area of jurisdiction of the Post in accordance with the provisions of this Act.

In the interest of national security, public safety and public health, the Secretary or any of the authorized consular officers may, after due hearing and in their proper discretion, refuse to issue a passport, or restrict its use or withdraw or cancel a passport: Provided, however, That such act shall not mean a loss or doubt on the person's citizenship: Provided, further, That the issuance of a passport may not be denied if the safety and interest of the Filipino citizen is at stake: Provided, finally, That refusal or cancellation of a passport would not prevent the issuance of a Travel Document to allow for a safe return journey by a Filipino to the Philippines.

SECTION 5. Requirements for the Issuance of Passport. — No passport shall be issued to an applicant unless the Secretary or his duly authorized representative is satisfied that the applicant is a Filipino citizen who has complied with the following requirements:

- a) A duly accomplished application form and photographs of such number, size and style as may be prescribed by the Department;

- b) The birth certificate duly issued or authenticated by the Office of the Civil Registrar General: Provided, however, That if the birth of the applicant has not been registered yet, or if his birth certificate is destroyed, damaged, or not available due to other causes, he shall apply for delayed registration of his birth with the Office of the Civil Registrar General which shall issue to said applicant a certification of pending application for delayed registration of birth attaching thereto a copy of an accomplished certificate of live birth. Such certification and the accomplished certificate of live birth shall be sufficient to support an application for passport in addition to other papers which the Department may require from the applicant;
- c) In the absence of a birth certificate, a baptismal certificate for those who are members of a Christian religious organization, or similar or equivalent certificate issued by a non-Christian religious group, attesting to the applicant's having been admitted to such religious group or sect at an early age and where it is indicated that the applicant is a Filipino citizen, which should be accompanied by a joint affidavit by two (2) persons who have personal knowledge of the applicant and of such age as to credibly state the applicant's date and place of birth, citizenship, and names of parents: Provided, That Filipinos who do not believe in any religion and whose parents for any reason failed to have the said applicant baptized shall be exempted from the baptismal certificate requirement: Provided, further, That in lieu thereof, the applicant shall execute an affidavit to that effect duly corroborated by affidavit of at least two (2) persons of good reputation who personally know such fact:
- d) In case of a woman who is married, separated, divorced or widowed or whose marriage has been annulled or declared by court as void, a copy of the certificate of marriage, court decree of separation, divorce or annulment or certificate of death of the deceased spouse duly issued and authenticated by the Office of the Civil Registrar General: Provided, That in case of a divorce decree, annulment or declaration of marriage as void, the woman applicant may revert to the use of her maiden name: Provided, further, That such divorce is recognized under existing laws of the Philippines;
- e) In the case of naturalized citizens, a certified copy of the naturalization certificate; or a certified naturalization certificate of husband or parent duly issued and authenticated by the Office of the Civil Registrar

General if citizenship is claimed through naturalization of spouse or parent;

- f) For an applicant who has not reached the age of majority, an affidavit of consent from a parent as indicated in the passport application if the minor is travelling with either parent, and a clearance from the Department of Social Welfare and Development, if the minor is travelling with a legal guardian or a person other than a parent;
- g) If the applicant is an adopted person, the duly certified copy of court order of adoption, together with the original and amended birth certificates duly issued and authenticated by the Office of the Civil Registrar General shall be presented: Provided, That in case the adopted person is an infant or a minor or the applicant is for adoption by foreign parents, an authority from the Department of Social Welfare and Development shall be required: Provided, further, That the adopting foreign parents shall also submit a certificate from their embassy or consulate that they are qualified to adopt such infant or minor child;
- h) In case of discrepancy between the applicant's name in the birth certificate and in any other private documents, the former shall prevail over the latter unless by operation of law or through court order, the applicant is permitted to use name other than what is officially recorded in the Civil Register; and
- i) If the applicant is a government employee, the travel authority issued by the head of department, agency or office, may be required only if said applicant is applying for an official passport.

SECTION 6. Application. — The application may be filed by:

- a) The applicant himself or herself; or
- b) The parent or legal guardian on behalf of an applicant who is below the age of majority.

In case of first time applicants, the applicant must present himself/herself in person to prove that he or she is the same person and of the age claimed in the application form. In case of renewal the application may be filed by any licensed travel agency duly accredited by the Department of Foreign

Affairs: Provided, That the agent shall be responsible for the authenticity or bona fide of the supporting documents being presented to meet the requirements for the application of passports.

SECTION 7. Types of Passports. — The Secretary or the authorized representative or consular officer may issue the following types of passports:

- a) Diplomatic passport for persons imbued with diplomatic status or are on diplomatic mission such as:
  - 1) The President and former Presidents of the Republic of the Philippines;
  - 2) The Vice-President and former Vice-Presidents of the Republic of the Philippines;
  - 3) The Senate President and the Speaker of the House of Representatives;
  - 4) The Chief Justice of the Supreme Court;
  - 5) The Cabinet Secretaries, and the Undersecretaries and Assistant Secretaries of the Department of Foreign Affairs;
  - 6) Ambassadors, Foreign Service Officers of all ranks in the career diplomatic service; Attaches, and members of their families;
  - 7) Members of the Congress when on official mission abroad or as delegates to international conferences;
  - 8) The Governor of the Bangko Sentral ng Pilipinas and delegates to international or regional conferences when on official mission or accorded full powers by the President; and
  - 9) Spouses and unmarried minor children of the above-mentioned officials when accompanying or following to join them in an official mission abroad.

The President of the Philippines and the Secretary of the Department of Foreign Affairs may grant diplomatic passports to officials and

persons other than those enumerated herein who are on official mission abroad.

- b) Official Passport to be issued to all government officials and employees on official trip abroad but who are not on a diplomatic mission or delegates to international or regional conferences or have not been accorded diplomatic status such as:
  - 1) Undersecretaries and Assistant Secretaries of the Cabinet other than the Department of Foreign Affairs, the Associate Justices and other members of the Judiciary, members of the Congress and all other government officials and employees travelling on official business and official time;
  - 2) Staff officers and employees of the Department of Foreign Affairs assigned to diplomatic and consular posts and officers and representatives of other government departments and agencies assigned abroad;
  - 3) Persons in the domestic service and household members of officials assigned to diplomatic or consular posts;
  - 4) Spouses and unmarried minor children of the officials mentioned above when accompanying or following to join them.
- c) Regular Passport issued to Filipino citizens who are not eligible or entitled to diplomatic or official passports, including government officials or employees going abroad for pleasure or other personal reasons. Government officials and employees and members of their families may, during their incumbency in office, hold two passports simultaneously; (1) a regular passport for private travel; (2) a diplomatic or official passport when travelling abroad on diplomatic or official business. The wife and minor children of persons entitled to a diplomatic or official passport shall be issued regular passports, if they are not accompanying or following to join them.

SECTION 8. Grounds for Denial, Cancellation or Restrictions. — The application for passport may be denied, cancelled or restricted only on the following grounds:

a) Denial of Passport

- 1) On orders of the court, after due notice and hearing, to hold the departure of an applicant because of a pending criminal case;
- 2) When so requested by the natural or legal guardian, if the applicant is a minor;
- 3) When the applicant has been found to have violated any of the provisions of this Act;
- 4) Such other disqualification under existing laws.

b) Cancellation

- 1) When the holder is a fugitive from justice;
- 2) When the holder has been convicted of a criminal offense; Provided, That the passport may be restored after service of sentence; or
- 3) When a passport was acquired fraudulently or tampered with.

c) Restricted

- 1) When the country of destination is in a state of political instability which could pose a danger to the Filipino traveler;
- 2) When diplomatic ties have been fractured or severed with the Philippines;
- 3) When the country of destination is subject to travel restriction by government policy, enforcement of action by the United Nations or in a state of war.

SECTION 9. Appeal. — Any person who feels aggrieved as a result of the application of this Act of the implementing rules and regulations issued by the Secretary shall have the right to appeal to the Secretary of Foreign Affairs from whose decision judicial review may be had to the Courts in due course.

SECTION 10. Validity. — Regular passports issued under this Act shall be valid for a period of five (5) years: Provided, however, That the issuing authority may limit the period of validity to less than five (5) years; whenever in the national economic interest or political stability of the country such restriction is necessary: Provided, finally, That a new passport may be issued to replace one which validity has expired, the old passport being returned to the holder after cancellation.

SECTION 11. Ownership of Passports. — A Philippine passport remains at all times the property of the Government, the holder being a mere possessor thereof as long as it is valid and the same may not be surrendered to any person or entity other than the government or its representative: Provided, That a Filipino citizen may voluntarily surrender his/her passport to a Philippine Service Post for storage and safekeeping for which a proper receipt shall be issued for use when reclaiming the passport at a later date.

SECTION 12. Names and Titles. — The passport shall contain the full name of the applicant, but shall not include his title or titles or profession or job description. If an applicant's name is changed by order of the court, a certified copy of the court order or decree shall be submitted together with the birth certificate or old passport on application.

SECTION 13. Travel Documents. — A travel document, in lieu of a passport, may be issued to:

- a) A Filipino citizen returning to the Philippines who for one reason or another has lost his/her passport or cannot be issued a regular passport;
- b) A Filipino citizen being sent back to the Philippines;
- c) An alien spouse of a Filipino and their dependents who have not yet been naturalized as a Filipino and who are travelling to the Philippines or is a permanent resident of the Philippines;



- d) Aliens permanently residing in the Philippines who are not able to obtain foreign passport and other travel documents;
- e) A stateless person who is likewise a permanent resident, or a refugee granted such status or asylum in the Philippines.

SECTION 14. Amendments. — A passport may be amended at the request of the holder for any lawful purpose, but such amendment should be approved by the Secretary or his duly authorized diplomatic or consular officers.

Diplomatic and official passports shall be submitted for revalidation before each departure of the holder.

SECTION 15. Loss or Destruction. — The loss or destruction of a passport should be immediately reported to the Department or the Post. The holder of such passport shall submit to the Department or Post an affidavit stating in detail the circumstances of such loss or destruction. The holder of such a passport who is in the Philippines, should also furnish the National Bureau of Investigation and the Bureau of Immigration copies of the affidavit. For those who are abroad, copies of the affidavit will be forwarded by the Post to the Department's Office of Consular Services, and in coordination with the Office of Legal and Intelligence Services, shall transmit a copy of the affidavit to the National Bureau of Investigation and Bureau of Immigration. The transmittal of the affidavit shall be accompanied by a request for the confiscation of the said passport if found, and to investigate or detain if necessary, the person attempting to use or has used the passport. All Posts will be informed of the lost passport, including pertinent information on the passport and the circumstances of loss.

No new passport shall be issued until satisfactory proof is shown that the passport was actually lost and after the lapse of fifteen (15) days following the date of submission of the affidavit of loss as herein required: Provided, however, That in the case of a passport reported lost by a Filipino travelling abroad, the Consulate may waive the fifteen (15) days requirement if the loss has been proven to the Consular Official's satisfaction: Provided, further, That in case the Filipino who reported a loss of passport is returning to the Philippines, the holder may be issued a Travel Document: Provided, finally, That in the event the lost passport is found, it should be destroyed

if a replacement has been issued, or mailed to the holder who was issued a Travel Document.

In all cases, the head of Office of Consular Services or the head of the Consular Section of an Embassy or the Consul General of a consulate may, upon his discretion, waive the fifteen (15)-day waiting period.

**SECTION 16. Fees.** — Reasonable fees shall be collected for the processing, issuance, extension, amendment or replacement of a lost passport and the issuance of a Travel Document as may be determined by the Department: Provided, however, That any fee shall not be increased more than once every three (3) years.

**SECTION 17. Passport Revolving Fund.** — The Department may charge a service fee of not more than Two Hundred Fifty Pesos (P250) for such service rendered to applicants relating to the processing and issuance of passports requiring special consideration, waiver or issuance beyond regular office hours. The service fees received by the Department under this section shall constitute a revolving fund to be called the “Passport Revolving Fund” which may be utilized by the Department for the improvement of its passporting and consular services and other Department services except travel and transportation allowances and expenses.

The setting up, use and disbursement of funds shall be subject to review, accounting and auditing rules and regulations of the Commission on Audit and will be subject to an annual review by Congress, but the Secretary will submit a report on the disbursement of the fund every six (6) months to both the Senate and the House Committees on Foreign Relations.

**SECTION 18. Waiver.** — The Secretary of Foreign Affairs is solely authorized to waive any requirements set forth in Section 5 of this Act.

SECTION 19. Offenses and Penalties. — A passport being a proclamation of the citizenship of a Filipino, is a document that is superior to all other official documents. As such, it should be accorded the highest respect by its holder that to do damage to its integrity and validity is a serious crime that should be penalized accordingly:

- a) Offenses Relating to Issuances: Penalties. — Any person who:
- 1) Acting or claiming to act in any capacity or office under the Republic of the Philippines, without lawful authority, grants, issues or verifies any passport or travel document to any or for any person whomsoever shall be punished by a fine of not less than Fifteen thousand pesos (P15,000) nor more than Sixty thousand pesos (P60,000) and imprisonment of not less than eighteen (18) months nor more than six (6) years; or
  - 2) Being a diplomatic or consular official authorized to grant, issue, amend or verify passports, knowingly and willfully grants, issues, amends or verifies any such passport to any or for any person not owing allegiance to the Republic of the Philippines, whether citizen or not, shall be punished by a fine of not less than Fifteen thousand pesos (P15,000) nor more than Sixty Thousand Pesos (P60,000) and imprisonment of not less than eighteen (18) months but not more than six (6) years, and upon conviction, be disqualified from holding appointive public office;
  - 3) Being a diplomatic or consular officer knowingly and willfully grants and issues to, amends or certifies to the authenticity of any passport or travel document for any person not entitled thereto, or knowingly and willfully issues more than one passport to any person except as provided for in this Act, shall be punished by a fine of not less than Fifteen thousand pesos (P15,000) nor more than Sixty thousand pesos (P60,000) and imprisonment of not less than eighteen (18) months nor more than six (6) years and upon conviction, be disqualified from holding appointive public office.

b) Offenses Relating to False Statements: Penalties. — Any person who willfully and knowingly:

- 1) Makes any false statement in any application for passport with the intent to induce or secure the issuance of a passport under the authority of the Philippine Government, either for his own use or the use of another, contrary to this Act or rules and regulations prescribed pursuant hereto shall be punished by a fine of not less than Fifteen thousand pesos (P15,000) nor more than Sixty thousand pesos (P60,000) and imprisonment of not less than three (3) years nor more than ten (10) years: or
- 2) Uses or attempts to use any passport which was secured in any way by reason of any false statements, shall be punished by a fine of not less than Fifteen thousand pesos (P15,000) nor more than Sixty thousand pesos (P60,000) and imprisonment of not less than three (3) years, but not more than ten (10) years; or
- 3) Travel and recruitment agencies whose agents, liaison officers or representatives are convicted of offenses relating to false statements shall in addition to the fines and penalties abovementioned have their license revoked with all deposits, escrow accounts or guarantee funds deposited or made as a requirement of their business forfeited in favor of the government without prejudice to the officials of the branch office or of the agency being charged as accessories to the offense and upon conviction barred from engaging in the travel or recruitment agency business.

c) Offenses Relating to Forgery: Penalties. — Any person who:

- 1) Falsely makes, forges, counterfeits, mutilates or alters any passport or travel document or any supporting document for a passport application, with the intent of using the same shall be punished by a fine of not less than Sixty thousand pesos (P60,000) nor more than One hundred fifty thousand pesos (P150,000) and imprisonment of not less than six (6) years nor more than fifteen (15) years; or
- 2) Willfully or knowingly uses or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated or altered passport or travel document or any passport validly issued

which has become void by the occurrence of any condition therein prescribed shall be punished by a fine of not less than Sixty thousand pesos (P60,000) nor more than One hundred and fifty thousand pesos (P150,000) and imprisonment of not less than six (6) years nor more than fifteen (15) years: Provided, however, That officers of corporations, agencies or entities licensed in the travel and recruitment industry would be held similarly as their agents, liaison officers or representatives: Provided, finally, That forgeries of five or more passports or travel documents, would be considered as massive forgery tantamount to national sabotage and shall be punished by a fine of not less than Two hundred and fifty thousand pesos (P250,000) nor more than One Million pesos (P1,000,000) and imprisonment of not less than seven (7) years nor more than seventeen (17) years.

- d) Offenses Relating to Improper Use: Penalties. — Any person who willfully and knowingly:
- 1) Uses or attempts to use, any passport issued or designed for the use of another or any supporting documents for a passport application which belongs to another; or
  - 2) Uses or attempts to use any passport or supporting documents in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant thereto; or
  - 3) Furnishes, disposes, or delivers a passport to any person, for use by another or other than the person for whose use it was originally issued or designed; or
  - 4) Defaces or destroys a Philippine passport, shall be punished by a fine of not less than Sixty thousand pesos (P60,000) nor more than One hundred fifty thousand pesos (P150,000) and imprisonment of not less than six (6) years nor more than fifteen years.
- e) Offenses Relating to Multiple Possession: Penalties. — No person or individual may hold more than one valid passport, except as provided for in Section 7 hereof, and any individual who possesses more than one unexpired passport shall, for every unexpired passport found in his possession, be punished by a fine of not less than Fifteen thousand

pesos (P15,000) nor more than Sixty thousand pesos (P60,000) and imprisonment of not less than eighteen (18) months but not more than six (6) years: Provided, That the maximum fine and imprisonment shall be imposed by the court if he attempts to use or actually uses an unexpired passport which is not in his name.

In case any of the offenses prohibited in this Act constitutes a violation of the Revised Penal Code and the penalty imposed in said Code is heavier than that provided in this Act, the latter penalty shall be imposed.

**SECTION 20. Suspension of Accreditation.** — Any duly accredited travel or recruitment agent or agency which violates the prescription on application for passport under Section 6 hereof shall have such accreditation suspended without prejudice to civil, criminal or administrative sanctions including revocation of its license to operate.

The mere submission of spurious, forged or falsified documents supporting a passport application by any duly accredited travel or recruitment agent or agency shall be prima facie evidence that the said travel or recruitment agent is the author of such forgery or falsification.

**SECTION 21. Rules and Regulations.** — The Secretary shall issue such rules and regulations as may be necessary to implement the provisions herein within sixty (60) days from date of effectivity of this Act without extension or delays.

**SECTION 22. Separability Clause.** — Should any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder thereof shall not be affected thereby.

**SECTION 23. Repealing Clause.** — All laws, decrees, orders, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

**SECTION 24. Effectivity.** — This Act shall take effect fifteen (15) days after its publication in at least five (5) newspapers of general circulation or in the Official Gazette.

Approved: November 22, 1996.

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INTERNATIONAL CONVENTION  
ON THE PROTECTION OF THE RIGHTS  
OF ALL MIGRANT WORKERS AND  
MEMBERS OF THEIR FAMILIES



# **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

**Adopted by General Assembly resolution 45/158  
of 18 December 1990**

**Ratified by the Philippines on 05 July 1995**

## **Preamble**

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No.143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No.151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105),

Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

## **Part I**

### **Scope and Definitions**

#### **Article 1**

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.
2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

#### **Article 2**

For the purposes of the present Convention:

1. The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.
2.
  - (a) The term “frontier worker” refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;
  - (b) The term “seasonal worker” refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

- (c) The term “seafarer”, which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;
- (d) The term “worker on an offshore installation” refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;
- (e) The term “itinerant worker” refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;
- (f) The term “project-tied worker” refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;
- (g) The term “specified-employment worker” refers to a migrant worker:
  - (i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
  - (ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
  - (iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;
- (h) The term “self-employed worker” refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her

family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

### **Article 3**

The present Convention shall not apply to:

- (a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;
- (b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;
- (c) Persons taking up residence in a State different from their State of origin as investors;
- (d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;
- (e) Students and trainees;
- (f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

### **Article 4**

For the purposes of the present Convention the term “members of the family” refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons



who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

## **Article 5**

For the purposes of the present Convention, migrant workers and members of their families:

- (a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;
- (b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

## **Article 6**

For the purposes of the present Convention:

- (a) The term “State of origin” means the State of which the person concerned is a national;
- (b) The term “State of employment” means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;
- (c) The term “State of transit,” means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

## **Part II**

### **Non-discrimination with Respect to Rights**

#### **Article 7**

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

## **Part III**

### **Human Rights of All Migrant Workers and Members of their Families**

#### **Article 8**

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.
2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

#### **Article 9**

The right to life of migrant workers and members of their families shall be protected by law.

## **Article 10**

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## **Article 11**

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.
3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
4. For the purpose of the present article the term “forced or compulsory labour” shall not include:
  - (a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;
  - (b) Any service exacted in cases of emergency or clamity threatening the life or well-being of the community;
  - (c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

## **Article 12**

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public

or private to manifest their religion or belief in worship, observance, practice and teaching.

2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

## **Article 13**

1. Migrant workers and members of their families shall have the right to hold opinions without interference.
2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.
3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputation of others;
  - (b) For the protection of the national security of the States concerned or of public order (*ordre public*) or of public health or morals;
  - (c) For the purpose of preventing any propaganda for war;

- (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

## **Article 14**

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

## **Article 15**

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

## **Article 16**

1. Migrant workers and members of their families shall have the right to liberty and security of person.
2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.
3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.
5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.
6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.
7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:
  - (a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;
  - (b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;
  - (c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.
9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

## **Article 17**

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.
2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.
4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.
5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.
7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.
8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

## **Article 18**

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:
  - (a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;
  - (b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;
  - (c) To be tried without undue delay;



- (d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;
  - (e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
  - (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
  - (g) Not to be compelled to testify against themselves or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
  5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.
  6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.
  7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

## **Article 19**

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.
2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

## **Article 20**

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.
2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

## **Article 21**

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

## Article 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.
2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.
3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.
4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.
5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.
6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.
7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.
8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

### **Article 23**

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

### **Article 24**

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

### **Article 25**

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:
  - (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
  - (b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.
3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

## **Article 26**

1. States Parties recognize the right of migrant workers and members of their families:
  - (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;
  - (b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;
  - (c) To seek the aid and assistance of any trade union and of any such association as aforesaid.
2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

## **Article 27**

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and

multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

## **Article 28**

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

## **Article 29**

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

## **Article 30**

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

## **Article 31**

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin. 2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

## **Article 32**

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

## **Article 33**

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:
  - (a) Their rights arising out of the present Convention;
  - (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.
2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.
3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

## **Article 34**

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

## **Article 35**

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable-conditions for international migration as provided in part VI of the present Convention.

### **Part IV**

#### **Other Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation**

## **Article 36**

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III.

## **Article 37**

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy



in the State of employment and the authority to which they must address themselves for any modification of those conditions.

### **Article 38**

1. States of employment shall make every effort to authorize migrant workers and members of the families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.
2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

### **Article 39**

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.
2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

### **Article 40**

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.
2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic

society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

#### **Article 41**

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.
2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

#### **Article 42**

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.
2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.
3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

#### **Article 43**

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:
  - (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

- (b) Access to vocational guidance and placement services;
  - (c) Access to vocational training and retraining facilities and institutions;
  - (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;
  - (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;
  - (f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;
  - (g) Access to and participation in cultural life.
2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.
  3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

## **Article 44**

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.
2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects

equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

## **Article 45**

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:
  - (a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;
  - (b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;
  - (c) Access to social and health services, provided that requirements for participation in the respective schemes are met;
  - (d) Access to and participation in cultural life.
2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.
3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.
4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

## **Article 46**

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

- (a) Upon departure from the State of origin or State of habitual residence;
- (b) Upon initial admission to the State of employment;
- (c) Upon final departure from the State of employment;
- (d) Upon final return to the State of origin or State of habitual residence.

## **Article 47**

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.
2. States concerned shall take appropriate measures to facilitate such transfers.

## **Article 48**

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

- (a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;
- (b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families. 2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

## **Article 49**

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.
2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.
3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

## **Article 50**

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.

2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.
3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

## **Article 51**

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

## **Article 52**

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.
2. For any migrant worker a State of employment may:
  - (a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;
  - (b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications

acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:
  - (a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;
  - (b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.
4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

## **Article 53**

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.
2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining



permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

## **Article 54**

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:
  - (a) Protection against dismissal;
  - (b) Unemployment benefits;
  - (c) Access to public work schemes intended to combat unemployment;
  - (d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.
2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

## **Article 55**

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

## **Article 56**

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in part III.
2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.
3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

## **Part V**

### **Provisions Applicable to Particular Categories of Migrant Workers and Members of their Families**

## **Article 57**

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part m and, except as modified below, the rights set forth in part IV.

## **Article 58**

1. Frontier workers, as defined in article 2, paragraph 2 (a), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.
2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified

period of time. The granting of that right shall not affect their status as frontier workers.

## **Article 59**

1. Seasonal workers, as defined in article 2, paragraph 2 (b), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.
2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

## **Article 60**

Itinerant workers, as defined in article 2, paragraph 2 (A), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

## **Article 61**

1. Project-tied workers, as defined in article 2, paragraph 2 (of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 45, paragraph I (b), and articles 52 to 55.
2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the

right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.

3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.
4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

## **Article 62**

1. Specified-employment workers as defined in article 2, paragraph 2 (g), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (d).
2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

## **Article 63**

1. Self-employed workers, as defined in article 2, paragraph 2 (h), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.
2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall

not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

## **Part VI**

### **Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families**

#### **Article 64**

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.
2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

#### **Article 65**

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia :
  - (a) The formulation and implementation of policies regarding such migration;
  - (b) An exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;

- (c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;
  - (d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.
2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

## **Article 66**

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:
- (a) Public services or bodies of the State in which such operations take place;
  - (b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;
  - (c) A body established by virtue of a bilateral or multilateral agreement.
2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

## **Article 67**

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.
2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

## **Article 68**

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:
  - (a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;
  - (b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;
  - (c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.
2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis

their employer arising from employment shall not be impaired by these measures.

## **Article 69**

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.
2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

## **Article 70**

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

## **Article 71**

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.
2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.



## **Part VII**

### **Application of the Convention**

#### **Article 72**

1.

- (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as “the Committee”);
- (b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2.

- (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person from among its own nationals;

- (b) Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.
5.
  - (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;
  - (b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;
  - (c) The members of the Committee shall be eligible for re-election if renominated.
6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.
7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.
8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### **Article 73**

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:
  - (a) Within one year after the entry into force of the Convention for the State Party concerned; (b) Thereafter every five years and whenever the Committee so requests.
2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.
3. The Committee shall decide any further guidelines applicable to the content of the reports. 4. States Parties shall make their reports widely available to the public in their own countries.

### **Article 74**

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.
2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the

consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.
4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.
5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.
6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.
7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.
8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

## **Article 75**

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

## **Article 76**

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
  - (a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
  - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer

the matter to the Committee, by notice given to the Committee and to the other State;

- (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;
- (d) Subject to the provisions of subparagraph ( c ) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;
- (e) The Committee shall hold closed meetings when examining communications under the present article;
- (f) In any matter referred to it in accordance with subparagraph ( b ) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph ( b ), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph ( b ) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:
  - (i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
  - (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The

written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

## **Article 77**

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.
2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.
3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:

- (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
  - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.
4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
  5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
  6. The Committee shall hold closed meetings when examining communications under the present article.
  7. The Committee shall forward its views to the State Party concerned and to the individual.
  8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.



## **Article 78**

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

## **Part VIII**

### **General provisions**

## **Article 79**

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

## **Article 80**

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

## **Article 81**

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

- (a) The law or practice of a State Party; or
  - (b) Any bilateral or multilateral treaty in force for the State Party concerned.
2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

## **Article 82**

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

## **Article 83**

Each State Party to the present Convention undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

## **Article 84**

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

## **Part IX Final provisions**

## **Article 85**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

## **Article 86**

1. The present Convention shall be open for signature by all States. It is subject to ratification. 2. The present Convention shall be open to accession by any State.
2. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

## **Article 87**

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

## **Article 88**

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

## **Article 89**

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.
3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

## **Article 90**

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference

of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

## **Article 91**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

## **Article 92**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for

arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.
3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

### **Article 93**

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

In witness whereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

ILO CONVENTION 189

DOMESTIC WORKERS CONVENTION





# **ILO Convention 189**

## **Domestic Workers Convention**

**Ratified by the Philippines on 05 Sep 2012**

### **Preamble**

The General Conference of the International Labour Organization, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on 1 June 2011, and

Mindful of the commitment of the International Labour Organization to promote decent work for all through the achievement of the goals of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization, and

Recognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for women and men workers with family responsibilities, greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries, and

Considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights, and

Considering also that in developing countries with historically scarce opportunities for formal employment, domestic workers constitute a

significant proportion of the national workforce and remain among the most marginalized, and

Recalling that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided, and

Noting the particular relevance for domestic workers of the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Private Employment Agencies Convention, 1997 (No. 181), and the Employment Relationship Recommendation, 2006 (No. 198), as well as of the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration (2006), and

Recognizing the special conditions under which domestic work is carried out that make it desirable to supplement the general standards with standards specific to domestic workers so as to enable them to enjoy their rights fully, and

Recalling other relevant international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime, and in particular its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and

Having decided upon the adoption of certain proposals concerning decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this sixteenth day of June of the year two thousand and eleven the following Convention, which may be cited as the Domestic Workers Convention, 2011.

## **Article 1**

For the purpose of this Convention:

- (a) the term domestic work means work performed in or for a household or households;
- (b) the term domestic worker means any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

## **Article 2**

1. The Convention applies to all domestic workers.
2. A Member which ratifies this Convention may, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, exclude wholly or partly from its scope:
  - (a) categories of workers who are otherwise provided with at least equivalent protection;
  - (b) limited categories of workers in respect of which special problems of a substantial nature arise.
3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports,

specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

### **Article 3**

1. Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely:
  - (a) freedom of association and the effective recognition of the right to collective bargaining;
  - (b) the elimination of all forms of forced or compulsory labour;
  - (c) the effective abolition of child labour; and
  - (d) the elimination of discrimination in respect of employment and occupation.
3. In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

### **Article 4**

1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.

2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

## **Article 5**

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

## **Article 6**

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

## **Article 7**

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

- (a) the name and address of the employer and of the worker;
- (b) the address of the usual workplace or workplaces;
- (c) the starting date and, where the contract is for a specified period of time, its duration;
- (d) the type of work to be performed;
- (e) the remuneration, method of calculation and periodicity of payments;

- (f) the normal hours of work;
- (g) paid annual leave, and daily and weekly rest periods;
- (h) the provision of food and accommodation, if applicable;
- (i) the period of probation or trial period, if applicable;
- (j) the terms of repatriation, if applicable; and
- (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

## **Article 8**

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.
2. The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.
3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.
4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

## **Article 9**

Each Member shall take measures to ensure that domestic workers:

- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household;
- (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and
- (c) are entitled to keep in their possession their travel and identity documents.

## **Article 10**

1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.
2. Weekly rest shall be at least 24 consecutive hours.
3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

## **Article 11**

Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.

## **Article 12**

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

## **Article 13**

1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.
2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

## **Article 14**

1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers



generally in respect of social security protection, including with respect to maternity.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

## **Article 15**

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:
  - (a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;
  - (b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;
  - (c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;
  - (d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and

- (e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.
2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

## **Article 16**

Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

## **Article 17**

1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.
2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.
3. In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

## **Article 18**

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers

organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

## **Article 19**

This Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

## **Article 20**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

## **Article 21**

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

## **Article 22**

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

## **Article 23**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

## **Article 24**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

## **Article 25**

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

## **Article 26**

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:
  - a. the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 22, if and when the new revising Convention shall have come into force;
  - b. as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

## **Article 27**

The English and French versions of the text of this Convention are equally





## ABOUT THE BOOK

This book is a compilation of the most relevant Philippine laws, rules and regulations on overseas employment.

It is a handy reference material for preparing pleadings and legal submissions, and oral arguments before the courts.

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