



# STANDARDS FOR REPAYMENT OF MIGRANT WORKER RECRUITMENT FEES AND RELATED COSTS

November 2020

## INTRODUCTION

In certain migration corridors, nearly all migrant workers pay recruitment fees and related costs. These fees have been internationally defined by the [ILO definition of recruitment fees and related costs](#) (referred to as ‘Fees and Costs’ throughout this document).

This document sets out recommended Standards developed by Impactt for repayment of migrant worker-paid recruitment Fees and Costs.

The Standards are underpinned by the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Due Diligence Guidance for Responsible Business Conduct. In particular, [UNGP 31: Criteria for Effective Grievance Mechanisms](#) has informed the thematic subsections of the Standards<sup>1</sup>.

### Who are the Standards for?

The Standards can be used by employers, private employment agencies (suppliers), buyers, investors, governments, policy-makers and auditors as well as trade unions or worker representatives when designing, implementing and evaluating repayment of historic migrant worker-paid Fees and Costs.

### Scope

The Standards aim to provide practical, experience-based guidance for estimating and repaying migrant worker-paid Fees and Costs in a way that is fair, transparent and practical, where there is limited or no proof of payment, as is generally the case in migrant worker recruitment processes.

The Standards do not address:

- Who should pay for the repayment cost – this is to be defined between the above-mentioned parties.
- The prevention of payment of recruitment Fees and Costs looking forwards – which is of critical importance.
- Accountability – how actors that exploit workers in the recruitment process should be brought to justice.

These issues are considered out of scope for these Standards and will be addressed in a separate document.

### How to use the Standards

We present eight key Standards for repayment. For each Standard, we outline the “minimum standard”, as well as “middle ground” and “best practice” approaches where applicable. Guidance notes are provided throughout the document. These provide general guidance which is applicable to all approaches outlined.

The Standards do not constitute legal advice. Additionally, the following of these standards alone should not be a replacement for ongoing efforts to enhance workplace social dialogue between employers and workers.

<sup>1</sup> See Appendix D for further information.

## Core Principles

Impactt recommend that the following core principles underpin any implementation of the Standards.

- 1. Safe-guarding workers.** Specific steps must be taken to ensure workers are safe guarded throughout the repayment process (see Standard 8 for details).
- 2. Shared responsibility and accountability.** All stakeholders including Employers, Private Employment Agencies (suppliers), buyers, investors, and others with remedial responsibility under the UNGPs should enter into a collaborative framework for repayment and ensure there is no delay to remediation.
- 3. Quality of investigation/verification.** The quality of investigations and verifications should be maintained and controlled to mitigate risks of workers underreporting fees.
- 4. Transparency and disclosure.** All stakeholders engaged in the process should act in good faith and with commitment to transparency and disclosure.
- 5. Governance, grievance, and appeals processes.** All stakeholders should work together to establish appropriate governance, grievance, and appeals processes to oversee implementation of the repayment process.
- 6. Sustainability.** All stakeholders should commit to take steps to strengthen their recruitment systems; this work must take place in parallel to repayment actions in order to make repayments sustainable.

Please see the Appendix for definitions of terms used (Appendix A), further details on the Core Principles (Appendix B), and information on how this guidance relates to the UN Guiding Principles on Business and Human Rights. (Appendix C).

## IMPACTT STANDARDS



## OVERVIEW OF STANDARDS

Standard	Minimum	Middle ground	Best practice
1. Scope for repayment	<p>Goal: All migrant workers that paid Fees and Costs are reimbursed.</p> <p>Repay all migrant workers that were employed on the date of the most recent investigation that established recruitment Fees and Costs.</p>	<p>Repay all migrant workers employed on the “date of first diagnosis”, i.e. the date the issue of Fee-charging was first identified.</p>	<p>Repay all current and former migrant workers that paid Fees and Costs.</p>
2. Investigating the repayment amount	<p>Goal: The investigation gathers reliable data on Fees and Costs.</p> <p>Carry out an internal investigation, using trained staff to get accurate results. Interview a minimum sample of 20-25% of the workforce.</p>	NA	<p>Commission a reputable independent third party to carry out an investigation into Fees and Costs.</p> <p>Interview as close to 100% of workers as possible.</p>
3. Calculating the repayment amount	<p>Goal: Workers are repaid the actual value of money they originally paid for Fees and Costs, considering interest, inflation, exchange rate and opportunity cost.</p> <p>Calculate the repayment amount using an average for each nationality (or other relevant group), factoring in interest and exchange rate.</p>	NA	<p>Calculate the repayment amount using an average for each nationality (or other relevant group), factoring in interest, exchange rate, inflation, and opportunity cost.</p>
4. Timeline for repayment	<p>Goal: Migrant workers are paid back as quickly as possible.</p> <p>Complete all repayments with 6 months.</p>	<p>Complete all repayments within 3 months.</p>	<p>Make all repayments in lump sum.</p>
5. Remediating locally recruited migrant workers	<p>Goal: Migrant workers recruited locally receive repayment for Fees and Costs.</p> <p>Repay all locally recruited migrant workers 2 months' wages as a “goodwill” payment towards Fees and Costs paid.</p>	NA	<p>Repay all locally recruited migrant workers in full for any Fees and Costs paid as part of their recruitment journey; benchmarked against averages paid to current workers.</p>
6. Engagement and communication with migrant workers	<p>Goal: Workers are engaged in the repayment process and receive clear communication related to the purpose, amount, timeline and protocol for payments.</p> <p>Invite migrant workers to engage in the repayment process. Provide all workers with clear information about the payment amount, protocol and timeline in their own language using a variety of channels including: a general memo, personal letter, communications session, pay slip, and grievance line.</p>	None	None
7. Verification	<p>Goal: A reputable independent third party verifies that all repayments have been made correctly, without any negative consequences for workers.</p> <p>Carry out independent 3<sup>rd</sup> party verification of payments to check that workers are paid fully and on time.</p>	None	None
8. Safe-guarding workers	<p>Goal: All workers are protected throughout the repayment process.</p> <p>Take steps to safeguard workers from harm throughout the repayment process, e.g. train investigators on how to respond to high risk cases, provide workers with information on helplines and support services they can access.</p>	None	None

## STANDARD DETAILS

### I. SCOPE FOR REPAYMENT



#### Scope for repayment

**Goal:** All migrant workers that paid Fees and Costs are reimbursed.

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#### Minimum standard: date of discovery by investigation

##### Requirements:

- At minimum, all current and former migrant workers that were employed at the date of the most recent investigation which established fee payments must be in scope. This includes any migrant workers that have left since the investigation date, as well as sub-contracted, outsourced, part-time or temporary workers that were regularly employed at the date of investigation.
- All migrant workers in scope must:
  - Remain free to resign without losing their entitlement to repayment. Where there is any penalty/risk of losing access to repayment by resigning, migrant workers are effectively again placed in a condition of bonded or forced labour.
  - Remain entitled to the repayment regardless of the circumstances. For example, a migrant worker that faces disciplinary action should still be entitled to repayment.
  - Remain entitled to other benefits such as repatriation costs (i.e. not face deductions or loss of other benefits as a result of receiving the repayment).

#### Middle ground: date of first diagnosis

##### Recommendations:

- If an Employer is unable to commit to best practice, they should instead use the “date of first diagnosis” to establish workers in scope.
- The “date of first diagnosis” is the date the issue of unethical recruitment or overcharging was first established, discovered, or reported by an internal or external party. Evidence that can support companies to establish this date could include:
  - The date workers first reported fee-charging to the Employer or another stakeholder.
  - The date that HR or senior management staff acknowledged worker-paid Fees and Costs, for example in contracts or communications with private employment agencies.
  - The date that the Buyer or Employer adopted an Employer Pays Policy.
  - The date an independent third-party first reported the issue (e.g. a third-party audit or whistle-blowers’ communications or engagement).
  - Other legitimate evidence such as reputable media reports or government statements which indicate that recruitment Fees and Costs have been endemic within a certain recruitment corridor or industry from a certain date.
- Companies must act in good faith to establish the actual first date of diagnosis (i.e. where several of the above dates could apply, the earliest date must be selected).
- Where no robust evidence exists, we recommend taking the date the Employer first began recruiting migrant workers as the “date of first diagnosis” (see Best Practice approach outlined below). This is based on Impactt’s experience that where worker Fees and Costs have been identified in the present – it is likely that this has always existed in these recruitment channels.

### Examples:

- The Employer adopted an Employer Pays Policy in January 2019, however, an audit report from September 2015 first identified worker-paid Fees and Costs as an issue. *The Employer uses September 2015 as the date of first diagnosis.*
- The first contract signed between the Employer and a Private Employment Agency commissioned to recruit migrant workers is dated April 2010. This contract shows that the Employer did not pay any Fees or Costs towards the recruitment of migrant workers. This indicates workers are highly likely to have paid Fees and Costs. This is confirmed via worker interviews. *The Employer uses April 2010 as the date of first diagnosis.*
- An independent audit carried out in April 2009 identified worker-paid Fees and Related Costs as an issue. *The Employer uses April 2009 as the date of first diagnosis.*
- A media-report published in January 1998 shows that recruitment fees are endemic for recruitment from Bangladesh and Nepal to the Middle East. *The Employer uses January 1998 as the date of first diagnosis.*

### Best practice: all current and former migrant workers employed

#### Recommendations:

- All current and former migrant workers who paid recruitment Fees and Costs should be eligible for repayment, regardless of when they were recruited, when they paid fees or when they left the Employer. This includes:
  - Any migrant workers recruited since the Employer adopted an Employer Pays Policy ("Zero-Cost workers"). Impactt's experience has shown that such individuals often still pay a wide range of Fees and Costs during their recruitment even after policies have changed.
  - Any indirectly employed migrant workers that regularly work on the Employer's worksite. This may include, for example, sub-contracted or outsourced workers such as cleaners, security or other temporary or part-time workers.

### General guidance

- It is important to note that many workers may have already repaid their loans and therefore could be interpreted as no longer being in bonded labour. All workers, regardless of their current debt status, are entitled to repayment.
- Employers that choose to repay some but not all workers (for example, only workers employed at facilities that produce goods for a specific customer) risk causing conflict among the workforce. Repayment should be made to all workers to avoid this issue.
- Repayments for all workers (including the categories listed below) should:
  - Be made in equal instalments across nationalities.
  - Be made subject to monitoring and verification by independent 3<sup>rd</sup> parties in the same way that payments are verified for current workers (i.e. those still employed on site).

### Former workers

- Employers must make a reasonable effort to contact any formerly employed migrant workers in scope to inform them about the repayment and how to access it. This can be done by:
  - Contacting former migrant workers directly to inform them of the existence of their right to repayment. As general good practice, Employers should strive to keep a record of former migrant worker contact details to enable communication where required.
  - Asking existing workers to make any eligible alumni aware of their entitlement.
  - Publicly communicating the existence of this fund and migrant workers' right to claim repayment via various channels such as newspapers, radio or social media, in both

destination and origin countries, and in collaboration with relevant trade unions or civil society organisations where available. Worker's respective embassies or consulates may also support.

### **Migrant workers who leave during the repayment period:**

- Migrant workers who resign or whose contracts end during the repayment period should be paid any outstanding amounts prior to departure, as part of their final settlement.
- If the repayment plan has not yet been agreed at the time of their departure, or their employer is unable to pay the full outstanding amount in lump sum, then an agreement can be made to continue paying the workers in instalments in their home country. Where this is done, the payment method should be agreed in consultation with workers and relevant worker organisations to ensure it is practical. Where workers do not have bank accounts this may include mobile or cash-transfer methods (such as Western Union). Any bank transaction costs should be borne by the employer.
- Frequency of payments may differ from current migrant workers if this saves on administrative costs – however, the overall timeframe for repayment should not be extended.
- Similarly, the complete quantum of repayment should still be paid.

### **Sub-contracted workers:**

- For sub-contracted, outsourced, temporary or part-time workers, the direct employer of these workers (i.e. a private employment agency) is responsible for actually repaying their worker's Fees and Costs. However, the Employer as the "End-user Employer" can also take the lead in ensuring repayment is undertaken in a timely manner – even if this may mean paying some or all of required repayment payments initially to workers and receiving payment back from their private employment agencies and/or enforcing contractual obligations against these private employment agencies.

Summary of workers in scope	Best practice	Middle Ground	Minimum standard
All current workers	✓	✓	✓
All former workers recruited by the Employer	✓	✗	✗
All former workers who were recruited within the "date of first diagnosis"	✓	✓	✗
All former workers who have left the Employer since the most recent audit/investigation which identified Fees and Costs	✓	✓	✓
Sub-contracted/outsourced/temporary/part-time workers employed regularly by the Employer	✓	✓	✓

## 2. INVESTIGATING THE REPAYMENT AMOUNT

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### Investigating the repayment amount

**Goal:** The investigation gathers reliable data on Fees and Costs.



#### Minimum standard

##### Requirements:

##### Investigation

- An in-depth investigation to establish Fees and Costs paid must be carried out.
- We recommend commissioning an experienced and reputable independent third party to carry out an investigation into Fees and Costs paid to ensure reliability of results. However, where this is not possible, internal staff may carry out the investigation.
- Where internal staff carry out the investigation:
  - Staff must have received adequate training on how to gather accurate data on “Fees and Costs” during worker interviews. In many cases workers may not have a clear understanding of what constitutes “Fees and Costs”. For example, many workers may not consider “broker fees” paid to relatives or middle men. Where workers can recall an itemised list of the breakdown of Fees and Costs this should be recorded<sup>2</sup>.
  - The investigation must be carried out against local law and international standards.
  - Investigation findings and resulting repayments must be verified by an independent third party.

##### Sampling

- The investigation must include a minimum sample of 20% of workers:
  - This sample must include a representative number of workers for each nationality, recruitment year, recruitment actor, recruitment location, and any other criteria that may be relevant to your dataset.
  - Where certain nationalities or groups are small (e.g. 40 or less) – 100% of that group must be interviewed.
  - Where greater than 40 workers are in a nationality group, a minimum of 40 workers should be interviewed from that group – even if this is above the 20% threshold.
- Based on Impactt’s experience, nationality is often a key variable in the level of payments made by workers. However, where datasets show extreme diversity among nationality groups, other variables such as Labour Recruiter in source or destination country, recruitment batch, date of recruitment, region of recruitment, and/or gender or religion, etc. must also be investigated. Relevant findings must be used to determine the most accurate and just payment amount.

##### Worker interviews

- Worker interviews must be carried out in a confidential setting by trusted, experienced interviewers. Where internal staff carry out such interviews, appropriate interviewers must be identified to ensure there is no conflict of interest (e.g. interviews are not carried out by anyone that workers may have reason to fear, e.g. supervisors or department heads) and that workers feel they can speak openly and honestly.
- Worker interviews must gather data on:

<sup>2</sup> See ILO-World Bank methodology and manual for data collection on recruitment costs.

[https://www.ilo.org/global/topics/labour-migration/publications/WCMS\\_670175/lang--en/index.htm](https://www.ilo.org/global/topics/labour-migration/publications/WCMS_670175/lang--en/index.htm)

- Fees and Costs paid
- Interest rates paid by workers on loans taken out to cover their recruitment Fees and Costs. The investigation must establish interest already paid and interest still to be paid. The interest amounts<sup>3</sup> must be factored into the total Fees and Costs reported by each migrant worker. It is not uncommon for migrant workers to pay 40% interest per annum on loans taken out to cover Fees and Costs.
- Worker testimony does need to be evidenced by receipts, which are usually not provided for modern day recruitment channels.

## Best practice

Recommendations:

### Investigation

Amounts of Fees and Costs paid by migrant workers should be established through confidential interviews carried out by a trusted 3<sup>rd</sup> party or independent body. Use of an independent party can increase reliability of results, as workers are more likely to speak without fear of retaliation from their Employer.

### Sampling

In an ideal world, best practice for determining the repayment amount would be to interview each worker in scope individually (i.e. sample 100% of the workforce) and to repay the exact amount they honestly report as being paid by them, plus interest. Where this is practical, for example, for any nationality groups on site with a small total number (40 or fewer), or for companies with a small total workforce, (100 or fewer) this method should be pursued i.e. the whole group should be sampled to obtain more accurate results.

For many medium and large size companies, attempting to interview all workers is challenging for several reasons:

- It may incentivise or increase the risk of worker coaching, coercion, and abuse. This is because employers, recruitment agencies and sub-agents may have a vested interest in workers reporting lower (or no) recruitment fee and related cost payments.
- There is no guarantee that reported amounts will always be accurate. Discrepancies may still occur with this method, as workers may misreport because they don't trust interviewers, or expect they will be paid more money.
- Greater overall resource and time is required to implement this approach.

The minimum standard approach for determining the payment amount outlined above is therefore recommended as the most practical and realistic for medium and large size companies.

## General guidance

- In some cases, it may be established that some migrant workers did not pay Fees or Costs. For example, this may apply in cases where workers arrived in the country on a Tourist visa and were subsequently recruited locally and brought onto a work permit, or for certain nationality groups that came via a recruitment corridor where fees are not prevalent. See examples on next page.

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<sup>3</sup> The interest noted here, being paid on loans taken out historically, is completely distinct from the mention of interest relating to opportunity cost in the subsequent section, and the two should not be confused.

#### **Example 1 – Sampling at a small company**

- A company has an overall workforce of 90 workers – with 72 from Bangladesh, 12 from Nepal, and 6 from Myanmar.
- Due to the small size, the entire workforce is sampled regardless of their being more than 40 Bangladeshi workers.

#### **Example 2 - Sampling at a small to medium sized company**

- A company has an overall workforce of 140 workers – with 51 from Nepal, 35 from Vietnam, 30 from Myanmar and 24 from Bangladesh.
- All workers from Vietnam, Myanmar and Bangladesh are interviewed, and a minimum of 40 workers from Nepal are also interviewed.

#### **Example 3 – Sampling at a medium sized company**

- A company has an overall workforce of 280 workers – with 240 from Nepal, 32 from India, and 8 from Sri Lanka.
- All workers from India and Sri Lanka are interviewed
- 48 Nepali workers are interviewed – equalling 20% of this nationality group

- In other cases, workers may have been either partially or fully reimbursed for Fees and Costs paid already (for example by their Employer or Labour Recruiter). Such cases should be investigated (including review of relevant documentation such as bank transfers and payment receipts), and, where the facts of the case are confirmed by an independent third party, this can be taken into account when making repayment calculations.

### 3. CALCULATING THE REPAYMENT AMOUNT



#### Calculating the repayment amount

**Goal:** Workers are repaid the actual value of money they originally paid for Fees and Costs, considering interest, inflation, exchange rate and opportunity cost.

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#### Key considerations

Where it is not feasible for exact fee-payments to be calculated for each worker, Repayments of Fees and Costs should be based on the average (mean) amount of costs reported by migrant workers of each nationality. Three further factors influence the fairness of repayment amounts of recruitment related Fees and Costs:

1. **Exchange rates:** given that many migrant workers were recruited and paid Fees and Costs several years before repayment takes place, the exchange rate selected between the currency/(ies) in which costs have been paid in and the employer's standard currency has a significant impact on the validity and fairness of calculations.
2. **Inflation:** the compound inflation since original payment of Fees and Costs should be reflected in repayment calculations so that the value of the repayment received by migrant workers is the same as that which they have lost.
3. **Opportunity cost:** the cost incurred by not enjoying the benefit associated with the best alternative. For example, if a migrant worker has sold land to pay Fees and Costs – not only have they incurred capital gains losses, but there is also an opportunity cost from the lost potential income from use of that land. We recommend reflecting opportunity costs via compound interest calculations (see Best Practice approach).

#### Minimum standard

##### Requirements:

At minimum, the repayment calculation must consider:

- ✓ Average fees paid per nationality group (or other relevant group criteria)
- ✓ Appropriate historic and current currency exchange rates
- ✓ Inflation

**Step 1.** Analyse the data on Fees and Costs obtained through the investigation (See Standard 2) to check if the recruitment year, recruitment actor, or other identified variable has a significant impact on the average amount paid.

- If yes, determine the amount to be paid based on the average (mean) per nationality, recruitment year, and recruitment actor (see Example 1).
- If no, i.e. if Fees and Costs paid are largely the same across recruitment years and actors, determine the amount to be paid based on the average per nationality (see Example 2).
- Companies may consider either option above. It should be noted that each option may result in a different overall quantum to be repaid. Ultimately companies may speak to buyers, investors, and worker representatives (where present in the workplace) to determine the most appropriate option to take when deciding on repayment methodologies. Paying all workers from one nationality the same amount could lead to less social unrest within the workplace – but on the other hand, from a fairness perspective this may correlate less precisely with what each recruitment year group has paid.
- Where there is significant variation in the amounts reported by migrant workers recruited in different batches, employers may use the mean by nationality for each recruitment batch.

**Step 2.** ‘Peg’ the amount paid by the migrant worker in their local currency to the USD, using the historic exchange rate when the fee was paid (e.g. [Currency Rate History for 10 years – USD to BDT](#))

If grouping by year of recruitment, the modal batch of recruits in that year can be the indicator for which exact date of exchange rate to use.

- Add compound inflation year on year (based on [USD CPI](#)). In Example 1 below, this would result<sup>4</sup> in an amount of USD 4,155, or RM17,409 being paid back to the Bangladeshi workers recruited in 2012. This represents an overall decrease in money received by this group of ~10%.
- Next, convert this USD amount back to the currency in which the worker is to be paid in (i.e. the currency which the employer uses to pay workers their salary). **Use the current XE exchange rate (ie. the exchange rate on the date of calculation of repayment)**<sup>5</sup>. As the workers are receiving this money now – they should receive this amount as an accurate reflection of what it is worth in today's terms – pegged to the USD to protect against unfair fluctuation. It is not recommended that employers use a historic exchange rate – as this will provide an incorrect and unfair reflection of the repayment amount's value today.

Employers should be aware that this minimum standard approach may not provide sufficient protection against future litigation or migrant worker claims for adequate remediation to situations of forced labour.

### Best practice

A best practice approach should calculate the repayment amount factoring in:

- ✓ Average fees paid per nationality group (or other relevant group criteria)
- ✓ Appropriate historic and current currency exchange rates
- ✓ Inflation
- ✓ Interest to account for lost opportunity cost

In order to implement the best practice approach, follow the same steps as outlined under minimum standard, however, under Step 2, add compound interest to the amount, in USD, for each year since the recruitment. This accounts for inflation.

Impactt recommend an interest rate of 3% to be slightly above a fair global (US) rate of inflation (~1.6% based on [USD CPI](#)). This makes an allowance for opportunity cost.

### Contingency Fund

- We recommend ringfencing a contingency fund in the total repayment costs to cover:
  - Individuals who have paid more than the average amounts calculated in accordance with the standards in this document. The individual payments resulting from the above calculations may fall far short of what those migrant workers who may have paid significantly more than the average are entitled to. In such cases, individual workers should be able to claim further compensation from the Contingency Fund set aside.
  - Future claims from former migrant workers.
- Employers should ensure that workers understand that receipt of financial repayment does not prevent them from exercising or claiming other rights or damages to which they may be entitled to under law.
- This Fund should have a clear protocol which establishes criteria for eligibility to claim further funds, appeals protocols, etc.
- Further guidance on this will be provided at a later stage.

<sup>4</sup> As the 'compound interest' rate of 3 is replaced by a rate of 1.6 ([the mean average inflation during the 8 year](#) time period since recruitment), and multiplied year on year – making the sum  $3660 * (1.016^8) = \text{USD } 4155$ . To note, this average rate of 1.6 would change depending on how many years since recruitment

<sup>5</sup> This should be as close as possible to the initial payment – no more than 1 month prior.

<sup>6</sup> Where legitimate and effective worker unions or representatives exist, worker representatives should be included in discussions regarding amount to be repaid, including fair levels of interest to account for lost opportunity cost and the most just methodologies to be applied during remediation processes.

Best practice standard (considering exchange rates, interest [over and above inflation] and opportunity cost):

### **Example 1 - Group workers by nationality and recruitment year:**

The following example demonstrates how the above calculation method could be applied to an imaginary employer – “Employer X”.

A third-party investigation is carried out at Employer X in Malaysia. As part of the investigation, the third party interviews a representative sample of the workforce, and gathers data on reported recruitment Fees and Costs, recruitment dates and recruitment agencies involved.

- Employer X has 1,000 Bangladeshi workers
  - 400 of these workers were recruited in 2012
  - 200 were recruited in 2013
  - 400 were recruited in 2014
- For those recruited in 2012, check the modal recruitment date (most workers are recruited in groups).
  - *In this example, let's say the vast majority were recruited January 1<sup>st</sup>, 2012*
- The investigation shows that at Employer X, the mean average amount reported to have been paid by workers in this year (2012) was 300,000 BDT. This amount is taken as the 2012 batch figure.
- Take the exchange rate for BDT → USD for the modal recruitment date of 1<sup>st</sup> Jan, 2012 (which is 0.0122) and use this to convert and ‘peg’ to the USD.
  - *In this example, BDT 300,000 \* 0.0122 = USD 3660*
- In an excel formula, multiply this USD amount by  $(IR ^ Y)$ , where IR is the compound interest rate<sup>7</sup> (or inflation if adopting the minimum standard requirements) being used (e.g. 1.03 for 3%) and the multiplication (or to the power) of the Y exponent is applied. Y represents the number of years between the recruitment year and current year (e.g. 8 years for 2012 to 2020).
  - *In this example, 3660\*(1.03^8) = USD 4636.*
    - *1.03^8 = 1.267 which represents the compound interest multiplier over this time*
- This results in a current USD value of what the money is worth now, which factors in a small compensation for opportunity cost.
- Convert this USD value into the currency in which Employer X pays workers their salaries, using the **current XE** exchange rate (i.e. as close to the date on which payment will be made as possible). This is then the amount to be paid to this specific batch.
  - *In this case, we take USD 4636, and applying the exchange rate of 4.19 for date of publication on 12/08/2020, this brings a total to be paid of RM 19,456.*
  - *The final amount is paid to workers in local currency (i.e. RM: the currency in which workers receive their salaries).*
- For those recruited in 2013 and 2014, repeat the steps above as appropriate, to calculate the amount which they should receive.

<sup>7</sup> This is the selected amount of year-on-year interest agreed.

- Similarly, repeat these steps for other nationalities

**Example 2 – Grouping into one payment per nationality (avoiding ‘batch by year’ approach):**

- Check the median year of recruitment by nationality
- Multiply by the historic exchange rate into USD from the median migrant worker for the recruitment batch, using their hiring date
- Add compound interest to this up to current date for a current USD value including interest
- Convert this total USD amount back to Employer X currency in current exchange rate
- In short – this method simply uses the ‘median’ migrant worker on a calendar scale of recruitment as the benchmark for how much all migrant workers should receive, as the fairest means.

### Guidance notes

#### Selecting the fairest method

- It is important to use the calculation method which is fairest to workers. Depending on the specific circumstances of the Employer, and the dataset obtained, the most appropriate calculation method may vary, however, in Impactt’s experience use of the mean is the fairest approach.
- It should be noted that using the average (mean) payment amount will entail that some workers will get a slightly higher, and some will get a slightly lower amount than what they originally paid. Despite this, the approach is still considered the fairest overall.
- In general, Impactt advise against using the mode (number which appears most often in a set of numbers) to determine repayment amounts. Use of the mode can be unreliable, as:
  - it is unlikely that there will be many exact number matches – thus rounding must be used which can oversimplify the dataset
  - results might be a bi-modal or tri-modal group which distorts the average and makes it unclear which to choose
- If an employer has used the mode or median rather than mean to calculate the amount, analysis should be carried out to make sure that this route does not unfairly disadvantage any group of migrant workers in comparison with using the mean.
- The amounts should be cross checked against any existing benchmarks, research, or statutory regulations where available and considered reliable. However, Fee amounts from investigation findings are preferable to any such amounts because they are directly representative of what the workers at the site have paid.
- Impactt will publish available data on its website regularly as well (date TBC). ILO and World Bank will also be providing data collection on recruitment costs in accordance with SDG indicator 10.7.1 in future.

#### Outliers

- Where there are outliers in data sets, each case should be investigated to identify any signs of coercion (in the case of very low reported Fees and Costs) or exaggeration (in the case of very high reported Fees and Costs). Such investigations should be carried out by a third party, especially where internal expertise is lacking or compromised. Based on investigation results, companies can then determine whether to exclude outliers from the overall average calculation on a case-by-case basis. In some cases, it may be appropriate to remove the outlier from the dataset but still repay the worker the full amount.

### Exchange rate & banking fees

- Taking an average exchange rate across all years covered by the repayment can result in inequitable repayment and does not represent the fair value of the money which migrant workers have lost.
- The Employer should cover banking transaction costs for any workers who leave employment and receive the payments in their home country. Workers who continue to work for the Employer may be expected to remit the money home alongside regular wages at their own expense.

## 4. TIMEFRAME FOR REPAYMENT

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### Timeline for repayment

**Goal:** Migrant workers are paid back as quickly as possible.



#### Minimum standard – 6 months

Requirements:

- Where complex negotiations between multiple parties are required to determine the payment amount and plan, negotiations must be completed within 3 months from the date of discovery.
- Payments must be made within a maximum timeframe of 6 months once negotiation is complete.

#### Middle ground – 3 months

Recommendations:

- Where lump sum payment is not possible, payments should be made within 3 months from the date of discovery.

#### Best practice – lump sum

Recommendations:

- Payment should be made to migrant workers in a lump sum payment as soon as possible after the issue has been identified in order to remediate the risk of debt bondage and/or forced labour as quickly as possible.
- Where lump sum payments are made – financial advice should be made available to workers to manage any vulnerabilities they may be exposed to as a result. Guidance on how to re-establish any assets workers sold in order to fund Fees and Costs should also be provided.
- It is important to check any potential tax implications of providing payments to workers (lump sum or otherwise) – as they may not yet be classed as tax-exempt. Arrangements should be made to ensure any such tax requirements are offset by the employer if they are required – to ensure the worker receives the full intended amount.
- It should be noted that as long as workers remain uncompensated, the burden on them continues to compound. A recalculation of the repayment amount may therefore be required, if repayments are made over an extended period of time.

#### Exceptional circumstances

- A possible extension, up to 12 months, could be permissible if an employer demonstrates they are unable to complete this payment schedule within 6 months. This should however be a last resort approach and only after evidence of requests for financial support– have been shared with buyers and investors without adequate response.

- Where migrant workers are let go due to bankruptcy, the employer should gather workers' current contact and banking details in destination and home country in order to enable payments to be made once funds become available.

### **Example 1**

- An employer is in critical financial hardship, and is able to provide irrefutable evidence that if they make remediation payments within 0-6 months, then this may cause an adverse effect on workers by bankrupting the business
- The employer provides this evidence to its buyers, (and any other relevant organisations) to seek financial support to ensure that the repayment can occur within the 6-month timeframe. Multiple buyers group together to support the initial funding of this repayment to meet the 6-month repayment schedule

### **Example 2**

- Another employer is in similar critical financial hardship.
- However, only one of its buyers can put forward any initial funding towards repayment, and this cannot meet the funding required to meet the 6-month requirement. The employer calculates, with evidence, that attempting to complete the repayment within the 6-month window, even with this additional funding, would bankrupt the business causing an adverse effect on workers
- Therefore, as a last resort approach, the payment window is extended to 12 months.
- Even with this extension to the payment window, some migrant workers have to be let go to ensure the business does not go bankrupt. The contact details of these workers are gathered, and 1 year later once the business has recovered, the workers are contacted and have their repayments completed over the course of 0-6 months

### **Guidance notes**

- It is important to note that there are two ways in which timelines can recreate an additional forced labour risk on workers: either by being too long, or by weighting the bulk of payments later in the timeline.
- Where payments are made over a 12 month-period, the instalment amounts should be higher during the initial months of the payment period or should be distributed equally. Payments should not be weighted towards the end of the payment period.
- Workers should all be paid at the same time, rather than paying some groups of workers before others (i.e. a staggered approach). Efforts should be made to apply this to all workers. In some cases, for example for sub-contracted workers, more time may be required to negotiate payment terms with the relevant employers.
- Longer periods of repayment risk constituting a new form of bonded labour, as migrant workers may feel tied to their jobs for longer periods of time, just to ensure they receive their payments in full. Employers should avoid consideration of 'risks' of migrant workers resigning upon receipt of payment for this reason. Experience shows that such resignations are rare – as migrant workers report feeling more respected and motivated to work for their employer, once repayment is properly communicated and implementation started. Instead of focusing on preventing workers from resigning, employers should focus on ensuring working and living conditions are such that workers will want to stay even if they are free to leave without constraints.

## 5. REMEDIATING LOCALLY RECRUITED MIGRANT WORKERS



### Remediating locally recruited migrant workers

**Goal:** Migrant workers recruited locally receive repayment for Fees and Costs.

5

When an employer recruits migrant workers locally (i.e. in the destination country, recruited from another Employer which may have gone bankrupt or is no longer in business, or as otherwise allowed by law) they are not directly responsible for the workers' recruitment journey. The employer that originally recruited these workers should have been responsible for the Fees and Costs those workers paid during their recruitment journey. However, despite the fact that these workers arrived at their current Employer via an indirect route, these workers are still at a similar level of risk of having paid recruitment Fees and Costs as any other migrant worker and hence at risk of debt bondage and forced labour.

#### Minimum standard

##### Requirements:

- Where Employers are not prepared to cover the full recruitment cost of locally recruited workers, a one-off 'Goodwill' payment of 2 months' salary must be made to migrant workers recruited locally that have paid recruitment Fees and Costs<sup>8</sup>. A flat rate, rather than a per-nationality rate, is recommended here to avoid situations of discrimination in hiring – where employers may, for example, avoid hiring Bangladeshis because it would cost more in repayment payments.
- This amount must be paid in the same currency that workers' salary is paid in once the worker has completed 3 months of service.
- This payment will to some extent mitigate the impact of migrant worker-paid Fees and Costs, whilst also recognising that the Employer did not directly recruit these migrant workers. Covering this will, in most cases, still cost less than recruiting a new worker directly from their home country, and therefore should not disincentivize hiring of such workers locally. However, in exceptional cases where there is reason to believe this approach will disincentivize hiring of migrant workers – this approach may be open to tailoring.
- Appropriate communications must accompany remediation and repayments which recognise:
  - (a) the purpose of the payment being towards remediating historic unethical and often illegal Fees and Costs paid by the migrant worker, and
  - (b) that this may only partially cover those costs paid historically

#### Best practice

##### Recommendations:

- Repayment should be made to all migrant workers including any recruited locally (e.g. via transfer from another Employer). Given the risk of debt bondage and historic fee payment, employers should take responsibility for remediating these workers as a part of their workforce if they choose to recruit migrant workers locally with the inherent risks involved.
- The repayment amount for this group of workers should use the amounts calculated per nationality for the regular workforce as a baseline. However, these workers should also be interviewed individually once hired to establish and correct any major deviations from that amount.

<sup>8</sup> This relates to Goal 10.7 of the Sustainable Development Goals (SDGs) which calls for facilitating orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies, specifically indicator 10.7.1: "Recruitment cost borne by an employee as a proportion of monthly income earned in country of destination."

## 6. ENGAGEMENT AND COMMUNICATION WITH MIGRANT WORKERS

6

### Engagement and communication with migrant workers

**Goal:** Workers are engaged in the repayment process and receive clear communication related to the purpose, amount, timeline and protocol for payments.



#### Minimum standard

##### Requirements:

During the development of the repayment plan:

- Migrant workers must be invited to engage in the repayment process themselves or through elected workplace representatives, trade unions or other independent organisations or 3rd parties that they trust or choose to represent them in negotiations with an employer.

Following finalisation of the repayment plan in consultation with migrant workers or their representatives, an employer must ensure that migrant workers understand the cause and reasons for repayment, the repayment process (amounts, timings) and that they have avenues to ask questions, provide feedback or raise grievances. Employers must:

- Provide all workers (domestic<sup>9</sup> and migrant) with a general memo in their own language which indicates why the payments are being made. This should address the issue of unethical recruitment Fees and Costs and provide an apology on behalf of the employer as far as possible. Additionally, this can indicate to migrant workers transparently that their payments will be different per nationality (and indeed per recruitment year or recruitment actor if that is the case). This communication does not necessarily need to publicly detail the exact figures for each group – however, transparency about differing amounts will be key to avoiding misunderstanding and potential unrest.
- Provide migrant workers receiving repayment with:
  - An individually addressed letter in their own language clearly communicating the process, protocol, rationale, and timeline for repayments. The actual amount of repayment that the worker will receive should be included in such communication, as well as details of how it was calculated.
  - A payslip which shows the repayment amount as a separate item.
- Organise communications sessions explaining the above verbally to all their workforce. These sessions must:
  - Be carried out in an appropriate location and in the workers' own language.
  - Communicate the helpline (see below) and its purpose.
  - Make clear to workers that receipt of financial repayment under any of the models presented here does not prevent these workers from exercising or claiming other rights or damages to which they may be entitled to under law.
- Where internal resources or expertise are limited or unavailable, contract an independent 3<sup>rd</sup> party helpline or utilise other independent methods to enable migrant workers to report any issues related to payment. The helpline must be available in workers' languages and ideally be operated by people trusted by workers. Awareness-raising sessions must be carried out to make workers aware of the helpline and how to use it. A log of issues raised, and their resolution must be kept, including confirmation that worker unions/representatives have knowledge of these issues. This helpline can have its purpose extended to become a more general external grievance line where appropriate.

<sup>9</sup> This document should also be provided to local workers, to ensure transparency and understanding, and reducing the risk of tensions between groups

## Best practice

*Clear communication and engagement with workers in their own language, and through a variety of channels, including verbal and written form, is vital to ensure the repayment is carried out effectively. Therefore, there is no best practice for this category, only a minimum standard.*

## 7. PAYMENT VERIFICATION



### Payment verification

**Goal:** A reputable independent third party verifies that all repayments have been made correctly, without any negative consequences for workers.

7

#### Minimum standard

##### Requirements:

- An independent 3<sup>rd</sup> party verification of payments to migrant workers must be conducted. This must include document review, worker interviews and management interviews.
- Verifications must be spread throughout the entire repayment schedule, but do not necessarily have to occur alongside every payment date.
- Verifications must:
  - Check that all workers (including workers that have returned to their home country) are being paid in full and on time.
  - Check that all workers understand what the payments are for.
  - Check that payments are not being made via a Labour Recruiter or broker, and documents are not being falsified.
  - Consult with worker unions and representatives, where existent, on an ongoing basis.
- Where in-person access to workers is limited, remote verification methodologies can be utilised (i.e. speaking with workers via Zoom, Whatsapp, Skype, etc.)

#### Best practice

*Verification that payments have been made correctly is critical in order to ensure a robust and legitimate repayment process. Therefore, there is no best practice for this category, only a minimum standard.*

## 8. SAFEGUARDING MIGRANT WORKERS

8

### Safeguarding workers

**Goal:** All workers are protected throughout the repayment process.



#### Minimum standard

##### Requirements:

Employers and other stakeholders involved in the repayment process must take steps to safeguard workers from retaliation or harm throughout the process.

- Investigators must be trained to identify any workers that may be at risk of threats or retaliation, or may have been trafficked, and implement suitable remediation actions. In some cases, workers may have paid Fees and Costs to exploitative, criminal brokers or syndicates that may threaten and coerce workers to pay them all or part of the repayment amount. In such cases, referral to law enforcement may be necessary.
- All workers must be informed about the internal or independent 3rd party helpline (see Standard 7), and that they can report any issues related to payment (including any potential threats from recruitment agents or brokers) to this helpline.
- Workers must also be provided with information on how to access support from local NGOs, worker representatives or law enforcement officials.

#### Best practice

*Safeguarding workers throughout the repayment process is vital, therefore, there is no best practice for this category, only a minimum standard.*

## Supplementary Comments

### **Repayment does not entail full remediation**

Repayment processes as outlined in this document may not lead to complete remediation of and reductions in the risk of debt bondage and forced labour situations<sup>10</sup> arising in workplaces and supply chains. Full remediation of complex and sensitive situations of forced labour, in many cases, will require a much broader range of actions beyond the scope of this document. For instance developing and implementing new policies, targeting systemic company practices, ensuring accountability for illegality and wrongdoing, apologies and guarantees of non-recurrence<sup>11</sup>, as well as addressing more complex harms which forced labour victims may have suffered (e.g. psychological damage, loss of opportunities).

### **Repayment must not prevent workers from making further claims**

There will be cases where, even following the best practice standards set out in this guidance document, some individuals worthy of repayment of Fees and Costs may be omitted or may receive a lesser amount than they have paid in advance for their job. It is therefore recommended that employers set aside a Contingency Fund (see Standard 3) to compensate in such cases.

Receipt of financial repayment under any of the models presented in this guidance document should not prevent migrant workers from exercising or claiming other rights or damages to which they may be entitled under law. Different jurisdictions and judicial systems assess adequacy and requirements of remediation to situations of forced labour or rights abuses in different ways also, according to their laws and precedent. Informing migrant workers of their rights is therefore crucial.

### **Investment in responsible recruitment systems is key to ensure sustainability of repayments**

The ‘best practice’ options for repayment of recruitment related Fees and Costs outlined here represent a viable and recommended pathway whereby Impactt believes workers will receive the repayment they are entitled to, and employers will be most protected from the risk of future litigation and claims for additional pay-outs by migrant workers alleged to have been subject to situations of forced labour<sup>12</sup>.

However, in order for repayments to be sustainable, it is vital that Employers adopt and implement a responsible recruitment system which will effectively prevent worker-paid recruitment Fees and Costs in the future. Such work must be carried out in parallel with any repayment efforts.

For further guidance see:

- *Guidance for buyers, auditors and employers (to be developed)*

<sup>10</sup> Forced labour being defined by the 11 [ILO Forced Labour Indicators](#)

<sup>11</sup> See for example OHCHR commentary on UNGP no.25, on p27 of:

[https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>12</sup> Forced labour through debt bondage, as defined internationally in various legal and state jurisdictions

## Appendix A – Definitions

### Recruitment Fees and Related Costs

The below table summarises the ILO's definition of recruitment fees and related costs. These are costs that should be paid by governments, employers, and recruitment agencies, not by workers.<sup>13</sup>

<b>ILO Overview of Recruitment Fees and Related Costs (referred to in this document as 'Fees')<sup>14</sup></b>	
<b>Recruitment Fees</b>	
1	Payments for recruitment services offered by public or private labour recruiters. These fees may be one-off or recurring and can cover recruitment, referral, and placement services. Costs could include advertising, disseminating information, arranging interviews, submitting documents for government clearances, confirming credentials, organizing travel and transportation, and placement into employment.
<b>Related costs</b>	
Related costs are expenses which are integral to recruitment and placement within or across national borders. It is generally acknowledged that the widest set of related costs are incurred for international recruitment. The following costs should be considered related to the recruitment process when initiated by an employer, labour recruiter or an agent acting on behalf of workers; when required to secure access to employment or placement; or imposed during the recruitment process.	
<i>To note – a company policy which aims to ensure that workers do not bear these fees and related costs is referred to in this document (and in many cases by companies) as a 'Zero Cost' policy</i>	
2	<b>Medical costs</b> (payments for required medical examinations, tests, or vaccinations)
3	<b>Insurance costs</b> (costs to insure the lives, health, and safety of migrant workers, including through enrolment in migrant welfare funds)
4	<b>Skills and qualification tests</b> (e.g. to verify workers' language proficiency, level of skills and qualifications, location-specific certification, or licensing)
5	<b>Training and orientation</b> (e.g. expenses for language, skills, and other required trainings, on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers)
6	<b>Equipment costs</b> (costs for tools, uniforms, safety gear and other equipment needed to perform assigned work safely and effectively)
7	<b>Travel costs</b> (expenses incurred for travel, accommodation, and subsistence during the recruitment process, e.g. during training, interviews, consular appointments, as well as costs for return and repatriation.)
8	<b>Administrative costs</b> (application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining, or legalizing workers' employment contracts, identify documents, passports, visas, background checks, security and exit clearances, banking services and work and residence permits).
<b>Illegitimate costs</b>	
9	Extra-contractual, undisclosed, inflated, or illicit costs (e.g. bribes, extortion or 'kickback' payments <sup>15</sup> , bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain).

### Further definitions

**Country of destination:** In the migration context, a country that is the destination for a person or a group of persons, irrespective of whether they migrate regularly or irregularly. Also known as host country, receiving country, State of employment.

<sup>13</sup> See summary: ILO, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_536755.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf)

<sup>14</sup> Note: this table covers Fees and Costs paid by workers in their home country only.

<sup>15</sup> These kinds of costs, including especially kickback payments and bribes that are accepted by employers, agencies and their representatives may warrant an internal or independent and detailed investigation to ensure criminal, civil or general contractual accountability and to recoup some of the workers' repayment costs.

**Country of origin:** In the migration context, a country of nationality or of former habitual residence of a person or group of persons who have migrated abroad, irrespective of whether they migrate regularly or irregularly. Also known as home country, sending country or state of origin.<sup>16</sup>

**Debt bondage:** The status or condition arising from a pledge by a debtor of his or her personal services or those of a person under his or her control as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.<sup>17</sup>

**Employer:** A person or an entity that engages employees or workers, either directly or indirectly.

**Employer Pays Principle:** Reflecting Principle I of the Dhaka Principles for Migration with Dignity, the Employer Pays Principle is a commitment to ensure that no worker should pay for a job. In response to this internationally recognised principle, many companies adopt an “Employer Pays” or “Zero-Cost” Policy to ensure migrant workers do not pay any Fees or Costs.<sup>18</sup>

**End-user employer:** a business enterprise that contracts the services of an employment agency, which in turn provides the services of an agency worker. The end-user employer usually supervises the work and it is normally performed on its premises; however, the end-user employer is not party to the employer– employee contract, or responsible for payment of wages directly to the worker.<sup>19</sup>

**Forced labour:** work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily.<sup>20</sup>

**Human trafficking:** The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of 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. Trafficking in persons can take place within the borders of one State or may have a transnational character.<sup>21</sup>

**Labour recruiter:** The term labour recruiter refers to both public employment services and to private employment agencies and all other intermediaries or subagents that offer labour recruitment and placement services. Labour recruiters can take many forms, whether for profit or non-profit, or operating within or outside legal and regulatory frameworks.<sup>22</sup> Private employment agencies fall within the definition of labour recruiters. For the purpose of this document, the term of private employment agency refers to the agencies that provide recruitment and employment services in the destination country.

**Mean:** The average in a set of numbers, obtained by dividing the sum total of a set of figures by the number of figures.

**Median:** The value that represents the point at which there are as many instances above as there are below.

<sup>16</sup> [IOM Glossary](#)

<sup>17</sup> [Ibid](#)

<sup>18</sup> [IHRB: The Employer Pays Principle](#)

<sup>19</sup> [IRIS Standard](#)

<sup>20</sup> ILO, CO29 – Forced Labour Convention (39 UNTS 55, 1930), art. 2(1)

<sup>21</sup> UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, 2000

<sup>22</sup> [ILO General Principles and Operational Guidelines for Fair Recruitment](#)

**Mode:** Number which appears most often in a set of numbers.

**Migrant worker:** A “migrant worker” is defined in the International Labour Organization (ILO) instruments as a person who migrates or has migrated from one country to another with a view to being employed other than on his own account, and includes any person regularly admitted as a migrant for employment. Here we also apply the term to any workers that are travelling or migrating within their own country of birth or residency. The same mechanisms and approach should be applied in such cases.

**Private Employment Agency:** For the purpose of this document, the term of private employment agency refers to the agencies that provide recruitment and employment services in the destination country.

**Subcontractor:** a person or business (operating as a registered entity) which has a contract (as an “independent contractor and not an employee”) with a contractor (labour recruiter) to provide some portion of the work or services on a project which the contractor has agreed to perform. The subcontractor is paid by the contractor for the services provided.<sup>23</sup>

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<sup>23</sup> [IRIS Standard](#)

## Appendix B – Core Principles

The below provides additional information related to Core Principle 2.

### **Core Principle 2: Shared responsibility and accountability**

Shared responsibility of repayment payments means that an employer may, in certain circumstances, feel justified in engaging their buyers, investors or contracted recruitment agencies for support in covering repayment costs. This may be due to the past buying price of their goods or services rendered not having reflected the employer covering all Fees and Costs in line with the ILO definition, or in line with developing international standards. The shared goal of all stakeholders should be to collaborate to make repayments as quickly as possible while ensuring that they are done correctly.

Shared responsibility may entail that:

- Recruitment agencies are held accountable for repayments to workers, for example by utilising contractual obligations between companies and agencies or withholding outstanding payment amounts to fund part of the repayments, with capacity building support provided to help ensure practices are improved into the future
- Where an Employer or Private Employment Agency is financially unable to repay workers, or can only repay over a time period beyond the minimum standards stated in this document, buyers or investors could be called on to repay upfront, with the Employer or Private Employment Agency then repaying the buyer.

## Appendix C – UNGP 31: ‘Criteria for effective grievance mechanisms’ and how this relates to this guidance

In line with the UN Guiding Principles on Business and Human Rights (UNGPs), companies are required to ensure that victims of human rights abuses have access to effective remedy. Effective remedy means putting right harms caused to people, including financial harms to workers as part of the recruitment process.

Impactt assesses the effectiveness of a remediation plan against the following criteria:

1. Legitimacy – i.e. the amount is calculated through a credible and/or independent investigation
2. Accessibility – i.e. all workers entitled to remediation are in scope of the remediation plan
3. Equitable and fair – i.e. repayment amounts are calculated in a fair and trustworthy manner
4. Transparent – i.e. all parties have received clear information throughout the process
5. Compatible with internationally recognised human rights – i.e. amounts are compatible with existing benchmarks on worker-paid recruitment Fees and Costs and paid according to a timeline which does not perpetuate bonded labour
6. Based on engagement and dialogue with the groups remedy is meant for – i.e. workers have been engaged in the process

These principles cover 6 of 8 criteria outlined under the UNGPs for judging the effectiveness of grievance mechanisms.

Impactt measures outcomes using one of the two remaining criteria:

7. Predictable – i.e. on verification, does it turn out that the plan has been implemented successfully

Impactt urge companies to use the final criteria, 8. *a source of continuous learning*, in their ongoing efforts towards zero cost recruitment, as they continue to engage with workers and other actors to understand how to improve the ongoing recruitment experience for workers.

Source: [The UNGP Criteria for Effective Grievance Mechanisms](#)



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