

GUIDE TO PRIVATE EMPLOYMENT AGENCIES
Regulation, monitoring and enforcement

Skills and Employability
Department (EMP/SKILLS)

Special Action Programme
to combat Forced Labour
(DECLARATION)

GUIDE TO PRIVATE EMPLOYMENT AGENCIES

Regulation, monitoring and enforcement

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Preface

For the past two decades, the increasing need to provide services to a rapidly growing and flexible labour market has led to the spectacular growth of private employment agencies (PrEA). While PrEA have long complemented the traditional employment market, they are now considered as a catalyst for new forms of human resource management services and can be contributors to better working conditions.

PrEA play an important role in the functioning of the labour market. With the adoption of ILO Convention No. 181, Private Employment Agencies Convention, 1997, PrEA are now more positively recognized. The same Convention sets the general parameters for the regulation, placement and employment of workers by these agencies. Through this Convention, ILO seeks to assist its member States to establish clear policies, legislation and implementing mechanisms for the effective registration and licensing of PrEA, thereby helping them play a constructive role in contributing to a labour market free from exploitative conditions.

This *Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement* has been prepared by the ILO to provide guidance to national legislators in drafting legal frameworks in line with ILO Convention No. 181 and Recommendation No. 188. Twenty countries have ratified the Convention and ILO has received a number of requests to assist national governments develop legal frameworks to regulate PrEA. The Guide is rich in many examples of country legislation and has collated specific provisions from both developed and developing countries. It is a useful resource for national legislators and social partners to identify possible gaps in their legislation and to find appropriate solutions. The Guide provides an overview of regulatory and institutional requirements, so that countries can be free to adapt aspects of the legislation applicable to their own national situations.

This Guide is a collaborative undertaking between the Skills and Employability Department (EMP/SKILLS) and the Special Action Programme to Combat

Forced Labour (SAP-FL) in DECLARATION and has benefited from the review and comments of key ILO external stakeholders: China Association for Employment Promotion (CAEP); Philippine Overseas Employment Administration (POEA); International Organization of Employers (IOE); International Confederation of Free Trade Unions (ICFTU); the International Confederation of Private Employment Agencies (CIETT); and, key ILO offices. We would like to thank them for their invaluable inputs.

This guide is a result of teamwork. We wish to thank the following: Mr. Lars Thomann, ILO consultant, who developed the initial draft through extensive research; Ms. Beate Andrees (SAP-FL, DECLARATION); Ms. Carmela Torres and Ms. Ellen Hansen (EMP/SKILLS), who worked tirelessly to ensure that the Guide appears in its proper form and content; and, Ms. Evelyn Ralph who edited it.

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Introduction

1

The rapid growth of private employment agencies (PrEA) has been due to a number of factors: a rapidly changing and flexible labour market; constraints in the operations of public employment services; and, the use of other networks for placement. There are few industries in the world that have changed their image as profoundly as the private recruitment industry. With companies increasingly seeking more flexible and mobile staff, and with workers willing to move across borders under varied work arrangements, private recruiters have become even more important to the efficient functioning of labour markets. Against the backdrop of changing national and global labour markets, PrEA have steadily increased their market share and expanded their business activities. They have placed over 8 million workers worldwide and have enhanced the employability of jobseekers by keeping them in touch with the job market and through training.¹

This development has been fostered by the opening up of labour markets in different parts of the world where previously public institutions had the monopoly on recruitment. The most dramatic examples can be found in the former communist countries of Eastern Europe. In others, mainly developing countries, recruitment is privatised “by default” as public employment services struggle with inefficiencies and minimal resources. Throughout the 1990s, more and more governments revised policies that prevented PrEA from operating in the market. It was in this spirit that ILO constituents adopted the new Private Employment Agencies Convention No. 181 in 1997, replacing earlier standards that had been aimed at the abolition of private recruitment agencies. This Convention recognizes that private employment agencies can contribute to the functioning of the labour market and sets general parameters for the regulation, placement and employment of workers recruited

1. International Confederation of Private Employment Agencies (CIETT), July, 2006.

by PrEA and, in particular, temporary work agencies. At the same time, the Convention promotes cooperation between the public employment services (PES) and PrEA to ensure the most efficient functioning of the labour market, with the PES still maintaining the authority in formulating labour market policies. The Private Employment Agencies Recommendation No. 188 relates to Convention No. 181 and specifies provisions for this cooperation. Currently, twenty (20) countries have ratified Convention 181.²

Mindful of their negative image, in some quarters, leading PrEA have developed mechanisms of self-regulation to promote good business practice and receive recognition as legitimate players alongside the PES. Self-regulation, however, cannot replace the role of national legislators and law enforcement agencies. National legislation has been seen as a means of balancing the interests of PrEA with the need to protect rights of workers, as set out in ILO Convention No. 181 and Recommendation No. 188 on Private Employment Agencies (please refer to Annex I on the actual texts of the Convention and Recommendation). Legislation can help in shaping the role of PrEA within the context of national employment and migration policies, local specificities of labour markets and levels of socio-economic development. Regulation should, therefore, ensure that PrEA offer their services in the interests of their clients as well as in support of the overall development goals of countries. It should improve the functioning of the labour market, not serve as a tool to restrain competition and create an unnecessary burden for PrEA.

Many countries that started elaborating such legal frameworks have sought guidance from the ILO. The present document seeks to provide guidance to national legislators for drafting laws in accordance with international standards. At the same time, it should also be seen as a resource book that provides a comprehensive overview of regulatory frameworks, based on ILO Convention No. 181 and Recommendation No. 188, as well as other international labour standards relating, for instance, to employment generation and migration. It may, therefore, be useful to a range of practitioners, including workers' and employers' organizations. It also contains country examples that should not, however, be regarded as best practice, but rather as illustrations of various possible approaches to drafting legislation on PrEA.

The Guide does not promote a "one-size-fits-all" approach. It gives an overview of a number of regulatory and institutional aspects, not necessarily relevant to all countries. In those with highly developed labour markets, for example, many of these aspects may already be sufficiently covered by general labour law provisions. In others, resources may be limited to such an extent that it would be impossible to

2. The countries which ratified ILO Convention No. 181 are: Albania, Algeria, Belgium, Bulgaria, Czech Republic, Ethiopia, Finland, Georgia, Hungary, Italy, Japan, Lithuania, Republic of Moldova, Morocco, Netherlands, Panama, Portugal, Spain, Suriname and Uruguay.

properly enforce an overly complex regulatory system. It is up to the national legislator and social partners to identify possible gaps in legislation and to find appropriate solutions. The Guide can serve as a useful resource for this purpose.

The Guide starts by outlining the overall context of legislation and institutions with regard to PrEA. The second section provides a detailed overview of possible legal requirements for establishing and operating a PrEA. The following section discusses regulatory and enforcement responsibilities of governments. The final two sections focus on mechanisms of self-regulation and cooperation between PrEA and public employment services. The annex contains extracts of representative legislative acts that have been chosen from a wide range of countries.

Background and context

2

2.1. Considerations in drafting legislation

Historically, there have been three main approaches to the regulation of PrEA: first, strict prohibition of any placement or other services offered by private agencies; second, strict regulation of PrEA that were allowed to operate alongside PES; and, third, minimum regulation of PrEA that were accepted as private players in the labour market.¹ Whereas the first policy option has been abandoned by most ILO Member States, differences, as regards the scope and density of regulation, are significant. The starting point for all regulation is the determination of the legal status and conditions governing the operation of PrEA. As set out in Article 3 of ILO Convention No. 181, the PrEA legal status shall be determined according to national law and practice and its operation, according to a system of licensing or certification. However, such licensing or certification system should be properly enforced, be objective, transparent and able to assist agencies in delivering their services appropriately and adequately. As options to licensing, registration and certification systems can also be implemented. As in the licensing system, proper enforcement is necessary and social partners should be involved. In most legislation on PrEA, the fundamental principles are found in laws where concrete, but also variable provisions, can be found in regulations such as ministerial ordinances or decrees. Some laws vest the enforcing agencies with the power to set up their own rules and regulations, i.e. concerning the licensing conditions. This may be a useful way not to overload a general law, such as a labour code, with detailed provisions, and to ensure a constant review process. The enforcing agency may directly react and change any provision of

1. For a historical overview of the policy debate around PrEA see ILO (1994): *The role of private employment agencies in the functioning of the labour market*, Geneva.

a ministerial regulation that has proven to be ineffective in monitoring the activities of PrEA. Further, it is essential in the process of elaborating such laws that equality issues and gender considerations be integrated.

If legislation regulating business activities of PrEA is elaborated, it should in the first place be consistent in itself; in addition, it should correspond to the overall labour market and migration policies for employment in a country. Experience has shown that this is necessary because contradictions between national legislation and policies can present a serious obstacle for the effective implementation and enforcement of PrEA regulations. In addition, during the legislative process, a country should consider existing government administrative capabilities to implement the proposed provisions. It can already be quite obvious, for example, at the stage of the drafting process, that the capacities of the designated enforcement authority are limited. It would, in such a case, be advisable to keep the obligations and requirements for PrEA as simple as possible, otherwise the enforcement process could be overburdened. Member States of the ILO are entitled to assistance from the Office when drafting new labour legislation.²

Article 3 of Convention No. 181 sets forth that, before drafting and adopting legislation, the organizations of workers and employers should be consulted. Special attention should be paid to particularly vulnerable workers, such as women or migrant workers. In order to take their concerns into account, it may also be advisable to consult with relevant civil society organizations and other stakeholders. Governments may, according to Article 2 (4) (a) of ILO Convention No. 181, after having consulted the most representative organizations of workers and employers, exclude certain “private employment agencies from operating in respect of certain categories of workers or branches of economic activity”. Such an exclusion of private market participation of PrEA in recruitment activity may be meaningful in cases where malpractice by private agencies has occurred in the past. Governments, therefore, may view the protection of workers to be better guaranteed by public employment services. An exclusion of private recruitment activities, however, may only be advisable in those circumstances where the public employment services of a country are actually capable of providing them. This question is, however, not only related to the financial capacities of States, but perhaps, more importantly, to the perceived acceptance of jobseekers in using the services of governmental agencies. If it was the case that some jobseekers would rather use private agencies than public services, it would be advisable to allow and regulate the participation of private recruitment agencies in the national labour market.

Two important related provisions of the Convention, Articles 4 and 11, emphasize the rights of workers to freedom of association and collective bargaining. PrEA legislation should include stipulations specifying that the workers recruited

2. The ILO Programme on Social Dialogue has prepared a tool that could also be of general help in this regard: the Labour Legislation Guidelines can give advice and assistance in drafting new labour laws. Available at: <http://mirror/public/english/dialogue/ifpdial/llg/main.htm>

are afforded these rights, as well as adequate protection in relation to: minimum wages; working time and other working conditions; statutory social security benefits; access to training; occupational safety and health; compensation in cases of occupational accidents and diseases and insolvency and protection of workers' claims; and, maternity protection and benefits. Article 12 further indicates the responsibilities of PrEA that involve employing workers with services made available to a third party, referred to as "user enterprise".

Recommendation 188 states that "private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike". Several countries have adopted legislation that prohibits the replacement of regular workers who are on strike by agency staff. In the United Kingdom, for example, the Conduct of Employment Agencies and Employment Business Regulations 2003, which came into force in April, 2004, restricts the provision of job-seekers during industrial disputes.

There are instances where some developed countries' legislation legalizes profit-oriented PrEA, treats them as any other business and, therefore, the employers and workers are covered under general labour legislation. This allows for a smooth deregulation of PrEA, especially where strong labour unions exist, having secured the working conditions of the employees through collective agreements. A number of good case examples are those of Sweden³ and Germany,⁴ where PrEA and temporary workers are covered by collective agreements that stipulate the employment relationship.

These are also indicative of the positive role of social dialogue in regulating and monitoring PrEA. The Netherlands and Denmark have statutory regulations on PrEA, whose legal framework has been achieved through collective labour dialogue, emphasizing the growing role of collective bargaining in the expansion of the sector.⁵

It is important that all laws and regulations be publicly known and circulated. This prerequisite could enable those PrEA applying for a licence to realistically expect its issuance, if conditions are met. Any decision taken by authorities, either referring to the licensing or the monitoring process, should be comprehensible, traceable and clearly based on the regulations. The conditions for obtaining a licence should be transparent, objective and known to applicants. The circumstances under which licences may be revoked or withdrawn should be known by future licensees. This includes a reasonable and realistic time limit for authorities to decide on an application for a licence.

3. Nystrom, Brigitta. "The Legal Regulation of Employment Agencies and Employment Leasing Companies in Sweden", *Comparative Labor Law and Policy Journal*, Vol. 23, No. 1, Published August, 2003.

4. Collective Framework Agreement on Temporary Work, Germany. <http://www.bza.de/tarif/tarifvertraege.php>.

5. "Temporary Agency Work in an enlarged EU", June, 2006. The full report is available at <http://eurofound.eu.int/thematicfeature14.html>.

2.2. Typology of PrEA legislation and regulations

The scope of application of PrEA regulations is likely to be linked to the types of recruitment services PrEA carry out or to sectors in which the focus of their operation lies. For example, a number of countries have set up specific legislation on temporary work agencies, while in other cases, legislation is intended to regulate the recruitment and placement of workers abroad, or others would include agencies which provide services other than placement.

Legislation is utilized to regulate, in an efficient way, the placement of persons in accordance with the law. Specific legislation to guide particular types of recruitment services is absolutely necessary, as in cases dealing with domestic workers and placement of workers abroad, as well as in the national market. If the placement of workers abroad is very common in a country, specific legislation for this kind of activity should be considered. In contrast, where such recruitment for abroad is rarely carried out, these agencies could fall under the scope of the general legislation. The structure of the domestic labour market and the placement activities predominantly undertaken may have an impact on deciding whether a single concise piece of legislation covering all types of agencies should be elaborated, or whether several specific laws and/or regulations should be used.

Box 1 Typology of legislation

A number of countries have opted for adopting specific laws and/or regulations covering only certain types of PrEA and addressing specific practices prevailing in this sector. The table provides some examples:

Topic of legislation: Scope of application of legislation

Country	Types of PrEA
Austria	Temporary work agencies
Belgium	Temporary work agencies
China	Overseas employment
France	Temporary work agencies
Germany	Temporary work agencies
Indonesia	Overseas employment
Italy	Temporary work agencies
Philippines	Overseas employment
Poland	Temporary work agencies
Portugal	Temporary work agencies
Spain	Temporary work agencies
UK	Labour providers in agriculture

In most countries specific legislation, for particular types of agencies, is set up to address specific kinds of practices connected to the activity carried out. In relation to temporary work agencies, for example, questions of equal treatment compared to regular staff are frequently asked; in a number of countries legislation on temporary work agencies, therefore, contains specific provisions on the protection of working conditions of agency workers. A similar picture evolves concerning overseas recruitment agencies.

Increasingly, difficulties in regulation and monitoring have arisen from PrEA operating on the Internet. Agencies operating through this medium, offer a wide range of services from classical job placement activities (fixed-term or temporary) to recruitment in other areas, such as au pairs, model agencies, etc. Since Internet based agencies have no physical infrastructure, they are difficult to monitor. A similar problem also prevails in the context of businesses based in, and operating from, another country outside the scope of application of national regulations. Many PrEA are engaged in the recruitment of migrant workers for jobs abroad. However, as these agencies operate from abroad, it is difficult to hold them accountable for abuses occurring in the recruitment process.

2.3. Institutional framework

Regulating and monitoring the activities of PrEA requires a responsible administrative authority for the enforcement of the legislation. In most countries, the authority lies with a specifically designated department within the Ministry of Labour, while other governments have created a separate authority charged with monitoring the activities of PrEA. Establishing a separate authority may offer the advantage of, not only involving other government officials, but also the social partners, i.e. the workers' and employers' organizations, or NGOs, as relevant, in the monitoring process. This increases the legitimacy of the monitoring process and might possibly be more effective, as more stakeholders become involved.

Authorities in charge should be clearly designated and have a precise mandate. If there is an ambiguous assignment of an enforcing authority, this could lead to an overlapping of tasks and duties and hence to problems of competence. To prevent this, cooperation mechanisms and procedures can be adopted where various ministries or agencies are involved in the enforcement process. Setting up coordination mechanisms is meaningful for other reasons. As the role of public and private employment services should be viewed in the light of other policies, especially regarding labour migration, interdepartmental coordination procedures should exist. This could facilitate the implementation of the overall labour market policy more coherently. Countries that seek to conclude bi-lateral agreements, or pursue

other protective measures regarding labour migration, may find that coordination between the needs and demands of different government ministries or departments can improve the effectiveness of putting these agreements into practice.



Samples of national legislation language on this topic are provided in **Annex III, table 1**.

2.4. Definition of PrEA

An important requirement of any PrEA legislation should be a clear and unambiguous definition of the term “PrEA”. This avoids a confusion regarding the application of the legislation. For example, protective provisions set out in the law might not cover certain categories of workers recruited through PrEA.

All categories of PrEA offering different types of job placement services have in common placement as their main activity. Despite differentiations in their functioning and modes of operation, PrEA could be defined generally as service

Box 2

C 181 Private Employment Agencies Convention, 1997

Article 1

1. For the purpose of this Convention the term **private employment agency** means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:
 - (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
 - (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred below as a “user enterprise”) which assigns their tasks and supervises the execution of these tasks;
 - (c) other services related to jobseeking, determined by the competent authority after consulting the most representative employers’ and workers’ organizations, such as the provision of information that do not set out to match specific offers of and applications for employment.
2. For the purpose of this Convention, the terms **workers** includes jobseekers.
3. For the purpose of this Convention, the term **processing of personal data of workers** means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

enterprises under private law carrying out, under contract, and in exchange for financial compensation, operations on behalf of individuals (or enterprises) whose aim is to ease or speed up access to employment or career progression by filling a vacancy.⁶ The definition of PrEA established in ILO Convention No. 181 is shown in Box 2.

This definition of Convention No. 181 has already been used in many cases (e.g. in Georgia, Slovenia and Italy) and could serve as a reference point for national PrEA legislation.



Samples of national legislation language on this topic are provided in **Annex III, table 2**.

6. ILO: *The Role of Private Employment Agencies in the Functioning of the Labour Market*, 1994, Geneva, p. 11.

Legal requirements for establishing and operating PrEA

As stipulated in Convention No. 181, “A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice”. However, licensing should not be seen as the only means of oversight or monitoring of the activities of PrEA. Certification and self-regulation are other options. More details are discussed in Section 4.0. The following section focuses on details of mandatory registration and licensing which is the basic means for implementing the principles of Convention No. 181.

3.1. Registration and licensing of the business

General conditions

One of the options in regulating the activities of PrEA is through registration and licensing (accreditation, authorization, incorporation, etc.). Registration means that PrEA are registered with a government authority, while licensing requires the previous authorization of a PrEA before commencing business. This is reflected in article 3 (2) of Convention No. 181 in which Member States are called on to “determine the conditions governing the operation of PrEA in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice”.

The regulation, through a licensing system, helps to keep records of PrEA; it provides not only information, such as business addresses of the actors involved in

the job placement market, but also on the types of services PrEA offer their clients. Although PrEA, in general, operate as a normal private business, it is worth noting that their activities and operations relate to people wishing to find suitable employment. Services related to human resource management are unlike a brokerage business; they require specific skills and an understanding of human beings with their different needs, aspirations and idiosyncrasies. Thus, PrEA should be registered as a special category of private business to avoid malpractice and abuse of clients.

Before adopting any licensing regulations and provisions, it is appropriate that government consult the most representative organizations of employers and workers, in line with Article 3 of Convention No. 181. The participation of social partners gives useful references to the precise need in the labour market for the operation of PrEA. In addition, specific concerns brought forward by social partners, e.g. referring to certain groups of workers that are particularly vulnerable to exploitation and abuse, could be considered.

The licensing system proposed should not be a complex one that will create unnecessary problems and burdens to the entrepreneurs. Specific criteria may be agreed upon during the consultation process, especially those acceptable and suitable to developing countries. The conditions for issuing a licence may vary to a great extent with very different consequences in practice. The advantage of a compulsory licensing system is that it allows for a pre-screening of the applicants' capabilities and professional experience in job placement activities. A licensing system also helps to create transparency by identifying those participating in the market and the overall activities of PrEA, e.g. the number of jobseekers placed. A licence is used mainly as a means of improving the functioning of the labour market, not as a means to restrain competition. Generally, difficulties in the licence conditions lie

Box 3

Public registers of PrEA in the Philippines and Singapore

Models of public registers with licensed PrEA that increase transparency within the job placement market can be found in countries like Singapore and the Philippines. Both countries have made a list with all currently licensed agencies publicly available on the Internet. This allows potential jobseekers to cross-check in advance whether the agency they are seeking services from is licensed or not. Additionally, the Philippines have even included those PrEA that have been de-listed, suspended, revoked, cancelled, banned or have been refused a renewal of licence with full details of the agency's official representatives. For those jobseekers with no access to the Internet, the Philippines publish, on a regular basis, a brochure with listed agencies. This approach takes into account the financial situation of many (migrant) workers seeking services of PrEA.

Source: Internet addresses of public registers in Singapore and the Philippines:
Singapore: <http://www.mom.gov.sg/FMMD/EADirectory/>
Philippines: <http://www.poea.gov.ph/cgi-bin/agSearch.asp>

in the standard of proof necessary. If provisions lack precise definition, their interpretation is then left to the discretion of an individual government official. This is not advisable, as it leads to unequal treatment within, and distortions of, the job placement market.

If a licensing system for the operation of PrEA is installed, a register of all licensed PrEA can be made public. Such a public register (with information on licensed agencies, their addresses and possibly the expiration date of the licence) ensures that anyone can verify whether the PrEA they wish to consult is actually legitimate. Illegally operating PrEA can be much more easily identified if it is known which agencies are licensed or not. Such a high degree of transparency would be advisable, especially in national labour markets where numerous PrEA are active.

As regards the placement of migrant workers, the non-binding ILO Multilateral Framework on Labour Migration stipulates guidelines on licensing and supervising recruitment with reference to the ILO Convention No. 181 on Private Employment Agencies.¹

Registration fee

If a registration or licensing procedure exists, it is very common to collect a registration fee from PrEA. The amount of this fee, however, varies to a large extent in different countries, with some even requiring applicants to pay for the application form. However, PrEA should not be deterred from starting their businesses by excessively high registration fees, neither should existing PrEA, previously not required to pay registration fees, be deterred from continuing their business.

The payment of a registration fee covers the administrative procedure of the licensing agency and can also be seen as a proof of the financial capacity of PrEA wishing to enter the market. In some legislation, the amount of the fee is dependent on the size of the agency applying, in terms of number of employees. Making the registration fee dependent upon the actual size of the agency takes into account the financial capacity of the PrEA and, thus, also allows small- and medium-sized enterprises to enter in the market.

The administrative costs that a licensing authority will have to bear, very much depends on the licensing procedure itself. The more complicated and differentiated the application procedure, the higher administrative costs will be. If, however, the amount of the registration fee is not accurately adjusted to the power

1. The *ILO Multilateral Framework on Labour Migration* contains non-binding principles and guidelines for a rights-based approach to labour migration. It provides practical guidance and action in maximizing the benefits of labour migration. Published in 2006.

of consumption prevailing in the country, it might, as a consequence, push some PrEA to operate outside the legal system, which is not the intention of any regulatory framework, and makes supervision and monitoring even harder. Therefore, a balance should be sought between covering administrative costs for issuance of a licence and the financial capabilities of PrEA. It is important to note, that heavy financial burdens imposed on recruiters, may lead to decreased competitiveness related to those willing to operate outside the legal system. If the application for a licence is, for whatever reason, rejected, some legislation has even set up provisions for reimbursement of the registration fee.



Samples of national legislation language on this topic are provided in **Annex III, table 3**.

Financial Capacities – Deposit and minimum start-up capital

The financial capabilities of a PrEA are an important criterion to assess its business conduct. Proof of sound financial capabilities can either be given in the form of a deposit and/or by having a specified minimum start-up capital.

Before starting their operations, a number of countries require PrEA to put up a bond with the authorities, as security. A deposit can serve as a safeguard to ensure that the PrEA complies with the provisions of the legislation. In addition, any loss or damage occasioned to any person, due to any failure to comply, can be repaid from the deposit. This policy seems to be effective in terms of discouraging violations of State regulations, if they are based on clear rules and regulations guarding the procedure of confiscating the deposit in cases of misconduct. There are cases where such a deposit becomes useful for paying the worker an indemnity, either as ordered by a court or a specially designated administrative procedure.

In practice, the amount of the bond varies to a great extent. A deposit may serve as a safeguard measure for the protection of the worker (for unpaid wages or other social security benefits etc.) or to ensure the payment of imposed fines to PrEA, especially where the required deposit is a fixed sum, thus, keeping out small firms with a low volume of recruitment. Therefore, some countries make the sum to be deposited dependent upon the number of workers the agency seeks to recruit. This, however, might be hard to achieve in practice, as PrEA do not always know in advance how their business will evolve or how many workers will actually be recruited. In other countries, the amount of the deposit equals a multiple of the annual minimum wage.

Deposits or bonds are not only requested to anticipate possible damages or fines. They may also serve as proof of the financial capability of a PrEA applying for

a licence. Where this is the case, a bank guarantee or proof of a minimum start-up capital may be sufficient. Such requirements, of either a minimum start-up capital or a bank guarantee, may ease the decision of whether or not to licence a PrEA. Proof of financial capability serves to demonstrate that the agency has the ability to provide the necessary logistical and financial resources to operate its placement business and to sustain it, as in the case of a failure of its activities, without damaging the interests of the affected employees.



Samples of national legislation language on this topic are provided in **Annex III, tables 4 and 5.**

Personal and professional qualifications

Another important criterion for the issuance of a licence to operate a PrEA is the personal qualification of eligibility. One specific criterion can be the age of the applicant. In certain countries, the age of eligibility is above the age of consent. The reliability of an applicant of a certain age, having obtained specific professional work experience, may be expected to be higher.

Besides the age of the applicant, personal criterion first of all refers to the reliability of the licence holder (and their employees) through their demonstration of previous lawful behaviour. Application documents submitted lead to the expectation that an applicant will fully comply, not only with the PrEA legislation in question, but also all other relevant laws and regulations. A certification stating that the applicant does not have criminal record and/or previous trade interdictions usually fulfils this criterion. In some cases, the demonstration of lawful behaviour is restricted to specific offences relating to labour law or is dependent on the gravity of previous crimes committed. In addition, the licence applicant may be required to show their suitability for job placement operation. This criterion refers to management capabilities and will be discussed below.

Several countries have incorporated certain requirements for the demonstration of professional competence into licensing requirements in an effort to ensure quality control regarding services provided. An example is Singapore (Box 4). In Germany, professional minimum standards are regulated through voluntary agreements (Box 5).

Restrictions can be applied by requiring the licence holder to be a national. The rationale of requiring a licensee to be a national or, in the case of a corporation, the majority shareholders, to be nationals, has mostly prevented foreign nationals being accountable. Restrictions based on nationality may, however, be counterproductive in the sense that foreign recruitment agencies, which often provide more financial guarantees, and even better jobs, are kept out of the market. Fears of

Box 4

Personal and professional qualifications for PrEA licence applicants in Singapore

The Government of Singapore and the Ministry of Manpower have, through laws and regulations, stipulated rather strict requirements for the personal and professional qualifications a prospective PrEA licence holder must have.

First of all, applicants must be above 21 years old, be a Singapore citizen, a permanent resident, or hold an employment pass as a foreigner. They must also not be an undischarged bankrupt and must not have any previous court convictions, specifically under the Women's Charter, the Children and Young Persons Act, the Penal Code, Employment Agencies Act and Employment of Foreign Workers Act.

From 1 August 2005 on, it has been compulsory for all new applicants to pass two modules of the Certificate for Employment Agencies (CEA) test conducted jointly by the Singapore Polytechnic and the Ministry of Manpower. It aims at providing PrEA with the necessary knowledge of managing and operating a PrEA in Singapore. Module A focuses on the legislative framework, while module B deals with managing and counselling capabilities.

Source: Ministry of Manpower: *A Guide for Employment Agencies*, 2005, available at: <http://www.mom.gov.sg/ProceduresAndGuidelines/ForProspectiveOrExistingEmploymentAgencies/AGuideforEmploymentAgencies.htm>
Singapore Polytechnics and course details available at: <http://www.sp.edu.sg/department/dis/-cec.htm>

Box 5

Germany: Adoption of quality standards

In March 2002, the German Parliament adopted a new law that lifted licensing requirements for PrEA. Since then, PrEA only have to register their trade and adhere to the following clauses of the social protection law (SGB III): (a) existence of a written contract stipulating job matching services; (b) payment of fees in the case of successful mediation; and (c) protection of data. The public employment service is responsible for the monitoring and enforcement of these regulations. At the same time, the legislator requested the Ministry of Labour and private business associations of PrEA to initiate a dialogue on quality standards in the industry. This has led to the adoption of the following minimum standards in December 2003:

1. Personal qualifications, e.g. no criminal record of staff, financial capacity, registration certificate;
2. Professional qualification of staff, e.g. proof of professional experience, knowledge of legal regulations and knowledge of the local/regional labour market;
3. Adequate institutional framework, e.g. transparent conditions of business, adequate premises and protection of data.

These minimum standards are of a voluntary nature and it is the responsibility of PrEA business associations to ensure their effective application. There is, however, an ongoing dialogue between the Ministry of Labour and PrEA to further adjust and develop these standards.

Source: *Bundestagsdrucksache 15/2521*, 2004.

non-accountability of foreign firms or licensees can be countered by requiring cash bonds or other financial guarantees, as described above. To prevent conflicts of interest, the licensee (or his partner) is prohibited, in any way, from being officially involved in the supervision or monitoring of PrEA. The same restriction should apply to the relatives of the licence holder.

Licences should be refused, cancelled or revoked in cases where specific sideline businesses carried out could disadvantage the jobseeker. Businesses often mentioned in this context are travel agencies, which might be more interested in selling travel arrangements than in providing proper and existing job opportunities, regarding the deployment of workers. The prohibition of side businesses depends, to a great extent, on past experiences, especially in detected cases of fraud, deception and malpractice. However, it is difficult to justify an outright disqualification of such companies. It might, therefore, be of advantage to licence those enterprises whose income is not exclusively derived from recruitment. In addition, companies that are reputable in one economic area are unlikely to lose their reputation through malpractice in recruitment activities.²



Samples of national legislation language on this topic are provided in **Annex III, tables 6, 7, and 8.**

Management capabilities

The criterion of management capability refers to the competence of the applicant to organize and manage a business. In addition to the demonstration of financial capability to operate a PrEA, one may consider as a prerequisite, proof of the professional skills and work experience of the applicant with regard to their suitability in managing job placement activities. In some countries, licence holders are required to have an adequate educational background (diploma, university degree, vocational qualification) in a field related to personnel management, job placement, consultation, etc. In addition, a specific period of professional working experience and educational background related to job placement activities may be required. Some countries have made the period of required work experience dependent on the educational background of the applicant.

Furthermore, the provision of paragraph 14 of Recommendation No. 188 calls for the extension of the above-mentioned professional skills to all staff of the agency. The competence of a licence applicant in identifying and selecting qualified nationals for jobs, and in identifying suitable job opportunities for them abroad, are very important, as they are the basic requirements for any job placement activities.

2. ILO: Abella, Manollo: *Sending Workers Abroad*, Geneva, 1997, p. 79.

Personal qualifications can help to ensure that the applicant is familiar, not only with relevant laws and regulations, the specificities of the local, national and (in the case of recruitment abroad) international labour markets, but also has knowledge of specific economic branches and professions suitable for job placement.

Care should be taken when defining the requirements for proof of managerial capabilities. This has, in certain countries, led to rather rigid and strict requirements. In Singapore, for instance, licence applicants must attend and pass a specifically designed course for the operation of a PrEA. Such a prerequisite can provide potential PrEA operators with useful information regarding the above-mentioned professional competence and also inform them of allowed or prohibited practices. How the management capability of the applicant can be demonstrated best – either through a desk audit of documents provided or a personal interview – is discussed in the next section.

In some countries, the provision of adequately sized and equipped business premises for operating the PrEA is an additional requirement for obtaining a licence. Some PrEA may even provide an extra room for conducting interviews in private. In many countries the premises of the PrEA are already inspected during the application process. Another institutional requirement for the operation of a PrEA is the specification and publication of the operating hours of the agency.



Samples of national legislation language on this topic are provided in **Annex III, table 9**.

Marketing capabilities

The proof of marketing capabilities has been considered by some countries as another criterion for issuing a licence to operate PrEA. This mainly refers to the competence of PrEA in identifying employment opportunities for jobseekers and in negotiating contracts, which not only benefit the agency, but also the workers to be engaged. Marketing capabilities are of specific importance in the area of overseas recruitment and in cases where the job placement market is already saturated. Therefore, some governments have set up this criterion so as not to allow more participants into the market. This is one way to restrict the market to those agencies qualified enough and able to prove that a new market for their recruitment activities actually exists. The marketing capability of identifying employment opportunities can be demonstrated through professional qualifications, but not exclusively.

In this regard, it is important to know in advance with which business partners the licensee wishes to cooperate and which market niche (if existing) the new applicant is trying to fill. The former can be demonstrated through a specific manpower request from a (foreign) business partner, a recruitment agreement with for-

sign officials, in the case of overseas employment, or a special power of attorney. The existence of new markets for job placement might be illustrated by a large amount of job orders for specific categories of workers. If on the contrary, the licensee cannot prove there is any demand for labour supply in an adequate quantity, it cannot be assumed that the PrEA has the marketing capability to survive in the market.



Samples of national legislation language on this topic are provided in **Annex III, table 10**.

Validity of licence and re-application

Licences for the operation of PrEA are generally issued for a limited period of time, usually 12 months. In some exceptional cases the period is three years. In cases where a renewal of the licence is requested, a re-application is sent prior to the expiration of the original licence to the licensing authority. Granting of short licensing approvals (e.g. one year) may hinder legitimate PrEA from properly running their businesses, as the period is too short to plan and execute their strategies.

If the PrEA has demonstrated proper business conduct over a specific period of time, the requirements for the re-application procedure can be eased and the period of a licence extended. This is being done in Japan where the first licence is issued for a period of three years and its renewal, in the case of PrEA which have conducted their business properly, for five years. On the contrary, if PrEA have not complied with regulations and their licence has been revoked, cancelled or withdrawn (except on the request of the licensee), it would be appropriate if a specified period of time elapsed before they were eligible to re-apply for a new licence.



Samples of national legislation language on this topic are provided in **Annex III, table 11**.

Scope and transferability of licence

The scope and transferability of a licence refers to questions of personal accountability and legal responsibility of the licensee for the proper operation of the business as such. To ensure accountability and responsibility, in many countries the issued licence is not transferable and the number of persons allowed to act on its behalf is restricted in order to prevent fraudulent practices once the authorization has been given.

In some countries, it is mandatory to announce all changes within the owner structure of the PrEA (shareholders, partners etc.), changes of business address, or

Box 6

The development of the regulatory framework for PrEA in Ireland

Ireland is an interesting example of adapting legislation on the operation of PrEA to the development of the recruitment industry in the Irish labour market in recent years. The Employment Agency Act of 1971 set out the principles for licensing recruitment agencies. The Act introduced a licence procedure, under which certain financial and managerial conditions were set up, such as the inspection of suitable premises. Apart from that, the overall regulation was rather liberal in its approach. It has to be borne in mind that the situation at the time of adopting the Act was that recruitment agencies in Ireland were mainly engaged in recruiting Irish for overseas work, primarily in the UK.

The boom in the Irish industry that started off in the 1990s has subsequently led to the creation of the phenomenon of a shortage of labour skills. Within a relatively short time, Ireland has changed its former status from a labour sending country to a country of destination for many workers abroad. The latter development has been facilitated through a greater freedom of movement both at the EU and global level, and through the advent of the Internet. This has not only led to an increase in PrEA operating in Ireland, but also from other States or the Internet to fill the labour demand shortage.

These developments were accompanied by the adoption of the Private Employment Agencies Convention No. 181 in 1997 and a renewed discussion within the EU on a Draft Directive on Temporary Agency Workers. In the course of these international and regional events, the Irish Department of Enterprise, Trade and Employment (DETE) prepared and circulated a discussion paper on the Review of the Employment Agency Act 1971 in May 2004 for review by interested parties. After comments were received from employers (including the recruitment industry) and workers' organizations, as well as single PrEA, the Revenue Commissioners and the Immigrant Council of Ireland, the DETE, published in June 2005, a White Paper on the matter. Included were proposals for introducing a new Act starting with a "clean slate". New legislation will reinforce the existing system of regulation by requiring that all employment agencies established and/or operating in Ireland hold a licence. It will also put in place a statutory Code of Practice covering standards of behaviour for PrEA. Compliance with the Code of Practice will be a condition for receiving a licence. The terms of the Code will be developed in a dialogue with the parties to the agreements, and will take into account ongoing discussion and developments at EU level in relation to posted workers and the Draft Service Directive.

Source: Department of Enterprise, Trade and Employment (2005), *Review of the Employment Agency Act 1971*
Available at: <http://www.entemp.ie/publications/employment/2005/employmentagencyreview.pdf>

the opening of new branches, to the licensing authority or the agency entrusted with the enforcement of the regulations. This requirement is of importance and thus advisable for the further enforcement or monitoring process; e.g., to know the current address of an agency is fundamental for inspections to be carried out.

Another way of limiting the scope of application of the licence is to impose restrictions on the geographical coverage of the operation of agencies. This, however, may pose questions on the feasibility and usefulness of such restrictions in practice. Some PrEA might find it difficult to offer job placement services only in certain

territories as these geographical areas may not provide the labour force demanded. In particular, the more qualifications needed for specific work or jobs offered, the more geographical restrictions of the licence could hinder PrEA from finding an adequately skilled and trained candidate for the position.



Samples of national legislation language on this topic are provided in **Annex III, table 12**.

3.2. Registration with other government business regulation and tax authorities

An additional way of keeping track of PrEA operations is a requirement for their registration with other government business regulations, social security systems and/or tax authorities. This requirement reflects the status of PrEA as commercial businesses with normal taxpaying and other obligations.

Moreover, the information of other agencies can be useful in the monitoring process at a later stage. Tax declarations of PrEA on their business volume can be cross-checked against reported recruitments and might, in cases of mismatching or discrepancies, indicate malpractice. Data obtained from social security systems may also provide useful information on the activities of PrEA. In some countries, for example, the licence applicant has to include the value added tax registration number, the income tax registration number, or a document proving business registration.



Samples of national legislation language on this topic are provided in **Annex III, table 13**.

3.3. Agreement to comply with labour and equal opportunity laws

Consistent with their status as commercial businesses, PrEA should be made to comply with all appropriate labour and equal opportunity laws and/or regulations. Although this requirement seems to be self-evident, it is, for various reasons, of crucial importance. First of all, to fulfil this condition it is necessary to delimit the responsibilities between the agencies and user enterprises concerning the protection of workers. This is particularly important in the case of temporary work

or overseas agencies. According to Article 12 of Convention No. 181, governments have the right to determine and allocate the respective responsibilities of PrEA and user enterprises regarding “a) collective bargaining; b) minimum wages; c) working time and other working conditions; d) statutory social security benefits; e) access to training; f) protection in the field of occupational safety and health; g) compensation in case of occupational accidents or diseases; h) compensation in the case of insolvency and protection of workers claims; i) maternity protection and benefits, and parental protection and benefits”.

This provision mirrors the relationship between the PrEA, the jobseeker and the employer, also referred to as “triangular” employment relationships. In the context of temporary agency work, in particular, this relationship has been widely discussed.³ In practice, the allocation of responsibilities has very different repercussions, depending on the type of PrEA governments are dealing with. PrEA, whether functioning as temporary work agencies or engaged in the recruitment for work abroad, have the same obligations under the law. However, each type of PrEA is governed by specific regulations covering their activities.

Furthermore, most national laws provide for the protection of workers from violations of fundamental rights, either in their constitution or other sources of law. They are usually based on the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up, adopted by Member States in 1998. Governments, therefore, have an obligation to protect all workers from violation of these rights, whether they have ratified the respective ILO Convention or not. These principles stipulate that all workers have the right to associate freely and to bargain collectively. They should be protected from discrimination in the world of work. This principle is of particular importance to women or minority groups that have difficulties in entering national or global labour markets. While PrEA cannot be held accountable for the general discrimination of certain groups in a particular country, they should refrain from all activities that may perpetuate such discrimination. Furthermore, since they are acting as brokers, they also have some amount of leverage in promoting the inclusion of discriminated groups. This is often regulated through collective agreements.⁴

The principle of non-discrimination is also inscribed in Article 5 of Convention No. 181. It says that PrEA should “treat workers without discrimination on the

3. ILO: *The Scope of the Employment Relationship*, ILC 91st session, Report V, Geneva, 2003. This topic was also on the agenda of the 95th session of the ILC, held in May-June, 2006.

4. In Germany, for example, the Association of Private Employment Agencies signed a collective framework agreement with members of the German Confederation of Trade Unions (*Deutscher Gewerkschaftsbund-DGB*) in 2003 where the agreement regulates working time and assignments of contract workers, establishment and termination of the employment relationship, payment of wages and leave time. It stipulates further, that staff members shall not be assigned to companies that are directly affected by a legal strike. Source: Bundesverband Zeitarbeit Personal Dienstleistungen e.V. <http://www.bza.de/tarif/tarifvertraege.php>

Box 7
Private employment agencies:
The “Gatekeepers” to employment

Employment agencies, whether private or public, can either promote equal opportunities and improve transparency in the labour market or perpetuate discriminatory practice. Through fear of losing existing or potential clients, employment agencies might discriminate in recruitment. Nevertheless, *Adecco*, the leading private employment agency for temporary jobs, has established a number of measures to promote equal opportunity. These include, a free line for temporary workers alleging discriminatory treatment, training for 2,000 of its 4,700 employees, and the obligation of staff not to accept discriminatory job requirements by employers, under threat of sanctions including dismissal.

Source: Y. Philippin: «Emploi. Le plus gros procès pour discrimination ethnique à l'embauche s'ouvre jeudi à Paris. L'entreprise prend des couleurs» in *Le Journal du Dimanche*, 14 mai, 2006 p. 15. See also <http://www.adecco.com>

Manpower, another international PrEA, has a proactive diversity policy in the USA and has also pioneered in promoting diversity in the workplace. As one of its corporate social responsibility (CSR) policies, *Manpower* considers diversity in the workplace essential. It defines diversity as differences of race, national origin, religion, cultural background, gender, age, disability, sexual orientation and gender identity. This means promoting mutual respect and understanding between people with different personal situations and backgrounds. For example, in 1948, *Manpower* pioneered creating opportunities for women to engage and thrive in the workforce at a time when it was not socially acceptable for women to work outside the home and develop careers. In the 1960s, which was the most pivotal era for racial diversity in the USA, it also played an important role in providing jobs for racial minorities.

Source: <http://www.manpower.com/mpcom/content>.

basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national laws and practice, such as age or disability”. This provision is of fundamental importance as many temporary and migrant workers, and also women, have difficulties in exercising their rights, are often excluded from social benefits and face other disadvantages in the form of low wages, poor working conditions and denial of freedom of association.⁵

Also relevant to the regulation of PrEA is the principle that no worker should be held under conditions of forced or bonded labour. Thus, PrEA have to abstain from all illegal practices that tie workers to their own agencies or to specific employers, for example, through debt bondage (possibly linked to the illegal imposition of recruitment fees or illegal wage deductions), the illegal retention of identity documents or various forms of threats. Finally, PrEA should respect the principle

5. ILO: ILC 92nd Session, Provisional Record No. 22, Geneva, 2004, p. 57.

that child labour should be eliminated and that no child should be recruited into what ILO Convention No. 182 has defined as the “worst forms of child labour”.⁶

As a more general rule, paragraph 5 of Recommendation No. 188 contains the requirement that all contracts concluded between PrEA and jobseekers regarding employment conditions have to be in writing. Recommendation No. 188 also stipulates, as a minimum requirement, that workers should be informed of the conditions of their future assignment.

Since migrant workers, in particular, often lack information about the conditions in the countries of employment, many governments have set up minimum standards for employment contracts to be signed by the jobseeker. To simplify the procedure, many countries have developed model employment contracts, which are built around rules and regulations on PrEA. These model employment contracts are not always mandatory, but they serve as a guide to the prospective employers and workers in the formalization of the employment agreement. Model employment contracts for migrant workers should as a minimum include the following:

- Description of the job, site of employment and duration of contract;
- Basic and overtime remuneration;
- Regular working hours, rest days, holidays;
- Transportation clauses to country/place of employment, and return;
- Employment injury and sickness compensation, emergency medical care;
- Valid contract termination grounds;
- Settling of dispute clause;
- Non-cash compensation and work related benefits.⁷

In order to protect in particular migrant workers, several countries have made the recruitment for work abroad dependent on the existence of bilateral agreements with the country in question. This is also reflected in Art 8 (2) of Convention 181: “Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment”. A model agreement on temporary and permanent migration for employment can be found in the annex of the ILO Migration for Employment (revised) Recommendation No. 86. According to this Recommendation, bilateral agreements should cover aspects such

6. See also ILO (2005): *Human trafficking and forced labour: Guidance for legislators and law enforcement*, Geneva.

7. ILO: Abella, Manollo: *Sending Workers Abroad*, Geneva, 1997, pp. 68.

Box 8
Recruitment of domestic workers

“In Asia, the large numbers of women migrating for work, as well as the demand for cheap domestic labor, has created a lucrative market for employment agencies specializing in domestic workers. These agencies are typically involved in recruitment, training, transportation, and placement of domestic workers. They often play a central role in handling disputes between employers and workers. Inadequate regulation and inadequate government oversight combine to give employment agencies enormous influence over the fates of migrant domestic workers. In many cases agencies set the conditions of employment, including wages and rest days. Migrant domestic workers are subject to deception and abuse by labor agencies in their home countries as well as the counterpart agency in the receiving country.

Labor agents often give incomplete or false information about the terms of employment and burden prospective domestic workers with onerous debts. For domestic workers migrating to Hong Kong, Taiwan, Singapore, and Malaysia, the recruitment fees are typically paid through long-term salary deductions. If they are migrating to the Middle East, they typically pay a large fee upfront to the local recruiter, often financed through loans with interest rates as high as 100 percent. With a vested interest in recovering their investment, employment agencies routinely fail to protect workers from employer abuse. Sometimes, labor agents are directly responsible for the abuse.

The Philippines and Sri Lanka have more developed regulatory frameworks for monitoring migration than other labor-sending countries. Migrant domestic workers from these countries tend to encounter far more abuses when they go through unlicensed agents versus those approved by their labor ministries. In Indonesia, where there are over four hundred licensed domestic employment agencies and countless illegal ones, lack of effective government oversight, corruption, and the bureaucratic structure of labor recruitment increase the risks of exploitation of prospective migrant domestic workers.”

Source: Human Rights Watch: *Swept under the rug. Abuses against domestic workers around the world*, July 2006, Volume 18, Number 7 (C). See also ILO: *Application of International Labour Standards: Report of the Committee of Experts on the Application of Conventions and Recommendations*, Geneva, 2005.

as vacancy notification, selection and recruitment, employment contracts, transport and conditions of employment, dispute settlement procedures, protection of basic rights, social security, and family migration and return. It should be noted, however, that in whatever form bilateral agreements exist, it is important to make sure they are accompanied by implementing guidelines. In addition, consistency between bilateral agreements and the regulations controlling the operation of PrEA is essential.

It is, however, important if such a condition of bilateral agreements exists, that the government in question has actually signed such agreements with other countries. If this was not the case, PrEA would automatically operate illegally. In addition, it is essential that the agreements signed set out concrete provisions for the protection of migrant workers. Experience shows, however, that many bi- or

Box 9
Bilateral agreements in Ghana

The Labour Act (2003) of Ghana demonstrates the use of bi-lateral agreements. Section 7 (5) of the Labour Act requires that any PrEA is only allowed to recruit job-seekers for jobs abroad where a bi-lateral agreement with the country of destination exists. To date, no bi-lateral agreement with any country exists. As a consequence, no PrEA in Ghana can legally recruit for jobs abroad. This situation demonstrates the need to follow-up legislative action with administrative procedures that support the legal framework.

Source: Ghana Labour Act (2003).

multilateral agreements on cross-border migration are primarily concerned with questions of illegal residence and/or deportation of illegally employed people. These agreements, therefore, cannot be regarded as helpful in terms of protecting this specific category of workers.

3.4. Reporting requirements

In order to be aware of developments within and without the domestic labour market, information has to be gathered. Governments should, therefore, request PrEA to regularly inform them on their activities by providing administrative records. This is in line with the requirement of Article 13 (3) of Convention No. 181 that stipulates that PrEA shall at intervals to be determined by the authority, provide information “to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices”. Providing information improves the transparency of the recruitment activities and offers governments an overall picture of job placement through PrEA.

The intervals in which PrEA should provide the relevant authority with information on their proceedings can vary in practice and is largely dependent on the capacity of the administration to process the data. Certain countries require monthly reporting, some require reporting at quarterly intervals, while others request annual reporting. Many countries, however, require PrEA only to keep records on recruited workers and to report or show these upon request. Government reporting requirements should be coherent with the method in which PrEA collect and file their information. The information obtained on the activities of PrEA can also be processed and used to gain a better picture of the labour market performance as a whole (see section 3.5).

In a number of legislation, copies of employment contracts intermediated through PrEA have to be presented to the responsible organization for approval. The responsible organization may be the foreign employment office or labour attachés of embassies in destination countries. If the terms set up in the employment contract meet the pre-defined criteria, an emigration clearance is given. Such a system will not only ensure that minimum standards set out in the contract are complied with, but also serves as documentary proof in case the standards are not complied with and disputes arise. In general, such a requirement can also serve as an additional way of gathering information on the conditions of workers recruited through PrEA.



Samples of national legislation language on this topic are provided in **Annex III, table 14**.

3.5. Collection of fees

The principle of free placement services for workers and employers was first established as a standard for public employment services in ILO Convention No. 2 in 1919 and again in Convention No. 88 in 1949. In Convention 181, the principle of free job placement services for jobseekers was retained as one of the protection provisions established to safeguard the interests of workers. At the same time, however, allowance was made for governments to grant exceptions to this principle if there were clearly justifiable reasons. Article 7 of this Convention states:

PrEA shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provision in respect of certain categories of workers as well as specified types of services provided by PrEA. A Member which has authorised exceptions on this provision shall in its reports to the ILO provide information on such exceptions and give reasons.

In industrialized countries where temporary work agencies dominate the private employment market, the prohibition of fee charging to workers is standard procedure. For example, fee charging to workers is prohibited in all of the EU-15 countries. In addition, the Code of Practice of the International Confederation of Private Employment Agencies (CIETT) expressly forbids the charging of fees to workers. Other countries, particularly those with a significant number of overseas placement agencies, have opted for either restricting the collection of fees to certain

categories of workers or have regulated the amount of fees to be charged. There are also countries that do not regulate fees at all and leave them to the discretion of the PrEA. The ILO Committee of Experts on the Application of Conventions and Recommendations is responsible for interpreting whether exceptions under national law are in accordance with the Convention.

It can be seen from some country examples that there are various reasons for allowing PrEA to collect fees from jobseekers. In some instances, the fee collection from the employer would be difficult in practice, e.g. because the employer is based abroad. In addition, the relationship between labour supply and demand in many countries has to be taken into account. In countries where a domestic excess of labour supply, or a high unemployment rate exists, situations can arise where jobseekers are willing to pay excessive fees. It seems adequate to allow PrEA to collect fees from jobseekers in order to compete with illegal market participants gaining profit through acceptance of bribes. This, however, is only acceptable as long as safeguards to protect jobseekers from exploitation are introduced and the amount of fees is regulated. In order to ease the implementation and monitoring of fees collected from jobseekers, a ceiling should be fixed in the legislation. In this regard, it would be important that the amount of fees PrEA are allowed to charge is made public.

In some countries, the fee allowed to be collected from the jobseeker is a proportion of the monthly or yearly wage. The actual amount set out in legislation varies considerably: from 5, 10 or 15 per cent of the initial monthly wage up to 5 per cent of the first gross *annual* wage. For certain categories of workers such as artists, performers, dancers or models, the amount of fee permitted is calculated differently.

Some countries have opted to fix a ceiling for the fees collected from workers. For some specific categories of workers certain exemptions are made: for au-pairs the maximum fee is considerably lower, while for apprentices, in general, no fees are collected. For recruitment as an artist, model, DJ, stuntman or professional sportsman, a limit in the form of a percentage of the wage is set for the fee. In some cases fees are only paid if recruitment results in employment.

Other countries' regulations allow PrEA to charge an equivalent of one month's salary to the jobseeker, unless the foreign country, in which the worker is to be employed, prohibits the collection of fees from jobseekers. In addition, jobseekers may be charged with documentation costs which, in recruitment for work abroad, can often turn out to be considerably high. Such documentation costs usually cover expenses for issuing identity cards, passports and medical certificates, or for undergoing medical examinations or skills testing. The rationale regarding these costs is that normally non-workers or non-migrants would also be subjected to such fees; as these costs may be conceived to be in the interest of the worker. Governments, hospitals etc. might not be willing to make specific exceptions for migrant workers on documentation costs.

It has already been mentioned that in exceptional cases where PrEA are allowed to charge fees to jobseekers, the services charged for have to be completely disclosed. This does not only include the actual service fees, but all expenses related to the recruitment. These additional costs can consist of expenses for documentation, visa arrangements, medical examination or air travel. In some cases, these expenses have proven to be even higher than the actual fee.



Samples of national legislation language on this topic are provided in **Annex III, table 15**.

3.6. Confidentiality and sharing of clients and jobseekers personal information

In line with Article 6 of Convention No. 181, processing workers' data should be "limited to matters related to the qualifications and professional experience of the workers concerned". The collection, storage and communication of all personal data of workers should always be carried out pursuant to national laws and regulations on personal data protection. Recommendation No. 188 supplementing Convention No. 181 provides for more detailed standards on the privacy of workers' personal information. These standards relate to the access of the worker to his data, the duration of data storage and the type of data allowed to be stored.⁸

Another important issue relates to the sharing of information through PrEA with the jobseekers. Information is essential, especially for jobseekers who have decided to work abroad as this is a prerequisite to being well informed and making sensible decisions. Therefore, paragraph 7 of Recommendation No. 188 states that: "the competent authority should combat unfair advertising practices and misleading advertisements, including advertisements for non-existent jobs in PrEA".

It is equally important that the jobseeker is aware of the terms and conditions of employment entered into. One way of ensuring that jobseekers actually know the exact conditions of work is to use model employment contracts, especially in recruitment for employment abroad. It is important for potential migrant workers to know what awaits them in the country of destination. This issue is also emphasized in Article 3 of the Migration for Employment Convention No. 97, where it is stated that Member States "take all appropriate steps against misleading propaganda relating to emigration and immigration".

8. The ILO has in 1997 also published a Code on the Protection of Workers' Personal Data, which entails more specific information on this topic. Available at: <http://www.ilo.org/public/english/protection/safework/cops/english/download/e000011.pdf>

The information PrEA have to provide should, however, not only relate to working conditions and possible risks due to the nature or type of work. Migrant workers should be informed of possible complaint procedures and provided with contact details in cases of emergency. It is also useful to provide migrant workers, in the pre-departure phase, with information on living conditions and specific customs and practices of the country. In addition, migrant workers also need information on diplomatic missions or labour attachés that can provide assistance regarding the protection of migrant workers' rights. They should be informed of existing procedures for filing complaints on contract violations or the mode of dispute settlement with local employers.⁹

9. ILO: Abella, Manollo: *Sending Workers Abroad*, Geneva, 1997, p. 86.

Government regulatory responsibilities

4.1. Registration procedure and (possible) collection of registration fees

The administration of the registration (or licensing) procedure is important, as there are many ways of organizing the licensing and subsequent monitoring of PrEA activities. Therefore, this issue is closely connected to the question of designating a responsible authority for enforcement, as already discussed in Section 2.3.

The administration of the registration procedure itself should include a division between the actual licensing and registration process and the subsequent monitoring of the activities of PrEA and the enforcement of legislation. Administrative assignments should also set up a time-frame in which licence applicants can realistically trust upon the licence to be issued – where criteria demanded are fulfilled.

One means of increasing the transparency of the activities of PrEA is to install a public register that includes all licensed PrEA with their contact details. It should also be set out in the PrEA regulations when and how the possible registration fees are to be collected. Some countries even demand licence applicants to pay a non-refundable filing or application fee, just for processing the application. The administration of the registration procedure again relates to the administrative and financial capacities of the licensing authority. Depending on the licence criteria a State wishes to set up, so will the staff necessary for processing applications vary.

4.2. Monitoring the activities of PrEA

After a PrEA has been licensed on the basis of the described criteria, it is important that recruitment activities are monitored. Two alternative ways of monitoring agencies' activities are a desk audit of provided information or field audits.

The most common method for the evaluation of the licence conditions is a desk audit. This may be carried out during the application procedure. However, in many countries agencies are obliged to provide the competent authority with additional information upon request. If the monitoring authority suspects an agency of being involved in fraudulent recruitment practices, the request for additional information would be justified. Although in some cases, while this additional information provided by the agency may be sufficient, inspection of their premises may also be necessary. In some legislation, the agreement to inspect agency premises by a labour inspector is included in the application procedure.

Besides the pre-licensing procedure inspections, many countries provide for regular and/or spot inspections. The latter is usually unannounced as it is often the result of a complaint or report on violations of the regulations. Regular inspections, however, require sufficient financial and human resources of the ministry in charge. As in many countries, financial and personnel capacities for regular or periodic inspections are lacking, they should at least provide a mechanism for on-the-spot inspections to investigate reported abuses or misconduct of an agency.

Some countries have installed auditing procedures with the applicant having to appear personally for the licensing procedure. Personal appearance for an interview with the licensing authority, committee or officer may be a way of scrutinizing in detail the applicant's qualifications and business strategies for operating a PrEA in advance.

A number of countries have established registration numbers for all agencies' activities as an additional way of monitoring. Particularly, when PrEA are advertising in the mass media, newspapers, TV, etc., they are required to publish their licence number. If a public register of all licensed PrEA exists, this requirement becomes useful as a cross-check on their respectability as it can be verified if the agency is actually licensed.

Another way of directly monitoring the recruitment and placement activities of PrEA is to require agencies to supply the authorities with copies of concluded employment contracts. Only if contracts meet the pre-defined set of minimum standards can the authorities give clearance for the commencement of the job. This requirement can be a useful tool, especially in relation to recruitment for employment abroad. As monitoring the working conditions of migrant workers is, by definition, difficult to achieve in the country of destination, at least in the pre-departure phase, as many details as possible should be fixed in writing. This could, for example, avoid the placement of women migrant workers in abusive conditions.¹

1. For further reference see: ILO (2003) *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, An Information Guide*, Geneva.

Box 10 The UK Gangmaster Licensing Authority (GLA)

The provision of labour supply in the UK agricultural sector through intermediaries called “gangmasters” had been carried out for a long time in a liberal, non-regulated manner. In 2003, a tragic incident involving the death of 23 migrant cockle pickers recruited through gangmasters changed the UK approach. The government-sponsored Ethical Trading Initiative (ETI) began consultations with the stakeholders, and the Temporary Labour Working Group (TLWG) was established. The TLWG started to draft a voluntary code of conduct. The UK Government, in the meantime, passed the Gangmasters (Licensing) Act, 2005, which made the licensing of gangmasters and compliance with the TLWG code of conduct compulsory. With this instrument, the Gangmasters Licensing Authority (GLA) was established in May 2005. The GLA is responsible for licensing existing and prospective gangmasters. The Act clearly sets out that gangmasters offering their services without having obtained a licence before operating their business will be guilty of an offence. Additionally, those employers (“labour users”) who use the services of non-licensed gangmasters will be equally punished.

The GLA published a consultation document in October 2005 on the specific conditions for issuing a licence. Regarding certain licence conditions, the directions set out can, however, already be foreseen. For example, the GLA has to carry out its licensing procedure on a full cost recovery strategy that will have an impact on the level of fees. A full cost recovery with a flat licence fee would result in licence fees for gangmasters of up to approximately £2000. This amount is, however, seen to constitute an unreasonable financial entrance barrier, particularly to small and newly organised PrEA. In addition, it would deter less-than-fully compliant PrEA from coming forward for licensing. A possible solution is thought to be a change from a flat fee approach to a differential (banding) approach. This would mean that the licence fee relates to the size of the business and would lead to an entry licence fee of £660 for small- and medium-sized labour providers. By the end of 2006, the GLA had issued 882 licences.

Another issue on licensing conditions concerns inspections to ensure compliance. The GLA will use inspections at the application stage and once the licence is issued. Application inspections for all labour providers, however, would be rather costly. Therefore, the GLA is seeking to implement a risk-assessment approach at the application stage. On the basis of a statistically sound risk profile, which is currently being developed, only those gangmasters will be audited when the GLA believes there is a medium to high risk of future non-compliance. In addition, the GLA is seeking to follow a proportionate approach to scoring compliance, with categories such as critical (safety), critical (other), reportable and correctable. Against these criteria, compliance and the possible risk factor will be scored on the basis of, for example, interviews with workers and labour providers, data collected from labour providers or evidence collected by the GLA’s officers. On the whole, the risk assessment process is aimed at lowering the cost of the overall licensing regime, as compliant labour providers will not be burdened with inspection and auditing costs. Additionally, only those labour providers are targeted who are believed to constitute a risk to the rights of workers.

Source: GLA: Gangmasters Licensing Consultation, October 2005, available at: <http://www.gla.gov.uk/consultation.htm>

Similarly, certain PrEA have set up controls and standards for foreign employers. This includes measures such as: a verification system for foreign employers; job sites; projects through embassies of sending countries; evaluation processes on job offers and terms and conditions of employment contracts; and, administrative penalties or suspension of foreign employers.

4.3. Assessment of penalties for non-compliance with laws or regulations

In cases of non-compliance with the regulations, sanctions have to be imposed. This approach is mirrored in Article 10 on migrant workers of Convention No. 181, where States are called to adopt “laws or regulations which provide for penalties, including prohibition of those PrEA which engage in fraudulent practices and abuses”. If on the contrary, legislative provisions on the operation of PrEA are not properly enforced and no sanctioning mechanism exists, the regulations will not deter or affect those PrEA engaged in malpractice. Therefore, a differentiated sanctioning system is necessary in order to act adequately in cases of non-compliance. This means that sanctions can be imposed either by the enforcing authority itself, through administrative tribunals, or through a court of law.

Sanctions for non-compliance with PrEA legislation and regulations usually depend on the type of infringement and whether the perpetrator is a first time or repeat offender. Measures can range from minor administrative to severe penal sanctions. In cases where the PrEA has been found guilty of slight misconduct, the enforcing authority could give appropriate advice to the PrEA on how to rectify their procedures or practices. Such a cooperative and communicative approach to dealing with slight cases of non-compliance (below the form of administrative sanctions) has been proposed for the new Irish PrEA legislation.² At the other extreme, administrative sanctions should include the possibility to withdraw a licence in cases of severe or repeated misconduct. Sanctions that prohibit permanently the business of PrEA engaged in fraudulent recruitment and placement activities can serve as a deterrent and protect those PrEA that conduct their business correctly. In less severe cases of non-compliance, the PrEA should be reprimanded and given the chance to improve its behaviour. Legislation should, however, also provide the possibility to withdraw or revoke licences for a specific period of time (suspension).

2. Department of Enterprise, Trade and Employment (2005), *Review of the Employment Agencies Act 1971*, p. 13. Available at: <http://www.entemp.ie/publications/employment/2005/employmentagencyreview.pdf>

Since recruitment malpractice can have severe consequences for the jobseekers, penal sanctions for non-compliant PrEA may also be imposed. Whether these penal sanctions take the form of fines or imprisonment will depend on the gravity of the infringement in question. It is also important to bear in mind a balanced application between fines to be imposed and possible imprisonment. The fines ought to relate to the possible illegal benefits a law-violating PrEA might have gained. The decision on imposing penal sanctions should also take into account any compensation paid by the PrEA to the jobseeker. Penal sanctions should, therefore, also include compensation mechanisms for the affected workers. If they were victims of exploitation through the recruitment and placement of a PrEA, the agency should be obliged to pay financial restitution to the jobseeker.

Some countries have in addition to imposing administrative and penal sanctions on non-complying PrEA, introduced incentives for complying PrEA. The Philippines, for instance, rewards exemplary PrEA by having them accompany government officials on missions to countries of destination. The return of whole or part of the security deposit after a specific period of time, could also serve as an incentive for ethical recruitment.

4.4. Administration of a complaint procedure for workers

In cases where workers have been victims of abuse or malpractice by a PrEA, it is necessary to set up adequate complaint procedures to identify and examine allegations of violations. This is in accordance with Article 10 of Convention No. 181, which further calls for involving “as appropriate the most representative employers’ and workers’ organizations” in the complaint machinery. Furthermore, victimised jobseekers have the possibility to seek remedies through filing complaints.

In some countries, complaints by jobseekers, who were abused or exploited, have to be lodged in competent labour courts. Adjudication in court procedures, however, can be costly, lengthy and excessively legalistic. In addition, primarily regarding migrant workers, it is often the case that the jurisdiction of labour (courts) in the country of employment is neglected. Often, complaints are referred to the country of recruitment where, in turn, complaints are not being dealt with either, due to alleged lack of competence.

Another avenue of dealing with complaints is specific administrative grievance procedure. Such procedures allow complaints and allegations of malpractice or abuse to be processed in an accelerated manner.

4.5. Information reporting to responsible authorities

The aggregation and analysis of information on PrEA activity should be presented periodically to the leadership of the responsible ministry, as well as other responsible authorities, as appropriate. These reports on the general evolution and development of private placement activities can give an overview of shortcomings in trends and practice. Such a mechanism would allow legislation to be evaluated and amended as needed.

There are several countries which utilize information from government registration and licensing to publish the names of private agencies conforming to the law and/or those which do not. This process is a way of distinguishing between the stronger and weaker PrEA based on some uniform information. The Philippine Labor Code, for example, has provided guidelines, rules and regulations with respect to private sector participation in the recruitment and placement of workers locally and overseas, and has maintained a roster of overseas Filipino workers serving penalties for violation of the Code of Conduct for Overseas Employment. This list is published periodically and contains licensed employment agencies which are suspended, cancelled, banned or delisted.

Mechanisms of self-regulation

5

While effective registration and licensing are key in the implementation of the principles of Convention 181, it is important to note the positive role played by professional codes of practice and other voluntary industry standards through self-regulation. A number of practices exist in promoting industry self-regulation and where, in developed countries, the PrEA have organized themselves into national industry associations utilizing industry codes of practice as a criterion for membership. In Canada, for example, PrEA have been organized into an Association of Canadian Search, Employment and Staffing Services (ACSESS) to ensure professional ethics, standards and best practices in the recruitment, employment and staffing services industry.¹ There is the Confederation of Private Employment Agencies (CIETT) based in Belgium, an international organization composed of representatives of national industry organizations, as well as large multinational enterprises which has developed its own Code of Practice (see Annex II). This code serves as a model for national organizations.

1. [http://www.acsess.org/CPC-CERTIFICATION/default, asp](http://www.acsess.org/CPC-CERTIFICATION/default.asp).

5.1. Associations of private employment agencies

Across different countries, PrEA have organized themselves to gain visibility and legitimacy in national and global labour markets. Private business associations have been key in creating a positive image of PrEA and raising standards in the industry. They also help to ensure that PrEA are consulted when new legislation affecting their business is being drafted.

PrEA associations can also facilitate the exchange of information between their members and government authorities. Without a solid understanding of the market and the constraints of PrEA, legal regulations may risk being impracticable and, thus, will be met with resistance. At the same time, PrEA associations can also collect information on high-risk agencies through regular screenings of their members, as well as new membership applications. Standards in the industry are also raised through training seminars that PrEA associations organize. Since recruitment is not a certified profession, business associations are crucial in disseminating know-how and good business practice.

Associations can unite PrEA in one specific country or of one specific type. The rules governing the members of an association are specified in the by-laws. They usually contain conditions of eligibility, membership fees and regulations on the expulsion of members. Associations of PrEA often belong to the national employers' federation.

National associations can form an international federation that would represent their interests on a broader basis. A primary example is the International Confederation on Private Employment Agencies (CIETT), as mentioned above. CIETT's main objective is to seek greater recognition of the contribution of agency work to overall employment creation, integration in the labour market and economic growth. Its members are national associations of temporary work agencies and large multinationals like Manpower and Adecco. It has played a leading role in establishing worldwide standards for its PrEA members in the recruitment industry.² In a number of countries, private associations have emerged. In Canada, as mentioned above, the PrEA are organised in the Association of Canadian Search, Employment and Staffing Services (ACSESS). In the Russian Federation, the International Association of Labour Migration (IALM) was established in 2004 and includes over 70 private recruitment agencies from Russia, Tajikistan and Moldova. The Association's principle task is the development of "civilized" forms of labour migration through advocacy, the organisation of conferences and active participation in policy dialogue. IALM members have adopted a Code of Business Ethics which guides their work.

2. For more information see <http://www.ciett.org>.

5.2. Codes of practice

In addition to statutory requirements, PrEA have developed their own codes of practice, either on specific issues or in a more general sense. Codes of practice can be put in place by individual companies or by an association. They are not legally binding, but should be based on international standards and national law. These standards address issues of business ethics and promote quality in service delivery. This is important in order to ensure the credibility of the code of practice and to facilitate a reputable management of the company/association. Their value is that of a moral nature: a code of practice is a promise and a commitment vis-à-vis clients and the wider public.

In 1997, a meeting of international experts organized by the ILO elaborated recommendations to encourage self-regulation of PrEA engaged in recruitment for employment abroad. The ILO Governing Body later adopted the recommendations.³ It was recommended that codes of practice for overseas recruitment agencies should cover the following items:

- minimum standards for the professionalization of the services of private agencies, including specifications regarding minimum qualifications of their personnel and managers;
- the full and unambiguous disclosure of all charges and terms of business to clients;
- the principle that private agents must obtain from the employer before advertising positions in as much detail as possible, all information pertaining to the job, including specific functions and responsibilities, wages, salaries, and other benefits, working conditions, travel and accommodation arrangements;
- the principle that private agents should not knowingly recruit workers for jobs involving undue hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;
- the principle that migrant workers are informed, as far as possible, in their mother tongue or in a language with which they are familiar, of the terms and conditions of employment;
- refraining from bidding down wages of migrant workers; and
- maintaining a register of all migrants recruited or placed through them, to be available for inspection by the competent authority, provided that information so obtained is limited to matters directly concerned with recruitment and that in all instances the privacy of workers and their families is respected.

3. ILO: Doc. GB.270/MEIM/1997/D4, Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, 21-25 April 1997, Geneva.

Box 11

Code of practice for labour providers in agriculture, United Kingdom

Several reports have documented illegal and highly abusive practices in the recruitment industry that made it difficult for legitimate operators to compete legally in the markets. The government-sponsored Ethical Trading Initiative (ETI) organized consultations on this issue in 2002, which led to the establishment of the Temporary Labour Working Group (TLWG) focusing mainly on labour providers (“gangmasters”) in the agriculture sector. At the time, it was not clear whether political will was sufficient to introduce stricter legal measures. The TLWG, therefore, decided to go ahead with the drafting of a voluntary code of practice. The code was drafted on the basis of intensive research, taking into account the ETI Base Code derived from Conventions and Recommendation of the ILO. Various drafts of the code have been discussed with government officials and representatives of the concerned industries (labour providers and retailers). The code was also tested in practice, reviewed and revised.

At the same time, an Association of Labour Providers (ALP) was set up in 2004 to give law-abiding firms a voice in the process. In the same year, the ALP adopted the code of practice as a condition of membership. It is now working with the TLWG to implement the code and to effectively promote the standards included in it. To date, it is the most comprehensive and elaborate system of self-regulation covering PrEA in one specific industry. ALP and TLWG will work closely with the Gangmaster Licensing Authority, established in 2005, to monitor the implementation of the new Gangmaster Licensing Act (see Box 10).

Sources: Temporary Labour Working Group: *A License to Operate. New measures to tackle exploitation of temporary workers in the UK agriculture industry*, November 2004. Code of practice available at: www.lpcode.co.uk

While codes of practice may go beyond these provisions, they should be regarded as minimum standards, especially with regard to overseas recruitment.

Past experience has shown that the development of codes of practice are more effective when the following practices are adhered to:⁴

1. A code of practice should not be confused with the by-laws of a federation or private business association but it could be used to increase the threshold of membership;
2. While the specific standards to be included in the code of practice are an internal affair of a company or private association, they should nonetheless be discussed with trade unions, government and civil society organizations where relevant;

4. Principles on self-regulation, including labelling and certification can be downloaded from the website of the International Social and Environmental Accreditation and Labelling Alliance (ISEAL) <http://www.isealalliance.org/>

3. Independent monitoring mechanisms that also stipulate clear criteria and sanctions for non-compliance should be included, although this is often the most controversial aspect of the code of practice; and
4. The code of practice has to be communicated to the public, in particular to clients, jobseekers as well as members of the company or organisation.

There is an increasing number of codes of practice developed by PrEA or their associations. The most well known is the CIETT Code that provides general rules to be adopted by national business associations. CIETT supports the principle of self-regulation of temporary work businesses in cooperation with the relevant institutions. National codes of practice should reflect the spirit of the CIETT code, but in many cases they may go well beyond the general standards set out by CIETT. Other voluntary codes can also include negotiated codes of practice or other forms of employer-worker collaboration to regulate work of PrEA. An example of how a national code of practice has been adopted following a long process of consultation and complaints about abusive practice in the recruitment industry of the United Kingdom is shown in Box 11.

In addition to voluntary codes of practice, PrEA have favoured more competitive systems of self-regulation, such as rating or labelling. Major multinational companies have achieved the ISO 9000 label of quality management by the International Standards Organization. For example, in 2002, KELLY Services was certified ISO 9002. PrEA, such as KELLY Services, currently use the ISO 9000 label in their advertising and marketing campaigns as a guarantee of quality. Throughout the ISO 9000 family, emphasis is placed on the satisfaction of clients.

Relationship between PrEA and PES

Article 13 of Convention No. 181 (1997) promotes cooperation between private and public employment agencies. Specifically: “A Member shall in accordance with national law and practice after consulting the most representative organizations of employers and workers, formulate, establish and periodically review conditions to promote cooperation between the public employment services and private employment agencies”. In many respects, their activities can also be complementary. However, in principle, the public authorities retain the final authority as far as formulating labour market policy and in the utilization and control of public funds for the implementation of this policy.

Paragraph 17 of Recommendation No. 188 (1997) proposes the following measures of cooperation:

- “pooling of information and use of common terminology so as to improve transparency of labour market functioning;
- exchanging vacancy notices;
- launching joint projects, for example in training;
- concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;
- training of staff; and
- consulting regularly with a view to improving professional practices”.

Joint activities can be of a non-commercial or commercial nature. In the first case, cooperation would not involve expenditure of public funds for services provided.

Box 12
Information sharing between PES and PrEA

Means of cooperation between the PES and PrEA can be found in a range of countries. In France for example, the ANPE (the French PES) also provides jobseekers with the offers of temporary work agencies (TWA). Besides the exchange of information regarding the labour market, the ANPE assists TWA in finding suitable candidates for the vacancy. In Lithuania, the cooperation between PES and PrEA is also focusing on information exchange. PrEA are briefed on a regular basis on the labour market situation and its development. PrEA are also allowed to report on their activities in the premises of the PES. PES and PrEA in Poland not only exchange databases on jobseekers, but also jointly organize job fairs and exchange hard-to-fill vacancies. In Slovakia a list of all PrEA is published on the website and in all offices of the PES.

Source: ILO: *Public-Private Partnerships in Employment Services*, Working Paper, No. 17, Geneva, 2004.

An example could be the exchange of information regarding vacancies. In the second case, public resources are allocated to PrEA to carry out certain activities, such as training of the unemployed. There are also instances where a national memorandum of agreement is drawn up setting out how the public and private sector will work together.

Cooperation can be facilitated through ongoing communication. There could be regular meetings between representatives of PrEA associations and PES at the regional and national level. Ultimately, however, cooperation will depend on the trust private and public actors have in each other. Lack of trust, often due to unclear legal regulations and established good practice, can significantly hamper the delivery of more efficient services.

In many countries around the world, PrEA have gained increasing importance in the labour market. They offer employment-related services in many areas, including placement of temporary workers and facilitation of labour migration. Given the diversity of activity in this industry, setting up a legal framework for private employment agencies is a complex task requiring coordination among various government agencies and the support of workers' and employers' organisations.

This guide has provided information on important aspects of the process of drafting and implementing legislation. The challenges that can be encountered during this process and possible solutions are summarized below:

1. Legislation should be designed to meet the requirements and standards set out in ILO Convention No. 181. However, in its application, due regard must be given to suit specific national circumstances and capacities. The law on PrEA should address the particular shortcomings and gaps regarding the current role of PrEA in the national labour market and take into account the main activities and services they carry out. PrEA regulation should further be adapted to the enforcement capacities that are available to the government. If the current situation is mainly characterized by a lack of monitoring and enforcement capacity due to scarce financial and technical resources, this should be considered in drafting the new law. In such a case, it would be advisable to keep the regulations simple with an emphasis on provisions that can realistically and effectively be enforced. Setting up principles in the law that will not be enforced can undermine the legitimacy of the new law.
2. In order to adjust the law to specific national circumstances, the current practice and performance of existing PrEA in the labour market should be reviewed before any new laws and/or regulations are drafted and adopted. Legislators

should know how many agencies exist or are estimated to exist, which types of services they offer and in which economic sectors they predominate. Reported malpractice and abuse by agencies should be analyzed. An assessment of the actual services and performance of PrEA ensures that the specific problems of the national labour market can be taken into consideration during the process of drafting legislation.

3. In accordance with ILO's principles of social dialogue, employers' and workers' organisations should be consulted during the drafting process of PrEA legislation from the very beginning. It can be of specific help if PrEA have already set up their own business association, as they are much more aware of the specific problems they face in the labour market. Expert opinions from workers' and employers' organisations, but also from other stakeholders, such as women or migrant workers' organisations, can help assess the problems and gaps in the regulatory framework. They can also play a crucial role in the enforcement of new legislation as well as voluntary codes of practice.
4. It is also important to bear in mind that the overall objective of regulating the activities of PrEA should be to increase the effectiveness of labour market services provided by both public and private employment agencies. The provisions of the law should not primarily be aimed at restraining competition or deliberately or involuntarily hindering small and medium-sized PrEA from entering the market. PrEA legislation should not only provide for controls on abuse in employment practice, but should also include positive incentives for law-abiding agencies.
5. The legislation on PrEA needs to be harmonized with laws and policies on general commercial practices, labour, migration and the public employment service. For example, in the placement of jobseekers overseas, cooperation mechanisms between countries of origin and destination should be set up. This refers not only to law enforcement agencies, but also to PrEA themselves. As problems often arise in countries of destination after a recruitment takes place, a follow-up procedure should be installed.
6. It is important to set up a functioning and effective complaint mechanism and to investigate cases of non-compliance. This includes a specific procedure for jobseekers, who have suffered in the recruitment and placement process, to seek redress. Complaint mechanisms should be based on a differentiated approach, allowing for settlement among the different parties before choosing adjudication.
7. Provisions of a new law or regulation have to be publicized and made available to those concerned. Not only do PrEA themselves have to be informed about the specific content of the legislation, but also all government agencies involved in monitoring and enforcement. Awareness-raising among stake-

holders is important to ensure broad support for new legislation. Training seminars on the specific conditions set out in the law can be a useful tool in this regard.

8. Since market forces tend to alter business opportunities for PrEA rather quickly, it is useful to periodically review experiences in implementing legislation. Thus, necessary adaptations and amendments to the law can be made.
9. There are several modes of cooperation between PrEA and the public employment service. PES can play a role in professional standard setting for PrEA as they have the expertise in providing labour market services. PES and PrEA can exchange information to enrich each other's broader understanding of labour market dynamics.

The ILO's main concern is to assist member States to establish clear and effective laws and structures in the registration and licensing of PrEA which support the principles of Convention No. 181. However, there are also voluntary means, using professional codes and industry standards, where self-regulation is practised.

Bearing the above-mentioned advice in mind, a balance can be achieved, "recognizing the role which private employment agencies may play in a well-functioning labour market, and recognizing the need to protect workers against abuses..."(ILO Convention No. 181, Preamble).

Annex I

ILO Conventions

C181. Private Employment Agencies Convention, 1997

Convention concerning Private Employment Agencies

(Note: Date of coming into force: 10.05.2000)

Convention: C181

Place: Geneva

Session of the Conference: 85

Date of adoption: 19.06.1997

Subject classification: Employment Services – Job Placement

Subject: Employment policy and Promotion

See the ratifications for this Convention

Display the document in: French Spanish

Status: Up-to-date instrument

This Convention was adopted after 1985 and is considered up to date.

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 Eighty-fifth Session on 3 June 1997,
and

Noting the provisions of the Fee-Charging Employment Agencies Convention
(Revised), 1949, and

Being aware of the importance of flexibility in the functioning of labour markets,
and

Recalling that the International Labour Conference at its 81st Session, 1994, held
the view that the ILO should proceed to revise the Fee-Charging Employment
Agencies Convention (Revised), 1949, and

Considering the very different environment in which private employment agencies operate, when compared to the conditions prevailing when the above-mentioned Convention was adopted, and
Recognizing the role which private employment agencies may play in a well-functioning labour market, and
Recalling the need to protect workers against abuses, and
Recognizing the need to guarantee the right to freedom of association and to promote collective bargaining and social dialogue as necessary components of a well-functioning industrial relations system, and
Noting the provisions of the Employment Service Convention, 1948, and
Recalling the provisions of the Forced Labour Convention, 1930, the Freedom of Association and the Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Discrimination (Employment and Occupation) Convention, 1958, the Employment Policy Convention, 1964, the Minimum Age Convention, 1973, the Employment Promotion and Protection against Unemployment Convention, 1988, and the provisions relating to recruitment and placement in the Migration for Employment Convention (Revised), 1949, and the Migrant Workers (Supplementary Provisions) Convention, 1975, and
Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, 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 nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Convention, which may be cited as the Private Employment Agencies Convention, 1997:

Article 1

1. For the purpose of this Convention the term private employment agency means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

- (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
- (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a “user enterprise”) which assigns their tasks and supervises the execution of these tasks;
- (c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.

2. For the purpose of this Convention, the term workers includes jobseekers.

3. For the purpose of this Convention, the term processing of personal data of workers means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

Article 2

1. This Convention applies to all private employment agencies.

2. This Convention applies to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers.

3. One purpose of this Convention is to allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions.

4. After consulting the most representative organizations of employers and workers concerned, a Member may:

- (a) prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to in Article 1, paragraph 1;
- (b) exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.

5. A Member which ratifies this Convention shall specify, in its reports under article 22 of the Constitution of the International Labour Organization, any prohibition or exclusion of which it avails itself under paragraph 4 above, and give the reasons therefor.

Article 3

1. The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers.

2. A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.

Article 4

Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

Article 5

1. In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.

2. Paragraph 1 of this Article shall not be implemented in such a way as to prevent private employment agencies from providing special services or targeted programmes designed to assist the most disadvantaged workers in their jobseeking activities.

Article 6

The processing of personal data of workers by private employment agencies shall be:

- (a) done in a manner that protects this data and ensures respect for workers privacy in accordance with national law and practice;
- (b) limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.

Article 7

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.

2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.

3. A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.

Article 8

1. A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.

2. Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

Article 9

A Member shall take measures to ensure that child labour is not used or supplied by private employment agencies.

Article 10

The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

Article 11

A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies as described in Article 1, paragraph 1(b) above, in relation to:

- (a) freedom of association;
- (b) collective bargaining;
- (c) minimum wages;
- (d) working time and other working conditions;
- (e) statutory social security benefits;
- (f) access to training;
- (g) occupational safety and health;
- (h) compensation in case of occupational accidents or diseases;
- (i) compensation in case of insolvency and protection of workers claims;
- (j) maternity protection and benefits, and parental protection and benefits.

Article 12

A Member shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises in relation to:

- (a) collective bargaining;
- (b) minimum wages;
- (c) working time and other working conditions;
- (d) statutory social security benefits;
- (e) access to training;
- (f) protection in the field of occupational safety and health;
- (g) compensation in case of occupational accidents or diseases;
- (h) compensation in case of insolvency and protection of workers claims;
- (i) maternity protection and benefits, and parental protection and benefits.

Article 13

1. A Member shall, in accordance with national law and practice and after consulting the most representative organizations of employers and workers, formulate, establish and periodically review conditions to promote cooperation between the public employment service and private employment agencies.

2. The conditions referred to in paragraph 1 above shall be based on the principle that the public authorities retain final authority for:

- (a) formulating labour market policy;
- (b) utilizing or controlling the use of public funds earmarked for the implementation of that policy.

3. Private employment agencies shall, at intervals to be determined by the competent authority, provide to that authority the information required by it, with due regard to the confidential nature of such information:

- (a) to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices;
- (b) for statistical purposes.

4. The competent authority shall compile and, at regular intervals, make this information publicly available.

Article 14

1. The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.

2. Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities.

3. Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention.

Article 15

This Convention does not affect more favourable provisions applicable under other international labour Conventions to workers recruited, placed or employed by private employment agencies.

Article 16

This Convention revises the Fee-Charging Employment Agencies Convention (Revised), 1949, and the Fee-Charging Employment Agencies Convention, 1933.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

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 12 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 12 months after the date on which its ratification has been registered.

Article 19

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 at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

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 acts of denunciation communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 21

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 acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 22

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 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, 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 19 above, 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 24

The English and French versions of the text of this Convention are equally authoritative.

Cross references

- Conventions: C029 Forced Labour Convention, 1930
- Conventions: C034 Fee-Charging Employment Agencies Convention, 1933
- Conventions: C087 Freedom of Association and Protection of the Right to Organise Convention, 1948
- Conventions: C088 Employment Service Convention, 1948
- Conventions: C096 Fee-Charging Employment Agencies Convention (Revised), 1949
- Conventions: C097 Migration for Employment Convention (Revised), 1949
- Conventions: C098 Right to Organise and Collective Bargaining Convention, 1949
- Conventions: C111 Discrimination (Employment and Occupation) Convention, 1958
- Conventions: C122 Employment Policy Convention, 1964
- Conventions: C138 Minimum Age Convention, 1973
- Conventions: C143 Migrant Workers (Supplementary Provisions) Convention, 1975
- Conventions: C168 Employment Promotion and Protection against Unemployment Convention, 1988
- Revised: C034 This Convention revises the Fee-Charging Employment Agencies Convention, 1933

- Revised: C096 This Convention revises the Fee-Charging Employment Agencies Convention (Revised), 1949
- Supplemented: R188 Complemented by the Private Employment Agencies Recommendation, 1997
- Constitution: 22:article 22 of the Constitution of the International Labour Organisation

R188. Private Employment Agencies Recommendation, 1997

Recommendation concerning Private Employment Agencies

Recommendation: R188

Place: Geneva

Session of the Conference: 85

Date of adoption: 19.06.1997

Subject classification: Employment Services – Job Placement

Subject: Employment policy and Promotion

Display the document in: French Spanish

Status: Up-to-date instrument

This Recommendation was adopted after 1985 and is considered up to date.

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 Eighty-fifth Session on 3 June 1997,
and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Private Employment Agencies Convention, 1997;

adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Recommendation, which may be cited as the Private Employment Agencies Recommendation, 1997:

I. General provisions

1. The provisions of this Recommendation supplement those of the Private Employment Agencies Convention, 1997, (referred to as “the Convention”) and should be applied in conjunction with them.

2. (1) Tripartite bodies or organizations of employers and workers should be involved as far as possible in the formulation and implementation of provisions to give effect to the Convention

(2) Where appropriate, national laws and regulations applicable to private employment agencies should be supplemented by technical standards, guidelines, codes of ethics, self-regulatory mechanisms or other means consistent with national practice.

3. Members should, as may be appropriate and practicable, exchange information and experiences on the contributions of private employment agencies to the functioning of the labour market and communicate this to the International Labour Office.

II. Protection of workers

4. Members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies. These measures may include laws or regulations which provide for penalties, including prohibition of private employment agencies engaging in unethical practices.

5. Workers employed by private employment agencies as defined in Article 1.1 (b) of the Convention should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. As a minimum requirement, these workers should be informed of their conditions of employment before the effective beginning of their assignment.

6. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.

7. The competent authority should combat unfair advertising practices and misleading advertisements, including advertisements for non-existent jobs.

8. Private employment agencies should:

- (a) not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;
- (b) inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment.

9. Private employment agencies should be prohibited, or by other means prevented, from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers organization.

10. Private employment agencies should be encouraged to promote equality in employment through affirmative action programmes.

11. Private employment agencies should be prohibited from recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered.

12. (1) Private employment agencies should store the personal data of a worker only for so long as it is justified by the specific purposes for which they have been collected, or so long as the worker wishes to remain on a list of potential job candidates.

(2) Measures should be taken to ensure that workers have access to all their personal data as processed by automated or electronic systems, or kept in a manual file. These measures should include the right of workers to obtain and examine a copy of any such data and the right to demand that incorrect or incomplete data be deleted or corrected.

(3) Unless directly relevant to the requirements of a particular occupation and with the express permission of the worker concerned, private employment agencies should not require, maintain or use information on the medical status of a worker, or use such information to determine the suitability of a worker for employment.

13. Private employment agencies and the competent authority should take measures to promote the utilization of proper, fair and efficient selection methods.

14. Private employment agencies should have properly qualified and trained staff.

15. Having due regard to the rights and duties laid down in national law concerning termination of contracts of employment, private employment agencies providing the services referred to in paragraph 1(b) of Article 1 of the Convention should not:

- (a) prevent the user enterprise from hiring an employee of the agency assigned to it;
- (b) restrict the occupational mobility of an employee;
- (c) impose penalties on an employee accepting employment in another enterprise.

III. Relationship between the public employment service and private employment agencies

16. Cooperation between the public employment service and private employment agencies in relation to the implementation of a national policy on organizing the labour market should be encouraged; for this purpose, bodies may be established that include representatives of the public employment service and private employment agencies, as well as of the most representative organizations of employers and workers.

17. Measures to promote cooperation between the public employment service and private employment agencies could include:

- (a) pooling of information and use of common terminology so as to improve transparency of labour market functioning;

- (b) exchanging vacancy notices;
- (c) launching of joint projects, for example in training;
- (d) concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;
- (e) training of staff;
- (f) consulting regularly with a view to improving professional practices.

Annex II

CIETT Code of Practice

CIETT Members' commitment
towards a well functioning international labour market

Introduction

Services provided by private employment agencies represent a modern answer to reconcile the requirement of labour flexibility for user companies and the need of work security for employees.

Being aware of such a social responsibility, the private employment agency industry has adopted, for many years, national codes of conduct at country level.

Because of the growing importance of private employment agencies at the international level and the need for strengthening self-regulation principles to enhance the quality standards of the industry, Ciett has established a global Code of Conduct, which provides General Agreed Principles on private employment agency practices, shared by all its Members.

These common agreed principles are complemented by the Ciett Charter of private employment agencies, which describe the obligations of Ciett members regarding their corporate social responsibility.

I. Ciett Code of Conduct

Principle 1 – Respect for Ethical and Professional Conduct

Members shall observe the highest principles of ethics, integrity, professional conduct and fair practice in dealing with temporary agency workers as well as other

relevant stakeholders and shall conduct their business in a manner designed to enhance the operation, image and reputation of the industry.

Principle 2 – Respect for Laws

Members and their staff shall comply with all relevant legislation, statutory and non-statutory requirements and official guidance covering Private Employment Agencies.

Principle 3 – Respect for Transparency of Terms of Engagement

Members shall ensure that workers are given details of their working conditions, the nature of the work to be undertaken, rates of pay and pay arrangements and working hours.

Principle 4 – Respect for free-of-charge provision of services to jobseekers

Members shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement.

Principle 5 – Respect for Safety at Work

1. Members shall act diligently in assessing risks in order to promote the safety at agency workers in their workplace.
2. Members shall inform agency workers whenever they have reason to believe that any particular assignment causes an occupational health or safety risk.

Principle 6 – Respect for Diversity

Members shall establish working practices that safeguard against any unlawful or unethical discrimination.

Principle 7 – Respect for the Worker's Rights

1. Equitable, objective and transparent principles for the calculation of agency workers' wages shall be promoted, considering national legislation and practices.
2. Members shall not in any way deny the right of freedom of association of their employees.
3. In accordance with national law and practices, private employment agencies shall not make workers available to a user company to replace workers of that company who are legally on strike.

Principle 8 – Respect of Confidentiality

1. Members shall ensure confidentiality in all of their dealings.
2. Members and their staff shall ensure that permission has been given and documented before disclosing, displaying, submitting or seeking confidential or personal information.

Principle 9 – Respect for Professional Knowledge and Quality of Service

1. Members shall work dilligently to develop and maintain a satisfactory and up to date level of relevant professional knowledge.
2. Members shall ensure that their staffs are adequatley trained and skilled to undertake their responsibilities and assure a high quality service.

Principle 10 – Respect for Fair Competition

Members shall assure mutual relations based on fair competition.

II. The Ciett Charter of Private Employment Agencies

Services provided by private employment agencies represent a statutory labour flexibility arrangement which provides workers an opportunity for employment security, enhanced occupational status and a stepping stone function while, at the same time, reconciling employees' aspirations and employers' needs for flexible workforce.

As socially responsible employers, the Ciett members fully agree to recognise through this Charter of private employment agencies that:

1. Employment through private agencies should respect the international and national principles of non-discrimination on all issues linked to working conditions.
2. Private employment agencies should not charge directly or indirectly any fees or costs to workers for job-finding services.
3. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.
4. Private employment agency should facilitate access to training for the agency workers.
5. Social dialogue and collective labour bargaining should be seen as an appropriate mean to organise the private employment agency industry, when relevant and fitting.

At the same time, the positive contribution that private employment agencies makes to the worldwide employment and economic objectives should be fully recognised by national governments, international institutions and relevant stakeholders. Indeed, services provided by private employment agencies can be part of the solution to improve the efficiency of the labour markets by:

- Providing work to job-seekers
- Acting as a stepping-stone to permanent employment

- Enhancing job-opportunities and integration in the labour market, in particular for the most disadvantaged group of workers
- Improving labour market's fluidity
- Helping the creation of jobs that would not exist otherwise and therefore contributing to reduce unemployment
- Cooperating with the Public Employment Services
- Facilitating access to vocational training

Additionally, any regulation on private employment agencies should enhance the fight against illegal practices and human trafficking.

Finally, as the International Confederation of Private Employment Agencies, Ciett fully endorses the ILO Convention 181 on Private Employment Agencies. Ciett supports its members in encouraging their respective countries to ratify this ILO instrument, in case they have not done so.

Annex III

Samples of national legislative language by topic

Table 1

Topic of legislation: Organization or official responsible for enforcement

Country, title of legislation, and year of enactment	Legislative provisions
Australia (Queensland), <i>Private Employment Agents Act</i> , 2005	Part 3, Section 7: "The Employment Agents Advisory Committee is established." Section 8: "[...](2) The committee's functions include – (a) advising the chief executive on matters relating to the content and operation of the code of conduct; and (b) if asked by the chief executive - advising the chief executive in relation to any matter arising under this Act or the Industrial Relations Act 1999, chapter 11A (Fees charged by private employment agents)."
Ethiopia, <i>Private Employment Agency Proclamation No. 104</i> , 1997	Section 4: "Any person who wishes to operate a private employment agency shall have to obtain a license from the following authorities: 1) without prejudice to Sub-article 3 of this Article, from the Regional Authority responsible for the implementation of labour laws, if the employment service is confined within that region; 2) from the Ministry if the employment service is to be rendered in two or more regions; 3) from the Ministry if the employment service is to hire and send abroad an Ethiopian worker to a third party."

Country, title of legislation, and year of enactment	Legislative provisions
Philippines, <i>Migrant Workers and Overseas Filipinos Act</i> , 1995	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 [...] 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 [...]; b) Department of Labor and Employment – The Department [...] shall see to it that labor and social welfare laws in the foreign countries are fairly applied to migrant workers [...] including the grant of legal assistance and the referral to proper medical centers or hospitals; b.1) Philippine Overseas Employment Administration – Subject to deregulation and phase out as provided under Sections 29 and 30 herein, 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 employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements. [...]"
Singapore, <i>Employment Agencies Act (Chapter 92)</i> , 1985	Section 3 (1): "The Commissioner for Labour appointed under the Employment Act [...] shall be the officer in charge of the general administration of this Act [...]"
UK (agriculture), <i>Gangmasters (Licensing) Act</i> , 2004	Section 1: " (1) There shall be a body known as the Gangmasters Licensing Authority [...] (2) The functions of the Authority shall be (a) to carry out the functions relating to licensing that are conferred on it by this Act, (b) to ensure the carrying out of such inspections as it considers necessary of persons holding licences under this Act, (c) to keep under review generally the activities of persons acting as gangmasters, [...] (e) to keep under review the operation of this Act, [...]"

Table 2
Topic of Legislation: Definition

Country, title of legislation, and year of enactment	Legislative provisions
Australia (Queensland), <i>Private Employment Agents Act</i> , 2005	Part 1, <i>Section 4 (1)</i> : “A person is a <i>private employment agent</i> if the person, in the course of carrying on business and for gain—(a) offers to find—(i) casual, part-time, temporary, permanent or contract work for a person; or (ii) a casual, part-time, temporary, permanent or contract worker for a person; or (b) negotiates the terms of contract work for a model or performer; or (c) administers a contract for a model or performer and arranges payments under it; or (d) provides career advice for a model or performer. [...]”
Australia (New South Wales), <i>Fair Trading Amendment (Employment Placement Services) Act</i> , 2002	Schedule 1 (1): “In this Part, employment placement service means a service provided by a person as an agent for the purpose of: (a) finding or assisting to find a person to carry out work for a person seeking to have work carried out, or (b) finding or assisting to find employment for a person seeking to be employed, whether or not the employment or work is to be undertaken or carried out pursuant to a contract of employment.”
Canada (British Columbia), <i>Employment Standards Act</i> [RSBC 1996], Chapter 113, 1996	Section 1 (1): “In this Act: [...] ‘ employment agency ’ means a person who, for a fee, recruits or offers to recruit employees for employers [...]”
China, <i>Administrative Regulations on Overseas Employment Intermediary Activities</i> , 2002	Art. 2: “[...] Overseas employment intermediary activities refer to relevant services provided to Chinese citizens employed to work outside the boundary of the People’s Republic of China, or to overseas employers who recruit Chinese citizens to work abroad.”
Indonesia, <i>Act No. 13 Year 2003 Concerning Manpower</i> , 2003	Art. 1 (12): “Job placement service is an activity aimed at matching up manpower with employers so that manpower get jobs that are suitable to their talents, interest and capability and employers get the manpower they need.”
Ireland, <i>Employment Agency Act</i> , 1971	Section 1 (2): “For the purpose of this Act, the business of an employment agency means the business of seeking, whether for reward or otherwise, on behalf of others, persons who will give or accept employment, and includes the obtaining or supplying for reward of persons who will accept employment from or render services to others.”

Country, title of legislation, and year of enactment	Legislative provisions
Israel, <i>Employment of Employees by Manpower Contractors Law</i> , 5756, 1996	Section 1: "In this Law – [...] "manpower contractor" means a person engaged in the provision of manpower services by his employees for the purposes of work for another person, including a private bureau within its meaning as defined in the Employment Service Law [...], which also engages in the provision of manpower services; [...]"
Malta, <i>Employment Agencies Regulations</i> , 1995	Section 2: "In these regulations unless the context otherwise requires: [...] 'employment agency' or 'employment business' means any activity carried out in Malta for the recruitment of persons for employment in Malta or outside Malta; [...]"
Singapore, <i>Employment Agencies Act (Chapter 92)</i> , 1985	Section 2: "In this Act, unless the context otherwise requires – "employment agency" means any agency or registry carried on or represented as being or intended to be carried on (whether for the purpose of gain or reward or not) for or in connection with the employment of persons in any capacity, but does not include any registry set up by an employer for the sole purpose of recruiting persons for employment on his own behalf; [...]"
South Korea, <i>Employment Security Act (Wholly Amended by Act No. 4733)</i> , 1994	Section 4: "For the purpose of this Act, [...] 2) the term job placement means to help, upon request, both job offerer and seeker to a conclusion of an employment contract; [...] 4) the term free placement service means a job placement service rendered without receiving any fee, membership fee, or any money or valuables; 5) the term fee-charging placement service means a job placement service other than the free job placement service;"
UK, <i>Gangmasters (Licensing) Act</i> , 2004	Art. 4 (2): "A person ('A') acts as gangmaster if he supplies a worker to do work to which this Act applies for another person ('B')." Art. 3 (1): "The work to which this Act applies is (a) agricultural work, (b) gathering shellfish, and (c) processing or packaging- (i) any produce derived from agricultural work, or (ii) shellfish, fish or products derived from shellfish or fish."

Country, title of legislation, and year of enactment	Legislative provisions
US (Arizona), <i>Arizona Revised Statutes</i> , Title §23 Labor	<p>Section 23-521: "A. "Employment agent" means all persons, firms, corporations or associations which for a fee, commission or charge that is collected from persons seeking employment either:</p> <ol style="list-style-type: none"> 1. Furnish to persons seeking employment information enabling or tending to enable the persons to secure employment, including vocational guidance or employment counseling services. 2. Furnish to employers seeking laborers or other help of any kind information enabling or tending to enable the employers to secure help. 3. Keep a register of persons seeking employment or help, whether the agents conduct their operations at a fixed place of business, on the streets or as transients and also whether the operations constitute the principal business of the agents or only a sideline or an incident to another business."

Table 3
Topic of Legislation: Registration fees

Country, title of legislation, and year of enactment	Legislative provisions
Canada (British Columbia), <i>Employment Standards Regulation</i> , 1995, 2005	<p>Part 2, Section 2 (1): "An application for a licence to operate an employment agency must (a) be made to the director, and (b) be accompanied by a fee of \$ 100 [~US\$ 84]"</p> <p>Section 5 (1): "An application for a licence to act as a farm labour contractor must (a) be made to the director, and (b) be accompanied by a fee of \$ 150 [~US\$ 125]"</p>
Ghana, <i>Labour Act</i> , 2003, application sheet	<p>"Licensing fee of Two Million Cedis (2,000,000.00) shall be paid by an employment agency before commencement of business. Yearly renewable fee of One Million Cedis shall be paid by each operating private employment agency." [~ US\$ 240/120]</p>
Malta, <i>Employment Agencies Regulations</i> , 1995	<p>Section 4 (3): "A licence fee of one hundred and fifty liri shall be paid to the Director together with the application. Such fee shall not be refunded to the applicant if the application is refused." [~ US\$ 450]</p>

Country, title of legislation, and year of enactment	Legislative provisions
US (Arizona), <i>Arizona Revised Statutes</i> , Title 23 Labour, Chapter 3	<p>Section 23-528. Annual renewal of license; annual fees</p> <p>A. Each license shall be valid for one year from the date of issue and may be renewed annually for a like period of time. The commission shall give the licensee forty-five days' prior written notice of the expiration of the license.</p> <p>B. Every employment agency licensed under the provisions of this article shall pay a fee for an initial license or renewal license as follows:</p> <ol style="list-style-type: none"> 1. For an agency with fewer than three placement counselors, one hundred dollars. 2. For an agency operating with three to eight placement counselors, two hundred dollars. 3. For an agency operating with more than eight placement counselors, three hundred dollars. <p>C. For the purpose of determining the annual license fee which an employment agency shall pay, the applicant shall state in its application, the average number of placement counselors employed by the applicant's employment agency during the preceding licensed year. In the event that the applicant has not previously conducted an employment agency under the provisions of this article, he shall state the average number of placement counselors which he reasonably expects will be employed by the employment agency during the year for which the license is to be issued. All fees shall be paid to the industrial commission, and deposited, pursuant to sections 35-146 and 35-147, in the state general fund.</p>
US (Connecticut), <i>Chapter 564 Private Employment and Information Agencies</i>	<p>Section 31-130 (a): "[...] Application for such license or for renewal annually of such licenses shall be on forms prescribed and furnished by the commissioner and shall be accompanied by [...] a fee of one hundred fifty dollars for each year. Any license applicant refused a license shall have his fee refunded. [...]"</p>
Zimbabwe, <i>Labour Relations (Employment Agencies) (Amendment) Regulations, 2002 (No. 3)</i>	<p>Section 5: "The fee – (a) in respect of the application for registration and inspection of an employment agency shall be ten thousand dollars [~US\$ 12], which will not be refunded in the event that the application is rejected; (b) for registration of each employment agency shall be five thousand dollars [~US\$ 6]; (c) for the renewal of registration of each employment agency shall be five thousand dollars; (d) for the late renewal of registration of each employment agency, that is, renewal after a period of fourteen days when the previous certificate of registration of the agent expired, shall be three thousand dollar [~US\$ 3.50]."</p>

Table 3a
Topic of Legislation: Registration fees

Country, title of legislation, and year of enactment	Legislative language
Canada (British Columbia), <i>Employment Standards Regulation</i> , 1995, 2005	Employment agency \$ 100 [~US\$ 84] Farm labour contractor \$ 150 [~US\$125]
Ghana, <i>Labour Act</i> , 2003, application sheet	2.000.000 Cedis [~US\$ 240]
Ireland, <i>Employment Agency Act</i> , 1971	€500 [~US\$ 625]
Malaysia, <i>Private Employment Agencies Act</i> , 1981	RM 25 [US \$ ~6.80]
Malta, <i>Employment Agencies Regulations</i> , 1995	150 liri [~ US\$ 450]
Philippines, <i>POEA, Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , Part II; Rule II, section 2 and 3, 2002	Filing Fee P10.000 [~US\$ 178] License Fee P50.000 [~US\$ 890]
Singapore, <i>Employment Agencies Licence Conditions</i> , 2001	S\$ 350 [~US\$ 210]
Switzerland, <i>Ordonnance sur les émoluments, commissions et sûretés en vertu de la loi sur le service de l'emploi</i> , 1999	CHF700-1500 [~US\$ 570-1,220]
US (Arizona), <i>Arizona Revised Statutes</i> , Title 23 Labour, Chapter 3	US\$ 100 (1-3 employees) US\$ 200 (3-8 employees) US\$ 300 (> 8 employees)
US (Connecticut), <i>Chapter 564 Private Employment and Information Agencies</i>	US\$ 150
Zimbabwe, <i>Labour Relations (Employment Agencies) (Amendment) Regulations</i> , 2002 (No. 3)	\$ 10,000 [~US\$ 12]

Table 4
Topic of Legislation: Deposit

Country, title of legislation, and year of enactment	Legislative language
Canada (British Columbia), <i>Employment Standards Regulation</i> , 1995, 2005	<p>Part 2, Section 5: “(1) An application for a licence to act as a farm labour contractor must (a) be made to the director, and (b) be accompanied by a fee of \$ 150. (2) The director may issue a licence only if the applicant has [...] (d) posted security in accordance with subsection (3). (3) The security must [...] (c) be in the amount directed under section 5.1. [...] 5.1 (1) In this section, ‘core requirement’ means a requirement under any of the following sections: (a) section 13 (1) of the Act [<i>Farm labour contractors must be licensed</i>]; (b) section 17 (1) of the Act [<i>Paydays</i>]; (c) section 28 of the Act [<i>Payroll records</i>] (d) section 58 of the Act [<i>Vacation pay</i>]; (e) sections 15 and 18 (1) [<i>Minimum Wage</i>]. (2) Subject to subsection (3), the amount of the security required to be posted by a farm labour contractor under section 5 (3) (c) is equal to the amount obtained by multiplying the minimum hourly wage by 80, and multiplying the result by the number of employees specified in the licence. (3) If a farm labour contractor has not contravened any core requirement for a period stated in Column 1 of the following table, the amount of security required to be posted under section 5 (3) (c) is equal to the amount obtained by multiplying the minimum hourly wage by the number set out in Column 2 opposite the period of non-contravention in Column 1, and multiplying the result by the number of employees specified in the licence.</p> <p>Period of non-contravention/ Multiplier</p> <p>1 year to less than 2 years → 60 2 years to less than 3 years → 40 3 years or more → 20”</p>
Ethiopia, <i>Private Employment Agency Proclamation No. 104</i> , 1997	<p>Section 14 (1): “Any private employment agency which sends a worker abroad for work in accordance with this Proclamation shall, for the purpose of protecting the rights of the worker, deposit the following amount of money in cash or its equivalent in a confirmed and irrevocable bond from a recognized financial institution: a) for up to five hundred workers 30.000 US\$ [...]; b) for five hundred and one to one thousand workers 40.000 US\$ [...]; c) for above one thousand and one workers 50.000 US\$ [...].”</p>

Country, title of legislation, and year of enactment	Legislative language
Malaysia, <i>Private Employment Agencies Act</i> , 1981	Bond RM 1.000.00 (~ US\$ 265) Bond for overseas RM 5.000.00 (~ US\$ 1330)
Nigeria, <i>Labour Act Chapter 198</i> , Application for Registration for Employer's Permit/ Recruiter's Licence/ Private Employment Agency, 1990	C) Applicant to submit security, deposit in bond forms as follows: - 1-10 recruits – N100.000 (~ US\$ 750) 11-50 recruits – N500.000 (~ US\$ 3750) 51-100 recruits – N1.000.000 (~ US\$ 7500) 101-250 recruits – N2.000.000 (~ US\$ 15.000) 251-500 recruits – N5.000.000 (~ US\$ 37.500) 501-1000 recruits – N10.000.000 (~ US\$ 75.000) 1000 and above - N20.000.000 (~US\$ 150.000)
Singapore, <i>Employment Agencies Licence Conditions</i> , 2001	S\$ 20,000 [~US\$ 12,000]
US (Arizona), <i>Arizona Revised Statutes</i> , Title 23 Labour, Chapter 3	23-527. Application for license; cash deposit or surety bond; deposit A. A person, firm, corporation or association desiring a license as employment agent shall make application for a license to the industrial commission, and shall accompany the application with a minimum cash deposit of one thousand dollars or surety bond in the amount determined by the commission, not to exceed five thousand dollars, conditioned that the agent will conform in all particulars to the requirements of law relating to the business of employment agent. The cash deposit or surety bond shall at all times be maintained at the minimum of one thousand dollars or the amount determined by the commission not to exceed five thousand dollars.

Table 5
Topic of Legislation: Financial Capabilities –
Minimum start-up capital

Country, title of legislation, and year of enactment	Amount
Malaysia, <i>Private Employment Agencies Act</i> , 1981	RM 25,000.00 [~US\$ 6,650]
Morocco, <i>Code du Travail</i> , Livre IV, 2003	Article 481: “L’autorisation d’exercer prévue à l’article 477 ci-dessus ne peut être accordée qu’aux agences de recrutement privées disposant dans tous les cas d’un capital social d’un montant au moins égal à 100.000 [~US\$ 11.175] dirhams.»
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	Part II, Rule 1, Section 1. “Only those who possess the following qualifications may be permitted to engage in the business of recruitment and placement of Filipino workers: [...] b) A minimum capitalization of Two Million Pesos (P2,000,000.00) [~US\$ 35750] in case of a single proprietorship or partnership [...]”

Table 6
Topic of Legislation: Personal qualification – Age

Country, title of legislation, and year of enactment	Legislative language
Malta, <i>Employment Agencies Regulations</i> , 1995	Section 3 (2) “No person shall be qualified to be granted a licence to conduct any employment agency or employment business unless he is twenty-five years of age or over and has in accordance with section 23 of the Act displayed notice of his intention to run the employment agency and has advertised notice of the application.”
Singapore, <i>Guide for Prospective Employment Agencies</i> , 2005 ¹	Applicants must: a. be at least 21 years old at the point of application

1. <http://www.mom.gov.sg/ProceduresAndGuidelines/ForProspectiveOrExistingEmploymentAgencies/AGuideforEmploymentAgencies.htm> [visited on 15 November 2005]

Table 7
Topic of Legislation: Personal qualification –
Reliability for obtaining a licence (lawful behaviour)

Country, title of legislation, and year of enactment	Legislative provisions
Ethiopia, <i>Private Employment Agency Proclamation No. 104</i> , 1997	Section 7: “A person punished for his engagement in an illegal employment activity shall not qualify for a license to operate a private employment agency.”
Morocco, <i>Code du travail</i> , Livre IV, 2003	Article 481: “[...] L’autorisation d’exercer ne peut être accordée ou maintenue aux personnes condamnées définitivement à une peine portant atteinte à l’honorabilité ou condamnées à une peine d’emprisonnement d’une durée supérieure à trois mois.”
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	Part II, Rule I, Section 2: “The following are not qualified to engage in the business of recruitment and placement of Filipino workers overseas: [...] (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.”

Table 8
Topic of Legislation: Conflict of interest

Country, title of legislation, and year of enactment	Legislative language
Japan, <i>Employment Security Law</i> , 2000	Article 33-4: "A person who carries on a restaurant, eating or drinking establishment, inn, second-hand shop, pawnshop, money lending business, money changing business or the like, shall not carry on an employment placement project."
Nigeria, <i>Labour Act</i> , Chapter 198, 1990	Section 26 (3): "No public officer shall – (a) act as a recruiting agent; or (b) exercise pressure upon possible recruits; or (c) receive from any source whatsoever any special remuneration or other special inducement for assistance in recruiting."
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	Part II, Rule 1, Section 2: " 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; [...] 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; [...]"
South Korea, <i>Employment Security Act (Wholly Amended by Act No. 4733)</i> , 1994	Section 26: "No person who carries on the food and entertainment business as prescribed in section 21 of the Food Sanitation Act, the accommodation business as prescribed in section 2 of the Public Health Act, the matrimonial agency or matchmaking business as prescribed in section 5 of the Act relating to Family Rituals Acts, or other business as prescribed by the Presidential Decree, may render the job placement service."

Table 9
Topic of Legislation: Management capabilities –
Work experience and educational background

Country, title of legislation, and year of enactment	Legislative language
Canada (British Columbia), <i>Employment Standards Regulation</i> , 1995, 2005	Part 2, <i>Section 5</i> : (1) “An application for a licence to act as farm labour contractor must (a) be made to the director, [...] (2) The director may issue a licence only if the applicant has [...] (c) satisfied the director by an oral or written examination, or both, of the applicant’s knowledge of the Act and this regulation, [...]”
Czech Republic, <i>Employment Act</i> , 1991	Part 2, Section 5a (4): “When the granting of a licence for employment intermediary services is under consideration, an individual shall be deemed to have vocational qualifications if he has completed university-level studies and has at least two years’ experience in the field of employment intermediary services or in the sector to which the employment intermediary services are to be provided, or if he has completed secondary-level studies and has at least five years’ experience in the field of employment intermediary services or in the sector to which the employment intermediary services are to be provided. [...]”
Israel, <i>Employment of Employees by Manpower Contractors Law</i> , 5756, 1996	Section 3 (a): “A license shall only be granted to a person who wishes to act as a manpower contractor if he meets the following requirements: (1) He, or the manager, employed by him – as the case may be – has at least three years experience in the provision of manpower services or in the management of manpower; [...]”
Malta, <i>Employment Agencies Regulations</i> , 1995	Section 7 (1): “A competent person nominated by a licensee or by an applicant for a licence to manage an employment agency or business, or to act as substitute for such person, shall: [...] (c) have (i) not less than six years’ experience in any activity which includes the management of human resources; or (ii) not less than three years’ experience in any activity which includes the management of human resources and be in possession of a University degree or diploma in a field which, in the opinion of the Director, is relevant to the management of an employment agency or employment business.”

Country, title of legislation, and year of enactment	Legislative language
Singapore, <i>Guide for Prospective Employment Agencies</i> , 2005 ²	<p>Applicants must:</p> <ol style="list-style-type: none"> a. be at least 21 years old at the point of application, b. be a Singapore Citizen or Permanent Resident; or be an Employment Pass holder if you are a foreigner at the point of application, c. at least 5 GCE 'O' Level credits or possess the Certificate for Employment Agencies (CEA) at the point of application, if they do not intend to place work permit holders, d. possess the Certificate of Employment Agencies (CEA) at the point of application, if you intend to place work permit holders, e. be registered with ACRA as the owner/director/managing director/manager of the business/company/limited liability partnership (LLP) at the point of application [...]
US (Arizona), <i>Arizona Revised Statutes</i> , Title §23 Labor, Chapter 3	<p>Section 23-526</p> <p>B. Prior to the initial issuance of an employment agent licence, those persons determined by the commission to be involved in the actual operation of the employment agency shall take a written examination prepared by the director with the assistance of the advisory council. The examination shall be given at least once each month and shall be designed to demonstrate to the commission that the person has sufficient knowledge of the applicable laws and regulations, including, but not limited to:</p> <ol style="list-style-type: none"> 1. Laws pertaining to employment agents. 2. Rules and regulations pertaining to employment agents. 3. Laws pertaining to employment discrimination. 4. Other pertinent labor laws.

Table 10
Topic of Legislation: Marketing capabilities

Country, title of legislation, and year of enactment	Legislative provisions
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	<p>Part II, <i>Rule II</i>, Section 1 d: "Proof of marketing capability:</p> <ol style="list-style-type: none"> 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 a new market."

2. <http://www.mom.gov.sg/ProceduresAndGuidelines/ForProspectiveOrExistingEmploymentAgencies/AGuideforEmploymentAgencies.htm> [visited on 15 October 2005]

Table 11
Topic of Legislation: Validity of licence

Country, title of legislation, and year of enactment	Legislative provisions
Albania, <i>Ordonnance No. 365/1</i> , 1999	5. “La validité de l’autorisation dure une année à l’exception des cas quand il existe des conditions de retrait ou de révocation.”
Czech Republic, <i>Employment Act</i> , 1991	Part 2, Section 5a (1): “A licence (authorization) to act as an employment intermediary is granted (or not) on the basis of an application of an individual or a legal entity; this licence is valid for three years. Such licence may be issued recurrently.”
Ethiopia, <i>Private Employment Agencies Proclamation No. 104</i> , 1997	Section 8: “A license issued in accordance with this Proclamation shall be valid for two years subject to renewal every year.”
Japan, <i>Employment Security Law</i> , 2000	Article 32 –6: “The effective term of the permit provided for in Article 30, paragraph 1 shall be three years calculated from the day of issuing thereof. 2. A person who wishes to continue to carry on a fee-charging employment placement service connected with a permit after the expiration of the term of validity of a permit provided for in the preceding paragraph [...] shall obtain renewal of the term of validity of the permit. [...] 5. The term of validity of the permit [...] in a case where renewal thereof is obtained pursuant to the provisions of paragraph 2 shall be five years [...]”
Nigeria, <i>Labour Act</i> , Chapter 198, 1990	Section 25 (2): “A licence granted under this section shall be valid for a period of twelve months from the date of issue, and notification of the grant shall be published in the Federal Gazette.”
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	Part II, Rule II, Section 6: “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. [...]”
South Korea, <i>Employment Security Act (Wholly Amended by Act No. 4733)</i> , 1994	Section 19(2): “The validity term of permission referred to in subsection (1) shall be three years.”
Switzerland, <i>Loi fédérale sur le service de l’emploi et la location de services</i> , 2003	Art. 4(1): «L’autorisation est délivrée pour une durée illimitée et donne le droit d’exercer des activités de placement dans l’ensemble de la Suisse.»

Table 12
Topic of Legislation: Indication of changes within licence details

Country, title of legislation, and year of enactment	Legislative provisions
Hong Kong, <i>Employment Agency Regulations</i> , 1998	Section 9(1): "If a licensee wishes to change the place of business of his employment agency he shall, not less than fourteen days before the change – (a) notify the Commissioner in writing full particulars of the change; [...]"
Israel, <i>Employment of Employees by Manpower Contractors Law</i> , 5756, 1996	Section 9(c): "License holders shall inform the Minister in writing, within 30 days after the change, of any change in a particular that he has furnished under this Chapter."
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	<p>Part II, Rule II, Section 11: "Every appointment of agents or representatives of a licensed agency shall be subject to prior approval or authority of the Administration. [...]"</p> <p>Section 12: "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."</p>
Singapore, <i>MOM Employment Agency Licence Conditions</i> , 2005	Section 7(a): "The licensee shall obtain the written approval of the Commissioner for Labour prior to any change of partners or directors of the employment agency. [...]" 9 (b): In the event the licensee opens a branch or changes the address of the branch of the employment agency, the licensee shall inform the Commissioner within seven (7) days of such opening or change of address of the branch and request in writing for the Commissioner for Labour to include the address of the branch in the licence issued to the licensee in respect of the employment agency. A copy of the licence shall be displayed at the branch."
South Africa, <i>Regulations No. 608 with Regard to Private Employment Agencies</i> , 2000	Section 5 (4): "Where an employment service moves to new premises, it must apply to the Director General for a fresh registration certificate in respect of the new premises."
UK, <i>Draft Gangmasters (Licensing Conditions) Rules</i> , 2005	<p>Schedule:</p> <p>Section 1. (1) The licence holder must at all times act in a fit and proper manner.</p> <p>(2) The licence holder must notify the Authority of any change in his name or business address within 30 working days of the change.</p> <p>(3) The licence holder must notify the Authority of any changes in the control and running of his business within 10 working days of the change.</p>

Country, title of legislation, and year of enactment	Legislative provisions
UK, <i>Draft Gangmasters (Licensing Conditions) Rules, 2005</i> (cont.)	<p>(4) The licence holder must notify the Authority in writing within 10 working days if there are changes to any other details submitted with his application form.</p> <p>(5) The licence holder must notify the Authority as soon as reasonably practicable if he suspects his licence has been misused.</p> <p>(6) The licence holder must provide details of his licence at the request of any constable, enforcement officer or compliance officer.</p> <p>(7) A licence holder must provide details of his licence upon request to any worker supplied by him or labour user.</p>

Table 13
Topic of Legislation: Registration with other government business regulation

Country, title of legislation, and year of enactment	Legislative provisions
Ethiopia, <i>Private Employment Agency Proclamation No. 104, 1997</i>	Section 5: "Any person who applies to operate a private employment agency in accordance with this Proclamation shall fulfil the following: 1) present a document that shows he has a business registration for the operation of a private employment service; [...]"
Malta, <i>Employment Agencies Regulations, 1995</i>	Section 4 (1): "Applications for licences to carry on an employment agency or employment business shall be submitted to the Director on the form prescribed in the First Schedule hereto. Each application shall include the following particulars: (a) name, address, identity card number, Value Added Tax registration number and Income Tax registration number of the applicant [...]"
Singapore, <i>MOM Employment Agencies Licence Conditions, 2005</i>	Section 6 (a): "The licence shall be valid only if the employment agency has a valid registration with the Registry of Companies Businesses. The employment agency licence shall be for the same period of time as the registration period of the employment agency with the Registry of Companies and Businesses."
Switzerland, <i>Loi fédérale sur le service de l'emploi et la location de services, 1989</i>	Article 3: «L'autorisation est accordée lorsque l'entreprise: a.) Est inscrite au registre suisse du commerce; [...]"

Table 14
Topic of Legislation: Reporting on agency's activities

Country, title of legislation, and year of enactment	Legislative language
Canada (British Columbia), <i>Employment Standards Regulation</i> , 1995, 2005	Part 2, <i>Section 3 (1)</i> : "An employment agency must keep a record of the following: (a) the name and address of each employer for whom the employment agency provides a service; (b) the name, occupation and address of each person who is directed to an employer for the purpose of being hired and who is provided with information about employers seeking employees. (2) The record must (a) be in English, (b) be kept at the employment agency's principal place of business in British Columbia, and (c) be retained by the employment agency for 2 years."
Ethiopia, <i>Private Employment Agency Proclamation No. 104</i> , 1997	Section 12 (2): "[...] a private employment agency which sends a worker for work abroad shall have the following obligations: (d) to submit a report to the Ministry annually or as may be required regarding the situation of the worker in the country of employment."
Ghana, <i>Labour Act</i> , 2003	Section 7 (6): "An Agency shall submit to the Minister not later than fourteen days after the end of every three months returns in respect of workers recruited for employment, whether in Ghana or outside Ghana, during that period."
Israel, <i>Employment of Employees by Manpower Contractors Law</i> , 5756, 1996	Section 9 (a): "License holders shall deliver to the Minister – once a year on a date to be set by the Minister – audited reports of their activity as manpower contractors, which shall include data on the number of employees, by branches of employment, work places, the periods of their work, wages, payments in respect of employees under legislation, and additional similar data that shall be prescribed by the Minister."
Jordan, <i>Regulation No. (21) for the year 1999 Regulation of Private Offices of Employment</i>	Article(6): "(a) The Minister will endorse the records, forms and documents related to organizing the office work, and forms of contracts which are signed or made with jobseekers. (b) The work inspector may examine the records, the documents and the contracts at the office and to take photocopies thereof."
Malaysia, <i>Act 246, Private Employment Agencies Act</i> , 1981	Section 19: "Every private employment agency shall maintain – (a) records of registration [...] of the workers; (b) records of vacancies and all aspects relating to the vacancies, [...] (c) records of placement of workers; (d) records of fees collected; [...] Section 20: The Director General may at any time in written direction require a private employment agency to send him in the manner and within the period specified in such direction – (a) a return pertaining to any or all records to be maintained under section 19; [...] (c) a return of registrations and placements of persons for employment overseas [...]"

Country, title of legislation, and year of enactment	Legislative language
Nigeria, <i>Labour Act</i> , Chapter 198, 1990, Employer's Permit and Recruiter's Licence Conditions and Guidelines	Section 6: "Every employer or recruiter shall render quarterly reports to the Federal Ministry of Labour and Productivity in the State in which he operates on the following: (a) Number of workers employed or recruited (b) Place(s) where work is/are being or are to be performed, and (c) nature of work."
Peru, <i>Decreto supreme N° 005-2003-TR</i> , Crean el Registro Nacional de Agencias Privadas de Empleo, 2003	Artículo 13: "Las Agencias Privadas de Empleo registradas de acuerdo a lo prescrito por el presente Decreto Supremo, deberán comunicar trimestralmente a la Autoridad Administrativa de Trabajo, de acuerdo a los formatos aprobados para tal efecto, la información estadística laboral relacionada con su oferta y demanda de mano de obra, frecuencia de colocación, ocupaciones y sectores de la actividad económica en las que se intermedia, numero de solicitantes de empleo presentados, rechazados y colocados en las empresas, así como los importes de las remuneraciones asignadas a estos últimos."
Singapore, <i>Employment Agencies Act</i> , (Chapter 92), 1985	Section 17: "Every employment agency shall submit monthly returns in the prescribed form not later than the seventh day of the month following the month in respect of which those returns are required to be so submitted."
South Africa, <i>Regulations No. 608 with regard to Private Employment Agencies</i> , 2000	Section 5 (12): "The owner or manager of an employment service must on or before the 10th day of January of each year submit to the Director-General a report stating the number of persons, classified according to race, gender and occupation, who were placed in or recruited for employment during the previous year by that employment service."
South Korea, <i>Employment Security Act (Wholly Amended by Act No. 4733)</i> , 1994	Section 41 (1): "The Minister of Labour or Mayor/Provincial Governor may, if necessary, order any person who offers a placement service with a permission as prescribed in sections 18, 19 or 33, or after reporting as prescribed in section 23 to make a report required for enforcement of this Act."
UK, <i>The Gangmasters (Licensing Conditions) (No.2) Rules</i> , 2006	Schedule Records relating to workers 19. "Every licence holder must record, as soon as reasonably practicable, the following details in relation to every application received from a worker— (a) the date terms are agreed between the licence holder and the worker; (b) the worker's name, address and, if under 22, date of birth; (c) any terms which apply or will apply between the licence holder and the worker, and any document recording any variation;

Country, title of legislation, and year of enactment	Legislative language
<p>UK, <i>The Gangmasters (Licensing Conditions) (No.2) Rules, 2006</i> (cont.)</p>	<p>(d) any relevant details of the worker's training, experience or qualifications and any authorisation to undertake particular work (and copies of any documentary evidence of the same obtained by the licence holder);</p> <p>(e) details of any requirements specified by the worker in relation to taking up employment;</p> <p>(f) the names of labour users or sub-contractors to whom the worker is supplied;</p> <p>(g) details of any resulting engagement and the date from which it takes effect;</p> <p>(h) the date the contract was terminated (where applicable); and</p> <p>(i) details of any enquiries made under paragraphs 13 and 14 about the worker and the position concerned, with copies of all relevant documents and dates they were received or sent.</p> <p>Records relating to labour user</p> <p>20. Every licence holder must record, as soon as reasonably practicable, the following details relating to labour users—</p> <p>(a) the date terms are agreed between the licence holder and the labour user;</p> <p>(b) the labour user's name and address, and location of the place of work if different;</p> <p>(c) details of any sub-contractors;</p> <p>(d) details of the position the labour user seeks to fill;</p> <p>(e) the duration or likely duration of the work;</p> <p>(f) any experience, training, ability, qualifications, or authorisation required by the licence holder or labour user by law, or by any professional body; and any other conditions attaching to the position the labour user seeks to fill;</p> <p>(g) the terms offered in respect of the position the labour user seeks to fill;</p> <p>(h) a copy of the terms between the licence holder and the labour user, and any document recording any variation;</p> <p>(i) the names of workers supplied;</p> <p>(j) details of enquiries under paragraphs 12 and 14 about the labour user and the position he seeks to fill, with copies of all relevant documents and dates of their receipt;</p> <p>(k) the details of each resulting engagement and date from which it takes effect; and</p> <p>(l) dates of requests by the licence holder for fees or other payment from the labour user and of receipt of such fees or other payments, and copies of statements or invoices.</p>

Country, title of legislation, and year of enactment	Legislative language
<p>UK, <i>The Gangmasters (Licensing Conditions) (No.2) Rules, 2006</i> (cont.)</p>	<p>Records relating to dealings with other licence holders</p> <p>21. Every licence holder must record, as soon as reasonably practicable, the following details relating to other licence holders—</p> <p>(a) the names of any other licence holders whose services the licence holder uses, and details of enquiries made to ascertain that the other licence holder is licensed; and</p> <p>(b) the date and copy of any agreement made under paragraph 16 (2).</p> <p>General provisions relating to records</p> <p>22. (1) A licence holder must keep all records for at least one year. (2) The records may be kept at any premises a licence holder uses for or in connection with the carrying on of his business, or elsewhere; if kept elsewhere, the licence holder must ensure that they are readily accessible and capable of being delivered to the licence holder's premises in the United Kingdom or to the Authority within two working days. (3) All records may be kept in written or electronic form."</p>
<p>Zimbabwe, <i>Labour Relations (Employment Agencies) (Amendment) Regulations, 2002</i> (No. 3)</p>	<p>Section 10: "An employment agency shall submit monthly statistical returns to Registrar in form E.A. 3."</p>

Table 15
Topic of Legislation: Employment contract has to be in writing

Country, title of legislation, and year of enactment	Legislative provisions
France, <i>Dispositions législatives propres au travail temporaire</i>	Article L.124-4 : “Le contrat de travail liant l’entrepreneur de travail temporaire à chacun des salariés mis à la disposition provisoire d’un utilisateur doit être établi par écrit et adressé au salarié au plus tard dans les deux jours ouvrables suivant sa mise à disposition.”
Israel, <i>Employment of Employees by Manpower Contractors Law, 5756, 1996</i>	Section 11: “(a) The employment conditions of employees of manpower contractors shall be set out in written agreements between them, unless a collective agreement, that prescribes the employment conditions of the manpower contractor’s employees, applies to them. (b) The manpower contractor, prior to the commencement of his employment, shall give the employee a copy of the written agreement drawn up between them; where a collective agreement applies to them, then the contractor shall afford the employee an opportunity of reading it.”
Poland, <i>Act on Employment of Temporary Employees, 2004</i>	Article 9(1): “in order to conclude a service agreement between a temporary work agency and a temporary employee the user employer shall agree with the agency in writing: [...]”
UK, <i>The Gangmasters (Licensing Conditions) (No.2) Rules, 2006</i>	Schedule 9. (1) “Before supplying a worker to a labour user, a licence holder must agree the terms which will apply between the licence holder and the worker including— (a) the type of work the licence holder will find or seek to find for the worker; and (b) the terms referred to in paragraph 10. (2) Subject to sub-paragraph (3), a licence holder must record all terms in writing, where possible in one document, and give the worker the written terms before he provides any services to the worker.”

Table 16
Topic of Legislation: Fees from jobseekers

Country, title of legislation, and year of enactment	Legislative provisions
Australia (New South Wales), <i>Fair Trading (general) Amendment (Employment Placement Services) Regulation</i> , 2003	Schedule 1 Section 87A: “[...] (2) A person who provides employment placement services must, before providing those services to a person seeking employment (a job seeker), give the job seeker a written notice that sets out the following statements: (a) A person who provides employment placement services must not charge a job seeker a fee for the purpose of finding the job seeker employment.”
Canada (British Columbia), <i>Employment Standards Act</i> [RSBC 1996], Chapter 113, 1996	Part 2, Section 10 (1): “A person must not request, charge or receive, directly or indirectly, from a person seeking employment a payment for (a) employing or obtaining employment for the person seeking employment, or (b) providing information about employers seeking employees. (2) A person does not contravene this section by requesting, charging or receiving payment for any form of advertisement from the person who placed the advertisement. (3) A payment received by a person in contravention of this section is deemed to be wages owing and this Act applies to the recovery of the payment.” Section 11 (1): “An employment agency must not make a payment, <i>directly or indirectly</i> , to a person for obtaining or assisting in obtaining employment for someone else. (2) A farm labour contractor must not make a payment, directly or indirectly, to a person for whom the farm labour contractor’s employees work. (3) A person does not contravene this section by paying for any form of advertisement placed by that person.”
Czech Republic, <i>Employment Act</i> , 1991	Part 2, Section 5 (1): “A legal entity or an individual may act (without consideration i.e. free of charge, or for a fee) as an employment intermediary (agency) only if granted a licence (authorization) to do so (Note 39); intermediary services may also be carried on as a gainful activity. When acting as an employment intermediary (agency) for a fee (charge), its payment may not be required from a citizen (a job seeker).”

Country, title of legislation, and year of enactment	Legislative provisions
Ethiopia, <i>Private Employment Agencies Proclamation</i> , 1997	<p>Section 2: "In this Proclamation, unless the context otherwise requires; 1) 'Private Employment Agency' means any person, independent of government bodies, which performs one or two of the following employment services without directly or indirectly receiving payments from the worker; [...]"</p> <p>Section 13: "Without prejudice to Article 18(2) and (3) of this Proclamation, the competent authority may suspend or cancel a license on the following grounds: [...] 2) where it is found that the private employment agency or his representative has received payment in cash or in kind from the worker;"</p>
Ghana, <i>Labour Act (No. 651)</i> , 2003	Section 7 (7): "An Agency shall refund fifty percent of the fees paid by a client to the Agency, if the Agency is unable to secure a job placement for the client after the expiration of three months."
Malaysia, <i>Private Employment Agencies Act No. 246</i> , 1981	<p>Section 14 (1): "No private employment agency shall charge for any service rendered a fee other than or in excess of that prescribed in the Schedule and for every fee received a receipt shall be issued."</p> <p>Schedule (iv) Placement Fees (i): "Fee charged for local placement – not more than 10 % of initial month's pay. (ii) Fee charged for overseas placement – not more than 15% of initial month's pay"</p>
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	Part II, Rule V, Section 3: "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 d) Birth Certificate e) Medicare f) Trade Test, if necessary g) Inoculation, when required by host country h) Medical Examination fees [...]"
Switzerland, <i>Ordonnance sur les émoluments, commissions et sûretés en vertu de la loi sur le service de l'emploi</i> , 1999 Switzerland, <i>Loi fédérale sur le service de l'emploi et la location de services</i> , 2003	<p>Article 3: "La commission de placement s'élève à 5 % au maximum du premier salaire annuel brut."</p> <p>Article 9 (2): «La commission n'est due par le demandeur d'emploi qu'à partir du moment où le placement a abouti à la conclusion d'un contrat.»</p>

Country, title of legislation, and year of enactment	Legislative provisions
UK, <i>The Gangmasters (Licensing Conditions) (No. 2) Rules</i> , 2006	Schedule: 2. "A licence holder may not charge a fee to a worker for any work-finding services. 3. A licence holder may not make the provision of work-finding services conditional upon the worker— (a) using other services; or (b) hiring or purchasing goods, whether provided by the licence holder or by any person with whom the licence holder is connected."
US (Arizona), <i>Arizona Revised Statutes</i> , Title 23 Labour, Chapter 3	23-532. "Return of agent's fee to applicant A. No employment agent, <i>or agent thereof</i> , shall send an applicant out for employment without having a bona fide order from the prospective employer to do so. B. If an applicant is sent out and fails to obtain employment as represented the employment agent shall, <i>upon demand</i> , refund any fee the applicant has paid. C. If the employment agent refuses or fails to make a prompt refund, <i>upon demand</i> , as provided in this section, the applicant may apply to the commission for a hearing. If the commission upon investigation finds that the applicant is entitled to a refund it shall issue an order to that effect, and shall pay the refund to the applicant from the cash deposit or bond of the employment agent. Either party to any such controversy may appeal within five days from the issuance of an order to the superior court of the county in which the business of the employment agent is located."
Zimbabwe, <i>Labour Relations (Employment Agencies) (Amendment) Regulations</i> , 1985	Section 8(1): "The fees to be charged by an employment agency shall be – (a) in the case of a work-seeker, for placing him in employment, a maximum of five per centum of the remuneration earned by the work-seeker during his first month in employment or part thereof; (b) in the case of employer of an employer for whom the services of an employee have been secured, a maximum of twenty per centum of the annual rate of remuneration to be paid to the employee; (c) in the case of any client, for the insertion of an advertisement in any publication, the actual cost of inserting the advertisement plus a maximum service charge of ten per centum of the cost [...] (2) Nothing contained in subsection (1) shall be construed as permitting any person to charge a fee or to receive any fee or any other payment or reward for the registration of a work-seeker with an employment agency."

Table 17
Topic of Legislation: Confidentiality

Country, title of legislation, and year of enactment	Legislative provisions
Malta, <i>Employment Agencies Regulations</i> , 1995	Section 13: “Any information furnished to any employment agency or business by any applicant for employment or by any user shall be carefully guarded as confidential, and it shall not be divulged for any purpose other than that for which it has been furnished, except with the consent in writing of the person furnishing the information, [...]”
Singapore, <i>Employment Agencies Act, Licence Conditions</i> , 2005	Section 13: “The licensee shall not, unless with the client's written consent, directly or indirectly give, divulge or reveal to any persons any information whatsoever regarding any client of the employment agency, which information the agency acquired or requested the client to provide in the course of their employment agency work. [...]”
South Korea, <i>Employment Security Act (Wholly Amended by Act No. 4733)</i> , 1994	Section 42: “No person who has participated or participates in a placement service or recruitment of labour, shall divulge any secret concerning workers or employers, which he has learned in the course of his duties, except in a case where it is disclosed by the direction of the Minister of Labour.”
UK, <i>The Conduct of Employment Agencies and Employment Businesses Regulations</i> , 2003	Section 28(1): “Neither an agency nor an employment business may disclose information relating to a work-seeker, without the prior consent of that work-seeker, except- (a) for the purpose of providing work-finding services to that work-seeker; (b) for the purposes of any legal proceedings (including arbitrations); or (c) in the case of a work-seeker who is a member of a professional body, to the professional body of which he is a member. (2) Without prejudice to the generality of paragraph (1), an agency shall not disclose information relating to a work-seeker to any current employer of that work-seeker with that work-seeker's prior consent [...]”

Table 18
Topic of Legislation: Information sharing with jobseeker

Country, title of legislation, and year of enactment	Legislative provisions
<p>Australia (Queensland), <i>Private Employment Agents (Code of Conduct) Regulation, 2005</i></p>	<p>Division 5, Section 28: "A private employment agent must – (a) ensure a copy of this code is always available at the private employment agent's place of business for perusal on request; or (b) if a copy is not available at the private employment agent's place of business – immediately tell a person who asks to see the code where the person can obtain a copy. Maximum penalty – 14 penalty units."</p> <p>Section 29: "(1) Before a private employment agent provides a service for a work seeker, the agent must give the work seeker a statement (an information statement) in the approved form. [...] (2) The approved form must include the following information – (a) that a private employment agent must not charge fees in contravention of the <i>Industrial Relations Act 1999</i>, section 408D; (b) that the agent and the agent's employees have a working knowledge of State and Commonwealth legislation affecting the placement and employment of persons seeking work; (c) that the agent will make all placements as required under the relevant legislation; (d) the name and other contact details of the department from whom the person may obtain information about action that may be taken if the person believes a private employment agent has acted illegally, inappropriately or in a false and misleading way."</p>
<p>Australia (New South Wales), <i>Fair Trading (General) Amendment (Employment Placement Services) Regulations, 2003</i></p>	<p>Schedule 1: "[...] (2) A person who provides employment placement services must, before providing those services to a person seeking employment (a job seeker), give the job seeker a written notice that sets out the following statements: (a) A person who provides employment placement services must not charge a job seeker a fee for the purpose of finding the job seeker employment. (b) A person who provides employment placement services must not engage in misleading or deceptive conduct (such as advertising a position as being available when the person knows no such position exists or knowingly giving misleading information to a job seeker about the nature of a position). (c) If a job seeker believes that a person has acted inappropriately in the course of providing employment placement services, the job seeker may contact the Department of Fair Trading for information on possible action that may be taken."</p>

Country, title of legislation, and year of enactment	Legislative provisions
China, <i>Administrative Regulations on Overseas Employment Intermediary Activities</i> , 2002	Article 18: "An agency shall display, at a conspicuous place in the premise of the establishment, lawful certificates, service items, fee standards, supervisory authorities and the supervisory phone numbers, among others and shall be subject to inspection and supervision of local department of labour and social security and other relevant departments."
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	Part V, Rule I, Section 4: "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."
Zimbabwe, <i>Labour Relations (Employment Agencies) Regulations</i> , 1985	Section 9: "Every person keeping or conducting an employment agency shall exhibit a copy of these regulations in that agency in a place where the regulations will be clearly visible to, and can be studied by, any person seeking the services of an agency."

Table 19
Topic of Legislation: Complaint procedure

Country, title of legislation, and year of enactment	Legislative provisions
Canada (British Columbia), <i>Employment Standards Act</i> [RSBC 1996], Chapter 113, 1996	<p>Section 74 (1): “An employee, <i>former employee or other person may complain to the director that a person has contravened (a) a requirement of Parts 2 to 8 of this Act, or (b) a requirement of the regulations specified under section 127 (2) (1). (2) A complaint must be in writing and must be delivered to an office of the Employment Standards Branch.</i></p> <p>[...] Section 76 (2) The director may conduct an investigation to ensure compliance with this Act and the regulations, whether or not the director has received a complaint.</p> <p>[...] Section 78 (1): The director may do one or more of the following: (a) assist in settling a complaint or a matter investigated under section 76; (b) arrange that a person pay directly to an employee or other person any amount to be paid as a result of a settlement agreement under paragraph (a); (c) receive on behalf of an employee or other person any amount to be paid as a result of a settlement agreement under paragraph (a).”</p>
Israel, <i>Employment of Employees by Manpower Contractors Law</i> , 5756, 1996	Section 23: “The Labour Court has sole jurisdiction to hear any claim, the grounds for which are in the provisions in this Law.”
Poland, <i>Act on Employment of Temporary Employees</i> , 2003	Art. 24: “Claims of temporary employees shall be considered by the labour court with jurisdiction over the seat of the temporary work agency employing such employees.”
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	Part VI, Rule II, Section 1: “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. [...] 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.”

Table 20
Topic of Legislation: Monitoring

Country, title of legislation, and year of enactment	Legislative provisions
Ireland, <i>Employment Agency Act</i> , 1971	<p>Section 3 (3): “Where an application is made for a licence under this Act, the Minister shall grant the licence – if (a) he is satisfied that the premises conform to the prescribed standards of accommodation, [...]”</p> <p>Section 9 (3): “An authorized officer may at all reasonable times – (a) enter and inspect any premises in which the business of an employment agency is being carried on or in respect of which an application under section 3 of this Act has been made, (b) inspect such books and records relating to the business of an employment agency as are required to be kept under this Act, and, where he has reasonable grounds for believing that this Act is being or has been contravened, take copies of any entries in such books or records, (c) require any person carrying on the business of an employment agency or proposing to do so to furnish him with such information as he may reasonably require in order to ascertain whether or not the agency is being or is likely to be conducted in accordance with this Act.”</p>
Israel, <i>Employment of Employees by Manpower Contractors Law</i> , 5756, 1996	<p>Section 19(c): “In the exercise of his lawful functions an inspector may – 1) enter any place in which he has reason to believe that persons are employed in it, or that a manpower contractor’s business is conducted there, but he shall only enter a place used for residential purposes by order of a Judge; 2) examine and copy any book, certificate, report or other document; 3) be accompanied by a police officer, if he has grounds to fear interference in the performance of his duties.”</p>
Malaysia, <i>Act 246, Private Employment Agencies Act</i> , 1981	<p>Section 21 (1): “The Director General or any officer duly authorised in writing by the Director General shall have power to enter at any reasonable time any premises reasonably suspected of being used for the purposes of an employment agency without a licence or where he has reasonable grounds for believing that the business of a private employment agency is in contravention with this Act and shall inspect such premises to make any inquiry which he considers necessary in relation to any matter within the provision of this Act.”</p>

Country, title of legislation, and year of enactment	Legislative provisions
Malta, <i>Employment Agencies Regulations</i> , 1995	Section 14: "The Director shall have at any time the right to examine the books, including any records, of any licensed employment agency or employment business, or to demand any information which in his opinion is reasonably required for ensuring that the conditions of any licence issued by him or the provisions of these regulations are being complied with, or for protecting the interests of applicants for employment or applicants for training services. Failure to comply with any demand made by the Director in pursuance of this regulation shall constitute an offence against these regulations."
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	<p>Part II, Rule III, Section 1: "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."</p> <p>Annex A, Part II 2. a.: "Regular inspection – This entails the conduct of ocular inspection on the office premises of agencies and entities with applications for:</p> <ul style="list-style-type: none"> ● Issuance of license ● Renewal of license ● Accreditation of studios, PDOS venues ● Renewal of authority to operate a training center ● Establishment of branch office (agency and training centers), extension office and/or request for occupancy of additional room with address/building ● Transfer of business address of main and branch office, <i>studio</i>, training center and PDOS venue ● One-year of operation after renewal of license <p>3. Spot inspection – This kind of inspection is undertaken in the following instances:</p> <ul style="list-style-type: none"> ● Suspension and/or cancellation of license or authority ● Delisting of an agency from the roster of licensed agencies ● Possible conduct off recruitment at the old address ● Documented reports on illegal recruitment activities of a person/agency/entity ● Reported violation/non-compliance of agency/entity with POEA Rules and Regulations and other related issuances ● Giving up of room/additional space ● Monitoring recruitment activities outside acknowledged office address."

Country, title of legislation, and year of enactment	Legislative provisions
Singapore, <i>Employment Agencies Act (Chapter 92)</i> , 1985	Section 20: "The Commissioner or any officer duly authorized in writing in that behalf by the Commissioner may, subject to any rules made under this Act, at any reasonable time, and without previous notice, enter and inspect any employment agency or any premises reasonably suspected of being used for the purposes of an employment agency, and examine all books, or other documents found in the premises, which may appear to him to be the property of or to have been used for the purposes of an employment agency and remove them for further examination."
US (Arizona), <i>ARS Title §23 Labor</i>	<p>23-524</p> <p>"A. A commissioner or deputy of the commission may at any reasonable time enter the place of business of an employment agent for the purpose of examining the records or registers kept by the employment agent and bring to the attention of the agent any law, <i>rule or regulation as promulgated by the advisory council</i>, or failure on the part of the employment agent to comply therewith. An employment agent shall not refuse admittance to a commissioner or deputy of the commission to the agent's place of business.</p> <p>B. An employment agent receiving from the commission forms calling for information required by the commission in carrying out the provisions of this article, <i>with directions to complete them</i>, shall answer fully and correctly each question therein propounded, and if unable to answer any question, shall give a good and sufficient reason for such failure. All such answers shall be verified by two witnesses, and returned to the commission within the period fixed by the commission"</p>

Table 21
Topic of Legislation: Requirement to display licence number

Country, title of legislation, and year of enactment	Legislative provisions
Malta, <i>Employment Agencies Regulations</i> , 1995	Section 11: “An employment agency or employment business shall observe the following procedures: (a) When issuing advertisements for the filling of vacancies or when making any form of publicity of the employment agency or business or for any user, the licence number shall be quoted.”
Malaysia, <i>Act 246, Private Employment Agencies Act</i> , 1981	Section 18 (1): “No private employment agency may advertise in any mass media unless the advertisement contains – (a) a licence number; and (b) correct information relating to vacancies, qualifications thereof and terms and conditions of employment.”
Singapore, <i>MOM, EA Licence Conditions</i> , 2005	Section 11: “If the licensee wishes to advertise his employment agency in any publication, newspaper, journal, magazine etc., he shall insert the licence number of his employment agency in the advertisement, with the words «Agency No.» followed by the licence number.”

Table 22
Topic of Legislation: Administrative sanctions

Country, title of legislation, and year of enactment	Legislative provisions
China, <i>Administrative Regulations on Overseas Employment Intermediary Activities</i> , 2002	Article 33: "Any unit or individual participating in overseas employment programs without authorization of the department of labour and social security or registration in the department for industry and commerce shall be banned by the above administrations. The business assets and illegal income shall be confiscated. As to any damage to the served party caused by illegal overseas employment, the agency shall the take liability of compensation."
Czech Republic, <i>Employment Act</i> , 1991	Section 5b (2) "A licence to provide employment intermediary services shall be withdrawn if an individual or a legal entity: a) ceases to meet the requirements (conditions) pursuant to section 5a(2); b) carries on intermediary services contrary to the conditions applying to providing such services as laid down in this Act or in the issued licence."
Ethiopia, <i>Private Employment Agency Proclamation</i> , 104/1997	Section 13: "Without prejudice to Article 18(2) and (3) of this Proclamation, the competent authority may suspend or cancel a licence on the following grounds: 1) where it is found that the license has been issued to the private employment agency based on deceitful document; 2) where it is found that the private employment agency or his representative has received payment in cash or in kind from the worker; or 3) where it is found that the private employment agency has violated other provisions of this Proclamation or regulations and directives issued in accordance with this Proclamation as well as other laws."
Ireland, <i>Employment Agency Act</i> , 1971	Section 4: "Where the holder of a licence under this Act has been convicted of an offence under this Act or has given false information in an application under section 3 of this Act or where in the opinion of the Minister- a) the holder is no longer a suitable person to carry on the business of an employment agency, or b) the premises where the holder is carrying on the business of an employment agency no longer conform to the prescribed standards, the Minister may revoke the licence."
Malaysia, <i>Act 246, Private Employment Agencies Act</i> , 1981	Section 25(1): "The Director General may cancel any licence if he is satisfied that the licensee – (i) has contravened any of the provisions of this Act or of any regulation made thereunder [...] or, (ii) has been convicted of an offence under this Act; or (iii) has not complied with any direction issued by the Director General to the licensee under this Act; or (iv) has furnished in any application, or in any return, or in any written information or written explanation, sent by the licensee under this Act, any particulars which to the knowledge of the licensee are false or incorrect: [...]"

Country, title of legislation, and year of enactment	Legislative provisions
Malta, <i>Employment Agencies Regulations</i> , 1995	Section 8: "The Director may refuse or revoke an application, as the case may be, on any of the following grounds: [...] (d) that the applicant has failed to comply with any of the provisions of the Act or of these regulations or of any other regulations in force under the Act or has failed to comply with any condition laid down in the licence; e) that the licensee or the competent person nominated by him to manage the employment agency or business or any other person responsible for the running of the employment agency or employment business has charged any fees or demanded any payment from applicants for employment; [...]"
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , 2002	Part VI, Rule IV Section 1: "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: [...] (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 worker [...] B. The following are less serious offences [...] 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 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 [...] 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 offence – Cancellation of License [...]"
Singapore, <i>Employment Agencies Act (Chapter 92)</i> , 1985	Section 11 (1): "The Commissioner may revoke a licence if he is satisfied that the licensee – (a) is contravening or has contravened any of the provisions of this Act or any rules made thereunder; (b) has failed to comply with any of the conditions of his licence; (c) has carried on or is carrying on an employment agency in a manner likely to be detrimental to the interests of his clients; or (d) has ceased to carry on an employment agency for which he has been licensed or, if the licensee is a company, goes into liquidation or is wound up or otherwise dissolved."

Table 23
Topic of Legislation: Penal sanctions

Country, title of legislation, and year of enactment	Legislative provisions
Chypre, <i>Loi concernant l'établissement et le fonctionnement des agences de placement privées</i> , 1997	Article 19: "Toute personne qui omet de se conformer ou qui commet une transgression contraire aux dispositions de la présente loi ou des Règlements promulgués en vertu de la présente, est coupable d'un délit pénal sanctionné par une peine d'emprisonnement inférieure des douze mois ou par une peine pécuniaire qui ne dépasse pas les mille livres ou par les deux peines, sauf si la présente loi dispose différemment."
Ethiopia, <i>Private Employment Agency Proclamation</i> , No. 104/1997	Section 18: "Unless the provisions of the Penal Code provide more severe penalties, any person: 1) without having obtained a license in accordance with this Proclamation; a) who performs employment services in Ethiopia, is punishable with imprisonment for a term of not less than three years and not exceeding five years and a fine Birr 10,000 (ten thousand Birr). b) who sends an Ethiopian national abroad for work, is punishable with imprisonment for a term of not less than five years and not exceeding ten years and a fine Birr 25,000 (twenty five thousand Birr). [...] 3) Where the human rights, and physical integrity of an Ethiopian sent abroad for work have been injured, the punishment mentioned in sub-Article (1)(b) of this Article may be increased from 5 to 20 years rigorous imprisonment and a fine up to Birr 50,000 (fifty thousand Birr)."
Indonesia, <i>Act No. 13 Year 2003 Concerning Manpower</i> , 2003	<p>Art 187(1): "Whosoever violates what is stipulated under subsection (2) of Art 37 [written permission] [...] shall be subjected to a criminal sanction in prison for a minimum of 1 (one) month and a maximum 12 (twelve) months and/or a fine of a minimum of Rp 10,000,000 (ten million rupiah) and a maximum of Rp 100,000,000 (one hundred million rupiah)."</p> <p>Art 188 (1): "Whosoever violates what is stipulated under [...] subsection (2) of Art 38 [collection of fees] [...] shall be subjected to a criminal sanction in the form of a fine of a minimum of Rp 5,000,000 (five million rupiah) and a maximum of Rp 50,000,000 (fifty million rupiah)."</p> <p>Art 189: "Sanctions imposed on entrepreneurs in the form of a jail, prison sentence and/or fine do not release the entrepreneurs from their obligations to pay entitlements and/or compensations to the workers/labourers."</p>

Country, title of legislation, and year of enactment	Legislative provisions
Japan, <i>Employment Security Law</i> , 1947, 2000	Article 63: "A person who falls under any of the following items shall be punished with penal servitude of not less than one year and not more than ten years or a fine of not less than two hundred thousand yen and not more than three million yen: (1) a person who has carried on or engaged in employment placement, labour recruitment or labour supply by means of violence, intimidation, imprisonment or other restraint on mental or physical freedom; (2) a person who has carried on or engaged in employment placement, labour recruitment or labour supply with an intention of having workers do work injurious to public health or morals."
Malaysia, <i>Act 246, Private Employment Agencies Act</i> , 1981	Section 32(1): "Any person who is guilty of an offence under section 7 [necessity to obtain licence] shall, on conviction be liable to a fine not exceeding five thousand ringgit [~US\$ 1330] or to imprisonment for a period not exceeding three years or to both such fine and imprisonment. (2) Any person who is guilty of an offence under section 15 [placement injurious to public interest] shall, on conviction be liable to a fine not exceeding four thousand ringgit [~US\$ 1060] or to imprisonment for a period not exceeding two years or to both such a fine and imprisonment. (3) Any person who is guilty of an offence under section 18 [advertisement] shall, on conviction be liable to a fine not exceeding three thousand ringgit [~US\$ 800] or to imprisonment for a period not exceeding one year or to both such fine and imprisonment. (4) Any person who is guilty of an offence under this Act shall, on conviction, where no other specific penalty is provided under this Act, be liable to a fine not exceeding two thousand ringgit [~US\$ 530] or to imprisonment for a period not exceeding six months or to both such fine and imprisonment."
Malta, <i>Employment Agency Regulations</i> , 1995	Section 17: "Any person who contravenes any provision of these regulations shall be guilty of an offence and shall on conviction be liable to a fine (multa) of not less than fifty liri [~US\$ 160] and not more than one thousand liri [~US\$ 3050], provided that when a person is convicted of having received any payment from any applicant for employment or of having made any deductions from the wages due to an employee in consideration of any services provided by an employment agency or employment business, the Court shall in determining the penalty, take into consideration any refund made by such person to the applicant for employment of any payment received or deduction made."

Country, title of legislation, and year of enactment	Legislative provisions
Philippines, <i>Migrant Workers and Overseas Filipinos Act</i> , 1995	Section 7(a): "Any person found guilty of illegal recruitment 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 not less than two hundred thousand pesos (P200,000.00) nor more than five hundred thousand pesos (P500,000.00). (b) The penalty of life imprisonment and a fine of not less than five hundred thousand pesos (P500,000.00) nor more than one million pesos (P1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein. 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."
Singapore, <i>Employment Agencies Act (Chapter 92)</i> , 1985	Section 24(1): "A licensee or any person who is guilty of an offence under sections 22 and 23, other than an offence under section 23 (d) [women/girls and immoral purposes] shall be liable on conviction to a fine not exceeding \$ 2,000 and in respect of a second or subsequent offence to a fine not exceeding \$ 5,000 or to imprisonment for a term not exceeding 6 months or to both. 2) A licensee or any person who is guilty of an offence under section 23 (d) shall be liable on conviction to a fine not exceeding \$ 5,000 or to imprisonment for a term not exceeding 2 years or to both."
UK, <i>Gangmasters (Licensing Act)</i> , 2004	Section 12(1) "A person commits an offence if he acts as a gangmaster in contravention of section 6 (prohibition of unlicensed activities) [...] (2) A person commits an offence if he has in his possession or under his control – (a) a relevant document that is false and that he knows or believes to be false, (b) a relevant document that was improperly obtained and that he knows or believes to have been improperly obtained, or (c) a relevant document that relates to someone else, with the intention of inducing another person to believe that he or another person acting as a gangmaster in contravention of section 6 is acting under the authority of a licence. (3) A person guilty of an offence under subsection (1) or (2) is liable to a summary conviction – (a) in England and Wales, to imprisonment for a term not exceeding twelve months, or to a fine not exceeding the statutory maximum, or to both; [...] Section 13:(1) A person commits an offence if- (a) he enters into arrangements under which a person ('the gangmaster') supplies him with workers or services, and (b) the gangmaster in supplying the workers or services contravenes section 6 (prohibition of unlicensed activities. [...]) (4) A person guilty of an offence under subsection (1) is liable – (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding the statutory maximum, or to both, [...]"

Table 24
Topic of Legislation: Information reporting to responsible authorities

Country, title of legislation, and year of enactment	Legislative provisions
Australia (New South Wales), <i>Employment Agents Act</i> , 1996	Section 33: "(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years." ³
Philippines, <i>Migrant Workers and Overseas Filipino Act</i> , 1995	Section 33: "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 to the said body a semi-annual report of Philippine foreign posts located in countries hosting Filipino migrant workers. The report shall not be limited to the following information: (a) Masterlist 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) Initiative/ actions taken by the Philippine foreign posts to address the problems of Filipino migrant workers; (e) Changes in laws and policies of host countries; and (f) Status of negotiations on bilateral agreements between the Philippines and the host country [...]"
UK, <i>Gangmasters (Licensing) Act</i> , 2004	Section 23: "The Secretary of State shall each year lay a report before each House of Parliament on the operation of this Act."

3. The review that was carried out under this provision actually lead NSW to repeal the existing legislation and incorporate a new section on Employment Placement Services into the Fair Trading Act, 1987.

