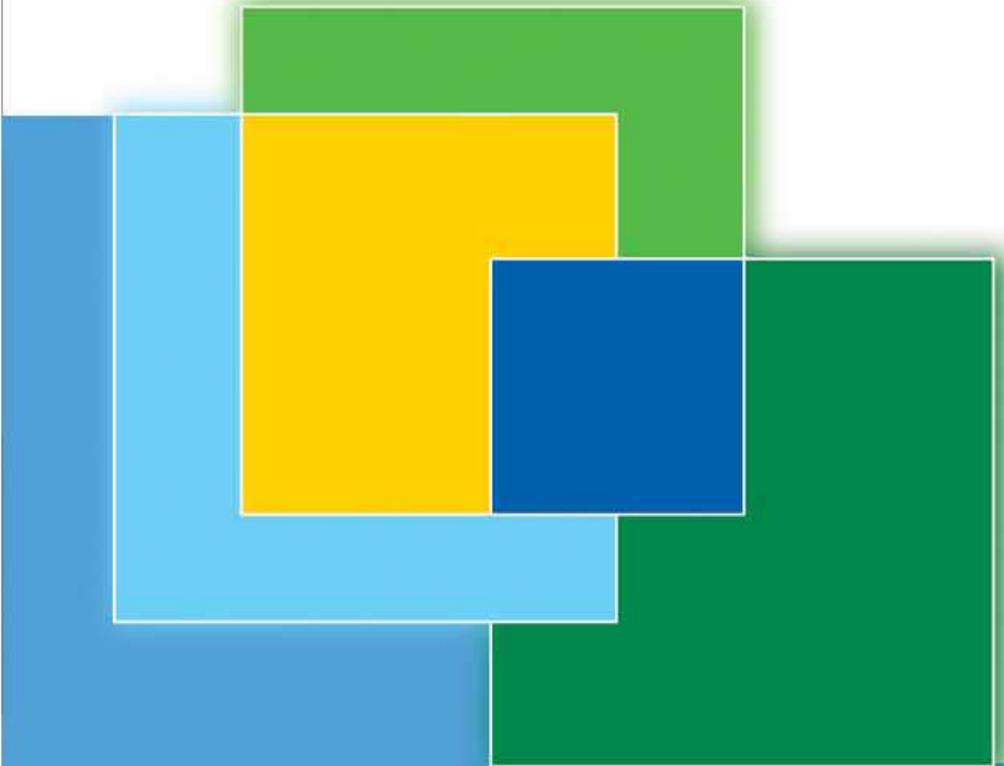




Viet Nam
Association of Manpower Supply



Code of Conduct

Applied to Vietnamese enterprises sending
workers for overseas employment

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Introduction

Increasing the numbers and quality of overseas employment for workers is a matter of great interest of the state, society and people. In the past years, Vietnamese enterprises recruiting workers for overseas employment have played an important role for these achievements.

For ensuring sustainable development, building prestige and trademark of enterprises and helping them to gain initiative in compliance with the national law, international labour standards, VAMAS, with the cooperation of and technical support from MOLISA and ILO, has formulated and promulgated a Code of Conduct (CoC-VN) for Vietnamese enterprises sending workers for overseas employment.

Applying of this CoC-VN voluntarily will bring great benefits to development of each enterprise and the oversea employment for Vietnamese workers as a whole.

MOLISA highly appreciates VAMAS in establishing and promulgating this specialized CoC and encourages enterprises in the sector to apply. The Ministry considers the registration and application of CoC-VN as an important indicator in evaluating and rating the performance of the enterprises and introducing with domestic and foreign stakeholders.

VAMAS sincerely thanks MOLISA, DOLAB, ILO Special Action Program on forced labour (SAF-FL), the contributions



of the ILO Regional Office for Asia and the Pacific (especially Mr. Tim De Meyer and Ms. Natsu Shimokawa), ILO Office in Viet Nam (Mr. Nguyen Hoang Ha) for their cooperation and support in the process of establishing CoC-VN; we also express our thanks to IOM, UNIFEM offices in Viet Nam and Vietnamese enterprises sending workers for overseas employment for their enthusiastic comments. We are hoping for their further cooperation and effective support in the process of implementation of the CoC-VN.

Nguyen Thanh Hoa
Vice Minister, MOLISA

Nguyen Luong Trao
Chairman of VAMAS

Part I: General Provision

This Code of Conduct:

- Presents the fundamental principles which Vietnamese enterprises recruiting workers for overseas employment should comply with;
- Is based on Vietnam legislation, ILO Conventions and Recommendations and other relevant international instruments and on the actual context of Vietnam;
- Is not a substitute for national legislation and regulations and to be applied voluntarily to complement and support compliance with the law;
- Is an important instrument for enterprises for their better legal compliance; better business management and prevention of forced labor and human trafficking, especially against vulnerable workers such as female workers.

Some definitions and abbreviations in this Code of Conduct:

- Trafficking of persons means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- Forced labour is a form of exploitation. It includes all work or service which a person has to perform under the threat of penalty or sanction, and which the person has not freely consented to do.
- Vietnamese agencies sending workers overseas for employment are those who are licensed by Ministry of Labor, Invalids and Social affairs to work in the field of sending workers overseas for employment, herein after known as enterprise.
- Recruitment means the engagement of a worker for employment overseas; the giving of an undertaking for employment overseas; any act of prospection and selection of workers for employment overseas; and the preparation for departure.
- Labor supply contract: It is the contract signed between a Vietnamese enterpris and a foreign partner on labors who are selected by the former and met the demand for labor

employment of the latter within definite term: “Contract 1”, in short it is known as Ct1.

- Contract sending workers overseas for employment: It is the contract signed between an enterprise and workers, thereby enterprise is eligible to seeking jobs and sending them overseas for employment, it is known “Contract 2” and abbreviated as Ct2.
- Employment contract: It is the contract signed between a worker and a foreign employer, it is shorten as LBCT.
- CoC-VN: Code of Conduct applied to Vietnamese enterprises sending workers for overseas employment.
- ILO: International Labour Organization
- MOLISA: Ministry of Labour, Invalids and Social affairs
- NGOs: Non governmental organizations
- Workers: those who work overseas
- VAMAS: Vietnam Association of Manpower supply

Part II: Operational Principles

Consisting 12 Articles:

- Legal Compliance
- Business Standards
- Job Advertisement
- Recruitment
- Training
- Sending workers overseas
- Protection of workers overseas
- Contracts
- Returning and Reintegration
- Dispute Settlement
- Partnership development
- Fellowship development among Vietnamese enterprises

1 Legal compliance

Enterprise and all its staff must comply with laws and regulations related to sending Vietnamese workers overseas for employment, especially to the prevention of forced labour and trafficking of persons.

2 Business Standards

1. Have clear and transparent business policies;
2. Have minimum standards on services which are provided by the enterprise and on professional standards for staff and managers of the enterprise;
3. Ensure transparency, legal compliance and the agreement of worker on all types of fees and costs that the enterprise may collect from the worker in exchange for the services it provides:.
4. To provide assistance to workers when they are in troubles or at risk in the country of employment, by adhering to the terms and conditions of the contracts that were signed between the enterprise and the workers.
5. Compete on the basis of fair and quality-based services;

3 Job advertisements

1. The content of job advertisement must be complete, accurate, honest and clear;

2. Job advertisements must state the occupational qualifications and working conditions genuinely required by the job. They may not discriminate against the potential applicants as prescribed by law;

3. The advertisement must not overstate the reality of rights, benefits, wage, bonus, accommodation, living conditions of workers in the country of employment;

4. The advertisement must not understate the contractual responsibility and obligation of workers, difficulties and challenges which may confront workers in the working and living in the country of employment.

4 Recruitment

1. The enterprise must directly carry out the recruitment.

2. When necessary, the enterprise may cooperate with other authorized agencies functioning in as stipulated by law.

3. In cases where the local collaborators are introduced to assist in the labor recruitment, the enterprise must instruct and administer them to ensure that they comply with the law and hold them liable for the recruitment of workers, including when they cause loss to workers;

4. The enterprise must commit to recruiting workers based on objective criteria and requirements of foreign employers to ensure non-discrimination as prescribed by law

5. All types of fees and costs that the enterprise may collect from the worker in exchange for the services it provides should be set and applied in accordance with laws and regulations, and the information on such fees and costs should be fully disclosed to the worker

6. The enterprise shall not collect any fees from the worker for the purpose of obtaining a job.

7. The enterprise may collect relevant service fees in accordance with laws and regulations and the voluntary agreement of workers. Service fees include fees associated with e.g. passport, visa, work licence, health certificate, training, transportation including air ticket etc. Such fees should not exceed the actual amount of the cost involved;

8. The enterprise must disclose to workers in writing, at least 3 days prior to their departure, full and detailed information related to working conditions, the place and nature of the work to be undertaken, including rates of pay and pay arrangements and working hours;

9. The enterprise must guarantee the confidentiality of personal information of job seekers.

5 Training

1. The enterprise organizes vocational training, foreign language training courses for workers before sending them overseas for employment in accordance with the requirements of contracts made in foreign countries;

2. The enterprise does not take advantage of "licence" to open training courses without authentic objectives to collect money from and cost for the workers;

3. The enterprise organizes pre-departure trainings and orientations for workers under the core framework of State management agency; and provide them with practical information on contracts and market where the workers go to work;

4. The enterprise has to ensure to have all prospective workers learn about their rights, obligations, position, what they should do, and what they should avoid and prevent; rights and responsibilities borne by the enterprise, contacts to seek assistance and help in cases of problems or emergencies;

5. The enterprise may collect fees proportionate to the cost involved for pre-departure training in accordance with the law and worker's voluntary approval.

6. The enterprise observes properly the performance regarding the information on the training duration, time for departure.

7. The enterprise is committed to the agreement made with workers if the time for departure is lengthened due to objective reasons.

6 Sending workers overseas

1. The enterprise does not send workers overseas if it is not permitted by authorized State agencies;
2. The enterprise uses only the legal and safe means of sending workers overseas for employment;
3. The enterprise shall not make use of other forms of transportation such as travel, relatives visit, business trip etc. for the purpose of sending workers for employment;
4. The enterprise minimizes the transportation cost which is borne by workers.

7 Protection of workers overseas

1. The enterprise maintains contact with workers and keeps itself informed about the situation of workers in the country of employment ;
2. The enterprise coordinates with foreign partners and Vietnamese representative agencies in the country of employment to protect the legitimate rights and benefits of migrant workers.
3. The enterprise exercises due diligence in assessing hazards, risks, abuse, exploitation or discrimination of all kinds in the workplaces to which it intends to send workers; where hazards and risks were identified, it is the obligation of the enterprise to inform workers of such hazards and risks.

4. Any wage deduction from workers should only take place under conditions prescribed by the laws and regulations of the country of employment, and should require issuance of written statement signed by and informed to the workers.

5. Workers will have full access to their savings account at any time.

6. Employers are not allowed to retain identity documents of workers such as passport, work licence, etc and other personal belongings such as cell phones and medication with the purpose of forcing them to work for the employers.

7. At the request of workers, employers may keep these documents at a secure place, however they must immediately return these documents to workers in case of request at any time.

8. The enterprise maintains the registration for workers overseas when they change the location.

9. The enterprise coordinates with foreign partners and Vietnamese representative agencies overseas to support migrant workers, especially female migrant workers.

8 Contracts

1. All workers shall have the right to enter into employment voluntarily and freely, without the threat of a penalty;
2. The enterprise is not allowed to use the following acts when signing an employment contract with workers:

- Threat or use of force
- Harassment or intimidation
- Fraud, deception
- Coercion
- Abuse of power
- Subordination

3. The content of rights, obligations and conditions for migrant workers in contract 2 which was signed by the enterprise and workers must be consistent with and not lower than that stated in contract 1 and 3.

4. The negotiations, surveys and contract agreements on labor supply contract (contract 1) must ensure that the lawful agreement made under contract 3 which was signed between workers and employers overseas must be clear and transparent, at a minimum, about the work or change of work (if any), working conditions, wages, social insurance, living conditions, complaint procedures, dispute settlement procedures and compensation;

5. The enterprise must strictly follow national law in case of termination of a employment contract and must not terminate the contract suddenly, without legitimate reasons;

6. Workers may unilaterally terminate an employment contract in the following cases:

- a) The employer uses violence, threats, or denies the freedom of movement of workers;
- b) The employer does not comply with the terms of contracts on wages and does not respond to the request of employees;
- c) The employment contract was signed by fraud and/or deception.

9 Repatriation and reintegration

1. The enterprise collaborates with employers and other concerned agencies in sending and receiving countries to facilitate workers' return to home country after the contract is terminated/ expired in safe and convenient way, paying special attention to the needs of female migrant workers.

2. The worker must not be asked to pay for the costs of repatriation, if the repatriation is not due to the fault of the worker.

3. The enterprise assists workers with the necessary procedures to regularize local residence after their return;

4. The enterprise helps workers to get access to information about job vacancies and to seek for suitable jobs as soon as possible in Vietnam or to work overseas under another contract;

5. The enterprise contributes to the Fund of Employment Overseas under the provisions of the law.

10 Dispute settlement

1. All disputes between workers and the enterprise must be settled in accordance with the contract signed by concerned parties and the Vietnamese laws;
2. All disputes between workers and employers overseas must be settled on the basis of agreement signed by related parties, by the laws in receiving country and international treaties which the Socialist Republic of Vietnam is a member State, by international agreements which ministries, ministerial level agencies and Government agencies signed with foreign parties.
3. The dispute settlement procedures must ensure for the Vietnamese workers overseas to have support from the enterprise, officers from Vietnamese embassy to the country of employment, interpreters as well as the legal representatives who speak Vietnamese.

11 Partnership development

The enterprise cooperates with, shares information with and supports:

- a) Foreign partners;
- b) Localities, vocational training institutions, State management agencies;
- c) Workers' and employer's organizations.

12 Fair competition among Vietnamese enterprises

1. Be united and mutually supportive;
2. Be fair competitors who do not take the contracts and partners from others by raising the prices excessively over the agreed level, which would in turn burden the workers.

Part III: Application Principles

1 Commitment of application

- a) This CoC-VN is an important component of the basic policies of the enterprise in order to guarantee its sustainable development and good brand;
- b) The enterprise will ensure that its business partners (e.g. workers and overseas employers and local authorities) are aware of its commitment to the code of conduct and can entertain grievances concerning the application of the code of conduct

2 Mechanism of information dissemination, awareness raising and capacity building

- a) Information dissemination and advocacy of CoCVN should be disseminated to all enterprises which are sending workers overseas for employment, labor agencies, local governments and to the public;
- b) Enterprises which have registered to apply CoC-VN must be published widely;
- c) Trainings in CoC- VN application are organized for staff in charge of recruitment to prevent forced labor and human trafficking;
- d) Job seekers and foreign partner are properly informed of the CoC-VN;

- e) VAMAS sets up a mechanism to get feedback from workers, local government, NGOs and enterprise etc about the compliance of the enterprise;
- f) VAMAS develops a rating set for the CoC-VN performance of enterprises;
- g) VAMAS establishes the Assessment Council to assess and evaluate the application of CoC-VN by the enterprises
- h) Based on the rating set, enterprise may conduct a self-evaluation and submit the results to the Assessment Council;
- i) Upon the collected information, feedback crosscheck and comparative review of the self evaluation, the Assessment Council will evaluate and rate the performance of the enterprise;
- j) VAMAS issues the reward system to best practices and widely disseminates the best practices on the overall application of CoC-VN or on certain articles of CoC-VN.

3 Penal provisions

- a) Warn with minor violation;
- b) Widely inform the stakeholders with major and/or repeated violation;
- c) Exclude from the list of registered enterprises which commit to applying CoC - VN.

4 Amendment and Supplement

CoC - VN will be amended and supplemented with necessary content during its application on the basis of its real performance and approval from majority of representative enterprises, worker's organization and State management agencies.