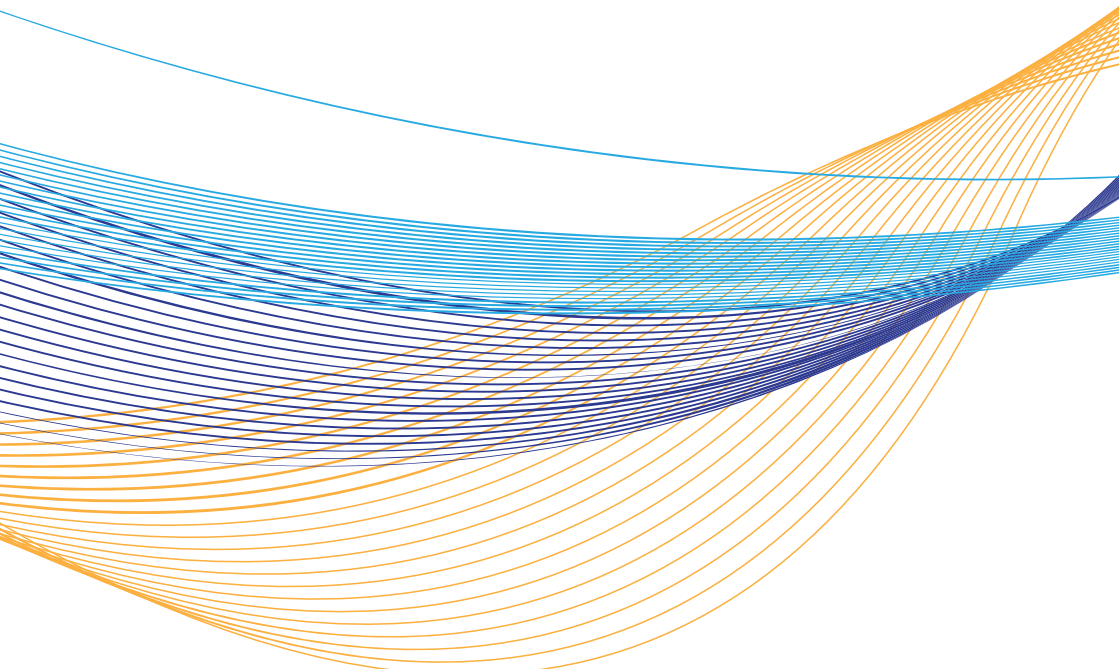




Sri Lanka Bureau of Foreign Employment



# Code of Ethical Conduct

for Licensed  
Foreign Employment  
Agencies/ Licensees



# **Code of Ethical Conduct**

## for Licensed Foreign Employment Agencies/Licensees

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ILO Country Office for Sri Lanka and the Maldives

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# Foreword

Sri Lanka's recruitment industry plays a pivotal role in its labour migration sector. While the industry is expected to secure jobs for Sri Lankans within conditions of safety, security and dignity, the regulation of the industry is important to ensure minimising of situations of exploitation and abuse of migrant workers within Sri Lanka and in countries of destination. The Sri Lanka Bureau of Foreign Employment as the government agency with a mandate to protect migrant workers, is making several efforts to regulate the 700 plus licensed recruitment agencies registered with them.

The Government of Sri Lanka, through the Ministry of Foreign Employment Promotion and Welfare and the Sri Lanka Bureau of Foreign Employment, supported by the ILO is implementing the National Labour Migration Policy. The policy clearly states *"The recruitment aspect of the labour migration process will be regulated and managed within a framework of governance and accountability. The State shall regulate the recruitment industry through administrative policies and procedures, licensing schemes, codes of Conduct and monitoring and penal provisions to address offenses"*.

To this end, ILO through its project on "Promoting decent work through good governance, protection and empowerment of migrant workers: *Ensuring the effective implementation of the Sri Lanka National*

*Labour Migration Policy"*, has been engaging in several activities to support the SLBFE to develop recommendations and guidelines to regulate the recruitment industry.

In November 2011 the Project commissioned a study of recruitment practices in Sri Lanka and overseas. The study highlighted specific recruitment practices and recommended actions to improve such practices. A desk review was also done to analyze regional best practices of the recruitment industry in the Asia Pacific region. The findings of the studies were shared at a national stakeholder workshop organized by ILO held in April 2012, chaired by the Secretary Ministry of Foreign Employment Promotion and Welfare (MFEPW). The workshop was attended by officials of the Ministry of Labour and Labour Relations (ML&LR), the Ministry of External Affairs (MEA), individual recruitment agents, representatives of the Association of Licensed Foreign Employment Agents (ALFEA) representatives of trade unions and civil society. Participants reviewed the recommendations, and agreed on developing a Code of Ethics for the recruitment industry in Sri Lanka. This was done with the intention of ensuring the industry works in line with provisions of the ILO Multilateral Framework on Labour Migration, ensuring the protection and rights of Sri Lankan migrant workers in-country and at destinations. A key outcome of the stakeholder workshop was the appointment

of a Sub-Committee by the Secretary MFEPW to guide the development of a Code of Ethical Conduct for recruitment agents.

The Committee consisted of Mr. D. Swarnapala, Additional Secretary, MFEPW (Chair), Mrs. P. Ratnayake, Coordinating Secretary to Secretary, ML&LR, Mr. W.N.S. Bandara, Acting Director General, Consular Division, MEA, Mr. K.O.D.D. Fernando, Additional General Manager, SLBFE, Ms. Cheka Premasiri, DGM Legal, SLBFE, Mr. W.M. Aponso, President, ALFEA, Mr. Faizer Mackeen, Secretary, ALFEA, Mr. K. Marimutthu, Vice President, Ceylon Workers Congress and Mr. L.K. Ruhunage, ILO Consultant.

The Code of Ethical Conduct for Recruitment Agents was developed with additional inputs from Mr. H. Batagoda, General Manager, Ms. M.M. Sandya Sweety, Manager Legal and Mr. R.A.G.S. Jayasinghe, Assistant Manager Legal of SLBFE, according to the institutional and legal framework of the SLBFE. The efforts of Mrs. Padmini Ratnayake and Mr. L.K. Ruhunage for and their professional inputs throughout the entire process of developing this document is acknowledged.

The Code of Ethical Conduct was approved by the Board of Directors of the SLBFE in August 2013 and has been developed with the intention of streamlining the practices of recruitment agents, enhancing

professionalism, responsibility and accountability and promoting transparency of business activities. It should be the duty of recruitment parties to abide by the principles spelled out in this Code of Ethical Conduct to ensure safe and secure employment for migrant women and men of Sri Lanka.



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# LIST OF ABBREVIATIONS

<b>CoEC</b>	- Code of Ethical Conduct
<b>ILO</b>	- International Labour Organization
<b>LFEA</b>	- Licensed Foreign Employment Agency
<b>ALFEA</b>	- Association of Licensed Foreign Employment Agencies'
<b>SLBFE</b>	- Sri Lanka Bureau of Foreign Employment
<b>MEA</b>	- Ministry of External Affairs
<b>MFEPW</b>	- Ministry of Foreign Employment Promotion and Welfare
<b>ML&amp;LR</b>	- Ministry of Labour and Labour Relations

## DEFINITIONS

- i. **Trafficking of persons** is the buying, selling or bartering or instigating another person to buy, sell or barter any person or does anything to promote, facilitate or induce the buying, selling or bartering of any person for money or other consideration; recruitment, transportation, transfer, harbour or receipt of any person or any other act by the use of threat, force, fraud, deception or inducement or by exploiting the vulnerability of another for the purpose of securing forced or compulsory labour or services, slavery, servitude, the removal of organs, prostitution or other forms of sexual exploitation or any other act which constitutes an offence under any law (as defined in S. 360C of the Penal Code)
- ii. **Human smuggling** is the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or a permanent resident'. definition as per United Nations Convention Against Transnational Organized Crime, 2000
- iii. **Forced labour** shall mean all work or services exacted from a person under the menace of a penalty for which such person has not rendered him/herself voluntarily (as defined in the Penal Code)
- iv. **Child labour** is the work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. This refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work. (ILO Definition, as per International Programme of Elimination of Child Labour)
- v. **Job seeker** is a Sri Lankan who seeks overseas employment



# 1. INTRODUCTION

The significant role played by the Licensed Foreign Employment Agents (LFEAs) is clearly evident in the process of foreign employment placements of Sri Lankan nationals in various destination countries. Their service paves way for reducing the country's unemployment and under-employment problem and the employment of nationals abroad also enriches the national economy with much needed foreign exchange which has come to be the largest source of foreign exchange to the country at present.

Having acknowledged the services rendered by the LFEAs, the National Labour Migration Policy (NLMP), which received Cabinet approval in Sri Lanka in 2008, has identified the importance of improving ethical practices among the LFEAs. Among its objectives are to strengthen LFEA's business capacities and promote best practices in the process of recruiting Sri Lankans for overseas employment, thereby bringing the benefits of such policies to the migrant workers, their family members, the countries' economy and the overall foreign employment industry.

This Code of Ethical Conduct (CoEC) was prepared by a Sub-Committee appointed by the Secretary of the Ministry of Foreign Employment Promotion and Welfare (MFEPW) with a view to regulate the industry. The sub-committee consisted of officials from the MFEPW, Ministry of Labour and Labour

Relations, Sri Lanka Bureau of Foreign Employment (SLBFE), representatives of trade unions and office bearers of the Association of Licensed Foreign Employment Agencies (ALFEA). The involvement of the representatives of ALFEA in preparation of this Code of Ethical Conduct (CoEC) symbolises the interest recruitment agents have to establish guidelines to conduct their business in a professional and transparent manner.

The application of this CoEC will be regulated and monitored by the Sri Lanka Bureau of Foreign Employment under its provision Section 55d and shall apply to all licensed recruitment agencies and licensees and their respective management and staff.

## 1.1 Objectives

The objectives of this Code of Ethical Conduct (CoEC) is to establish a framework that:

- i. Promotes ethical conduct and professionalism of Licensed Foreign Employment Agencies (LFEA) and licensees in their business with job-seekers, employers and other stakeholders.
- ii. Brings the operation of all LFEAs within a well governed framework based on best practices for the purpose of providing high quality placements and recruitment services for job seekers and employers.
- iii. Regulates the conduct of LFEAs to establish ethical standards and guidelines to fall in

line with the stipulated regulations within the SLBFE Act No. 21 of 1985 as amended, Decent Work Policy of Sri Lanka and International Labour Standards.

- iv. Builds a supportive and cordial relationship with SLBFE and other stakeholders to improve the standards of the foreign employment industry in Sri Lanka.

### 1.2 Title

This Code may be cited as the 'Code of Ethical Conduct for Licensed Foreign Employment Agencies and Licensees (CoEC).

### 1.3 Authority

This CoEC has been prepared under the provisions of the Sri Lanka Bureau of Foreign Employment (SLBEF) Act No. 21 of 1985 as amended, and the National Labour Migration Policy of Sri Lanka (NLMP) declared in 2008. This CoEC shall come in to force with immediate effect upon the approval by the Sri Lanka Bureau of Foreign Employment.

## 2. LEGAL COMPLIANCE

- i. All LFEAs shall comply with the rules and guidelines spelled out in this CoEC and any future additional conditions or amendments to the CoEC, as approved by the SLBFE.
- ii. All LFEAs shall further comply and respect the provisions of local legal enactments which govern the subject of foreign employment.
- iii. All LFEAs should comply with the provisions of relevant laws of any foreign country to which Sri Lankan migrant workers are deployed.

## 3. BUSINESS STANDARDS AND BEST PRACTICES

- i. Observe the highest principles of integrity, professionalism and fair practice in handling all businesses of job seekers, prospective migrant workers, employers and foreign counterparts.
- ii. Refrain from activities which discriminate against or have negative impacts on job seekers especially women or infringe upon basic human rights and practices that contravene national and international norms while undertaking the procedures of foreign employment recruitment.
- iii. Refrain from illegal, immoral or unhealthy competition for money and/or position.
- iv. Have clear and transparent business policies.

- v. Ensure accountability and transparency in dealing with job seekers and migrant workers and associated partners.
- vi. Share with the job seekers accurate information on all types of fees and costs that the LFEA's may collect from the job seeker and all the services provided.
- vii. Set standards on the services provided by the LFEA in the business premises and environment, and the conduct of all staff of the licensed foreign employment agency. Deliver at all times high quality services.
- viii. The LFEA shall not lend its licence or provide desk renting facilities to facilitators.
- ix. Engage in business with job seekers, recruiters and others in a manner that is fair, open, honest, courteous and is of high quality at all times.
- x. No LFEA shall in any way defame, criticize, undermine or take unfair advantage of another LFEA in order to promote or market their own business.
- xi. The LFEAs shall refrain from bidding down the wages and any other fees or payment to migrant workers and must comply with the stipulated minimum limits set by the SLBFE.
- xii. The LFEAs shall ensure continuous improvements to knowledge, skills and qualifications of their staff members.
- xiii. The LFEAs shall maintain systematic and accurate records in their recruitment processes, as specified by the SLBFE.
- xiv. The ALFEA shall not become involved in any bilateral agreements on labour market policies without consulting and obtaining prior approval of the SLBFE.

#### **4. JOB ADVERTISEMENTS**

- i. The contents of job advertisements must be complete, accurate, honest and clear. All job descriptions and claims must be verifiable.
- ii. Job advertisements must contain the required occupational qualifications, working conditions and wages for different categories of jobs offered.
- iii. The advertisement must neither overstate or understate the reality of rights, benefits, wages, bonuses, accommodation and/or living conditions of workers in their country of employment nor understate the contractual responsibility and obligations of workers, and the difficulties/challenges which may confront workers when working and living in the country of employment.

- iv. The information contained in the advertisement shall not mislead or deceive job seekers about the working and living conditions in the country of employment.
  - v. All specific vacancies advertised must already be registered with the LFEA by a foreign client/ sponsor and must be available or put on display at the time of advertising.
  - vi. Advertisements shall not carry any information or material against religious or communal values of the people of Sri Lanka or the destination country.
  - vii. The LFEAs shall follow the guidelines issued by the SLBFE relating to placing advertisements in the media.
- iii. The LFEAs shall endeavour to protect the industry and their clients against trafficking in persons and shall offer their fullest cooperation to law enforcement to investigate and prosecute offenders. The LFEAs shall also educate their staff on the criminal offence of trafficking contained in the Penal Code of Sri Lanka.
  - iv. While preventing gender discrimination, the LFEAs shall pay due consideration to the rights and needs of female job seekers and endeavour to protect their dignity at all times.
  - v. The LFEAs shall be cautious of job seekers who appear under aged for foreign employment, bearing in mind the age limits established for different countries, and different job categories by the Government of Sri Lanka. In case of doubt, and where identification documents are unavailable, the LFEA shall demand for a medical certificate stipulating the age of the job seeker.

## **5. RECRUITMENT**

- i. The LFEAs shall endeavour to protect the industry and their clients against fraud, misinterpretation and unethical practices in the recruitment for foreign employment.
  - ii. The LFEAs shall take measures to ensure that child labour or forced labour is not used or supplied for foreign employment and/or engage in activities that are equivalent to human trafficking and human smuggling.
- vi. The LFEAs shall ensure that the workers recruited for foreign employment under them, have an employment contract and ensure compliance of the same.
  - vii. The LFEAs shall refrain from substituting employment contracts and take immediate action to rectify any such substitution reported to the SLBFE.

- viii. LFEAs shall refrain from recruiting workers for jobs involving unnecessary / unacceptable risks in which the worker may be subject to dangerous or hazardous work environments.
- ix. No misrepresentation shall be made as to the nature, authenticity, country of origin, qualifications, medical fitness etc. of job applicants supplied by a LFEA.
- x. The LFEAs must directly carry out the recruitment as much as possible.
- xi. In situations where local collaborators or employment promoters are introduced to assist in the labour recruitment process of the LFEA, the LFEA is liable for the acts of such collaborators. The LFEA must instruct and administer the local collaborators to ensure that they comply with the laws of the country the SLBFE Act and the CoEC.
- xii. All types of fees and costs that the recruitment agent may collect from the worker in exchange for the services it provides should be in accordance with laws and regulations of the SLBFE. The LFEA should issue receipts for all payments made by the job seekers.
- xiii. The LFEAs shall not allow intermediaries acting on their behalf to collect fees from job seekers.
- xiv. The LFEAs shall display within its premises a list of countries to which the Government of Sri Lanka does not permit the deployment of workers.
- xv. The LFEAs should only use legal and safe means to send workers overseas for employment and shall not make use of other reasons such as holiday travel, visiting relatives, business trips etc. for the purpose of sending workers for employment.
- xvi. The LFEA shall not intimidate the worker when signing an employment contract by using threat, force or harassment, fraud or deception.

## **6. PROTECTION AND WELFARE OF WORKERS**

- i. The protection and welfare of workers deployed overseas should be a core responsibility of LFEAs. Therefore, fullest support must be given by the LFEA to the SLBFE and other stakeholders such as MFEPW, Sri Lankan Diplomatic Missions and MEA, to protect and ensure the welfare of migrant workers.
- ii. The LFEAs should regularly monitor the wellbeing of the workers who have found foreign employment through their respective agencies.

- iii. The LFEAs should closely coordinate with their foreign counterparts to determine that contract obligations are being observed by the foreign sponsor/ employer.
- iv. The respective LFEA should take all steps reasonably possible to ensure that the terms and conditions of contracts of employment between a foreign employer and a person recruited for employment through their counterparts are observed by that employer.
- v. In the event of a severe breach of contractual obligations by employers, personal visits by the LFEA are encouraged to facilitate on the spot dispute settlement to protect the rights of the worker affected.
- vi. The LFEAs must ensure that the operational activities of foreign companies to which workers are intended to be deployed are secure and risk free and not harmful to the workers' health and safety.
- vii. The worker selected for foreign employment must be made well aware of the terms of the contract prior to signing, laws of the country of employment, customs and norms.
- viii. The worker selected for foreign employment must be made aware of the complaint handling mechanisms that are in place in Sri Lanka and in the country of employment .
- ix. In the event that a death, accident, injury or abuse is reported to the LFEA by his or her foreign counterpart, the employer or worker, the information must be immediately brought to the notice of the SLBFE/MEA for further action.
- x. The LFEA must facilitate the return and reception of migrant workers faced with any difficulties by providing welfare assistance such as transport, medicine as per the signed contractual obligations.
- xi. The LFEA must refer returnees to psycho-social counselling services where needed to assist their reintegration and should refer them to relevant agencies for further assistance if needed.
- xii. The LFEA must at all times provide support and cooperation to efforts, campaigns or programmes against child labour, forced labour, illegal recruitment, human trafficking and human smuggling conducted by the SLBFE and other recognized stakeholders.
- xiii. The LFEA should avoid any action that will jeopardize, disturb or violate the rights of migrant workers and their families.

- xiv. The LFEA should actively participate, collaborate and cooperate with the action plans of the SLBFE that promote the protection and welfare of migrant workers.
  - xv. The LFEA should respect and observe faithfully the international instruments on the protection of the rights and wellbeing of migrant workers and their families that Sri Lanka is signatory to.
  - xvi. The LFEA should collaborate and assist in the successful implementation of the social security and insurance schemes for migrant workers introduced by the SLBFE.
- iii. The LFEA must organize and conduct awareness raising programmes with prospective migrant workers on safe migration and ill-effects of irregular migration, as well as the dangers of human trafficking and human smuggling.
  - iv. The LFEAs have to ensure that the prospective workers are aware of their rights, responsibilities, obligations, job positions, and do's and don'ts in the country of prospective employment and upon return in their home country.
  - v. The LFEAs must be conscious of the global shortage of skilled labour and raise awareness of these skills among prospective migrant workers to encourage the acquisition of specific skills that are in high demand.

## 7. TRAINING

- i. The LFEAs must organize special vocational training including foreign language training courses for workers before sending them overseas for employment in accordance with the requirements set in the contracts of foreign sponsors and set out in the standards of the SLBFE.
- ii. The LFEAs shall organize pre-departure trainings and orientations for workers, as stipulated in the core framework of the SLBFE, and provide workers with practical information on their contracts and respective destination countries.

## **8. HANDLING OF COMPLAINTS AND DISPUTE SETTLEMENT**

- i. A LFEA must respond promptly to a complaint made about the work or services offered by the LFEA or the employees of the LFEA. The complaint investigation/review team of the LFEA shall include a female, in the event that the complaint has been made by a female job seeker.
- ii. If the SLBFE gives a LFEA the details of a complaint made to the SLBFE about the work or services carried out by the LFEA or its employees or any other matter relating to the LFEA's compliance with this CoEC, the LFEA must respond appropriately to the SLBFE within the time period specified.
- iii. All disputes between workers, overseas employers and foreign recruitment agents must be settled on the basis of the contract signed between the parties, and comply with the laws in the receiving country and any bi-lateral agreement with the Government of Sri Lanka and the Government of the receiving country.
- iv. The LFEAs must cooperate fully with the SLBFE and relevant parties in complaints settlement of migrant workers.
- v. The LFEA must pay attention and take prompt action in resolving migrant worker complaints in coordination with the foreign counterpart/employer.
- vi. The LFEA must work to enhance strict adherence by the employer to the terms and conditions stipulated in the employment contract between the worker and the employer.
- vii. The LFEA should explore all possibilities to obtain a workers' unpaid wages from the foreign employer.
- viii. The LFEA should provide assistance to the authorities in the repatriation of workers due to political/economic/or any other emergency situation in the country of employment.
- ix. The LFEA should provide timely and factual information to the family members of the migrant worker for inquiries pertaining to the grievances of migrant workers.
- x. The ALFEA should maintain a database on defaulting foreign agents/employers/sponsors/ and share such data among other LFEA through the SLBFE.



## **9. OBLIGATIONS TO CLIENTS, JOB-SEEKERS AND CUSTOMER CARE**

- i. The LFEAs should adhere to established customer care procedures when the public pays visits to the office of the LFEA or when making inquiries in any other form (Telephone/fax/e-mail, letter etc.)
- ii. The LFEAs should maintain the office environment in a customer friendly atmosphere.
- iii. The LFEAs should train staff members on public relations and courteous interactions with job seekers and put in place adequate measures to protect their privacy with special attention to women.
- iv. The LFEAs should maintain confidentiality of the job seekers /clients' personal data, with exemptions to data that is legally required to be shared.
- v. The LFEA should refrain from engaging in any activity that may unfairly jeopardise a job seekers current or future employment prospects and should ensure a job seekers right to maximise his or her potential for career development is preserved.
- vi. The LFEAs should make provisions to make available educational and awareness raising materials in the agency premises for

easy access for their customers. The LFEAs must provide clients access to interpreter services when necessary or requested.

- vii. The LFEAs must provide job seekers with accurate advice about employment and placement options, including current labour market information.
- viii. The LFEAs should refrain from using information provided by a job seeker for a purpose other than the job placement.

## **10. PARTNERSHIP DEVELOPMENT**

- i. Relationship among the LFEAs and foreign recruitment parties.
  - a) A LFEA should work closely with their respective business partners and be mutually supportive.
  - b) The LFEA should be fair with competitors, and refrain from taking contracts and partners from others by raising prices excessively over the agreed levels, which could in turn burden the workers.
  - c) A LFEA must act with fairness, honesty and courtesy when dealing with other LFEAs.

- ii. Relationship with the SLBFE and other relevant government institutions.
  - a) The LFEA must respond to requests/ inquiries for information from the SLBFE within the time period specified by the SLBFE.

## **11. RETURN AND REINTEGRATION**

- i. The LFEAs must maintain records of the workers and their termination of employment contract for the purpose of providing guidance/advice on career development and referral to the relevant agencies for return and reintegration assistance.
- ii. The LFEAs must provide basic and accurate information to migrant workers on secure savings and financial services upon their return. Such information will be based on approved curriculum and guidelines of the SLBFE.

## **12. AWARENESS OF THE CODE OF ETHICAL CONDUCT**

- i. The ALFEA should display the CoEC on their website and update any amendments with immediate effect.
- ii. The LFEAs must ensure that the CoEC is displayed prominently in all three languages i.e. Sinhalese, Tamil and English at:
  - a. Any waiting area of the agency premises used by the clients.
  - b. Office or room in which the agent conducts business/discussion with the clients.
- iii. The recruitment agent must be courteous enough to provide a copy of the CoEC on the request by a job seeker or client.

### **13. IMPLEMENTATION OF THE CODE OF ETHICAL CONDUCT**

- i. The ALFEA should bear the sole responsibility for the implementation of the CoEC among licensees.
- ii. Complaints can be made to the ALFEA against any LFEA that violates the CoEC. All complaints should be filed at the Association.
- iii. Any licensee who violates the CoEC can be called upon to resolve the complaint/ dispute within 14 days, failing which the ALFEA will refer the complaint to the SLBFE. Such referrals should be made as per standard format.
- iv. The SLBFE may conduct an inquiry on the complaint referred by ALFEA. A committee will be appointed by the SLBFE for this purpose. Such complaints should be reviewed by an authorized officer of the SLBFE to determine if it should be taken up by the Conciliation Division/Enforcement

Division or to the appointed Committee of the SLBFE.

- v. The findings of the Committee shall be forwarded to the ALFEA for file of record.
- vi. The findings of the inquiry panel shall be binding on the LFEA and if the LFEA is not satisfied with the order in the findings, an appeal could be made to the Secretary, MFEPW to seek an independent inquiry or seek legal action.

### **14. ENFORCEMENT**

- i. If any LFEA has violated the CoEC, the SLBFE can take the following actions:
  - a. Warn them in writing.
  - b. Based on the nature of the complaint, the alleged LFEAs Star Grade can be reduced and will affect their future grading.
  - c. A recommendation can be made to suspend the renewal of the licence of the licensee.
  - d. The Committee could recommend to the SLBFE to withdraw or cancel the license.

## **15. TIME PERIOD FOR FILING COMPLAINTS**

- i. The complaint should be filed with the ALFEA within three (3) months of the reporting of the violation of the CoEC.
- ii. Complaints against LFEAs, whether from the SLBFE or any other recognized source, Job-seekers, clients and other licensees will be subjected to inquiry by the Committee at all times.



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