

MEMORANDUM OF UNDERSTANDING

ON

THE EMPLOYMENT OF WORKERS

BETWEEN

THE GOVERNMENT OF INDIA

AND

THE GOVERNMENT OF MALAYSIA

The Government of India and the Government of Malaysia, hereinafter referred to singularly as "the Party" and collectively as "the Parties";

BELIEVING that the employment of Workers from India in Malaysia and Workers from Malaysia in India shall be an area of cooperation which is mutually beneficial to both countries;

REALIZING the need to establish a framework to facilitate the employment, protection and welfare of Workers from India working in Malaysia and Workers from Malaysia working in India;

PURSUANT to the prevailing laws, rules, regulations, policies and directives of the respective countries.

HAVE REACHED AN UNDERSTANDING on the following matters:

Article 1

For the purpose of this Memorandum of Understanding ("MoU"):

"Employer" means, in respect of Malaysia, a company incorporated under the laws of Malaysia or a sole proprietor or any person providing or offering to provide employment to Workers from India; and in respect of India, a company incorporated under the laws of India or a sole proprietor or any person providing or offering to provide employment to Workers from Malaysia.

"Worker" means, in respect of India, a citizen of Malaysia who is contracted to work in India for a specified period of time and in respect of Malaysia, a citizen of India who is or contracted to work in Malaysia for a specified period of time.

Words and expressions in the singular include the plural, and words and expressions in the plural include the singular.

Article 2

The objective of this MoU is to establish a framework relating to the employment, protection and welfare of Workers from India who intend to work in Malaysia and the Workers from Malaysia who intend to work in India.

Article 3

The Parties recognize that the Workers shall be employed in accordance with the terms and conditions of employment which shall be in compliance with the relevant laws, rules, regulations, policies and directives relating to employment in the respective country.

Article 4

- (a) The Parties recognize the right of the Employer to determine the terms and conditions of employment of the Workers including wages, allowances, other benefits and hours of work;

- (b) The terms and conditions of employment of the Workers including wages, allowances, other benefits and hours of work shall be governed by a labour contract between the Employer and the Worker and duly authenticated administratively by the relevant authorities of the respective Governments where necessary; and
- (c) The Parties recognize that the Workers would be employed in accordance with the terms and conditions of employment which are in compliance with the relevant laws and regulations relating to employment in India and Malaysia.

Article 5

The Parties agree to cooperate in promoting orderly recruitment and deployment of Workers including cooperation in pre-departure orientation, skill up gradation, training, conditions to be satisfied by Workers prior to entry and terms and conditions of the work contract between the Employers and Workers for the mutual benefit of both countries.

Article 6

- (a) The Workers under employment in Malaysia shall comply with all Malaysian laws, rules, regulations, policies and directives throughout the duration of their employment. Similarly, the Workers under employment in India shall comply with all Indian laws, rules, regulations, policies and directives throughout the duration of their employment.

- (b) Both Parties shall take appropriate measures for the protection and welfare of all categories of Workers under the labour laws and other relevant laws of the respective countries.

Article 7

The Workers who are employed under this MoU shall work in the respective country for a specified period of time in accordance with the contract of employment and subject to the approval of the relevant authority in the respective country.

Article 8

A Worker may be allowed to continue working in the respective country after the expiry of the period specified in the contract of employment referred to in Article 7 by renewing the said contract of employment or entering into a fresh employment contract with the same or another Employer, subject to the approval of the relevant authority in the respective country.

Article 9

- (a) Employment of Workers in the respective country shall be governed by the terms and conditions as specified in **Appendix A**.
- (b) The respective Party shall take appropriate action against the Employers or licensed recruitment agencies in their respective country that contravene the provisions under this MoU.

Article 10

- (a) The Parties shall establish a Joint Working Group to implement this MoU in general and to perform the following functions in particular;
 - (i) review employment opportunities and availability of corresponding skills in both countries;
 - (ii) explore new avenues for cooperation in the field of labour and manpower development for mutual benefits; and
 - (iii) Coordinate between the Parties in the implementation of this MoU and to take such further action in this regard as may be necessary.
- (b) The Committee shall be composed of at least three (3) members from each Party, and shall meet at least twice a year, alternately in India and Malaysia.
- (c) Each Party shall designate an office within its relevant authorities that shall serve as contact point with the other party.

Article 11

The MoU may be amended, modified or revised by exchange of letters of mutual consent between the Parties through diplomatic channels. Such amendment, modification or revision shall come into force on such date as determined by the Parties.

Article 12

Each Party reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part the implementation of this MoU which suspension shall take effect thirty (30) days after notification has been given to the other Party through diplomatic channels.

Article 13

Any difference or dispute between the Parties concerning the interpretation and / or implementation and / or application of any of the provisions of this MoU shall be settled amicably through mutual consultation and / or negotiations between the Parties through diplomatic channels, without reference to any third party or international tribunal.

Article 14

- (a) This MoU shall enter into force on a date to be mutually agreed upon by the Parties, which shall be notified through the exchange of Diplomatic Notes.
- (b) This MoU shall remain in force for a period of five (5) years from the date of entry into force of this MoU subject to extension by mutual agreement of both Parties.

- (c) Either Party may terminate this MoU by written notification, through diplomatic channels, which shall enter into force six (6) months after the date of such notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this MoU.

DONE at New Delhi on this **3rd** day of **January** in the year **2009** in six (6) original texts, two(2) each in the English, Malay and Hindi languages, all texts being equally authentic. In the event of any divergence of interpretation between any of the texts, the English text shall prevail.

**On Behalf of the
Government of India**



.....
311109

**Vayalar Ravi
Minister of Overseas Indian Affairs,
India**

**On Behalf of the
Government of Malaysia**



.....

**Dr. S. Subramaniam
Minister of Human Resources,
Malaysia**

EMPLOYMENT OF WORKERS IN THE RESPECTIVE COUNTRY SHALL BE GOVERNED BY THE TERMS AND CONDITIONS SPECIFIED AS FOLLOWS:

A. Responsibilities of the Employer

- (i) The Employer shall recruit Workers directly or through the licensed recruitment agencies approved by the Government of the respective country. The Employer is also responsible for obtaining the approval of the relevant authorities as per laws and regulations in the respective country for that purpose;
- (ii) The basic wages offered to the Workers shall be clearly stated in the terms of the contract of employment;
- (iii) The terms and conditions of the contract of employment must be clearly stated and must be fully explained and understood by the Workers before the recruitment of the Workers. The English version of the employment contract shall prevail in case of any dispute arising in relation to the provisions of the employment contract between the Employer and the Workers. A copy of the employment contract in English version shall be supplied to the Workers upon the issuance of the offer letter in the source country;

- (iv) The Employer shall provide a sample of the contract of employment to the licensed recruitment agency in the respective country;
- (v) A copy of the contract of employment shall be given to the Workers and signed in the respective country before or at the same time of commencing of employment and shall be the same as which was explained to the Workers during the selection exercise;
- (vi) The Employer shall not have the authority to amend or vary the provision of the employment contract without the consensus of the Worker;
- (vii) The Employer shall be responsible for all the requirements relating to the entry and employment of the Workers into the respective country;
- (viii) The Employer shall be required to provide appropriate accommodation and amenities to the Workers;
- (ix) The Employer shall be responsible to provide a security deposit as required by the relevant authority in the respective country;
- (x) The Employer shall provide workmen's compensation coverage for each Worker pursuant to the relevant legislation of the respective country;

- (xi) The Employer shall be responsible to ensure that each Worker receives the foreign worker card from the relevant department of the respective country before or at the time of commencement of work and the card shall be kept by the Worker;
- (xii) The Employer shall be responsible to renew the Workers' work pass at least one (1) month before the expiry date. Any penalty or compounding fine due to the failure of the Employer to do so shall be borne by the Employer; and
- (xiii) In the event of death of the Workers, the funeral or the repatriation of the remains of the Worker shall be arranged by the Employer pursuant to the relevant legislation of the respective country.

B. Responsibilities of the Licensed Recruitment Agency

- (i) The licensed recruitment agency shall be responsible in providing potential Workers according to the Employers' specification and needs, to be interviewed or selected by the Employers;
- (ii) The licensed recruitment agency shall conduct the interview if authorized by the Employers;

- (iii) The licensed recruitment agency shall facilitate Workers to obtain the necessary travel documents and to arrange for medical check-up at the designated medical centres accredited by the Ministries of Health of India and Malaysia; and
- (iv) The licensed recruitment agency shall be responsible to ensure that the terms and conditions of the contract of employment are fully explained to and understood by the Workers during the selection exercise.

C. Responsibilities of the Workers

- (i) The Workers shall bring along a copy of the medical examination report and to be shown upon request at the entry point. All medical examinations and procedures shall be governed by the terms and conditions determined by both the Ministries of Health of India and Malaysia;
- (ii) The Workers shall be responsible to produce the foreign worker card to the enforcement agency whenever required as the identify document for the Workers during their stay in the respective country; and
- (iii) The Workers shall abide by all the respective Indian or Malaysian laws, rules, regulations, policies and directives and respect Indian or Malaysian traditions and customs during their stay in the respective country.

D. Miscellaneous

- (i) The Parties shall facilitate the repatriation of the Workers upon the termination of their contract of service; and
- (ii) The repatriation cost of the Workers shall be borne as follows :

(a)	at the completion of contract	- by the Employer
(b)	termination due to misconduct of the Worker	- by the Worker
(c)	resignation of the Worker	- by the Worker
(d)	termination by the Employer	- by the Employer
(e)	termination due to failure of the Employer to fulfill the terms and conditions of the contract of employment	- by the Employer