



## ► Policy Brief

September 2020

# Improving recruitment agency business practices in Sri Lanka

### The issue

Recruitment fees and costs related to recruitment of migrant workers are *“any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection”* (ILO, 2016).

As such, recruitment costs are the financial expenses incurred during the recruitment process.

As per international standards, including the ILO Private Employment Agencies Convention, 1997 (No. 181), no part of this recruitment cost should be borne by the migrant worker. However, in practice, when jobs and workers are in two different countries, the cost of job matching and the financial costs incurred in the recruitment process are most often borne by the prospective migrant worker (ILO, 2016). However, in some instances, other stakeholders in the recruitment process such as employers, recruitment intermediaries or a combination of stakeholders bear or share the recruitment costs (WEC, n.d.; CGF, n.d.). In Sri Lanka, recruitment costs paid by migrant workers are permitted, and regulated through a maximum threshold stipulated by the Sri Lanka Bureau of Foreign Employment (SLBFE).

The fees and costs associated with recruitment of workers for foreign employment from Sri Lanka consist of a web of formal and informal costs and fees incurred by recruitment agents, paid to multiple stakeholders, and most often borne by migrant workers. In this complex recruitment ecosystem, opportunities for vague and exploitative recruitment cost systems which have unfavourable outcomes for migrant workers exist. These include recruitment costs higher than those stipulated by the SLBFE as maximum costs that agents could charge from migrant workers (circular 14/2019).

Additionally, the lack of adherence to principles of fair recruitment have ripple effects for “in-service” (currently employed) migrant workers often resulting in deficits in decent working conditions, increased risk of trafficking and incidences of forced labour.

This Policy Brief provides suggestions for Licensed Foreign Employment Agents (LFEAs), the SLBFE and other stakeholders in the recruitment industry on improving business practices in the recruitment of workers for foreign employment and reducing and eventually shifting costs away from workers.

### Recruitment for foreign employment – An overview

Recruitment for foreign employment has existed in Sri Lanka since the late 1970s, with recruitment agents being formalised and licensed by the SLBFE since 1985. Since then, LFEAs have played a crucial role in the recruitment of migrant workers from Sri Lanka.

The original SLBFE Act of 1985 prohibited any LFEA from charging fees for recruitment in Sri Lanka for foreign employment. As noted by Weeraratne, Wijayasiri and Jayaratne (2018), the amendment made in 1994 to the SLBFE Act introduced a recruitment fee structure, which was linked to the salary levels of migrant workers. The subsequent amendment in 2009 granted legal authority

This policy brief complements the full research report, ILO (2020) Improving recruitment agency business practices in Sri Lanka, available at [ilo.org/fairrecruitment](https://ilo.org/fairrecruitment).

to LFEAs to charge the actual cost of recruitment in addition to the cost of the government levies to be paid. The main aim of this amendment was to protect migrant workers from agents charging arbitrary recruitment fees. Specifically, the 2009 amendment stipulates that: “If any licensee does not receive any commission or any other payment to secure employment opportunities outside Sri Lanka, he may charge the actual expenses to be incurred, in addition to the registration fee from any recruit, after having obtained prior approval for the same from the Bureau” (SLBFE Act, 2009). This paved the way for recruitment agents to cover the costs they bear in the recruitment process, and to introduce the maximum chargeable fee. Until recently, this fee was calculated by considering many variables. Within this regulatory framework, different occupations in Country of Destination (COD) were capped with specific maximum chargeable recruitment fees, all subject to monthly salary, duration of the employment contract, and exchange rate. On the other hand, when employers cover the entire cost of recruitment and travel of female domestic workers to the Middle East, the recruitment agents are not permitted to charge any fees (Weeraratne, 2018c). However, in reality these maximum caps are not adhered to as agencies claim that they are not adjusted to reflect changing prices of air travel and other factors.

To address this issue, a new regulation caps per cost item. According to the circular issued on maximum chargeable fees and implemented on 6 August 2019, LFEAs are allowed to charge migrants for the following:

- A maximum amount of 20,000 Sri Lankan rupees (LKR) for advertising expenses, and a maximum of LKR10,000 for communications, courier charges and visa translations.
- SLBFE registration fee of LKR15,000 + Nations Building Tax (NTB) and Value Added Tax (VAT). This fee is passed on to the SLBFE.
- Administrative and promotional expenses – amount equal to one month’s salary for migrant workers heading to the Middle East or South Asia. Equivalent of two months’ salary for migrant workers heading to Europe and other countries.
- Visa endorsement and air tickets – based on actual expense incurred by the recruitment agent. Any other actual expenses related to the relevant recruitment, provided documentary evidence could be submitted to SLBFE.

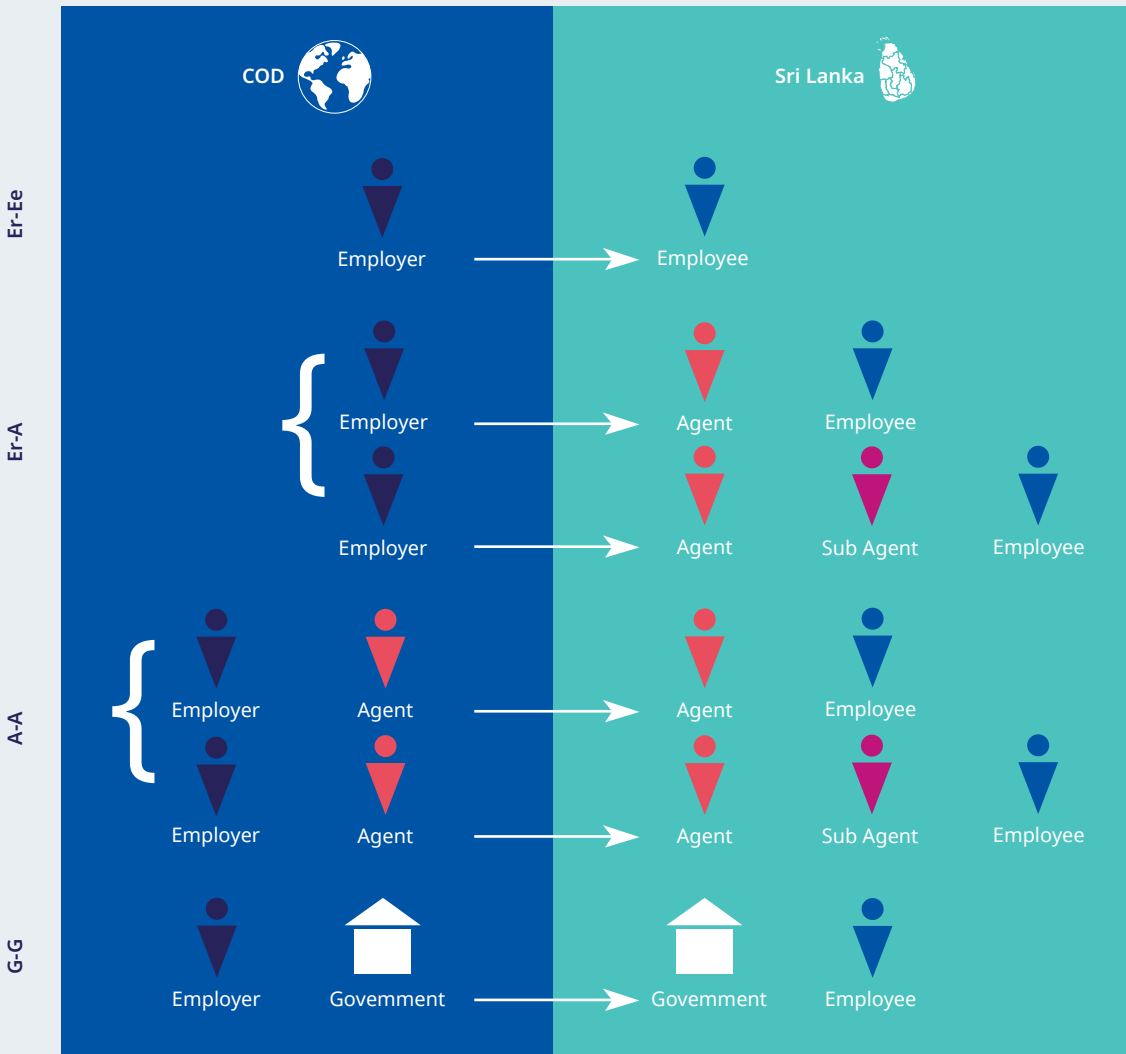
Total of the above expenses constitutes the maximum chargeable amount by recruitment agents, and if any commission or other payments were received from the foreign employer/agent, those would be subtracted from the total amount (SLBFE, 2019).

## Recruitment models

There are four main recruitment modalities in Sri Lanka: 1) direct employment through employer to employer; 2) recruitment via a recruitment agent in Sri Lanka; 3) recruitment via recruitment agents both in COD and Sri Lanka; and 4) government to government recruitment (Figure 1). The involvement of a LFEA may also include an informal recruitment intermediary often called a sub-agent.

In 2018, nearly one third of foreign employment departures were not through LFEAs (CBSL, 2018). The popularity of recruitment through licensed agencies has experienced a declining trend since 2014. Since 2014, the absolute number of departures for foreign employment via licensed agents has decreased continuously from 180,605 in 2014 to 66,924 in 2018 – an overall fall of 63 per cent across the five- year period (ibid.). In relation to the drop in the relative importance of recruitment agencies, this is partly attributed to the estimation of the number of departures via “own account” recruitment – that is, migrants who find employment without the involvement of a licensed recruitment agent in Sri Lanka. The SLBFE defines own account recruitment in two groups: (i) those who actually find employment on their own account in their current migration; and (ii) migrants who are rehired through contract renewals by current employers.

Figure 1. Schematic of different recruitment modalities in Sri Lanka



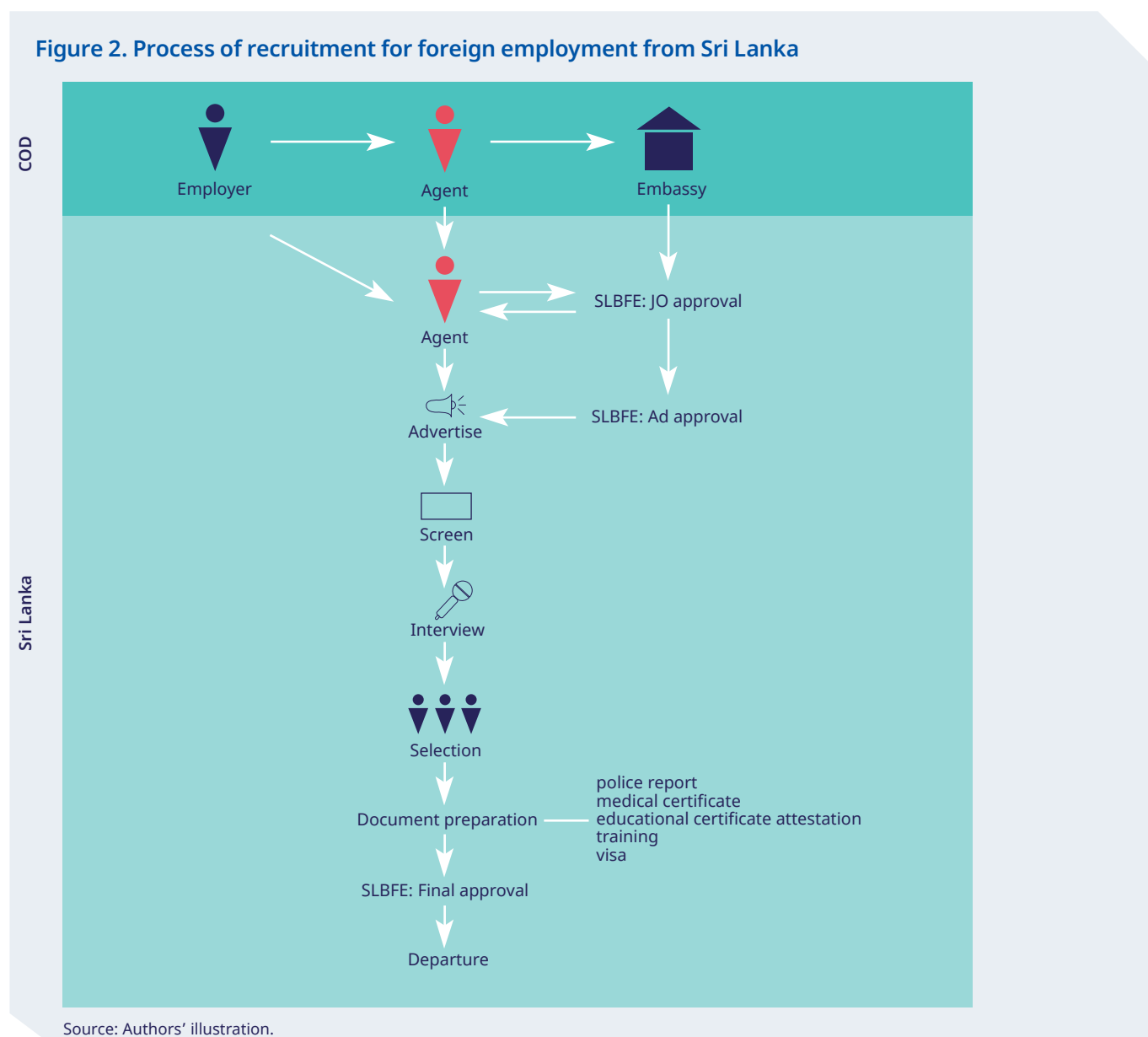
Source: Authors' illustration.

## Recruitment process in Sri Lanka

The stages in the recruitment process for foreign employment is outlined in Figure 2. The process is initiated at the COD where foreign employers may either directly or through a recruitment agent in the COD, contact a recruitment agent in Sri Lanka with a job order (JO). The JOs must be approved by the Sri Lankan diplomatic mission in COD and by the SLBFE in two stages – JO approval and job advertisement

approval. Once vacancies are advertised, candidates are screened (with or without the involvement of employer) and interviewed for selection. Selected candidates must prepare the required documentation (with assistance from the agency if through agency) and obtain SLBFE mandated pre-departure training and other clearances to obtain final approval for departure.

Figure 2. Process of recruitment for foreign employment from Sri Lanka



## Recruitment costs and fees

The costs borne by private recruitment agents in Sri Lanka vary depending on if it is a 'free recruitment' or 'recruitment for fee' model. In the 'free recruitment' model the foreign employer absorbs the full cost of the recruitment upfront. This is usually the model adopted for female domestic workers migrating to countries in the Middle East. Under the 'free recruitment' model, for female domestic workers, the employer provides an upfront payment to the LFEAs in Sri Lanka, who appropriates this amount between recruitment fees

and commissions charged by the recruitment agent in COD, sub-agent, any other recruitment fees, and incentive payments for migrant worker.

On the other hand, the 'recruitment for fee' model requires migrant workers to bear the full or partial cost of recruitment. For some sectors, the employer will contribute to the cost by sending a fixed amount to contribute towards recruitment costs. The 'for fee' model is the predominant model for recruitment through an agency. Under this approach, the agent usually charges a lump sum amount (or in instalments)

to the migrant worker, to cover all fees pertaining to the recruitment process which they pay out on the migrant's behalf. Details of operational costs borne by agents are summarized in table 1. These are costs borne directly

by the agent, rather than costs such as air fare, visa fee, bureau registration fee etc., paid out by agent on behalf of migrant.

► Table 1: Operational costs borne by agent (LKR unless otherwise specified)

Item	Cost Item	Cost (in LKR)
Advertising	TV/Newspaper Advertisements - Radio Advertisements - Online portal ad (i.e. Ikman.lk) Job campaigns/ handbills -	100,000 – 200,000 per month 35,000-40,000 per month 35,000 25,000 per day
Interview costs	Venue Fees - Hosting interviewer from abroad (including food/ accommodation/flight tickets) -	Up to 200,000 for hotel hall (if large numbers) 200,000-500,000
Informal kickbacks	Informal kickbacks to Human Resource Managers from employing company -	USD 100-150 per migrant
Commission to agents in COD	Commissions to foreign agents	
Travel cost to Colombo	For agencies based out of Colombo - Accompanying migrant to Colombo -	5 visits Up to 25,000
License fee	License application form fee - New license fee - Bank guarantee - Annual renewal fee -	5,000 200,000+ NBT+VAT 750,000 75,000
Office maintenance cost in Sri Lanka	Staff cost and building rental	
Office maintenance cost in COD	Staff cost and building rental cost representation of the Sri Lankan agency in COD	
Replacement cost	Recruitment cost borne by employer/agent on behalf of migrant	
Sub-agent fees	Varies	

Source: ILO 2019 (Forthcoming). There was no clearly discernible variation across sectors/district except for travel cost component.

## Maximum fees and additional informal fees

Though the SLBFE stipulates a maximum amount that recruitment agents can charge to a migrant worker, agents claim it does not cover all the costs they incur at each stage of the recruitment process. For example, recruitment agents claim they incur costs<sup>1</sup> to cover the replacement of workers who leave employers before

an agreed probation period. Additionally, agents often incur costs to compete for the attention of Human Resources Managers in CODs to provide exclusive foreign employment opportunities. Such costs include bringing them to Sri Lanka and hosting their stay. The costs associated with such activities are often passed on to the migrant worker informally, and often are above the maximum chargeable fee set by the SLBFE.

<sup>1</sup> Source: Key information interviews conducted for the full report, ILO (2020) Improving recruitment agency business practices in Sri Lanka.

## The case for no fees charged to migrant workers

International human and labour rights frameworks argue against recruitment costs being borne by workers. For instance, the ILO's Migration for Employment Convention (Revised), 1949 (No. 97) states that "public employment service in connection with the recruitment, introduction or placing of migrants for employment must be rendered free", while the Private Employment Agencies Convention, 1997 (No. 181) stipulates that "private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers". These standards are reiterated in the ILO General Principles and Operational Guidelines for Fair Recruitment, and Definition of Recruitment Fees and Costs, adopted in 2016 and 2018 respectively. Hence, the ILO is committed to no fees or costs for workers, and supports avenues to explore and pursue efforts to bring laws and practices in line with this principle, while recognizing that in certain contexts, such efforts should be sufficiently broad to allow an "incremental approach", i.e. through progressively reducing the maximum fee.

A similar view is reflected in the 2030 Agenda for Sustainable Development Goals (SDGs). Specifically, SDG target 10.7 aims to facilitate orderly, safe, regular and responsible migration and mobility of people, including implementation of planned and well-managed migration policies, while indicator 10.7.1 defines recruitment cost borne by the employee as a proportion of monthly income earned in the COD (UN, 2018). Additionally, SDG target 8.8, aims to protect labour rights and promote safe and secure working environments for all workers, including migrant workers, particular women migrants and those in precarious employment. These SDGs are linked to recruitment costs as far as they infringe on rights of the migrant worker.

## Moving to an 'employer pays' model

Fair recruitment practices require moving to an employer pays model of recruitment. The following recommendations are directed to LFEAs and the SLBFE as a precursor to policy reform that removes fees altogether. As a first step, stricter regulation of LFEAs, particularly reduction of fees is a desirable move towards this objective. The ILO proposes the following recommendations to the LFEAs and SLBFE:

### Licensed Foreign Employment Agents

- LFEAs who do not charge recruitment fees from migrant workers can create a niche with a reputation for adhering to fair and ethical recruitment practices – increasingly demanded by global employers and brands operating in countries of destination.
- Agents should adopt transparent business practices and disclose payments and expenses incurred.
- Agents should stop making hidden payments to employers' representatives (e.g. Human Resource Managers). As a first step, agents must encourage recipients of such payments to include and disclose total recruitment cost. As a second step, LFEAs report such payments to SLBFE.
- Agents must highlight success stories of 'employer pays model' to employers and recruitment agents in CODs.
- Agents should negotiate an 'employer pays model' with employers in CODs in return for replacing workers when required.

### Sri Lanka Bureau of Foreign Employment

- ▶ Regulate recruitment costs by adopting fair recruitment principles such as the ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs.
- ▶ Remove the regulation preventing LFEA from establishing branches, as a means to minimise the use of informal sub-agents.
- ▶ Raise awareness amongst recruitment agents on the need to inform migrants about working conditions and managing expectations of both workers and employers.
- ▶ Improve the standard of LFEA operations by revising requirements such as:
  - ▶ Introducing minimum educational qualifications for registration as an LFEA.
  - ▶ Increase bank guarantee for registration.
- ▶ Revise the formula used to calculate the maximum chargeable fee under the Chairman's circular No, 14/2019 by:
  - ▶ Disaggregating and defining administrative costs.
  - ▶ Defining and identifying expenses under (i) advertising and (ii) promotional activities.
- ▶ Ensure transparency in costs charged by periodically revisiting maximum chargeable fees levied by agents to reflect current costs and revisit actual costs incurred by agents.
- ▶ Update the regulatory requirements for advertising via social media to ensure a level playing field in charging advertising costs.
- ▶ Introduce industry-wise pre-determined costs (visa fees, airfare and transportation from airport to job site etc), similar to practices in the Philippines.
- ▶ Conduct international advertising programs to prevent cost incursions by recruitment agents, which drive recruitment costs of agents in countries of origin.
- ▶ Develop a mechanism to regulate business models adopted by LFEA in Sri Lanka with employers abroad to minimize informal and undisclosed payments from LFEA to employers' representatives.
- ▶ In consultation with the Ministry of Foreign Employment, ensure that current and future Memorandums of Understanding (MOUs) with CODs, include clauses to regulate business models adopted by LFEAs in Sri Lanka with employers/ agents abroad.

### Summary and conclusions

This brief sets out recommendations for LFEAs, the SLBFE and the recruitment industry in general to improve businesses practices in recruiting workers for foreign employment. Specific recommendations for LFEAs aim to encourage agencies to establish and adhere to fair recruitment processes and reduce incentives for exploitation of workers. Moving to a 'employer pays' model can shift the recruitment cost burden which is often the result of inefficiencies in the recruitment process, from the migrant worker to the employer and thereby reduce exploitation of migrant workers through excessive fees and costs.



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This brief was produced by the ILO Global Action to Improve the Recruitment Framework of Labour Migration project (REFRAME), supported by the European Union. The REFRAME project aims at preventing and reducing abusive and fraudulent recruitment practices, and maximizing the protection of

migrant workers in the recruitment process and their contribution to development.

The contents of this publication are the sole responsibility of the International Labour Office and can in no way be taken to reflect the views of the European Union.

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