



# **Financial and Contractual Approaches to Mitigating Foreign Migrant Worker Recruitment-Related Risks**

**October 2019**

**Funded with generous support from:**

**Hewlett Packard Enterprise**

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## INTRODUCTION

Foreign migrant workers are often faced with a choice: pay illegal or unethical recruitment fees for a job abroad or go without work altogether. To finance these exorbitant costs, which can be as high as USD 6,000 in some migration corridors, they often take out loans. The resulting debts, borne by workers over the course of their employment term, significantly increase workers' vulnerability to debt bondage and are a root cause of forced labor globally. In Verité's experience, the charging of recruitment fees and expenses to migrant workers is the most significant contributor to the persistence of debt bondage, the manifestation of forced labor, or "modern slavery" most frequently encountered in global supply chains today.

In recent years, a growing number of multinational corporations (MNCs) and their suppliers have begun to adopt "Employer Pays" and "No-Fees to Workers" recruitment policies and practices. When enforced, these policies help to ensure that employers in supply chains absorb the true cost of recruitment and prohibit the charging of recruitment costs to workers, in accordance with international standards and regulations. If workers are charged recruitment costs, ideally, remediation would be initiated to provide for the prompt reimbursement of the full amount to workers. But that is only when the policy is enforced, and employers and recruitment agents are held accountable.

Measures like contractually enforceable obligations, bonds, and insurance mechanisms which hold parties accountable for violations of international, national, and corporate policies are common in many business sectors where they are used to mitigate risks introduced by third parties in a commercial venture. Indeed, some of these mechanisms are currently used in cross-border labor migration to address very specific aspects of the relationship between parties.

The purpose of this paper is to identify, map, and assess the impact and potential application of contract clauses, surety bonds, and insurance policies for promoting compliance with key migrant worker standards, while simultaneously mitigating financial risk to employers.

The first section will define a baseline for ethical recruitment; the sections that follow will outline and analyze the impact and operation of existing approaches and explore the potential of these mechanisms to be repurposed to mitigate risks to workers during the recruitment process and to employers due to the early termination of employment contracts by foreign workers.

## A BASELINE FOR ETHICAL RECRUITMENT

Historically, the realities of foreign worker recruitment have been shrouded by the impenetrability of upstream supply chains and hidden amongst networks of private recruitment intermediaries. Recent advancements in technology and supply chain management practices, including private compliance experts and social audit services, have made it possible to identify unscrupulous actors and hold them accountable for unfair and illegal practices. Alongside increased capacity for accountability, the will of public and private actors to combat these recruitment practices has also grown. Proactive initiatives like the International Labour Organization’s Integrated Program on Fair Recruitment (FAIR), for example, educate and support workers throughout the recruitment process in targeted migration corridors so they may better understand and exercise their rights.

Despite these developments, the charging of recruitment fees and expenses to migrant workers persists, and the risks of debt bondage and forced labor in global supply chains are perpetuated. MNC and supplier efforts to effectively embed ethical recruitment in their operations are frustrated by factors that include lack of government oversight, corruption, the opposition of recruitment agencies, and existing cost and profit structures.

Compounding the challenge to ethical recruitment, some employers believe that if workers don’t pay for or contribute to the cost of their job that they will “abscond” or leave the workplace before completing their two- or three-year contract. Although there is no body of evidence to substantiate this concern — and Verité’s experience is that ethical recruitment actually improves retention — there is no question that foreign worker turnover results in increased costs and can expose employers to other financial penalties such as immigration or foreign worker bond forfeiture.

The Employer-Pays Principle underpins many emergent solutions to recruitment-related debt bondage and forced labor. It states that no worker should pay for a job — the costs of recruitment should be borne, not by the worker, but the employer. A growing number of brands already require suppliers to pay the legitimate and reasonable fees and expenses associated with international labor migration, and prohibit them from charging their workers, directly or indirectly, for their jobs.

Industry groups, including the Responsible Business Alliance, the Consumer Goods Forum, and most recently the American Apparel & Footwear Association have made commitments to this Employer-Pays Principle.<sup>i</sup> Sectoral commitments typically lack robust mechanisms to enforce accountability. Individual company commitments may be limited where contractual relationships only exist between the customer and immediate supplier. Therefore, accountability at sub-tier supply chain levels is dependent on cascading requirements down the chain, which can be slow and ineffective given the lack of enforcement mechanisms available.

The Nepal-Malaysia migration corridor is an illustrative example. A comprehensive account of the discrete costs incurred during the recruitment process shows that the estimated cost of ethical recruitment to an employer in an Employer-Pays Model is between the equivalent of USD 1,100 and USD 1,500 per low wage worker, depending on the job, sector, and location. Approximately 55-60 percent of these costs are incurred in Nepal.

The vast majority of workers continue to shoulder these costs, particularly in their home countries. Based on recent Verité field experience in the electronics and garment manufacturing sectors, workers who paid fees in the Nepal to Malaysia corridor paid between RM 2,940 – 9,080 (USD 743 – 2,295) in total recruitment-related costs in Nepal alone. These workers paid an average of RM 5,935 (USD 1,500), with most workers paying between RM 4,200 – 7,200 (USD 1,061 – 1,819). At minimum wage, it will take workers more than eight months to pay off this debt before factoring in any other expenses.

Recent research attributes the discrepancy between the customary, legitimate, and reasonable cost of foreign worker recruitment and the actual cost being charged to workers to “layers of intermediaries and collusion between local and foreign agents [which] act to the detriment of migrant workers.”<sup>ii</sup>

## **IMMIGRATION OR FOREIGN WORKER SECURITY BONDS**

In Malaysia and Singapore, posting a security bond with the relevant government office is required when recruiting most foreign workers. In some cases, these deposits — up to RM 1,500 (USD 405) and SGD 7,000 (USD 5,110), respectively — are forfeitable if either employer or employee has violated the terms of the relevant Work Permit. Instead of posting the full bond amount, most employers take out insurance policies that typically cost 1-2 percent of bond value. Instances that may trigger forfeiture of the bond deposit include non-payment of wages (on the part of employers) or absconding (on the part of workers.)

While conceived as a mechanism to limit rates of illegal immigration by absconded workers by incentivizing increased oversight and better conditions by employers, the financial risk that security bonds present to employers has been noted as a root cause of restrictions on workers freedom of movement and other labor rights violations. In one media report, an employer in construction explained that their company holds passports because it stands to lose “thousands of dollars” in security deposits if the workers abscond: “Unless the government does away with the security bond, I think most employers will hold on to [workers’] passports.”<sup>iii</sup>

Verité research corroborates these anecdotes. Recent work in the Malaysian electronics sector has shown that the risk of forfeiting a posted bond due to worker abscondment is a source of anxiety for employers and influences employers’ decision to restrict workers’ freedom of movement through passport retention. Much of this anxiety is due to foreign

worker regimes in Malaysia and Singapore that tie workers to a single employer which is financially responsible for repatriating workers at the end of their contract. Employers often face penalties for failing to repatriate workers, including bans on future overseas labor recruitment. Given the risk of financial loss and penalty, employers retain workers' identification and travel documents as a strategy to limit instances of runaways and protect against bond forfeiture.

There is no readily accessible forfeiture data available for security bonds in the countries surveyed below. Migrant worker issue experts in Malaysia believe the rate of forfeitures to be negligible.<sup>iv</sup> In Singapore, surety industry sources indicate rates are very low in the manufacturing and services sectors (<2 percent), and perhaps slightly higher in the construction sector.<sup>v</sup> Still, any conclusions drawn from anecdotal evidence and expert opinion are ambiguous. Low forfeiture rates could be an indication that Foreign Worker Security Bonds accomplish their objectives of improved working conditions and oversight without being a major financial burden. Yet, the low rates could also signify that passport confiscation does indeed prevent workers from absconding.

Feedback from experts suggests it is unlikely that the financial risk associated with bond forfeiture alone in Malaysia results in identity document retention and other limitations on freedom of movement. Rather, employers tend to consider the cost of an insurance guarantee or bond premium as one element of their overall financial investment in recruiting foreign workers that also includes levies, visas, work permits, medical examinations, transportation, and agency service fees. Their potential financial exposure if workers abscond without reasonable notice includes these sunk costs in addition to the prospect of bond forfeiture. Thus, a conclusive determination cannot be made that any one of these costs or potential penalties is a causative link to the persistence of identity document retention.

The following sections review select recruitment-related security bond schemes in greater detail.

### **Malaysia**

Employers are required to post a security bond for each Foreign Contract Worker (FCW) recruited into Malaysia. In lieu of an upfront deposit for the total cost of the bond, which may amount to RM 2,000 (USD 540) per worker, employers can secure a Foreign Worker Insurance Guarantee (FWIG) from a private provider before processing a worker's reference visa (calling visa).

Under an FWIG plan, the employer engages an insurance company to underwrite the terms of the security bond at the price of a premium plus administrative costs.<sup>vi</sup> Because the bond amount varies by nationality, the value of the premium is subject to variation. The financial health of the employer, the quality of auxiliary guarantors, and the underwriting requirements borne by the surety also factor into calculating the sum of the

premium. Typically, the FWIG considerably lessens the financial burden of the bond imposed on employers. Under this scheme, a traditional bond arrangement is formed with the government as Obligee, the employer as Principal, and the insurer or bank as the Surety.

In some cases, such as the Foreign Worker Insurance Scheme offered by MSIG Insurance Berhad, a Malaysian insurance company, the Surety will require cash collateral to be deposited up front on large bond guarantees. In the case of MSIG, their FWIG plan requires 20 percent cash collateral on aggregate guarantees exceeding RM 25,000 (USD 5,948).

A sample of popular FWIG offerings is presented below:

Company	Policy	Premium (Ringgit)	Length	Commission
AIG Malaysia <sup>vii</sup>	Foreign Worker Insurance Guarantee	Varies on financials of company, guarantors, underwriting requirements, nationality; starts at 1% of guarantee per annum (minimum RM 50; USD 12)	Corresponds with length of Work Permit	10% of premium
Allianz General Ins. Co. Berhad <sup>viii</sup>	Foreign Worker Insurance Guarantee	Varies on financials of company, guarantors, underwriting requirements, nationality; starts at 1% of guarantee per annum (minimum RM 50; USD 12)	Corresponds with length of Work Permit	10% of premium
Takaful Malaysia <sup>ix</sup>	Foreign Worker Takaful Guarantee	65% of contribution	Corresponds with length of Work Permit	10% of premium
Zurich <sup>x</sup>	Foreign Worker Insurance Guarantee	Varies on financials of company, guarantors, underwriting requirements, nationality; starts at 1% of guarantee per annum (minimum RM 50; USD 12)	Corresponds with length of Work Permit	10% of premium

The full amount of the security bond will be discharged to the employer after completing a Check Out Memo with the Immigration Department and following the successful repatriation of the worker.<sup>xi, xii</sup>

If the terms of the bond are violated (a worker absconds, for example), the bond is forfeitable, in which case the Surety (insurance company) pays the Obligee (government), and the Principal (employer) is required to indemnify the Surety for the value of the bond plus costs.

## Singapore

In Singapore, the same SGD 5,000 (USD 3,650) security bond is required for each non-Malaysian worker brought into the country. For FCWs, employers are legally obligated to bear the full cost of the bond.

The Terms of forfeiture include:

- Employer or workers violate any of the conditions of the Work Permit or the security bond.
- Employer fails to pay their salaries on time.
- Employer fails to repatriate workers when Work Permits expire, are revoked, or cancelled.
- Worker goes missing. If a worker goes missing, only half of the security bond SGD 2,500 (USD 1,825) will be forfeited if the employer made reasonable efforts to locate the worker and filed a police report.

Like Malaysia, employers in Singapore have the option of purchasing a foreign worker bond guarantee from a private insurance or surety company. The premium on security bonds for FCWs is subject to a variable rate which factors in the financials of the employer, quality of guarantors, and underwriting requirements specific to the provider. A survey of available plans did not indicate a minimum premium or common standard; however, anecdotal feedback from insurers and employers suggests that a typical premium costs SGD 80-100 (USD 58-72) per worker.

A sample of popular Security Bond Guarantee plans for FCWs is presented below:

Company	Policy	Premium	Length
Allegiance <sup>xiii</sup>	Foreign Worker Security Bond	SGD 80-100 (USD 58-72) per worker; Varies on financials of company, guarantors, underwriting requirements	26 months
China Taiping <sup>xiv</sup>	Foreign Workers Bond	Varies on financials of company, guarantors, underwriting requirements	26 months
Tokio Marine Insurance <sup>xv</sup>	Foreign Workers Bond	Varies on financials of company, guarantors, underwriting requirements	26 months

Civil society groups have long reported that fears of bond forfeiture due to worker abscondment have given rise to an industry of private repatriation companies in Singapore. At a cost of SGD 250-300 (USD 180-220) per worker, these companies act as bondsmen on behalf of the employer, tracking and repatriating runaway workers before the security bond is triggered.<sup>xvi</sup>

### **Waiver of Counter Indemnity and Foreign Domestic Worker (FDW) Bonds in Singapore**

All employers in Singapore are required to post bonds when recruiting foreign workers. If the bond is forfeited employer is liable for the full value even if they purchased a security bond guarantee policy.

Insurance companies offer employers of foreign domestic workers the option of paying a higher premium to purchase a Waiver of Counter Indemnity. Under the terms of the waiver, employers will only be held responsible for the total forfeiture of the SGD 5,000 (USD 3,650) bond due to violations arising from an employer's own actions. For violations on the part of the FDW, the insurance company limits an employer's liability to SGD 250 (or, in some cases, nothing at all) while absorbing the bulk of the indemnity.

The popular consensus is that waivers of counter indemnity are not a financially attractive option due to perceived low risk of forfeiture. Only 65 bonds were fully forfeited from 2005 to 2010, amounting to a forfeiture rate between .02 percent and .04 percent, depending on sources.<sup>xvii</sup> For partial forfeitures, while more common, official figures show only 22 instances of partial forfeitures in 2011. Placing this in perspective: Ministry of Manpower figures show over 200,000 FDWs working in Singapore in 2012 alone.<sup>xviii</sup>

Singapore's repatriation companies have developed a negative reputation for colluding with employers to work outside their legal mandate. Alternately described as "gangsters" or "thugs" by the press, repatriation companies are reportedly hired to coerce workers into signing new contracts for lower wages than promised by recruiters or forcibly repatriate workers who have filed grievances.<sup>xix</sup> The 2018 U.S. Trafficking in Persons Report lists their role in Singapore's guest worker regime as cause for concern.<sup>xx</sup>

### Summary

While foreign migrant worker bonds are likely a contributing factor to restrictions (e.g. passport retention) on workers' ability to leave their jobs, the likelihood of bond forfeiture and the compounding contributing factors make the security bond less significant independently of other factors. It is therefore unlikely that companies would be interested in, or benefit significantly from, financial mechanisms that would limit their exposure to immigration bond forfeiture should their workers abscond. Two considerations do remain:

- Governments could improve upon existing bonds to impose obligations on employers to pay the full cost of the recruitment of workers and ensure workers are in possession of their personal documents.
- Employers may be interested in financial mechanisms that limit their overall losses, not just losses associated with bond forfeiture (including training costs, cost of recruiting new workers, etc.), should the employer abide by all standards and workers voluntarily terminate their contracts early.

Given the lack of necessity to use financial mechanisms to mitigate impacts of existing regulations, the next section will build upon these considerations and explore the use of financial mechanisms to promote adoption and compliance among business partners.

## CONTRACT CLAUSES

Understanding how the costs of moving workers across borders are allocated can help end the inequitable distribution of those costs that is at the root of debt bonded labor in supply chains. Unless employers that commit to pay the legitimate and reasonable fees and expenses related to international labor migration hold their recruitment agents

accountable for ensuring workers are not charged for their jobs — these issues will persist.

In Verité’s experience, the most reliable indicator of whether an employer has embedded this policy in its operations is the nature and scope of its relationships with its recruitment agents in both receiving and sending countries. Indeed, regulators increasingly assess the effectiveness of compliance programs based on whether contract terms with third parties, such as recruitment agencies, accurately describe the services provided, that the services are actually provided, and that the compensation is appropriate for the services provided in the sector and region.<sup>xxi</sup> Commercially and ethically sound relationships between the parties mitigate risks to workers and the employer.

Verité’s experience with assisting companies to address these issues leads to the conclusion that recruitment agents, in particular, will only change their deeply entrenched recruitment practices when there are enforceable financial and/or commercial consequences to continuing with “business as usual.”

In the case of recruitment costs, agreements and contracts should unambiguously state that the employing supplier is financially responsible for all recruitment-related fees and expenses, and that workers must not pay any of these costs. If workers are charged recruitment-related fees or expenses at any stage of the recruitment process by the agent or its sub-agents, the agent should be contractually obligated to cover the cost of reimbursing workers, within a specified time period. In some sectors and regions, surety bonds or escrow accounts are used to fund the reimbursement of workers in addition to breach of contract remedies that apply. In competitive RFPs in certain sectors, some employers require bidding agents to include recruitment-related fees and expenses as a line item in bid packages to reinforce the importance of those contract provisions and to ensure a level playing field.

Over the course of more than two decades performing social compliance audits, however, Verité has found that service agreements between employers and their recruitment agents frequently lack the robustness expected of a commercial contract. In many cases, contracts with agents do not exist; in others, the contracts between employers and agents make no reference to the question of fees and expenses: who is responsible, what payments are to be made, by whom, for what services, and when. Agency agreements frequently lack standard contractual language, such as remedies in the event of breach or even the applicable legal jurisdiction, which may render them unenforceable. One particular issue in the recruitment sector is that employers may have contracts with agents whose provisions prohibiting the charging of costs to workers do not require them to be cascaded down to that agent’s network of sub-agents.

The extracted and redacted agreement below between an employer and its recruitment agent in Nepal is an example of the typical agency agreement that fails to reinforce the requirement to recruit ethically. The agreement, which was on a single page including letterhead and signatures, purportedly covered the recruitment of several hundred

Nepali workers by an employer in Malaysia. There is no mention in the agreement of responsibility or the arrangements between the parties for the payment of recruitment-related fees or expenses in the sending country, estimated to be USD 650 – 750 per worker. Based on a document with such deficiencies, an employer is unlikely to pay such a substantial sum of money (amounting to several hundred thousand dollars in aggregate) to a foreign entity for services rendered over an extended period of time.

1. This agreement will be valid for 3 years from the date of agreement between the two parties.
2. The second party will send the bio-data, medical report, photo (4 copies) and the passport photocopy of Nepali workers to the first party within 15 working days from the date of this agreement. The first party will send the original Calling Visa to the second party within a maximum of 4-6 weeks from the date of getting the medical report, photos (4 copies) and passport photocopies. The second party will send the workers within 2-4 weeks of getting the original Calling Visa.
3. The second party will send the list of the workers with profile to the first party as per conditions laid down in the Demand Letter dated 3rd July 2017.
4. The payment of Government Levy will be borne by the employer.
5. The second party will send the workers to the first party in accordance with the above mentioned terms.
6. The first party must provide the necessary documents like demand letters, power of attorney, company registrations of the first party and license of the company to the second party.
7. The first party must provide all facilities to the workers as written in the Demand Letter. The first party will be fully responsible for everything while the workers are working with or under first party.
8. All the other terms and conditions should comply with existing Nepalese/Malaysian Labour Laws.

The extracted and redacted agreement below contains provisions that ostensibly include the payment by an employer of a fixed fee per worker to a recruitment agent to cover recruitment fees and expenses in the sending country; however this agreement does not contain details regarding the timing or method of payment, nor the substantiation of expenses required.

### Recruitment Fees

a. The Company agreed to pay The Agency an amount of **USD 670** per worker being recruitment cost for the supply of workers. The breakdown of the cost shall include the following costing:

i. Entry Visa (Malaysia Embassy)	USD 75.00
ii. Labour Department	USD 10.00
iii. Documentation	USD 35.00
iv. Air Ticket	USD225.00
v. Insurance	USD 65.00
vi. Training/Orientation	USD 7.00
vii. Health Check	USD 45.00
viii. Migrant Management System Fee	USD 33.00
ix. Immigration Security Clearance	USD 32.00
x. Agency Fees (including sub-agent fees)	USD143.00
<b>Total</b>	<b>USD670.00</b>

Should any of the above fees are legally required to be paid by the worker in advance, the Company shall promptly and fully reimburse the worker for those fees within one month from date of arrival.

Neither of the sample agreements contain any form of performance guarantee from the agency to the employer. Most ethical recruitment agreements provide some measure of financial protection to employers if recruited workers prove to be unfit during the probationary period or workers leave without providing reasonable notice within a certain time period after commencing employment. Typically guarantees would mitigate the financial risk to the employer by providing a refund on service fees paid by the employer and allocating a share of the costs that can't be recovered to the agent (visas, transportation, etc.) Without such guarantees, the employer has no recourse; so in addition to the disruption caused by employee turnover, the employer absorbs the entire cost including the agency service fees.

### POTENTIAL APPROACHES

Despite these deficiencies, contracts with recruitment agents in particular may yet be conceived of as a tool for employers to mitigate risks related to foreign worker recruitment. A precondition of doing so is to ground contractual provisions in reference to specific human rights and labor standards as a condition of doing business. The recruitment agents' failure to reach these standards must be tied to specified financial penalties.

## Contractual Obligations

Verité is seeing increased use of contractual obligations in recruitment agency agreements expressly related to the payment of recruitment costs that are underpinned by set-off, penalty, liquidated damages, and indemnity clauses. Set-off clauses are triggered when workers are found to have improperly paid fees during the recruitment process to the agent or any of its sub-agents. In such circumstances, the employer withholds payments to the agency and uses the proceeds to reimburse workers. In some cases, the setting off of worker reimbursement money against fees and expenses otherwise due to the agency is accompanied by a penalty amount, typically 3-5 percent of the amount withheld. Verité has seen enterprising suppliers include penalty clauses on their own of up to eight times the professional services fees payable to recruitment agents if workers are charged any costs in the sending country during the recruitment process. In Verité's experience, liquidated damages clauses are used to reimburse workers that have been charged recruitment costs in breach of the contract or agreement. They tend to be tied to the typical costs charged to workers. For example, Verité has seen these clauses use a typical sum of up to USD 1,500 per worker charged, depending on country of origin.

As a consequence, recruitment agents in sending countries frequently flow similar provisions down to their sub-agents. Where formal contracts don't exist, they use cash deposits or guarantees to encourage compliance.

As more employers adopt ethical recruitment, they are beginning to hold their recruitment agents accountable for the quality of service provided and to seek guarantees that mitigate the financial risk of workers terminating their contract within a pre-determined period of time. The form of guarantee varies but typically covers professional service fees and certain expenses. Guarantees can provide for full or pro-rated refunds if workers leave their job within a specified time period. Full or pro-rated replacement guarantees obligate the recruitment agency to replace workers that depart within a specified time period free-of-charge or for a reduced fee.

The following is a non-exhaustive list of terms an agency agreement may include to protect workers and mitigate financial risk to the employer client.

1. Parties to the Agreement
  - a. Include Agency full legal name and business address, recruitment license details, and authorized representative
2. Term or Duration
  - a. Can be for a certain period of time or a specific recruitment campaign
  - b. Reference number of workers to be recruited and/or client's quota approval or demand letter
3. Agency Responsibilities

- a. Typically, services provided such as advertising, screening, pooling, interviewing, offer processing, procuring clearances, visas, arranging inbound travel, etc.
4. Employer Client Responsibilities
  - a. Typically providing reasonable notice of number and category of workers needed, terms and conditions of employment, approvals (e.g., demand set), commitment to paying all agreed fees and expenses, etc.
5. Fees and Expenses
  - a. Client agrees to pay a placement fee per recruited candidate to Agent in the amount of\_\_\_\_\_.
  - b. Client agrees to reimburse Agent all reasonable pre-approved expenses related to the performance of its services under the agreement.
6. Payment Terms
  - a. Terms, method, and frequency
  - b. Invoicing requirements, including substantiation for reimbursable expenses
7. Ethical Recruitment Obligations
  - a. Express prohibition against charging any fees or expenses to applicants or selected workers by the Agent or its sub-agents or service providers directly or indirectly
  - b. Remedies for breach (retention or deduction against fees payable, indemnity, penalties, damages, termination)
8. Non-Discrimination Clause
9. Performance Guarantees
  - a. Typically covers Client's right to replacement, refund, or credit within a specified time period if a recruited worker is deemed unsuitable or voluntarily terminates their contract without reasonable notice
10. Governing Law and Dispute Resolution

### **Commercial Surety Bonding**

As increasing numbers of global companies and suppliers adopt “Employer Pays” recruitment policies in their supply chains and prohibit the charging of fees to workers, they will seek out ways to proactively cascade financial accountability down to their sub-tier suppliers and recruitment agents to insulate themselves from reputational, trade, and legal risk without having to resort to supply agreement suspension or termination clauses, or restrict workers’ freedom of movement.

There has been some interest in exploring whether MNCs and their suppliers can use a form of commercial surety bonding to underwrite specific recruitment-related contractual and code of conduct obligations. There is some evidence that surety bonds are used to impose obligations related to recruitment costs such as agency, application, or recruitment costs.<sup>xxii</sup>

An Ethical Recruitment Bond is a form of commercial surety bonding under development by Verité in which the Surety (typically a large insurer) guarantees to the Obligee (typically a buyer or supplier) that the Principal (sub-tier supplier, contractor or recruitment agent) will meet its obligations to pay, or ensure payment of, the recruitment fees and expenses incurred to recruit the foreign migrant workers employed in the Principal's facilities or on its projects in accordance with the terms of the underlying supply or services contract or applicable code of conduct.

For companies that require their suppliers, contractors, or recruitment agents to be bonded, there are obvious financial protection and risk mitigation benefits to an Ethical Recruitment Bond. Initially, the concept is likely to be of interest to companies looking to take a proactive approach toward enforcing their forced labor standards. There are also compliance and remediation benefits: If foreign workers do end up paying prohibited recruitment costs, the Obligee can call on the Surety to ensure the Principal remedies the violation and reimburses workers. The Surety would then be indemnified by the Principal.

An Ethical Recruitment Bond would be written as a continuous bond to cover liability for new foreign workers hired during the bond period or until terminated. The amount of the bond would be determined by the average legitimate and customary cost of ethical recruitment in the relevant corridor or country and the number of foreign workers expected to be recruited during the bond period.

If the bond is called, the Surety pays the Obligee up to the face value of the bond. If the workers paid recruitment fees that exceed the bond value, the Principal would still be liable to reimburse the difference to workers based on its contract obligations to the Obligee. See infographic below for an explanation of how an Ethical Recruitment Bond could work.

Bond premiums charged to Principals are typically 1-5 percent of the bond amount, though this could be higher initially given the specialist nature of these bonds and lack of claims history. Assuming the bond premium is similar to FWIG pricing in Malaysia, the cost to an employer or recruitment agent to get bonded for hiring Nepali workers, for example, could cost USD 7,500 for recruiting up to 999 foreign workers, a relatively cost-effective way to hold suppliers, contractors, and recruitment agents financially accountable for implementing Employer Pays and No Fees to Workers Policies, as well as mitigating the time, cost, and aggravation associated with remediation if workers are shown to have paid unethical recruitment costs. Feedback from surety industry sources indicate that ethical recruitment is likely to be “an insurable market.”<sup>xxiii</sup>



## What is an Ethical Recruitment Bond?

  
The Principal  
(The Sub-tier Supplier or  
Recruitment Agent)

  
The Oblige  
(The Buyer or Supplier)

  
The Surety Company  
(An Insurer or Surety)

### How it Works:



The Principal promises to pay all of the foreign worker recruitment costs and meet their ethical recruitment obligations as contracted by the Oblige.

 = Average \$ of Ethical Recruitment X # of 

The bond amount is determined by the average cost of ethical recruitment of the foreign workers expected to be recruited during the bond period.



If foreign workers end up paying recruitment costs or the sub-tier supplier or agent fails to meet their ethical recruitment obligations, the Oblige can file a claim against the bond that is backed by the Surety.



The Surety Company settles the claim with a financial sum used to reimburse the workers.



The Principal is responsible for the amount paid on the claim.

### Benefits of an Ethical Recruitment Bond:

- Surety bonding is a tried and trusted method of holding contract parties accountable.
- Surety bonding reinforces specific ethical recruitment contractual obligations.
- Surety bonding facilitates reimbursement of workers who paid recruitment costs.

## Other Insurance Policies

Migrant worker organizations have long believed that employer opposition to ethical recruitment stems from concerns about increased labor costs, in addition to the risk of financial loss if workers abscond, runaway, or don't complete their contract. In recent field interviews by Verité, employers noted that the adoption of responsible recruitment principles and shouldering the full cost of recruitment is of increased concern over the financial impact of worker abscondment. If workers voluntarily terminate their contract early, the employer typically has no recourse to recover associated recruitment costs. As a result, employers that choose to replace departed workers will have to absorb those recruitment costs. Occasionally, employers have expressed interest in being able to insure against such losses. Verité was unable to identify any current commercially available insurance schemes offering these protections.<sup>xxiv</sup>

The box below summarizes a recent insurance pilot scheme conducted in Jordan.<sup>xxv</sup>

### Foreign Domestic Worker Insurance in Jordan

In 2014, an innovative program launched in Jordan to insure employers' financial losses associated with foreign domestic worker abscondment. Organized and piloted by an industry association of Jordanian recruitment agencies working with a local insurance company, the program was intended to disincentivize employers from passing recruitment costs on to workers, thereby limiting risks of debt bondage or forced labor. Under the pilot, employers of domestic workers who paid a premium of USD 170 could redeem the full cost of recruiting a worker in cases of abscondment or early termination over a coverage period of three years. If a worker was found to have absconded or terminated due to mistreatment however, the insurance company was not obligated to pay out the claim. The pilot, launched in parallel to a wider effort to mandate insurance coverage for domestic workers in Jordan, lasted six months until this particular coverage was not included in a 2015 policy directive mandating insurance for domestic workers. Stakeholders interviewed for this paper indicated that the involvement of a third-party insurer motivated employers to comply with their underlying obligations. It is not entirely clear why the pilot program ceased, though it has been suggested cost was a factor.<sup>xxvi</sup>

## CONCLUSIONS AND RECOMMENDATIONS

Several of the models and tools discussed in the preceding sections already exist for mitigating risks surrounding foreign contract worker recruitment.

Immigration or foreign worker security bonds appear to work as intended as an instrument of government policy. The relatively complex and formal nature of surety bonds, the involvement of third-party insurance and surety companies, and the financial and other penalties associated with forfeiture mean that employers take these obligations seriously. Notwithstanding the risk of unintended consequences such as identity document retention, the use of surety bonds could be further leveraged to protect workers. Governments could, for example, use existing bonds to impose obligations on employers to pay the full cost of the recruitment of workers covered by the bond and underpin existing legal prohibitions such as passport retention. Employers could adapt the concept and use bonds to underwrite the obligations they impose on recruitment agents through contract clauses, codes of conduct, and industry standards.

Contract clauses are used to govern a wide variety of transnational business relationships and manage risk. They appear to be underutilized or ineffectively applied in the context of foreign worker recruitment. This is particularly true in the case of service agreements between employers and recruitment agents in sending countries. Many of the contractual provisions reviewed in this paper are often unenforceable because they fail to include express obligations in reference to applicable law or a binding code or standard. In other cases, the provisions fail to cascade to the level necessary to modify the behavior of recruitment agencies and their subagents. For employers who require their third-party agents to comply with their commitments to ethical recruitment and the Employer Pays Principle, contract clauses can effectively underpin those obligations. Template contracts containing some of the recommended clauses outlined in this paper can enable employers to create a level playing field for existing and prospective recruitment agents. These standard recruitment industry terms and conditions can also serve as a baseline against which employers can screen, supervise, and hold recruitment agents accountable for doing their part to protect vulnerable foreign migrant workers. Robust recruitment agency agreements are also a useful tool for employers to ensure recruitment agents are motivated to find and recruit the most suitable candidates and, by extension, absorb some of the financial risk when that doesn't happen.

With respect to contract clauses and bonds, a more rigorous assessment of each model's impact and weaknesses is required to guide policymaking and standards-setting. Anecdotal evidence has shown that these approaches can and do work. Preliminary evidence suggests that effective solutions must be directed by employers, built on binding contractual provisions, aligned with government action, and cascade to sub-tier levels to influence behavior where the recruitment process is most informal and opaque.

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## ENDNOTES

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- <sup>ii</sup> Thame, Charlie. *Recruitment of migrants in countries of origin: International standards and current mechanisms, and best practices from source countries*. ILO Yangon Briefing Paper. 2017.
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- <sup>iv</sup> Correspondence with The FAIR Hiring Initiative. 18 June 2019.
- <sup>v</sup> Correspondence with Allegiance Pte Ltd representative in Singapore. 18 July 2019.
- <sup>vi</sup> While plans are distinct between providers, premium rates on FWIG plans are most often calculated as 1 percent of the guarantee per annum subject to a minimum premium of RM50.
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- <sup>viii</sup> Allianz Malaysia. (2019) Accessed via: <https://www.allianz.com.my/foreign-workers-insurance>
- <sup>ix</sup> Takaful Malaysia. (2019) Accessed via: <https://www.takaful-malaysia.com.my/products/general/Pages/takafulforiegnuarantee.aspx>
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<sup>xx</sup> U.S. Department of State. “Trafficking in Persons Report 2018 – Singapore.” 28 June 2018. Accessed via: <https://sg.usembassy.gov/2018-trafficking-in-persons-report/>

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<sup>xxii</sup> <https://www.dol.gov/whd/regs/compliance/whdfs26.htm>

<sup>xxiii</sup> Correspondence with AIG, Asia Pacific.

<sup>xxiv</sup> Correspondence with the Manpower Group.

<sup>xxv</sup> ILO “Decent Work for migrant domestic workers: Moving the agenda forward” (2014). Accessed via: [www.ilo.org/global/topics/labour-migration/publications/WCMS\\_535596/lang--en/index.htm](http://www.ilo.org/global/topics/labour-migration/publications/WCMS_535596/lang--en/index.htm);

<sup>xxvi</sup> Correspondence with Recruiting Agencies Association of Jordan. 21 June 2019.