

Draft of the
Overseas Employment and Migration Act, 2012

Revised by:
Dr. Shahdeen Malik
Dr. Tasneem Siddiqui
Dr. C R Abrar

For submission to
Ministry of Expatriates' Welfare and Overseas Employment

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**Revised as per suggestions of Eng. K. Mosharraf Hossain, Honourable Minister of the Ministry
of Expatriates' Welfare and Overseas Employment, Government of Bangladesh**

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The original draft was prepared by a sub-Committee on Overseas Employment Act convened by RMMRU with following members: Convenor: Sumaiya Khair, Members: Kazi Abul Kalam, Selim Reza, Shahdeen Malik, Tasneem Siddiqui, Asif Nazrul, and C R Abrar. The draft incorporated special comments from Justice Dr. Syed Refaat Ahmed.

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Overseas Employment and Migration Act, 2012

Framed and proposed by RMMRU

(As of 06 December 2012)

Section	Proposed Provisions
Preamble	<p>WHEREAS</p> <p>Bangladesh has ratified the UN Convention on Protection of Rights of all Migrant Workers and Members of their Families, 1990 and now, therefore, it has become expedient and necessary to incorporate different provisions of the Convention into national law; and</p> <p>WHEREAS</p> <p>Taking into account the principles embodied in the basic instruments elaborated within the framework of ILO especially the Convention Concerning Migration for Employment (No. 97), the Convention Concerning Migration in Abusive Conditions and Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143); and</p> <p>WHEREAS,</p> <p>Reaffirming the commitment of Bangladesh to promote sound, equitable and humane conditions in connection with international migration of workers and members of their</p> <p>families including the provision of adequate consular and other services necessary to meet the social, cultural, financial and other needs of migrant workers and members of their families, adoption of measures regarding the orderly and safe return of migrant workers and members of their families, promoting conditions for resettlement and re- integration;</p> <p>Now THEREFORE</p> <p>The Parliament deems it expedient to enact this law.</p>

<p>1. Short title, application and commencement</p>	<p>This Act shall be called the Overseas Employment and Migration Act, 2012.</p> <p>It applies to all citizens of Bangladesh</p> <p>It shall come into force immediately.</p>
<p>2. Definition</p>	<p>In this Act, unless there is anything repugnant in the subject or context,</p> <ul style="list-style-type: none"> a) ‘Bureau’ means Bureau of Manpower Employment and Training b) ‘Citizen’ means a citizen of the People’s Republic of Bangladesh. c) ‘Demand’ means any requirement or offer of employment for workers by a foreign or Bangladeshi employer, who has any project or contract or establishment or enterprise or firm or factory or plantation or farm or any other establishment in a foreign country, which also includes visa instructions or work permit from the competent Government authority of the country of employment. d) ‘Depart’ and ‘Departure’ means the departure out of Bangladesh of any person for employment by any foreign or Bangladeshi employer or for self-employment. e) ‘Dependent’ means husband/ wife, or children of a migrant. f) ‘Entity’ means legal person such as agent, association, company, partnership, sole proprietorship, who operates or may operate in the field of overseas employment. g) ‘Government’ means Ministry of Expatriates’ Welfare and Overseas Employment. h) ‘Intends’ to migrate means a citizen who has: <ul style="list-style-type: none"> a) entered into a contract for going abroad for employment and/or b) been granted a visa or work permit for employment abroad.

- i) **‘License’ means a license issued under Section 11 of this Act authorising a person or an entity to operate as a recruiting agent for overseas employment.**
- j) ‘Media’ includes print and electronic and any other means of communication for mass circulation.
- k) **‘Migrate and migration’ means the departure by sea, air or land out of Bangladesh of any person**
- l) ‘Migrant worker’ means a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national and includes a dependant, whether such dependant accompanies that migrant, or departs subsequently for the purpose of joining the migrant in the country to which that migrant has lawfully migrated.
- m) ‘Overseas employment’ means employment of a Bangladeshi citizen outside Bangladesh.
- n) ‘Prescribed’ means prescribed by rules made under this **Act.**
- o) ‘Protector of Migrants’ means a person appointed as a Protector of Migrants under this Act.
- p) ‘Recruit’ means issuing a letter of appointment, entering into a contract for employment abroad by a foreign or Bangladeshi employer and also includes making preliminary arrangements for selecting persons for overseas employment through advertisement, publicity, letter, preparation of panel, verbally or in writing, and any other steps towards furtherance of the objectives of overseas employment of a citizen.
- q) ‘Recruiting Agent’ means any person or entity (natural or legal) licensed under Section 11 of this Act engaged in Bangladesh in the business of recruitment for an employer outside Bangladesh and representing such employer with respect to any matter in relation to such recruitment including dealings with persons so recruited or desiring to be so recruited, directly or indirectly.
- r) “Rules” means rules made under this **Act.**

	<p>s) ‘Smart Card’ means the card containing information about the migrant worker, his/her employment and other details given to the migrant worker.</p> <p>(2) In case of any doubt or dispute arising otherwise than in the course of any proceedings, as to whether a person is a migrant worker within the meaning of this Act, the question shall be determined by the Government and such determination shall be final.</p>
<p>3. Appointment of Protector of Migrants</p>	<p>(1) The Government shall, appoint a Protector of Migrants as it deems fit.</p> <p>(2) The Protector of Migrant shall be a public servant within the meaning of Section 21 of the Penal Code (Act XLV of 1860).</p>
<p>4. Duties and functions of the Protector of Migrants</p>	<p>(1) The Protector of Migrants shall perform the functions assigned to him/her by and under this Act:</p> <p>a) To protect and assist all migrant workers;</p> <p>b) To comply and cause to be complied all the provisions of this Act and of the rules made hereunder to be complied with;</p> <p>c) To enquire and inspect in such manner as may be prescribed:</p> <p>i. any migrant worker,</p> <p>ii. any means of transportation such as aeroplane, ship, if he/she has reason to believe that such means of transportation is being or shall be used for transportation of migrant worker in contravention of this Act,</p> <p>d) to inquire into the treatment received by migrants during their voyage or journey to the country of employment, and during the period of their stay in the country of employment and also during the return voyage or journey to Bangladesh;</p> <p>e) to inspect and enquire into the consular services provided to the migrant workers by the Bangladeshi missions abroad;</p> <p>f) to aid, advice and assist in the re-integration of migrant workers who have returned to Bangladesh;</p>

	<p>g) to undertake initiative or action or project to promote, facilitate and otherwise enquire into matters pertaining to migration through research, advocacy and dissemination;</p> <p>h) to regulate, monitor and supervise all recruiting entities and medical establishments concerned with migration or migrant workers including any association or bodies of such recruiting entities or establishment;</p> <p>i) to maintain database and/or record of migrants; and</p> <p>j) to perform any other function for further protection and welfare of migrant workers as may be directed by the government from time to time or as may be determined by the Protector of Migrants with the permission of the Government.</p> <p>(2) The Government may authorize any authority or body subordinate to it to perform any of the above-mentioned functions at home and in the country of overseas employment.</p>
<p>5. Non discrimination</p>	<p>No migrant worker shall be discriminated on grounds only of religion, race, ethnicity, caste, gender, language, political belief and place of birth.</p>
<p>6. Agents in foreign countries</p>	<p>(1) The Government may, for the purpose of safeguarding the interest of migrant workers and promoting overseas employment, appoint persons to be agents in any place outside Bangladesh and may define their powers and duties.</p> <p>(2) The Government shall regulate the duties and functions of such agents.</p>
<p>7. Delegation of certain powers</p>	<p>The Government may authorize any authority or body subordinate to it to:</p> <p>(a) Promote overseas employment;</p> <p>(b) Undertake any measure or step to ensure safety and welfare of migrant workers in situation of emergencies and disasters in countries of overseas employment</p>
<p>8. Lawful and Unlawful Migration</p>	<p>(1) Migration for overseas employment shall not be lawful from any port or place except from such ports or places as the Government may, by notification in the official Gazette, declare to be ports or places from which such migration is lawful.</p>

	<p>(2) No person unless he/she possesses a valid demand, shall recruit or attempt to recruit any citizen for overseas employment except in accordance with the provisions of this Act and the Rules made thereunder.</p> <p>(3) Notwithstanding anything contained in any other law for the time being in force, no migration of a citizen shall be lawful, unless he/she is in possession of valid travel documents with registration endorsement under Sub-section (3) of Section 12.</p>
<p>9. Power to prohibit migration of workers</p>	<p>(1) If the Government, having regard to the occupation, profession, vocation or qualification of any person or class of persons is satisfied that migration of such person or class of persons is not in the public interest, it may, by Notification in Gazette, prohibit the migration of such person or class of persons and thereupon the departure of such person or class of persons otherwise than in accordance with such order shall not be lawful.</p> <p>(2) If the Government has reasons to believe that (a) the intending migrants would be exposed to serious risk to life on arrival in the country of employment by reason of</p> <p>(i) outbreak of any disease or grave pollution of environment; or</p> <p>(ii) outbreak of hostilities or civil war or civil commotion or political disturbances;</p> <p>and if Bangladesh is not in a position to protect the migrants from discrimination, maltreatment and exploitation, it may, by Notification in Gazette, prohibit migration to that country.</p> <p>(3) Notwithstanding the provisions of Sub-section (1), where the Government has reason to believe that sufficient grounds exist for prohibiting migration of any person or class of persons to any country, it may, by Notification in Gazette, declare that migration of such person or class of persons to that country shall cease to be lawful from a date specified in the Notification; and from that date such migration to that country shall accordingly cease to be lawful.</p>
<p>10. Prohibition Of advertisement, etc.</p>	<p>(1) No entity shall, except with the prior written permission of the government or any authority designated, recruit or attempt to recruit a citizen for overseas employment or publish an advertisement in the media or issue any material or hold any interview or examination for such recruitment for the purpose of migration.</p>

	<p>(2) No media shall disseminate any advertisement for employment abroad without the inclusion of the memo number with date of the permission of the Government.</p>
<p>11. Grant of license.</p>	<p>(1) No entity shall conduct or engage in the business of recruitment without a valid license issued under this Act.</p> <p>(2) Whoever desires to engage, or to recruit any person as migrant worker shall apply to the Government, for a license at such time and in such manner, and shall, with his or her application, furnish such information and documents as prescribed in the rules and pay such security and fee as may be prescribed.</p> <p>(3) On receiving an application under Sub-section (2), the Government shall scrutinize the application as per the rules made for this purpose and shall inform the applicant of its decision within 60 (sixty) days, unless such period has been extended for another 30 (thirty) days for reasons recorded in writing.</p> <p>(4) Such license shall be granted initially for a period of 2 (two) years and thereafter may be renewed for every 5 (five) years.</p> <p>(5) A license under this section may be issued in favour of a citizen, company, partnership firm or any other entity, if –</p> <p>(a) in the case of company, (i) at least sixty percent of the stock of the company and (ii) If it is shown that the company has complied with all statutory obligations and standards under the Company’s Act 1994 for a period of at least two years prior to preceding its application for license</p> <p>(b) in the case of partnership firm or any other entity, at least sixty percent of the capital or proprietary right of the firm or the entity, is owned or controlled by Bangladeshi citizens</p> <p>(6) In the case of sole proprietorship or partnership or firm upon the death of the member of such entity the license or interest of the deceased shall devolve upon the person nominated by the deceased at the time of obtaining the license or at subsequent period.</p>
<p>12.Representation of agent before</p>	<p>(1) Before a person departs from Bangladesh, the person by whom he/she has been engaged or assisted shall appear in person or by his/her duly authorized agent before the Protector</p>

<p>the Protector of Migrants and Registration of migrants</p>	<p>of Migrants or the officer authorized by him/her for this purpose and furnish such information regarding terms of his/her engagement contract, and such other matters concerning his/her selection as may be prescribed.</p> <p>(2) If the person departing from Bangladesh is directly appointed or recruited by a foreign Government or organization or agency or by other foreign employers, he/she shall furnish to the Protector of Migrants the terms and condition of his/her employment contract.</p> <p>(3) Registration of persons departing Bangladesh shall be endorsed upon examination on their Smart Card and passport by the Protector of Migrants.</p>
<p>13. Non-transferability of license or authority</p>	<p>(1) No license or authority shall be used, directly or indirectly, by any person other than the person in whose favour it was issued or at any place other than the place mentioned in the license nor shall the license be transferred, conveyed or assigned to any person or entity without prior written permission of the Protector of migrant.</p> <p>(2) No transfer of the business address of a recruiting agent or designation of any agent or representative mentioned in the license shall be made without prior approval of the Protector of Migrants.</p>
<p>14. Cancellation, suspension, forfeiture of security etc.</p>	<p>(1) The Government may, at any time, cancel a license on any one or more of the</p> <p>following grounds –</p> <ol style="list-style-type: none"> a. If the license is obtained fraudulently by producing any wrong information or misrepresentation or suppression of any relevant fact. b. If he/she violates any of the terms and conditions of the license. c. If he/she is convicted of any criminal offence and sentenced to imprisonment for a term of not less than two years. d. In case of company, when the company has been wound up. <p>(2) Before passing an order of cancellation, the license holder shall be given an opportunity of being heard and the operation of the certificate may be suspended during that period, if necessary, and appropriate measures and</p>

	<p>arrangements have to be made for safeguarding the interests of migrants or any other persons with whom the holder of certificate had any transactions in the course of his business as recruiting agent.</p> <p>(3) While canceling the license the Government may, forfeit the security furnished by the license-holder under Section 11 in full or in part;</p> <p>Provided that the security money or part thereof may be:</p> <ul style="list-style-type: none"> a. Paid to affected person(s). b. Contributed to the Wage Earners' Welfare Fund. <p>(4) Where a license has been cancelled under Sub-section (1), the license holder shall not be eligible to apply for a new license within a period of 3 years.</p>
<p>15. Power to Inspect</p>	<p>The Protector of Migrants or officer authorized by him/her, may, for the purpose of enforcement of the provisions of this Act and the rules made thereunder may-</p> <ul style="list-style-type: none"> (a) Enter into any office or premise maintained or used by any person or entity in connection with the recruitment of migrants for overseas employment; (b) Require and enforce the production of any books of accounts and records maintained by such person or entity and inspect such books of accounts and records; and (c) Seize, if necessary, such records, books, documents and other materials including computer and electronic equipments.
<p>15. Power to search and detain vessels</p>	<p>All the powers for the time being conferred by law on officers of customs with regard to the searching and detention of vessels may be exercised for the prevention of offences under this Act by any such officer authorised by the Government on its behalf.</p> <p><u>(Comments: This power given to too many agencies may be counter productive.)</u></p>
<p>16. Unlawful migration</p>	<p>(1) Whoever, except in conformity with the provisions of this Act, migrates or attempts to migrate or departs or attempts to depart shall be punishable with imprisonment for a term which may extend to one year simple imprisonment or with fine not exceeding taka five thousand or with both.</p> <p>(2) Whoever, except in conformity with the provisions of this Act</p>

	<p>(a) makes or attempts to make, any agreement with any person purporting to bind that person, or any other person, to migrate, or</p> <p>(b) causes or assists, or attempts to cause or assist any person to migrate or depart or to attempt to migrate or depart or to leave any place for the purpose of migrating or departing, or</p> <p>(c) causes any person engaged, assisted or recruited by him, after grant of the license under Section 11 to depart without appearing before the Protector of Migrants as required under Section 12, or</p> <p>(d) in contravention of this Act furnishes or publishes information or notice or documents in relation to recruitment for employment abroad, or</p> <p>(e) substitutes or alters any employment contract approved and verified by the Protector of Migrants, or</p> <p>(f) withholds or denies travel documents from a prospective migrant for monetary or financial consideration other than those authorised under this Act,</p> <p>Shall be punished with rigorous imprisonment for a term which may extend to seven years, or with fine, or with both.</p>
<p>17. Fraudulently inducing to migrate</p>	<p>Whoever, by means of coercion or fraud or deception, causes or induces or attempts to cause or induce, any person to migrate, or enter into an agreement to migrate shall be punishable with imprisonment for a term which may extend to seven years, or with fine or both.</p> <p><u>(Comment: Any punishment higher than five years go for trial in sessions court that is time consuming, and thus in reality the accused evade punishment. That is why RMMRU suggests to limit it to five years)</u></p>
<p>18. False representation of Government authority</p>	<p>Whoever fraudulently represents or advertises for recruitment of migrants in the name of the Government shall be punishable with imprisonment for a term which may extend to 3 years or with fine, or with both.</p>
<p>19. Receiving money, etc., for providing foreign employment</p>	<p>(a) If recruiting agent or his employees or authorised person charges or accepts, directly or indirectly, any amount greater than that fixed by the Government, for providing or securing any person employment in any country outside</p>

	<p>Bangladesh shall be punishable with imprisonment for a term which may extend up to 5 years, or with fine or with both.</p> <p><u>(Comment: Legally it is considered as administrative infraction not a criminal one. Nature of offence may entail suspension of license and does not allow imprisonment. Needs further legal advise from the Ministry of Law)</u></p>
<p>20. Recovery of expenditure for repatriation, etc. –</p>	<p>(1) The expenditure, if any, incurred by the Government for repatriation to Bangladesh may be recovered from such person in accordance with the provisions of the Public Demands Recovery Act, 1913 (Ben. Act III of 1913)</p> <p>(2) The government may recover the amount involved in an offence under Sections 17 and 19 in accordance with the provisions of Public Demand Recovery Act, 1923 (Ben. Act III of 1913) and the amount so recovered shall be paid to the person who had paid it. (Comment: PDR, 1913 is not applicable to individual claims and hence some other legal provision has to be looked for to recover the amount involved in an offence under this sub-section)</p> <p>(3) The complainant shall have the opportunity to enjoy the rights to be represented during BMET arbitration.</p>
<p>21. Filing of criminal cases</p>	<p>(1) a criminal case against a recruiting agent for offences under this Act shall be filed by the Protector of Migrants or an official authorized by him/her;</p> <p>(2) a complainant shall file a complaint to the Protector of Migrants for offences committed against him/her and in case of failure to file a case by the Protector of Migrants within 90 (ninety) days under sub-section (1) above, the complainant may file a complaint case under the Code of Criminal Procedures, 1898</p>
<p>22. Indemnity</p>	<p>No suit, prosecution or other legal proceeding shall lie against the Government, Protector of Migrants or any person for anything done in good faith under this Act.</p>
<p>23. Not to apply to certain persons</p>	<p>This Act shall not apply to a person</p> <p>(a) who is not a citizen of Bangladesh, or</p> <p>(b) who is in the service of the Republic, or of a local authority, or proceeding on duty, or on training, or leave, or for employment with any international organisation, with the permission of the Government, or</p>

	<p>(c) who is engaged as a member of the crew on board a foreign-going vessel, or</p> <p>(d) Who is a dependent of a citizen already resident or employed in a foreign country and is on a temporary visit to Bangladesh.</p> <p><u>(Note: This whole Section is not necessary because this Act does not apply to non- migrant workers)</u></p>
<p>24. Repeal and Savings</p>	<p>1) The Emigration Act, 1922 (Act VII of 1922), shall stand repealed</p> <p>(2) Notwithstanding such repeal,-</p> <p style="padding-left: 40px;">(a) anything done or any action taken or any rule made or any notification issued or any proceeding commenced under the provisions under the provision of the said Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done, taken, made, issued or commenced, as the case may be, under this Act; and</p> <p style="padding-left: 40px;">(b) all cases pending before any court immediately before the commencement of this Act shall be tried and disposed of by such court and all matters in connection with such cases shall be dealt with in accordance with the provisions of the said Ordinance, as if the said Ordinance had not been repealed by this Act.</p>
<p>25. Power to make rules</p>	<p>1) The Government may, by notification in the official Gazette, make rules for all or any of the following matters, namely :-</p> <p>(a) Granting of license to recruiting agent including grading of recruiting agents</p> <p>(b) For maintain and update a database and or register of those who intense to migrate, migrant workers abroad and returnee migrant workers</p> <p>(c) the manner of inspection of premises, books of accounts and records of any person or entity connected with recruitment of emigrants for overseas employment;</p> <p>(d) setting up training, orientation and briefing centres to guide and advise intending migrants and their dependants proceeding abroad;</p>

	<p>(e) measures to be adopted for the welfare of migrants, returnee migrants and their dependants including the management and use of WEFW;</p> <p>(f) procedure for sending of migrants by persons possessing secured contract or sub- contract for the purpose;</p> <p>(g) Special procedure for female migrant workers</p> <p>(h) For settlement of civil disputes between migrants and recruiting agents.</p>
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