MEMORANDUM OF UNDERSTANDING
ON
THE RECRUITMENT OF VIETNAMESE WORKERS
BETWEEN
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM
AND
THE GOVERNMENT OF MALAYSIA
The Government of the Socialist Republic of Vietnam and the Government of Malaysia, hereinafter referred to singularly as 'the Party' and collectively as 'the Parties';

**BELIEVING** that the employment of Vietnamese workers from the Socialist Republic of Vietnam in Malaysia shall be an area of mutually beneficial cooperation to both countries;

**REALIZING** the need to establish a framework to facilitate the selection, conveyance and recruitment of Vietnamese workers from the Socialist Republic of Vietnam to work in Malaysia;

**PURSUANT** to the prevailing laws and regulations of the respective countries;

**HAVE REACHED AN UNDERSTANDING** on the following matters:

**Article 1**

For the purpose of this Memorandum of Understanding:
“Employer” means a company incorporated under the laws of Malaysia or a sole proprietor or any person providing or offering to provide employment to Vietnamese workers from the Socialist Republic of Vietnam.
“Worker” means a citizen of the Socialist Republic of Vietnam who is contracting or contracted to work in Malaysia for a specified period of time excluding domestic servants.

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

Article 2

The parties agree that the recruitment of workers for employment in Malaysia shall be conducted in accordance with this Memorandum of Understanding as per Flow Charts annexed as Appendix A.

Article 3

(a) The Government of the Socialist Republic of Vietnam recognizes the right of the employer to determine the terms and conditions of employment of the workers such as wages, allowances, other benefits and hours of work.

(b) The Government of Malaysia recognizes that the workers shall be accorded the terms and conditions of employment as provided under the relevant laws, regulations and policies relating to employment in Malaysia.
Article 4

The Government of the Socialist Republic of Vietnam agrees to ensure that the workers who are offered for selection by the Malaysian employer to work in Malaysia shall satisfy the following conditions prior to their entry into Malaysia:

i. be at least 18 years of age but not more than 40 years of age;

ii. possess the required qualifications and skills specified by the employer;

iii. possess sufficient knowledge of Malaysian culture and social practices;

iv. possess the ability to communicate either in English or Malay language;

v. satisfy Malaysian immigration procedures in Malaysia;

vi. comply with Malaysian medical requirements; and

vii. do not possess any previous criminal records.
Article 5

The workers under employment in Malaysia shall comply with all Malaysian laws, regulations, policies and directives in their conduct as workers and temporary residents in Malaysia.

Article 6

The workers who are recruited under this Memorandum of Understanding shall work in Malaysia for a specified period of time in accordance with the contract of employment and subject to the approval of the relevant authority in Malaysia.

Article 7

Subject to Article 6, a worker will be allowed to continue working in Malaysia after the specified period subject to the approval of the relevant authority in Malaysia.

Article 8

Employment of workers in Malaysia shall be governed by the terms and conditions specified as follows:
Responsibilities of the Employer

i. The employer shall recruit workers through licensed recruiting agencies in Vietnam and is responsible for obtaining the approval of the relevant authorities in Malaysia for that purpose;

ii. The employer shall not be required to make any payment for such recruitment other than workers’ transportation cost from the entry point in Malaysia to the place of employment in Malaysia. For this purpose the entry point for Sabah and Sarawak is the first entry point in the respective state. The employer shall not receive any form of payment from workers or any other persons;

iii. The basic wages offered shall be clearly stated in the terms of the contract of employment and shall be similar to the basic wages offered to Malaysian workers in the same capacity;

iv. The terms and conditions of the contract of employment must be clearly stated and must be fully explained and understood by the workers during the selection exercise;
v. The employer shall provide a sample of the contract of employment to the licensed Vietnamese Recruitment Agency in Vietnam stating that the terms and conditions of employment will be the same as the contract of employment which has been extended to the Embassy of the Socialist Republic of Vietnam in Malaysia and the Department of Labour in Malaysia and will be signed in Malaysia by the workers and the employer;

vi. A copy of the contract of employment shall be given to the workers and signed in Malaysia before or at the time of commencing of employment and shall be the same as which was explained to the workers during the selection exercise. The basic terms of the contract of employment shall be as in Appendix B;

vii. The employer shall be responsible to provide a security deposit as required by the Immigration Department Malaysia;

viii. The employer shall be responsible for the arrangement of the entry of the workers upon their arrival at the point of entry and thereafter;
ix. The employer shall be required to provide appropriate accommodation in accordance with the existing laws, regulations and rules in Malaysia;

x. The employer shall provide coverage for each worker under the Workmen’s Compensation Act 1952;

xi. The employer shall be responsible to ensure that workers receive their foreign worker card from the Immigration Department Malaysia as soon as possible and the card shall be kept by the workers;

xii. The employer shall be responsible to renew the workers’ work pass at least one month before the expiry date. Any penalty or compound due to the failure of the employer to do so shall be borne by the employer;

xiii. The employer shall be responsible for the safe keeping of the worker’s passport and to surrender such passport to the Embassy of the Socialist Republic of Vietnam in Malaysia in the event of abscondment of the worker;
xiv. The employer shall bear the cost of using a recruitment agency in Malaysia in the event the employer engages a recruitment agency in Malaysia in dealing with the licensed Vietnamese Recruitment Agency in Vietnam;

xv. In the event of death of the worker, the funeral or the repatriation of the remains shall be arranged at the expense of the employer as provided for under the Workmen’s Compensation Act 1952;

B. Responsibilities of the licensed Vietnamese Recruitment Agency in Vietnam

i. The licensed Vietnamese Recruitment Agency in Vietnam shall be responsible in providing potential workers according to the employer’s specification to be interviewed or selected by the employer;

ii. The licensed Vietnamese Recruitment Agency in Vietnam shall conduct the interview if authorized by the employer,
iii. The licensed Vietnamese Recruitment Agency in Vietnam shall facilitate workers/employer to obtain the necessary travel documents and to arrange for medical check-up at the designated medical centers in the Socialist Republic of Vietnam accredited by the Ministry of Health of Malaysia;

iv. The licensed Vietnamese Recruitment Agency in Vietnam shall be responsible to ensure that the terms and conditions of the contract of employment are fully explained and understood by the workers during the selection exercise;

Responsibilities of the Workers

i. The workers shall be responsible for the payment of levy, pass, visa, processing fee and any other charges imposed by the Government of Malaysia. However, for the first year of the employment, the employer may advance such payment and shall be allowed to deduct not more than fifty percent from the workers' monthly salary for all types of deduction to recover such advances subject to the approval of the Department of Labour in Malaysia. The amount and duration of deduction must be clearly stated in the contract of employment;
ii. The workers shall bear all expenses incurred in Vietnam;

iii. 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 the Ministry of Health Malaysia;

iv. The workers shall not be involved in any marital knot during their stay in Malaysia. The workers shall not be allowed to bring in their family members. The employer shall report to the Immigration Department Malaysia immediately in the event of contravention of these conditions;

v. The workers shall be responsible to produce the foreign worker card to the enforcement agency whenever required as the identity document for the workers during their stay in Malaysia; and

vi. The workers shall abide by all Malaysian laws and respect Malaysian traditions and customs during their stay in Malaysia.
D. Miscellaneous

i. The Parties shall facilitate the repatriation of the workers upon the termination of their contract of employment;

ii. The repatriation cost of the worker shall be borne as follows:
   a. at the completion of contract - by the employer
   b. termination due to misconduct - by the worker
   c. resignation of the worker - by the worker
   d. termination by the employer - by the employer

iii. The respective Party shall take appropriate action against employers or Recruiting Agencies that contravene the provisions under this Memorandum of Understanding.

Article 9

This Memorandum of Understanding may be amended or revised by exchange of letters of mutual consent between the Parties through diplomatic channels. Such amendment or revision shall come into force on such date as determined by the Parties.
Article 10

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

Article 11

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

Article 12

The Parties agree to meet from time to time at officials level to discuss and to find a solution on any matter arising from the implementation of this Memorandum of Understanding.
Article 13

This Memorandum of Understanding 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.

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

Done at Hanoi, Vietnam on the 1st day of December in the year 2003.

On Behalf of the Government of the Socialist Republic of Vietnam

On Behalf of the Government of Malaysia

NGUYEN THI HANG
Minister of Labour, Invalids & Social Affairs
The Socialist Republic of Vietnam

DATUK WIRA DR. FONG CHAN ONN
Minister of Human Resources
MALAYSIA
FLOW CHART OF THE FOREIGN WORKERS
RECRUITMENT PROCEDURE FOR EMPLOYMENT IN PENINSULAR MALAYSIA

1. Employer submits the application to employ foreign workers to the MoHA.

2. MoHA processes application and issues Approval Letter to Employer.

3. Employer submits letter of demand * to MOLISA or RA.

3a. Employer informs * RA.

4. MOLISA/RA provide candidates to be interviewed/selected by the Employer.

4a. RA informs MOLISA.

5. Employer makes selection and prepares list of selected workers with MOLISA/RA assistance.

6. MOLISA/RA arranges for workers' Medical Check-up.

7. MOLISA/RA prepares workers Travelling Doc. and submit Medical Report and Travelling Doc. to the Employer.

8. Employer submits visa application to IDM together with the following payment:
   a. deposit;
   b. levy; and
   c. work permit charges.

9. IDM sends visa approval letter addressed to MM in Vietnam through the employer.

10. Employer obtains endorsement of approval letter at Consular office of MOFA.

11. Employer sends endorsed visa approval letter to MM in Vietnam through MOLISA/RA.

11a. RA informs EV and MOLISA.

12. MM in Vietnam issues the visa.

13. Worker arrives in Malaysia.

* attach a copy of MoHA approval letter, appointment letter, employment contract and company profile
APPENDIX A (2)

FLOW CHART OF THE FOREIGN WORKERS RECRUITMENT PROCEDURE FOR EMPLOYMENT IN SARAWAK, MALAYSIA

Recruitment Using Recruitment Agency (RA)

1. EMPLOYER

2. LABOUR DEPARTMENT SARAWAK (LDS)

3. EMPLOYER

4. RECRUITMENT AGENCY IN Vietnam(MOLISA/RA)

5. EMPLOYER

6. MOLISA/RA

7. MOLISA/RA

8. EMPLOYER

9. IMMIGRATION DEPARTMENT MALAYSIA (SARAWAK) IDM(S)

10. MINISTRY OF FOREIGN AFFAIRS (MOFA)

11. EMPLOYER/MOLISA/RA

12. MALAYSIAN MISSION (MM)

13. WORKERS

1. Employer submits the application to employ foreign workers to the LDS.

2. LDS processes application and issues Approval Letter to Employer.

3. Employer submits letter of demand* to MOLISA/RA.

3a. Employer informs* the EV.

4. MOLISA/RA provide candidates to be interviewed/selected by the Employer.

4a. RA informs MOLISA.

5. Employer makes selection and prepares list of selected workers with MOLISA/RA assistance.

6. MOLISA/RA arranges for workers’ Medical Check-up.

7. MOLISA/RA prepares workers’ Traveling Doc. and submit Medical Report and Traveling Doc. to the Employer.

8. Employer submits visa application to IDM(S) together with the following payment:
   a. deposit;
   b. levy and;
   c. work permit charges.

9. IDM(S) sends visa approval letter addressed to MM in Vietnam through the employer.

10. Employer obtains endorsement of approval letter at Consular office of MOFA.

11. Employer sends visa approval letter to MM in Vietnam through MOLISA/RA.

11a. RA informs EV and MOLISA.

12. MM in Vietnam issues the visa.

13. Worker arrives in Malaysia.

* attach a copy of LDS approval letter, appointment letter, employment contract and company profile.
FLOW CHART OF THE FOREIGN WORKERS
RECRUITMENT PROCEDURE FOR EMPLOYMENT IN SABAH, MALAYSIA

Recruitment Using Recruitment Agency (RA)

1. EMPLOYER

2. IMMIGRATION DEPARTMENT MALAYSIA (SABAH) - IDM(Sabah)

3. EMPLOYER

3a. Embassy of the Socialist Republic of Vietnam (EV)

4a. Ministry of Labour, Invalids & Social Affairs (MOLISA) Vietnam

4. MOLISA or Recruitment Agency in Vietnam (MOLISA/RA)

5. EMPLOYER

6. MOLISA/RA

7. MOLISA/RA

8. EMPLOYER

9. IDM(Sabah)

10. MINISTRY OF FOREIGN AFFAIRS (MOFA)

11. EMPLOYER/ MOLISA/RA

11a. MOLISA/RA/EV

12. MALAYSIAN MISSION (MM)

13. WORKERS

1. Employer submits the application to employ foreign workers to the IDM(Sabah).

2. IDM(Sabah) processes application and issues Approval Letter to Employer.

3. Employer appoints and places order with Malaysian Recruitment Agency (MRA). MRA appoints and places order with MOLISA/RA.

3a. MRA informs* the EV.

4. MOLISA/RA provide candidates to be interviewed/selected by the Employer.

4a. RA informs MOLISA.

5. Employer makes selection and prepares list of selected workers with MOLISA/RA assistance.

6. MOLISA/RA arranges for workers Medical Check-up.

7. MOLISA/RA prepares workers Travelling Doc. and submits Medical Report and Travelling Doc. to the Employer.

8. Employer submits visa application to IDM(Sabah) together with the following payment:
   a. deposit;
   b. levy, and
   c. work permit charges.

9. IDM(Sabah) sends visa approval letter addressed to MM in Vietnam through the employer.

10. Employer obtains endorsement of approval letter at Consular office of MOFA.

11. Employer sends visa approval letter to MM in Vietnam through MOLISA/RA.

11a. RA informs EV and MOLISA.

12. MM in Vietnam issues the visa.

13. Worker arrives in Malaysia.

* attach a copy of IDM(Sabah) approval letter, appointment letter, employment contract and company profile
TERMS TO BE INCLUDED IN THE CONTRACT OF EMPLOYMENT

1. Name of Employer
   a. Full Address of Employer
   b. Type of Business

2. Name of Worker
   a. Date of Birth
   b. Passport/Travel Document No.
   c. Home Address of Worker in ..........
   d. Name, Address and Telephone No. of Next of Kin in ..........

3. Occupation
   (Brief description of job)
   a. Basic wage
   b. Allowances
      (Specify types of allowances/rate of allowances)

4. Normal working hours

5. Overtime rate
   In accordance with the labour laws in Malaysia

6. Weekly rest day

7. No. of days of Annual leave

8. No. of days of Sick leave:

9. Public holidays (specify): state location and cost to the worker, if applicable

10. Provision of Housing:

11. Medical benefit:

12. Termination benefit: In accordance with the labour laws in Malaysia

13. Other Benefits (specify):

14. Duration of contract (not more than three years):

15. Termination of contract: In accordance with the provisions of the labour laws in Malaysia

16. Prohibition: Workers are prohibited from bringing in their family and are also not allowed to be involved in any marital knot during their stay in Malaysia.

17. Wage deduction (for levy, pass, visa or processing fee etc.): state purpose, duration and amount

18. Annual Medical Checkup: Workers must be certified medically fit at their own expense.