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## Managing International Labor Migration: The Philippine Experience

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Philippine Institute for Development Studies  
*Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas*

## Managing International Labor Migration: The Philippine Experience

*Aniceto C. Orbeta Jr. and Michael Ralph M. Abrigo*

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# **Managing International Labor Migration: The Philippine experience**

Aniceto C. Orbeta, Jr. and Michael Abrigo  
July 2011

## **Abstract**

This paper reviews the Philippine international labor migration management infrastructure using Regulatory Impact Analysis (RIA) framework. Thirty years of government experience in managing high volume labor migration has resulted to a network of institutions and policies dedicated to promote the welfare of migrant workers. This paper seeks to describe the migration management infrastructure based on the laws and regulations promulgated governing international labor migration, and on the mandates of public institutions created and the procedures it introduced. Consistent with the RIA framework it also describes the impact on the overall international migration sector as well as on a specific component – the household service workers. Although the Philippines is considered by many as the global model in managing international labor migration, indicative weaknesses in the system is recognized. The paper highlights the need for greater coordination among public institutions, as well the strengthening of its manpower composition. It also highlights the fact that the policy initiatives can miss their mark such as the initiative to professionalize the household service workers sector which are either largely ignored or not known to migrant workers concerned.

Keywords: International migration, Regulator Impact Analysis, Philippines  
JEL: F22

# Managing International Labor Migration: The Philippine experience

Aniceto Orbeta and Michael Abrigo<sup>1</sup>

July 2011

## 1. Introduction

Forty years<sup>2</sup> of continuously deploying overseas migrant workers has made international migration an enduring feature of Philippine development. Part of a deliberate development strategy or merely tolerating her citizens who cannot find jobs domestically to seek work abroad, the country is deploying to 192 countries a continuously rising number of migrant workers exceeding a million workers annually since 2005. Official remittance is over 9% of GDP in 2010 and this contribution represents more than many of the traditional industries. Given this background, it is not surprising that international migration is a continuing national concern.

The long experience of deploying large number of workers has earned accolade for the country as a global model for managing the deployment of workers (e.g. IOM, 2005; Martin, 2006). Nonetheless, as argued earlier (Orbeta, Abrigo and Cabalfin, 2009) and by others (COA, 2008; and Aguinas, 2008) there are limitations that need to be highlighted. This paper reviews the migration management infrastructure using the regulatory impact analysis (RIA) framework. Specifically, it describes the migration management infrastructure from the mandates of migration institutions and the procedures put in place to fulfil the mandate. It also reviews the “letter” of the laws and regulations. Finally, it describes the impact of the regulations on a specific sector – the household services workers.

The paper finds several indicative cracks in the internationally acclaimed migration management infrastructure of the country. For one, there is mounting cases of unresolved illegal recruitment indicating, at least, lagging administrative capacity to handle cases. There is also a glaring indication of lack of coordination between branches of government crafting laws as shown by the apparent re-enactment in the most recent migration law (RA10022) of a provision earlier rendered unconstitutional by the Supreme Court. Finally, the main provisions of the 2006 package of reforms to professionalize the household service workers sector are either ignored or not known to migrant workers concerned. What is even more telling is that even the minimum wage provision in the package was apparently violated

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<sup>1</sup> Senior Research Fellow and Senior Research Specialist, Philippine Institute for Development Studies. This study received financial support from the International Development Research Center (IDRC). All opinions here are, however, solely of the authors and do not necessarily reflect those of PIDS nor IDRC. This paper has benefitted from the comments of participants during the Regional Technical Workshop held in Manila, 13 Jan 2011. In particular, we would like to acknowledge helpful comments of Mr. Ricardo Casco, Mr. Tomas Achacoso, and Dr. Charles Harns. It has also benefitted from the comments of participants at the National Policy Forum held on 10 March 2011. In particular, we acknowledge the inputs provided by the POEA through Director Nini Lanto. All remaining errors are the sole responsibility of the authors.

<sup>2</sup> It is in the 1970s that the number of workers deployed increased rapidly even though the flow of migrant workers dates back to the Spanish period where Filipinos manned the ships of the Manila-Acapulco trade (Samonte, E. et. Al., 1985)

officially by the POEA Governing Board allowing another agreement covering similar workers to proceed which stipulates a lower minimum wage.

The paper is structured as follows. The next section provides a description of the methodology. This is followed by a description of the flows of migrant workers through the years. A description of the migration management infrastructure with a focus on the deployment agency – the Philippine Overseas Employment Administration (POEA) - follows. This section also includes a summary of the legal review done. The fourth section describes the impact of the regulations, in general, and on household service workers, in particular. The final section provides a summary and policy implications.

## **2. Methodology**

The paper uses regulatory impact analysis (RIA) to examine the prevailing migration management infrastructure. RIA essentially looks at the costs and benefits of introducing a regulation. This can be done both qualitatively and quantitatively if data allows. Jacobs (2006) have argued that the most influential ones are those involving quantitative analyses. Given the data limitations<sup>3</sup>, mainly qualitative analysis was done here. Specifically, it starts with a description of the regulation infrastructure. To do this, a documents survey and interviews were done to understand the mandates of migration institutions as well as the procedures adopted to implement these mandates. Simultaneously, a legal review of migration laws and regulation was done to examine the “letter” of the laws and regulations and describe the gains through the years, the remaining gaps and the prospects for protecting migrant workers. Finally, the impact of the regulations needs to be understood. Given limited resources and data, we can only discuss general indications of impact, such as disposition of cases involving OFWs, and had a more in-depth the determination of the impact on a specific sector – the household service workers – which is consistently the largest single group among the new hires and considered to be one of the most vulnerable. This particular component of the study used a combination of focus group discussions, key informant interviews and a mini-survey of migrant workers.

The legal review was done by lawyers Ambito and Banzon from a legal research institution – the Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. (IDEALS). The analysis of the impact of migration regulations on home service workers, on the other hand, was done by the Battistella and Asis of the Scalabrini Migration Center (SMC).

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<sup>3</sup> For instance, the background paper done by Battistella and Asis noted that the cost estimates of applying for an overseas job are unreliable confirming the observation in an earlier study. We also tried to obtain establishment data from the National Statistic Office’s Establishment Survey. NSO was not willing to release the raw data because they have determined that, at the level of disaggregation required by the study identity of the firms would already be revealed, thus violating the confidentiality rule. The published data, on the other hand, is at the four-digit level class 7810 which refers to activities of employment placement agencies. This class includes labor recruitment and provision of personnel, local (78101); labor recruitment and provision of personnel, overseas (78102); online employment placement agencies (78103); casting agencies (78104); theatrical booking agencies (78105) and others n.e.c. (78109). Hence, data for recruitment agencies for overseas employment is not readily available.

### 3. Flow of Labor Migrants

Organized labor migration from the Philippines has been in existence for at least 400 years, with historical accounts dating as far back as the Spanish-colonial period (1521-1898) wherein natives manned ships in the Manila-Acapulco galleon trade (Samonte, et. al., 1995). There were subsequent notable movements mostly to the United States facilitated by the special colonial relationship between the two countries. However, it was not until the 1970s when the number increased rapidly, coinciding with the construction boom in the Middle East as a result of the rise in oil prices in 1973-74. From a low of around 50,000 migrant workers in 1975, the Philippines has been deploying more than a million Filipino workers throughout the world since 2005 (Table 1).

Temporary migrant workers dominate the flow of Filipino migrants, accounting for more than 90 percent of total deployment annually in more recent years. The preference of employers for migrant workers with prior international experience is evident in the increasing proportion of rehired land-based workers. From around 38 percent of total annual flow in 1985, rehired workers constitute roughly 43 percent of the migration flow in 2005.

**Table 1. Flow of migrants, 1975, 1985, 1995, 2005**

	Levels				Annual Growth			
	1975	1985	1995	2005	1975-2007	1975-1985	1985-1995	1995-2005
Total	50,527	418,053	709,816	1,057,643	9.8	21.1	5.3	4.0
Permanent	14,492	45,269	56,242	69,028	5.4	11.4	2.2	2.0
Temp, landbased	12,501	320,494	488,173	740,632	13.0	32.4	4.2	4.2
New-hire	na	160,815	214,157	289,981	3.0	na	2.9	3.0
Re-hire	na	159,679	274,016	450,651	5.2	na	5.4	5.0
Temp, seabased	23,534	52,290	165,401	247,983	7.6	8.0	11.5	4.0
	Percentage to total							
Permanent	28.7	10.8	7.9	6.5				
Temp, landbased	24.7	76.7	68.8	70.0				
New-hire	na	38.5	30.2	27.4				
Re-hire	na	38.2	38.6	42.6				
Temp, seabased	46.6	12.5	23.3	23.4				

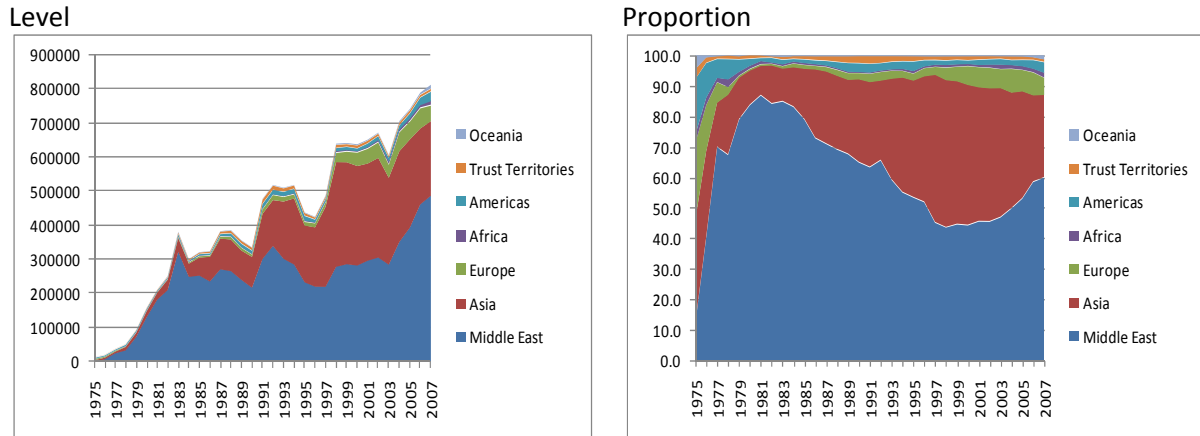
Data for temporary, land based for 1975 refers to processed workers

Source: CFO, POEA

The Middle East, followed by the rest of Asia, traditionally has been the destination of migrant workers, still reflecting the dominance of temporary migrant workers by volume, although more recent deployment statistics show significant proportion of the annual flows going to Europe and North America, the traditional destination of permanent migrants. From a low of 1,500 migrant workers who left the country for the Middle East in 1975, it rose to more than 300 thousand by 1983. The number fluctuated in the 200 to 300 thousand band in the 1990s and is observed to be gradually rising in recent years to over 400,000 by 2007. After the oil price hikes in 1973-74, Middle East countries went into massive infrastructure development financed by their oil wealth. This led to the construction boom that caused and unprecedented increase in temporary migrant workers between 1975 and 1985. The subsequent decline was due to several reasons, among which are (a) policies to restrict foreign workers and encourage use of local workers; (b) completion of most of the basic construction projects (IOM, 2005), and (c) the Gulf war in 1990-1991. Some of the reasons for the recent resurgence are (a) failure of policies to restrict flow of non-nationals and to encourage nationals to take up work done by

foreigners (Shah, 2008), and (b) increase in emigration of Arabs into other regions, e.g. OECD countries, (IOM 2008).

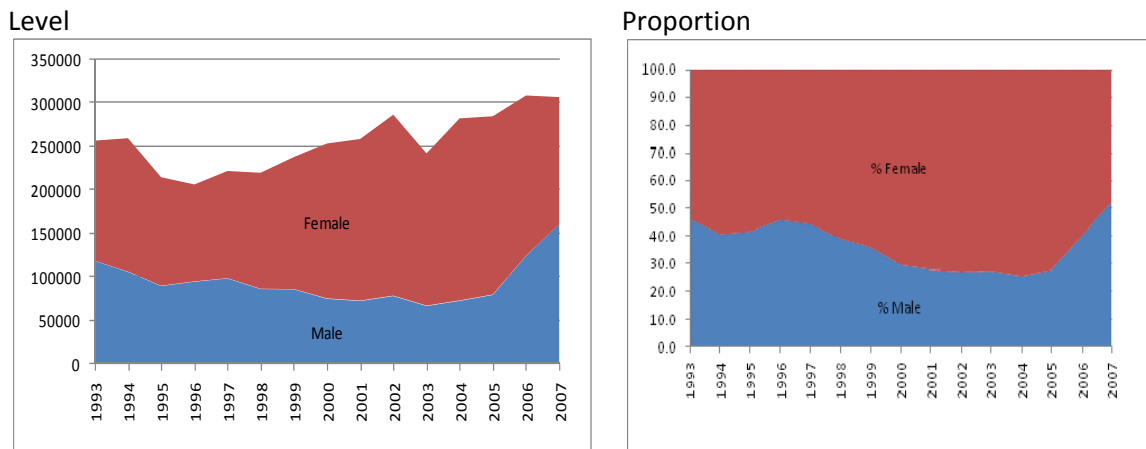
**Figure 2. Flow of temporary migrants by destination**



Source: CFO, POEA

On the other hand, the flow of migrant workers to the rest of Asia, especially East and Southeast Asia, in the late 1980s and early 1990s was conditioned primarily by the labor demand of newly industrialized countries (NICs) in the region which resorted to labor importation to sustain their economic growth (Asis, 2005). The Asian financial crisis in 1997-1998 affected the flow but the restriction on the flow of entertainers both by POEA and destination countries, notably Japan, is an important reason for the reduction in recent flows to the region (Figure 2).

**Figure 3. Flow of temporary migrants by sex**



Source of basic data: POEA

Another important characteristic of Philippine labor migration is the dominance of females in terms of proportion. Estimates by Cariño (1994b) put the proportion of females among permanent immigrants at around 60 percent of total flows in 1986, reflective probably of the considerable proportion of housewives, and, more recently, of nurses and midwives among the permanent migrants. Government administrative data show that the proportion has remained stable at around 60 percent

since 1993. Meanwhile, the large proportion of domestic helpers and entertainers has been pointed out as one of the causes of the high female to male ratio among the temporary migrants (Asis, 2006; Stahl and Appleyard, 1992). An earlier estimate puts the proportion of female workers in 1987 at 47.2 percent (Cariño, 1994b). The recent rise of male temporary workers evident in Figure 3 was perhaps on account of the restrictions on the fielding of entertainers both by the POEA and destination countries in Asia, notably, Japan.

Focusing on the deployment of temporary migrant workers, the flow was largely facilitated by private recruitment and manning agencies. In 2008, for instance, around 50 percent of workers deployed, constituting new-hire land-based workers (28%) and seamen (21%), were assisted by private firms as shown in Table 2. This figure does not include re-hired workers originally placed by recruitment agencies. A very small proportion was either handled by the government (GPB Hire) through its government-to-government hiring program (0.33%), or facilitated by the workers without the assistance of public or private recruitment services, i.e. name hires (2.04%).

**Table 2. Deployment of OFWs by Type of Hiring, 2004 and 2008**

Type of Worker/Hire	2004		2008	
	Number	% to Total	Number	% to Total
LANDBASED	704,586	71.27	974,399	78.83
NEW HIRES	284,912	28.82	376,973	30.50
GPB Hire	5,469	0.55	4,102	0.33
Private Agency Hire	265,310	26.84	347,000	28.07
Name Hire	14,133	1.43	25,263	2.04
Workers with Special Exit Clearance /2	169	0.02	72	0.01
Employment-based Immigration (EB3) /3	0	0.00	536	0.04
REHIRES	419,674	42.45	597,426	48.33
SEABASED	247,983	25.08	261,614	21.17
TOTAL	988,615	100.00	1,236,013	100.00
Daily Deployment Average	2,709		3,377	
1/ Based on Assistance Center on the actual departures of OFWs at the airports - the report of POEA's Labor actual departures international airports.				
2/ Non-contract workers leaving on employment visa / work permit or equivalent document to work abroad but who remain in the employment of the local companies and trainees of PEZA-registered companies				
3/ Source: Commission on Filipinos Overseas.				

Source: POEA Compendium of Annual Statistics, various years

In terms of occupation, the dominant groups are professionals, service workers, and production process workers, transport and laborers. The dominance of professionals in the 1975 was replaced by a notable spike in production process workers, transport and laborers in the 1980s and by service workers in recent years. In 2005, around half of new-hired workers were deployed as service workers (Table 3).

**Table 3. Distribution of temporary migrants and labor force by usual occupation**

	1975	1980	1985	1995	2000	2005	2010
Professional and Technical Workers	53.5	15.4	22.5	20.4	31.1	22.5	12.3
Managerial Workers	0.6	0.5	0.4	0.2	0.1	0.2	0.4
Clerical Workers	1.8	3.4	4.5	1.6	0.9	1.9	3.1
Sales Workers	0.4	0.3	0.8	0.9	0.8	1.5	2.1
Service Workers	22.0	14.8	27.1	37.8	36.0	47.1	45.4
Agricultural Workers	0.9	1.0	0.4	0.5	0.2	0.1	0.3
Production Workers	20.8	64.2	44.4	38.5	22.8	26.3	35.5
For Reclassification	0.0	0.0	0.0	0.1	7.9	0.4	0.8
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Note: 1975-1985 figures refer to processed workers. 1990-2010 refer to new-hire workers only. Source: POEA Compendium of Statistics, various years.



Service workers are dominated by household service workers in the low to semi-skilled class, deployed around the world, but with large concentrations in the Middle East and in East Asia. In early 1990s, as much as 80 percent of service workers are household service workers although this had declined in recent years (Battistella and Asis, 2011). Indeed among the new hires, a substantial proportion is comprised by household service workers (28%) as shown in Table 4.

**Table 4. Deployed New-Hire Overseas Filipino Workers – Top Ten Skills by Sex, 2008**

	2010			% Share to
	Male	Female	Total	Total
<b>Household Service Workers</b>	<b>1,703</b>	<b>94,880</b>	<b>96,583</b>	<b>28.4</b>
Charworkers, Cleaners and Related Workers Charworkers, Cleaners and Related Workers	2,612	9,521	12,133	3.6
Nurses Professional	1,828	10,254	12,082	3.6
Caregivers and Caretakers	543	8,750	9,293	2.7
Waiters, Bartenders and Related Workers	4,393	4,396	8,789	2.6
Wiremen Electrical	8,576	30	8,606	2.5
Plumbers and Pipe Fitters Plumbers and Pipe Fitters	8,391	16	8,407	2.5
Welders and Flame-Cutters	5,037	22	5,059	1.5
Caretakers Building / housekeeping and related service workers	701	4,098	4,799	1.4
Bricklayers, stonemasons and tile setters	4,478	29	4,507	1.3
Oth Skill Other Skills	116,415	53,606	170,021	50.0
Total Deployment-New hires	154,677	185,602	340,279	\1

\1 covers only 95% of total deployed landbased new hires

Source: 2008 POEA Compendium of Statistics.

## 4. International Migration Management System

### 4.1 Rationale for Regulation

Deployment of migrant workers is a job-matching problem. Viewed as such, on the one hand we have workers seeking the best wage, benefit and working condition package available given their skills and labor market conditions and, on the other, employers seeking the best workers available at least cost (Martin, 2006). With full-information for both parties, the most efficient job-matching institution will be the one having the most information on employers seeking workers and workers seeking for jobs. Matching is better if there are more choices of both jobs and workers available to match. Thus, there are economies of scale in job-matching. This has justified the preference for public (no-fee) employment services in early the years of deploying migrant workers. In recent years, however, the private sector dominates the recruitment industry while public employment service only deploys a very small proportion since the latter can no longer handle or can only handle less efficiently a growing volume of migrants (ILO 1997).

Full information is often a strong assumption to make. The job-matching problem can be characterized better as a case of asymmetry of information. Compared to the recruitment agency, the workers know his skill and capabilities better but know little jobs available. Job seekers know little about the quality of placement services offered by recruitment agencies until after they have purchased those services. This is particularly true for first-time jobseekers using placement services. The opposite is true for the recruitment agencies as they know better the jobs available but know little about the skill of

the applicants. The recruiter will not know what kind of workers is deployed until deployment services is bought. This can lead to inefficiencies when the information problems are not resolved. The classic market solutions to asymmetric information problems are signaling and screening (Akerlof, 1970). The parties can look for a signaling mechanism that can reveal the type of the other party. In screening, the less informed party can use a screening mechanism to induce the other party to reveal information. Relatedly, it is also argued that recruiters generally have more information than migrants (Martin 2006). Thus, there can be imbalance in bargaining power between recruiters and applicants. This imbalance in bargaining power will also generate inferior results. For instance, in the face of desperate and less informed applicants, recruiters can easily sort to offering non-existent jobs and even smuggling and trafficking with full cooperation from the worker. This will lead to illegal recruitment cases. In general, the recruitment fee will be some fraction of the difference in wages between the labor-sending and labor-receiving country. The worker would likely agree to pay higher recruitment fees if there are more benefits beyond the work being considered, e.g. prospects for settlement abroad, experience in more sophisticated working conditions; if it is more difficult to find work via other means such as via social networks or illegally; and if there are more workers seeking jobs than what is available. With asymmetry in information and/or imbalance in bargaining power, the recruiter can extract more than what the worker should be paying.

Matching workers and employers across national borders complicates the information problem. For one, there will be less standardization in the absence of bilateral agreements, multinational recruitment firms and government oversight of contracts (Martin 2006). Another important issue is difficulty of enforcement of the terms of the contract. Obviously, institutions in sending countries do not have jurisdiction in receiving countries unless there is a bilateral agreement binding the two countries.

These problems provide the reasons for the regulations on international migration.

## **4.2 Components of the Migration Regulation System**

The components of the Philippine deployment regulation system can be grouped into three (1) limiting entry, (2) regulation on fees and employment standard, and (3) monitoring and redress

### **4.2.1 Limiting entry**

At the forefront of protective measures against offenses committed against migrant workers is the pre-determination of who may participate in the overseas employment program, by setting minimum qualifications among the parties involved. The participants are bound by rules and regulations on how recruitment and overseas placement shall be conducted.

*Local Private Recruitment and Manning Agencies.* The POEA reserves the privilege of recruiting and placing workers for overseas employment positions to agencies which are at least 75 percent owned and controlled by Filipino citizens. Agencies with proprietors, partners or members of the board with derogatory records with the National Bureau of Investigation or with the Anti-Illegal Recruitment Branch of POEA are disqualified from participating in the overseas recruitment program. Agencies with

proprietors, partners or members of the board who are engaged in the operation of travel agencies or are sales agencies for airline companies are likewise barred from participating.

Although the requirement on minimum capitalization of agencies as pre-qualification for participation has been maintained since the introduction of the registration and licensing of recruitment and manning agencies in 1974, the actual amount has increased through the years. From Php500,000 (USD11,084)<sup>4</sup> in 1985 to Php1 million (USD22,168) in 1991, POEA raised the minimum capitalization requirement for agencies wishing to participate in the overseas employment program to Php2 million (USD44,336) in 2002 for recruitment agencies and in 2003 for manning agencies (Table 1). A certificate of bank deposit and a verified copy of income tax return in the last two years preceding the application are likewise required to prove the financial capacity of proprietors, partners or corporations wishing to participate in the overseas employment program.

**Table 5. Schedule of Fees and Other Requirements (Partial) for Application of License**

	1985	1991	2002 <i>Recruitment Agencies</i>	2003 <i>Manning Agencies</i>
Minimum Capitalization	Php500,000 (USD11,084)	Php1 Million (USD22,168)	Php2 Million (USD44,336)	Php2 Million (USD44,336)
Proof of Financial Capacity <i>Certificate of Bank Deposit amounting to at least</i>	Php250,000 (US5,542)	Php250,000 (US5, 542)	Php500,000 (USD11,084)	Php500,000 (USD11,084)
Proof of Marketing Capability <i>Manpower request or visa approval of at least</i>	-	50 workers (50 seafarers)	100 workers	50 seafarers
Filing Fee	To be determined by POEA	Php5,000 (USD111)	Php10,000 (USD222)	Php10,000 (USD222)
License Fee	Php6,000 (USD133)	Php30,000 (USD665)	Php50,000 (USD1,108)	Php50,000 (USD1,108)
Bonds*	Php250,000 (USD5,542)	Php150,000 (USD3,325)	Php100,000 (USD2,217)	Php100,000 (USD2,217)
Escrow Deposit	-	Php200,000 (USD4,434)	Php1 Million (USD22,168)	Php1 Million (USD22,168)
License Validity (Maximum)	1	2	4	4

Source: POEA Rules and Regulations governing Overseas Employment, various years

\* Aggregate amount of required bonds, i.e. surety and cash bonds (1985 and 1991 POEA Rules and Regulations)

In addition, each recruitment and manning agency must also submit a verified undertaking stating, among others, that it shall assume full and complete responsibility over all claims or liabilities

<sup>4</sup> All calculations of USD equivalent from here forward using 2010 annual average exchange rate Php45.11=USD1

arising from the use of the license; that it shall assume joint and solidary responsibility with the foreign principal or employer for all claims and liabilities arising from the implementation of workers' employment contract; and that it shall repatriate deployed workers and his/her belongings when needed. Joint and solidary responsibility of foreign employers and local recruitment or manning agencies ensures that local recruitment agencies will choose their principals well. This, together with the Filipino-ownership requirement, also enables redress of legitimate grievances in the Philippines, where the employment contract of workers is executed (Sto. Tomas, 2005).

Only licensed agencies are allowed to conduct recruitment activities. However, licensed recruitment or manning agencies may only do so at the address stated in their license or in their POEA-acknowledged additional offices. Conducting of recruitment activities at places other than at registered offices require prior approval by POEA and supervision by them, the DOLE or representatives of the local government unit where the recruitment activity will be held. Advertising for verified manpower requests and for man-pooling purposes are likewise governed by rules and regulations set by POEA. Recruitment and manning agencies may only charge a placement fee equivalent to at most one month's salary of the worker per contract processed.

With the enactment of RA 10022, amending RA 8042, recruitment and manning agencies are required to shoulder the insurance coverage<sup>5</sup> of each migrant worker deployed. The insurance will be effective for the duration of the contract of the worker and should include: survivor's benefit of at least USD15,000 for accidental death and USD10,000 for natural death; disability benefit of at least USD7,500; subsistence allowance benefit of at least USD100 per month for a maximum of six months for migrant workers involved in cases or litigation involving his/her rights in the host country; and money claims arising from employer's liability equivalent as settled by the NLRC and awarded to the worker. In addition, the insurance coverage should likewise include compassionate visit by one (1) family in case of hospitalization of migrant worker; medical evacuation; and medical repatriation.

*Foreign Principals.* Foreign principals, employers, projects or placement agencies wishing to hire Filipino workers require registration with and accreditation by POEA. Documentary requirements for registration are first verified by the Philippine Overseas Labor Office<sup>6</sup> (POLO) nearest to the worksite to ensure conformity with the minimum standards set by POEA, or legislations in the host country. In countries or worksites where there are no POLOs, verification of documents and accreditation of foreign principals is processed at POEA through the foreign principal's partner licensed local recruitment or manning agency. Documentary requirements for pre-qualification for accreditation include: recruitment or service agreement with local recruitment agency, master employment contract, manpower request, and valid business license, registration certificate or equivalent document.

Under the rules and regulations of POEA, foreign principals of land-based workers shall pay for the visa, airfare, POEA processing and OWWA membership of the workers that will be employed by

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<sup>5</sup> This is over and above existing insurance coverage already provided to workers, e.g. OWWA, PHIC, etc.

<sup>6</sup> POLOs act as the operating arm to administer and enforce the adopted policies and programs of the DOLE on international labor affairs; As of December 2008, there are thirty-four (34) POLOs around the world (DOLE, 2008)

them. Foreign employers of seafarers, on the other hand, shall be charged a manning fee that covers services rendered in the recruitment and deployment of the worker.

Foreign employers of land-based workers in war-risk areas declared by POEA have to purchase war-risk insurance with coverage of not less than Php200,000 (USD4,497) during the duration of the employment contract for every worker hired. All foreign principals and licensed manning agencies are required to report to POEA within twenty-four (24) hours significant incidents, including death, injury or illness, and detention or abandonment in foreign ports, concerning employed Filipino seafarers, as well as those who are missing or have abandoned their posts.

*Foreign Governments.* The POEA maintains an in-house recruitment facility, which primarily caters to government-to-government hiring of Filipino workers. Standards for foreign governments are not as well developed (Agunias, 2008) as those with other (private) recruitment and placement facilities under the supervision or regulation of POEA. Although the terms of employment vary by government or by project, governments hiring through a government-to-government arrangement must contribute to the Guarantee Trust Fund, which covers monetary claims by workers arising from non-compliance with contractual obligations, to hire Filipino workers.

*Workers.* The government recognizes that the possession of skills is the ultimate protection of workers. Thus, POEA, in coordination with other government agencies, strives for the standardization, assessment and certification of skills (Agunias, 2008). Recruitment and manning agencies are only allowed to recruit and place workers who are medically and technically fit as part of their verified undertaking with POEA.

Skilled and semi-skilled workers are required to secure from skills-testing centers accredited by the Technical Education and Skills Development Authority (TESDA) a certification that attests to their skill and competency. For instance, domestic helpers need to secure a National Certificate for Household Service Workers (NCHSW), while overseas performing artists must secure an Artist Accreditation Card (AAC) before they can apply for overseas employment.

Professional workers are required to submit proof of having completed requisite courses from the Commission on Higher Education (CHED). In instances where a license is required to practice such profession, such as for nurses and architects, the worker must show proof of having passed the required licensure examination coming from the Professional Regulatory Commission (PRC) (Sto. Tomas, 2008). In accordance with the "1978 Standards for Training, Certification and Watchkeeping Convention", seafarers are required to hold a valid national certificate for the specific maritime position prior to their employment.

Prior to their deployment, workers bound for abroad are required to attend pre-employment and pre-departure orientation seminars, which will brief them on country-specific labour and cultural practices, their rights and obligations under their employment contracts, and how to cope with their overseas situation (Sto. Tomas, 2005).

Direct hiring of workers for overseas employment is prohibited by POEA, unless otherwise allowed by the Secretary of the DOLE or by pertinent issuances. Name hires, or those workers who have found employment without assistance from POEA or from private recruitment agencies, and direct hires, when allowed, are required to be registered with POEA, subject to similar procedures as those workers hired through local recruitment agencies, and likewise subject to the approval of POEA.

*Destination Countries.* A recent addition to limit entry is the requirement of certification by the DFA foreign service that the country has safeguards to protect the rights of the Filipino migrant workers. This is mandated in RA10022. The criteria for the certification include: (1) if the receiving country has existing labor and social laws protecting the rights of migrant workers; (2) if the receiving country is a signatory to and/or ratifier of multilateral conventions, declarations or resolutions relating to the protection of migrant workers; (3) if the country has concluded a bilateral agreement or arrangement on the protection of the rights of overseas Filipino workers and; (4) if the receiving country is taking positive and concrete measures to implement the first three criteria. By law the deadline for this was supposed to be 11 November 2010 for those with embassies and 11 December 2010 for those without embassies. The effectivity was, however, suspended for 60 days by Vice-President Binay, who also acts the presidential adviser on OFW concerns. As of May 2011, only 76 countries had been certified out of the 192 countries we are deploying workers to. It is noteworthy that two of the top destination Gulf Cooperation Countries (GCC) are not yet certified – KSA and UAE. There are those of the opinion that this provision may be difficult to implement because of its implications on diplomatic relations with concerned destination countries.

#### **4.2.2 Regulation on fees and employment standards**

POEA prescribes country-specific and skill-specific employment contracts in the hiring of Filipino workers. Although many of the provisions are negotiated with host countries in the bilateral agreement or arrangement concluded with them, POEA adopts minimum provisions of employment contracts, especially for land-based workers (Table 3). Provisions in the standard employment contract of seafarers are in accordance with international maritime practices and standards.

Except for Household Service Workers (HSW), POEA does not prescribe a strict minimum wage for Filipino overseas workers. Instead, POEA establishes benchmarks to determine the minimum wage, which should not be lower than any of the following, whichever is highest: minimum wage in the host country; minimum wage-standards set in the bilateral agreement or arrangement; or minimum wage in the Philippines.

Other minimum provisions in employment contracts for land-based workers include free transportation to and from the worksite, and free food and accommodation, or offsetting benefits, for workers. The POEA likewise guarantees just/authorized causes of termination of workers through the use of standard employment contracts.

Another new provision in the new law is the mandatory compulsory insurance for OFWs. This is on top of the OWWA's coverage. The guidelines<sup>7</sup> have been released in October 2010 and will be effective 15 days later. This is to be paid for by the recruitment agencies. The report as of 30 December 2010 shows a considerable decline in processed applications a week after the regulation was in effect.

Although earlier rules and regulations by POEA prescribe more minimum provisions for inclusion in standard employment contracts, standard employment contracts for workers under specific categories of workers include the same provisions. Seafarers, for instance, are covered by their employer for work-related sickness or injuries, and are entitled to sickness allowance equivalent to his/her basic wage. Household service workers (HSWs) deployed in the United Arab Emirates (UAE) are likewise provided with health care treatment by their employers. In addition, HSWs are expected to be helped by their employer in remitting part or whole of their salary to their beneficiaries.

POEA allows parties in the employment contract to stipulate additional provisions, provided that the total employment package will be more beneficial to the worker and that it is not contrary to existing laws, public policy, or morals.

**Table 6. Minimum Provisions in Standard Employment Contracts Prescribed by POEA**

Provision	1985	1991	2002 <i>Land-based Workers</i>
Guaranteed wages and overtime pay, as necessary	X	X	X
Free transportation to and from worksite	X	X	X
Free emergency medical and dental treatment/facilities	X	X	
Just/authorized causes for termination	X	X	X
Workmen's compensation and war hazard protection	X	X	***
Repatriation of workers' remains/properties in cases of death to the point of hire	X	X	*
(Assistance in the) Remittance of worker's salaries, allowances or allotments to his/her beneficiaries	X	X	
Adequate board and lodging facilities	X	X**	X**
Grievance machinery for workers	X	***	***

*Source: POEA Rules and Regulations governing Overseas Employment, various years*

*\* Included in the verified undertaking of recruitment and manning agencies*

*\*\* Free; Or compensatory benefits*

*\*\*\* Guaranteed by POEA through other mechanisms set by the administration even if not specified in the employment contract*

<sup>7</sup> MC No 9 series of 2010.

### 4.2.3 Monitoring and Redress

POEA provides mechanisms to ensure that actors in the international employment program adhere to the set rules and regulations by the administration. For local participants, POEA has separate branches within its organizational structure that documents, screens and monitors participation of private agencies and of workers. POEA employs the assistance of POLOs overseas to monitor compliance of foreign principals, among others.

POEA has original and exclusive jurisdiction over all cases, excluding money claims<sup>8</sup>, arising out of violations of contractual obligations, as well as of recruitment rules and similar cases. Cases may be filed against any of the parties involved in the overseas employment of a worker, i.e. workers, foreign principals or employers, or local recruitment agency. Offenses are classified depending on the gravity of the offense, i.e. serious, less serious, light, and are meted with a schedule of penalties, ranging from suspension to permanent disqualification from the overseas employment program, depending on the number of times the offense has been committed.

Conciliation services are offered on a voluntary basis at Philippine embassies and consulates and at POEA to parties in a dispute who wish to settle the dispute amicably. Instead of an adjudicator deciding on a case, parties agree to resolve the dispute among themselves with the help of a conciliation officer/arbitrator. Cases that are not settled through conciliation are settled at the Adjudication Office of POEA.

*Local Private Recruitment and Manning Agencies.* POEA conducts inspections to monitor the compliance of local recruitment and manning agencies to the overseas employment rules and regulations. Before agencies are issued a license, POEA conducts inspection of the premises and facilities, as well as of the documents, of recruitment agencies to ensure conformity with the standards set by the administration. In addition to regular inspections, spot inspections are conducted when POEA receives a complaint or report of violation by agencies of existing rules and regulations. The POEA maintains a system of classification and ranking of agencies to inform the public of recruitment and manning agencies that are in good standing and those that are delinquent.

*Foreign Principals.* The government employs more than 200 labor attachés and welfare officers overseas that monitors the employment conditions of Filipino workers outside the country (Sto. Tomas, 2005). A system of reporting by foreign principals, especially those who employ workers in the low/semi-skilled category, is likewise established by POEA. Foreign principals, employers or projects that are complained to be in breach of contractual obligations may be suspended from hiring Filipino workers, and, upon final judgment in disciplinary action, may be excluded from the overseas employment program.

*Workers.* Documentation of overseas Filipino workers prior to migration is one of the key mechanisms through which POEA is able to perform various different functions at the same time. In line with its thrust of protecting the rights and promoting the welfare of Filipino temporary migrant workers,

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<sup>8</sup> Which is under the jurisdiction of the NLRC



the role of POEA in the deployment of Filipino workers abroad may be summarized into three (3) main functions. These functions include ensuring: (a) that workers possess the necessary skills and competencies, as well as physical, mental and psychological fitness, to perform their employment duties abroad; (b) that their rights and welfare are safeguarded at destination through various instruments; and (c) that legal remedies are available once problem arises.

During their documentation and registration at POEA, the worker shows proof of his (her) skills and competencies, good health, and employment at destination. Besides the POEA OFW Information Sheet, these documents include employment contract, passport and entry document(s), medical certificate, attendance to pre-departure orientation seminar, OWWA and PhilHealth proof of membership, and other job-specific and country-specific requirements. Upon submission of complete requirements and payment of necessary fees, POEA issues an Overseas Exit Clearance (OEC) to the worker. The OEC serves as a travel exit clearance in country exit points for departing OFWs. It likewise serves as proof exempting OFWs from payment of terminal fee at Philippines airport terminal counters, one of the privileges of OFWs under the law.

Documents required of workers by POEA serve specific purposes, namely:

1. *OFW Information Sheet*. This registration form provided by the POEA to OFWs summarizes the information about the OFW. Personal information, including demographic characteristics and legal dependents, and contract particulars are gathered through the OFW Information Sheet. All information provided are encoded into the POEA database, and cross-referenced with other documents provided by the worker. Information from OFWs is important and necessary inputs in formulating effective policies by the POEA.
2. *Employment contract*. This ensures that the worker has sure employment at destination even prior to migration. This presupposes that the employment contract contains minimum provisions required by POEA. Contract substitution at destination is subject to fines, ranging from suspension to permanent disqualification of foreign employer and local agency from future participation in the Philippine overseas employment program.
3. *Passport and entry document(s)*. Possession of valid entry document(s) ensures that the worker is allowed by the host country to enter as a foreign worker. Entry (exit) in any country port of entry (exit) is documented through the worker's passport.
4. *Medical certificate*. Workers must show proof that they are mentally, physically and psychologically fit to assume employment abroad. Physical and medical examinations are conducted only in Department of Health (DOH)-accredited facilities, and in accordance with the requirements of the foreign employer.
5. *Attendance at pre-departure orientation seminar (PDOS)*. PDOS is given for free by POEA, for government-to-government and direct-hire workers, and OWWA, for workers hired through country-specific programs, e.g. Canada and United Arab Emirates. Likewise, PDOS are provided to workers by accredited non-government organizations, which charge sending recruitment and manning agencies PHP100.00 (USD2.22) per attending worker to cover operational costs.
6. *OWWA and PhilHealth proof of membership*. Membership in the Overseas Workers Welfare Administration (OWWA) and the Philippine Health Insurance Corporation (PhilHealth), both required by law, allows the worker to benefit from the services provided by the two government agencies. OWWA provides medical/health care, disability and death benefits separate from that provided by PhilHealth. OWWA likewise provides education and training benefits, and social

services and welfare assistance to OFWs and their dependents, as well as workers assistance and on-site services to OFWs abroad. OWWA membership is valid for the duration of the employment contract up to a maximum of two (2) years. Philhealth coverage is valid for one (1) year. Philhealth reimburses medical costs equivalent to Level 3 hospital benefit rates of OFWs admitted in medical facilities abroad, provided that supporting documents be passed to Philhealth 180 days from discharge from hospital. Philhealth beneficiaries of OFWs may likewise claim Philhealth benefits in the Philippines. OWWA membership fee is USD25.00 (or PHP equivalent), while PhilHealth membership is PHP900.00 (USD19.95).

7. *Other job-specific and country-specific requirements.* Job-specific requirements include certification given by the Department of Education (DepEd), Technical Education and Skills Development Authority (TESDA), the Commission on Higher Education (CHED), the Maritime Industry Authority (MARINA), the Philippine Regulatory Commission (PRC), or other Philippine government certifying agency attesting to the skills and competencies of the worker. This ensures that the worker have the necessary skills needed to perform his (her) duties at work abroad. Country-specific requirements include other job-specific requirements or administrative procedures to be followed during registration.

## 5. A Review of Migration Laws<sup>9</sup>

The Philippines has passed over ten migration-related laws and signed 37 Bilateral Labor Agreements (BLAs) in the past four decades. Overseas employment program was officially recognized with the passage of the Labor Code of the Philippines in 1974. A few months back RA 10022 amending RA 8042 of the Migrant Workers and Overseas Filipinos Acts was signed into law. Table 7 provides a list of migration-related laws and statutes passed by the country. Bilateral Agreements (BLA) have also been entered into by the government and several countries (Table 8).

As the list indicates, migration-related laws and regulations range from provisions of the Philippine Constitution, laws passed by Congress, administrative issuances by executive departments, particularly, the Governing Board of the POEA and the Board of Trustees of the OWWA. The legal review pointed out some issues for concerns as follows:

The review shows that the Joint and Several Liability (JSL) rule, the banner component of the country's regulation, is not all encompassing. For instance, it will not be applicable to rehires that usually negotiate renewal of contract directly with their employers and no longer through an agency. In addition, the JSL does not apply also to Government Place Bureau (GPB) hires of the POEA since OFWs cannot sue the government. The Guarantee Trust Fund is supposed to cover the claims under the GPB hires. It has also been pointed out that the bond is a fixed amount and is not related to the volume of deployment. Thus, often victory in cases of money claims becomes paper victory because the bond is already exhausted. There is a rule that the bond should be replenished and maintained. However, this maybe insufficient if there are simultaneous claimants.

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<sup>9</sup> Draws heavily from Ambito and Banzon (2011) "Review of Philippine migration laws and regulations: Gains, gaps, prospects" a background paper for this report.

RA 10022 may have re-enacted an unconstitutional provision. In particular, it provides that the worker is entitled to the full reimbursement of his placement fee and the deductions made with interest at 12 percent per annum, plus his salaries for the unexpired portion of his employment contract for three (3) months for every year of the unexpired term, whichever is less<sup>10</sup>. The clause “or for three (3) months for every year of the unexpired term, whichever is less” was deemed unconstitutional by the Supreme Court in a case decided in 2008.<sup>11</sup>

RA10022 has encouraged the forging of Bilateral Labor Agreements (BLAs) with receiving country. The BLAs should specify the rights and obligations of the countries including grievance procedures, rules on setting claims and venue of action. Resorting to informal agreements such Memoranda of Understanding (MOU) which are not legally binding on countries should be avoided. In addition to the BLAs, Bilateral Social Security agreements to cover social security and equal entitlements to benefits granted to nationals of the host country and vice-versa should also be pursued.

**Table 7. Summary of Philippine Laws on Overseas Employment**

<b>Number</b>	<b>Full Title</b>	<b>Salient Features/ Remarks</b>
Presidential Decree (PD) No. 422  Year Signed: 1974	The 1974 Labor Code of the Philippines	This PD institutionalized the participation of the government in overseas employment. It created the Overseas Employment Development Board (OSDB) and the National Seamen Board (NSB). The two (2) Boards were mandated to undertake a systematic program for overseas employment - focusing on market development, recruitment and placement of Filipino workers.
Letter of Instruction No. 537 (1977)	The Welfare Fund for Overseas Workers (Welfare Fund).	The Welfare Fund was established to provide social and welfare services to Filipino overseas workers, to provide skills and career development services to Filipino overseas workers, to undertake studies and researches for enhancement of their social, economic and cultural well-being, and to develop, support and finance specific projects for the benefit of Filipino overseas workers.
PD 1412 (1978)	Further amending certain provisions of Book I, Presidential Decree No.442 otherwise known as the Labor Code of the Philippines.	Renewed the participation of the private sector in the recruitment activities.
Executive Order NO. 797 (1982)	Executive Order Creating the Philippine Overseas Employment Administration (POEA)	The POEA took over the functions of the OESDB and NSB. It was also given jurisdiction to take cognizance and resolve cases involving overseas contract workers.
EO 857 (1982)	Governing the Remittance to the Philippines of Foreign Exchange Earnings of Filipino Workers abroad and for other purposes.	EO 857B made mandatory the requirement for overseas workers to remit part of their earnings to their families in the Philippines and to ensure that these remittances passed through the official financial institutions.
1987 Philippine Constitution	The 1987 Constitution of the Philippines	Philippine labor policy was clearly defined in the 1987 Constitution. Article XIII states that “The State shall afford full

<sup>10</sup> Section 7.

<sup>11</sup> Antonio M. Serrano v. Gallant Maritime Service, Inc., et al. March 24, 2008

(replacing 1973 Constitution)		protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.”
Republic Act 7111 (1991)	Overseas Investment Fund Act	This law created the Overseas Workers’ Investment Fund Board to encourage remittance of earnings of Overseas Filipino Workers and to safeguard /oversee the participation of said workers’ remittances and savings in the Government’s debt reduction efforts and other productive undertakings. Incentives such as scholarship grants, housing program, credit assistance and other programs were also provided.
Republic Act 8042 (1995)	The Migrant Workers’ Act of 1995	The act was considered the first concrete measure and public commitment of the Philippine Government to protect the rights and promote the welfare of the Overseas Filipino Workers (OFWs).
Republic Act 9189 (2003)	Overseas Absentee Voting Act of 2003	This law paved the way for overseas Filipinos to participate in Philippine national elections. Thus, in May 2004 some overseas Filipinos exercised their right of suffrage.
Republic Act 9208 (2003)	Anti-Trafficking in Persons Act of 2003	This law was regarded as one of the most comprehensive and progressive anti-trafficking laws passed. This act adopted the UN definition of trafficking in person.
RA 9422	Strengthening the Regulatory Functions of the POEA (amending RA 8042)	It amended Section 23 (par.b.1) of RA 8042. Under the amendatory law, the POEA shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements.  It also repealed Section 29, 30 of the same law (RA 8042)
RA 9225 (2003)	Citizenship Retention and Re-acquisition Act of 2003 (Dual Citizenship Law)	By virtue of this law, natural-born Filipinos who became naturalized citizens of other countries are deemed not to have lost their Philippine citizenship. They can re-acquire their Filipino citizenship, while at the same time not losing their other citizenship. To date, more than 6,000 former Filipinos have reacquired their citizenship after the implementation of the law.
RA 10022	An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995. As Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes.	This law has introduced the following significant reforms: (1) mandating the government to monitor international conventions and ratify those that ensure protection of Filipino workers abroad as well as forge bilateral agreements with receiving countries. (2) members of the governing board of the POEA are now made accountable in the deployment of migrant workers. (3) state officials who facilitate the deployment of OFWs to countries that do not guarantee or follow international labor standards face dismissal from public service or disqualification from government appointments for five years

**Table 8. Bilateral Labor Agreements and International Instruments signed and ratified by the Philippine Government**

COUNTRY	TITLE / SUBJECT	DATE
JORDAN	Memorandum of Understanding on Labor Cooperation Between the Government of Hashemite Kingdom of Jordan and the Government of the Republic of the Philippines	May 27, 2010
BAHRAIN	Memorandum of Agreement Between the Republic of the Philippines and the Kingdom of Bahrain on Health Services Cooperation	April 24, 2007
CANADA		
Alberta	Memorandum of Agreement Between the Republic of the Philippines (DOLE) and The Ministry of Employment and Immigration of Alberta (E&I) Concerning Cooperation in Human Resource Deployment and Development	October 1, 2008
British Colombia	Memorandum of Understanding Between the Department of Labour and Employment of the Government of the Republic of the Philippines (DOLE) and The Ministry of Economic Development of the Government of British Columbia, Canada (ECDV) Concerning Co-Operation in Human Resource Deployment and Development	January 29, 2008
Manitoba	Memorandum of Understanding Between The Department of Labour and Employment of the Government of the Republic of the Philippines (DOLE) and The Department of Labour and Immigration of the Government of Manitoba, Canada(LIM) Concerning: Co-Operation in Human Resource and Deployment	February 8, 2008
Saskatchewan	Memorandum of Understanding Between the Republic of the Philippines (DOLE) and Her Majesty The Queen in the Right of the Province of Saskatchewan as represented by the Minister Responsible for Immigration and the Minister of Advanced Education and Employment (AEE) Concerning Cooperation in the Fields of Labour, Employment and Human Resource Development	December 18, 2006
CNMI	Memorandum of Understanding Between the Republic of the Philippines (DOLE) and The Commonwealth of the Northern Mariana Islands (CNMI)	September 14, 1994
	Memorandum of Understanding Between the Republic of the Philippines (DOLE) and The Commonwealth of the Northern Mariana Islands (CNMI)	December 18, 2000
INDONESIA	Memorandum of Understanding Between the Republic of the Philippines (DOLE ) and the Department of Manpower and Transmigration of the Republic of Indonesia Concerning Migrant Workers	January 18, 2003
IRAQ	Memorandum of Agreement Relating to Mobilization of Manpower Between the Republic of the Philippines and the Republic of Iraq	November 25, 1982
JAPAN	Memorandum of Understanding Between the Philippine Overseas Employment Administration and the Japan International Cooperation of Welfare Services on the Deployment and Acceptance of Filipino Candidates (JPEPA)	January 12, 2009
JORDAN	Memorandum of Understanding Between the Minister of Labor of the Republic of the Philippines and the Minister of Labor of the Hashemite Kingdom of Jordan	December 5, 1981
	Agreement on Manpower Between the Government of the Republic of the Philippines and the Government of the Hashemite Kingdom of Jordan	December 3, 1988
KOREA	Memorandum of Understanding Between the Department of Labor of the Philippines and the Ministry of Labor of the Republic of Korea on the Sending of Workers to the Republic of Korea	April 23, 2004
KOREA	Memorandum of Agreement Between the Republic of the Philippines and the Republic of Korea	December 15, 2005
KOREA	Memorandum of Understanding Between the Department of Labor and Employment of the Philippines and the Ministry of Labor of the Republic of Korea	October 20, 2006

	on the Sending and Receiving of Workers to the Republic of Korea under the Employment Permit System	
	Memorandum of Understanding between the Ministry of Labor, Republic of Korea and the Department of Labor and Employment, Republic of the Philippines on Cooperation in the Field of Labor and Manpower Development	May 30, 2009
	Memorandum of Understanding between the Department of Labor and Employment, Republic of the Philippines and the Ministry of Labor, Republic of Korea on the Sending and Receiving of Workers under the Employment Permit System of Korea	May 30, 2009
KUWAIT	Memorandum of Understanding on Labor and Manpower Development Between the Government of the Republic of the Philippines and the Government of the State of Kuwait	September 14, 1997
	Memorandum of Understanding Between the Department of Foreign Affairs of the Republic of the Philippines and the Ministry of Foreign Affairs of the State of Kuwait on the Establishment of Bilateral Consultations	September 14, 1997
LAO PDR	Memorandum of Understanding on Technical Cooperation on Labor and Employment Between the Government of the Republic of the Philippines and the Government of the Lao People's Democratic Republic	July 27, 2005
LIBYA	Agenda for Cooperation in the Field of Labor, Employment and Manpower Development Between the Philippines and Libya	October 18, 1979
	Memorandum of Understanding Between the Philippines and Libya (with Arabic Version)	July 17, 2006
NEW ZEALAND	Memorandum of Agreement on Labour Cooperation Between the Government of the Republic of the Philippines and the Government of New Zealand	November 4, 2008
NORWAY	Agreement Between POEA and the Directorate of Labour Norway on Transnational Co-Operation for Recruiting Professionals from the Health Sector to Positions in Norway	June 26, 2001
PNG	Memorandum of Understanding Between the Philippines and Papua New Guinea	March 14, 1979
QATAR	Agreement Between the Government of the Republic of the Philippines and the Government of the State of Qatar Concerning Filipino Manpower Employment in the State of Qatar	May 10, 1997
	Additional Protocol to the Agreement between the Government of the Republic of the Philippines and the Government of the State of Qatar Concerning Filipino Manpower Employment in the State of Qatar signed on 10 March 1997	October 18, 2008
SPAIN	Memorandum of Understanding on Cooperation for the Management of the Migration Flows Between the Ministry of Labor and Social Affairs of the Kingdom of Spain and the Ministry of Labor and Employment of the Republic of the Philippines (English Version)	June 29, 2006
	Memorandum of Understanding on Cooperation for the Management of the Migration Flows Between the Ministry of Labor and Social Affairs of the Kingdom of Spain and the Ministry of Labor and Employment of the Republic of the Philippines (Spanish Version)	
SWITZERLAND	Agreement Between the Government of the Republic of the Philippines and the Swiss Federal Council on Exchange of Professional and Technical Trainees	July 2, 2002
TAIWAN	Memorandum of Understanding between the Manila Economic and Cultural Office (MECO) in Taipei and the Taipei Economic and Cultural Office (TECO) in the Philippines regarding the Special Hiring Workers	September 3, 1999
	Memorandum of Understanding on Special Hiring Program for Taiwan Between the Manila Economic and Cultural Office in Taipei (MECO) and the Taipei Economic and Cultural Office (TECO) in the Philippines	January 12, 2001
	Memorandum of Understanding on Special Hiring Program for Taiwan Between	March 20, 2003

	the Manila Economic and Cultural Office (MECO) in Taipei and the Taipei Economic and Cultural Office (TECO) in the Philippines	
UAE	Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of the United Arab Emirates in the Field of Manpower	April 9, 2007
	MoU between RP and UAE in the Field of Manpower (Arabic)	
UNITED KINGDOM	Memorandum of Understanding between the Government of the Philippines and the Government of the Kingdom of Great Britain and Northern Ireland on Healthcare Cooperation	July 30, 2003
	Recruitment Agreement Between the Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern Ireland	January 8, 2002
UNITED STATES OF AMERICA	Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Relating to the Recruitment and Employment of Philippines Citizens by US Military Forces and Contractors of Military and Civilian Agencies of the US Government in Certain Areas of the Pacific and the Southeast Asia	December 28, 1968

## 6. Impact of Regulation

As mentioned earlier, RIA ultimately looks at the cost and benefit of introducing a regulation. This, however, requires quantification of costs and benefits. Since there is no data that will enable cost benefit analysis, we utilized some useful indications of the general impacts and had a more in-depth analysis of a specific sector – the household service workers. These are discussed in this section.

### 6.1 General

One important indicator of the impact of the regulations is the number of disputes recorded and how fast our system is able to dispose of cases involving OFWs. Table 9 shows the ratio of number of cases to deployment. One observations that can be made is that while illegal recruitment and adjudication cases appears to be stable at a little more than one and a little over ten cases per thousand deployed, respectively, the welfare cases shoot up from less than ten cases to as many as 100 cases per thousand deployed after 2005. This coincides with the transfer of the welfare cases from POEA to OWWA and appears to have no special significance besides being a break in the series.<sup>12</sup>

Table 10 show the cases handled and disposed by the different agencies concerned. The table shows that the system is performing respectably in welfare and adjudication cases. This is not true, however, in case of for illegal recruitment which is showing mounting pending cases as disposition rate rapidly declined.<sup>13</sup> The disposition rates for welfare and adjudication cases are well above 50% but for illegal recruitment this has gone down to less than 20% in 2010. Of course, these do not consider the relative difficulty in disposing the different types of cases.

<sup>12</sup> In 2005, jurisdiction over welfare cases was transferred to OWWA from POEA. Adjudication cases involving money-claims are under the sole jurisdiction of the National Labor Relations Commission (NLRC). All other cases are handled and processed by POEA.

<sup>13</sup> Ambito and Banzon (2011) mentioned 20,000 unserved warrants of arrests for over 200 large-scale illegal recruiters by the inter-agency Task Force Against Illegal Recruitment (TFAIR).

There are many reasons for unresolved cases. An obvious one is that there may not be enough personnel to handle the cases. Comparing the number of cases handled and the personnel handling it would be informative. Table 11 shows the POEA services and corresponding staff support for 2010.<sup>14</sup> The table shows that illegal recruitment branch is not the smallest one but its processing rate<sup>15</sup> per person is the lowest among the different POEA branches. This can be taken to indicate the bureaucracy is lagging behind the regulations that are in place.

Table 9. Cases per thousand deployed workers, 2000-2009.

	2000	2002	2004	2006	2008	2009
<b>Deployed ('000)</b>	842	892	934	1,063	1,236	1,423
<b>Cases per thousand deployed</b>						
<b>All Cases</b>						
Illegal Recruitment	0.7	1.1	1.6	1.4	1.4	1.1
Welfare	5.6	6.0	6.4	105.2	77.0	62.3
Adjudication	10.4	15.4	13.9	12.4	10.2	10.8
- With money claim	5.6	6.2	6.3	6.5	4.8	5.0
- Without money claim	4.8	9.2	7.6	5.8	5.3	5.7
<b>New Cases</b>						
Illegal Recruitment	0.5	0.8	0.9	0.5	0.3	0.2
Welfare	3.4	3.1	3.6	98.7	69.2	54.4
Adjudication	6.6	8.5	8.3	8.6	7.3	7.8
- With money claim	4.0	4.3	4.4	5.0	3.7	4.2
- Without money claim	2.6	4.2	3.9	3.6	3.6	3.6

Source: POEA

Table 10. Status Cases Involving OFWs, 2000-2008

	2000	2002	2004	2006	2008	2010
<b>Illegal recruitment</b>						
Total Cases Handled	573	956	1,462	1,504	1,687	1,648
Pending Cases (Beginning)	137	205	594	992	1,285	1,427
Cases Received	436	751	868	512	402	221
Total Cases Acted Upon/Disposed	446	610	650	350	329	283
<b>Disposition Rate (%)</b>	<b>78</b>	<b>64</b>	<b>44</b>	<b>23</b>	<b>20</b>	<b>17</b>
<b>Welfare Cases</b>						
Total Cases Handled	4,733	5,391	5,939	111,738	95,127	

<sup>14</sup> Until the paper was written, we have not received from POEA the data requested on staff support across the years which could have been used to compare performance across the years.

<sup>15</sup> Processing for illegal recruitment only means cases handled and not necessarily disposed of.



Pending Cases (Beginning)	1,854	2,603	2,603	6,889	9,563
Cases Received	2,879	2,788	3,336	104,849	85,564
Total Cases Acted Upon/Disposed	2,130	2,788	5,939	95,683	80,607
<b>Disposition Rate (%)</b>	<b>45</b>	<b>52</b>	<b>100</b>	<b>86</b>	<b>85</b>
<b>Ajudication cases</b>					
<i>NLRC</i>					
Total Cases Handled	4,707	5,569	5,870	6,934	5,991
Pending Cases (Beginning)	1,358	1,696	1,716	1,665	1,356
Cases Received	3,349	3,873	4,154	5,269	4,635
Total Cases Acted Upon/Disposed	3,283	3,935	4,130	5,138	4,710
<b>Disposition Rate (%)</b>	<b>70</b>	<b>71</b>	<b>70</b>	<b>74</b>	<b>79</b>
<i>POEA</i>					
Total Cases Handled	4,064	8,187	7,141	6,215	6,586
Pending Cases (Beginning)	1,836	4,465	3,514	2,358	2,149
Cases Received	2,228	3,722	3,627	3,857	4,437
Total Cases Acted Upon/Disposed	2,977	4,673	3,996	4,621	3,554
<b>Disposition Rate (%)</b>	<b>73</b>	<b>57</b>	<b>56</b>	<b>74</b>	<b>54</b>

Source: 2006-2008 Welfare Cases figures from OWWA Policy and Programs Development Office (2009); all others from BLES (2010)

Table 10. POEA Services and Staff Support, 2010

Services	POEA Processing Unit	Processed	Personnel	Processed / Man-day
<b>Contract Processing</b>				
Land-based Workers		1,205,734		
New Hires		424,977		
GPB Hire	Government Placement Branch	6,576	24	1.04
Private Agency Hire	Land-based Center (Agency-Hires Group)	398,452	37	40.79
Name Hire	Name-Hire Unit	19,949	11	6.87
Rehires	Balik-Manggagawa Division	780,757	17	173.97
Sea-based Workers	Sea-based Center (Agency-Hires Group)	438,705	31	53.61
<b>Illegal Recruitment Cases</b>				
Illegal Recruitment Cases	Anti-Illegal Recruitment Branch	1,648	28	0.22
Adjudication Cases	Adjudication Branch	8,173	13	2.38

## 6.2 The Case of Domestic Workers<sup>16</sup>

The focus on domestic workers is driven by three motivations: (a) it is the skill with the highest proportion of new hires in recent years; (b) it is considered as one of the most vulnerable group of

<sup>16</sup> Draws heavily from Battistella and Asis (2011)

migrant workers<sup>17</sup>; and (c) the POEA<sup>18</sup> also considers it the group that can indicate the efficacy of migration regulations.

A series of decisions by the POEA Governing Board in 2006<sup>19</sup> pertaining to household service workers (HSW) became known as the HSW Reform Package. The provisions include setting the minimum age<sup>20</sup> to 23, requiring departing HSW to secure a National Certificate for Household Workers from the TESDA, a country-specific Language and Culture Certificate of Competence issued by OWWA, waiving the payment of placement fees and requiring a minimum salary of US\$400. These reforms were thought to be a deliberate effort to professionalize domestic work and minimize vulnerabilities of HSWs. In some way, these stringent measures can be considered a compromise between a ban, which will not work anyway, and an unregulated flow of HSWs. Ostensibly the reform package was to improve protection of HSW but some claim that the real agenda was really to discourage deployment of this type of workers.

It was pointed out that the flow of house service workers was increasing until the introduction of the reform package in 2006. The flow was found to decline in 2007 and 2008<sup>21</sup> presumably as a result of the stringent regulations in the reform package but has rebounded in 2009.

To determine the impact to the reform packaged on the HSWs, a series of primary data gathering consisting of focus group discussion, key informant interview and a mini-survey was conducted with a selected set of respondents that include HSWs, recruitment agencies, government officers and NGO both in the country and in Singapore.

On the minimum salary of USD400, the respondents in Singapore says this was not honored and domestic workers even knew before leaving the country that they will not get the minimum salary and that it was acceptable to them. There maybe also softening of the official stand on minimum salary for HSWs. It is noteworthy that the POEA Governing Board<sup>22</sup> allowed the implementation of MOU between DOLE-ARMM and a group of recruiters in Malaysia that set the minimum wage at USD300, USD100 lower than the minimum wage in the reform package.

The reaction of the recruitment industry to the reform package is of two types. One is to reprocess the domestic workers as some other skills (e.g. cleaners) to circumvent the stringent requirements for the deployment of the HSWs. The other is to lobby for a ladderized salary system where totally unskilled workers are paid USD200 and the high skilled at USD400. Note that the first method constitutes illegal recruitment. The second one, however, is an imaginative way of complying and/or circumventing the regulation on minimum salary. It is interesting to note that the recruitment industry, contrary to many,

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<sup>17</sup> It has been argued that while the proportion of home workers is not larger than the 20 percent of the flow of migrant workers, it contributes 80 percent of the migrant problems.

<sup>18</sup> In our consultations with the POEA officials during the design of this study, they have pointed this out a good indicator of the efficacy of the regulation protecting workers.

<sup>19</sup> POEA Memorandum Circulars 10, 11, 12 and 14 series of 2006.

<sup>20</sup> This has been changed several times. It was 25 years in 1994, 21 years in 1998, 18 years in 2001 to 25 years in 2006 and finally 23 years old in 2007.

<sup>21</sup> Although the decline may have been artificial as it has been pointed out that there may be reprocessing of workers to work around the requirements for domestic workers.

<sup>22</sup> Resolution No 5 series 2010.

does not find the deployment of HSWs problematic and claims that problems only happen when the deployment is done illegally.

It is noted that rather than discourage deployment of foreign HSWs the higher minimum wage may encourage more workers to apply as HSW as some may find it remunerative.

No placement fee policy is another feature of the regulations.

The interviews with household service workers revealed the following:

*At pre-departure.* All migrant workers are required to attend pre-departure seminars (PDOS) which lasts for a day. For HSW, however, the reform package requires them to attend a Comprehensive Pre-Departure Orientation Program (CPDEP) which in addition to PDOS includes Language and Culture Training and Stress Management course. This is administered by the OWWA together with accredited NGOs. The program lasts from three to six days depending on the country of destination largely determined by the language and culture aspect of the program. This represents additional cost which has never been assessed if it has been beneficial to HSWs. For one, as explained below, the HSW generally leaves the terms of the contract to the employer which goes to say that the PDOS has not educated them enough to negotiate for the terms of employment.

*During application.* Complying with the placement fee is considered the most difficult to comply. Most of the respondents (66%) say they took a loan to pay for the placement fee.

A considerable number (17 out 200) claimed they experience illegal recruitment ranging from contract substitution, not being able to leave, paying money without being able to work abroad, leaving as tourists, and dealing with an unlicensed recruitment agency.

This study and an earlier one show it is difficult to establish the cost of applying for a job abroad.

There appears to be a low percentage of the respondents who claimed satisfaction with their experience in dealing with the various agencies while completing their requirements. This indicates there is a need for improvements the manner of delivering these services to migrant workers.

*On contract-related matters.* About 50% of the respondents said that their agency explained their contract to them and the other half said no explanation was provided. Almost half (47%) are paid lower than USD400, 13% around the minimum level (USD400) and 37% reported a higher amount. Again nearly half (41%) had no idea about their working hours; 23% mentioned 8 hours, 17% more than 8 hours, 17% not definite. Only a third (36%) said they can use a cellphone, the rest indicated that they either cannot keep a cellphone or did not know whether they can keep one. Only 28% said they can keep their passport, the rest indicated that they either cannot or they did not know whether they can keep their passport.

It was found that workers leave considerable discretion to their employers to define the terms of their contract. Considering that they had completed PDOS which is supposed to explain to them that they

have the right to negotiate the terms of their contract, it appears that this message did not sink in their consciousness.

The no placement fee regulation appears not to be honored. About half of the respondents (49%) admitted that they will have salary deductions and 46% claimed they had no salary deductions and the rest did not know if they had salary deductions. While those who claimed they had no salary deductions may mean that there is really no salary deduction or there is also the possibility that they have paid their placement fee in full before being deployed. It should be noted that, as mentioned earlier, most take a loan to pay placement fee.

*On knowledge about the 2006 HSW reforms.* Knowledge about the regulations on placement fee, minimum salary, and minimum age is low. Only 13% said there is no placement fee; 51% specified an amount and 36% did not know that there is a government policy on the matter. Knowledge on the minimum salary is very low. Only 13% was able to approximate the correct minimum salary (USD400), 47% thought it was lower and the rest thought it was higher. Knowledge of the minimum age (23years) is relative high - 46% correctly specified the minimum age, 19% indicated a younger age, while 30% noted higher age.

*The role of the unique characteristics of a receiving country: Singapore*

As a member of ASEAN, short visits to will not need a visa.<sup>23</sup> This contributed to the easier travel to Singapore. The availability of budget airlines opened travel opportunities between Philippines and Singapore and also contributed to the departure of Filipino workers without going through POEA.

Unlike other destination countries, Singapore does not require a work permit from POEA to be able to work legally in the city-state. The primary requirement is a work permit from the Ministry of Manpower (MOM) of Singapore. Once a work permit from MOM is secured, the Filipino workers legal worker in the eyes of the Singapore government. However, from the point of view of the Philippine government, they are considered unauthorized/undocumented workers.

Work in Singapore can be arranged by their network of family and friends or employment agencies. Getting work through Singaporean employment agencies is expensive. The usual payment consists of 6-8 months of salary and no days off for the duration of the salary deduction period. Again Singaporean government is not inclined to intervene.

Singapore laissez faire and free market approach may not be helpful to migrant workers. Minimum wage is difficult to push considering that there is no minimum wage in the city-state and local Singaporeans are not covered by it. The government does also not want to intervene on the issue of day off preferring to leave the matter to the negotiation between employer and domestic worker. The Singapore's no

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<sup>23</sup> <sup>23</sup> It has been pointed out by one of the participants in a policy forum that Singapore may not be a good case for migrant workers, particularly HSWs, because of this no visa requirement for Filipino migrants for short visits.

pregnancy rule<sup>24</sup> has resulted in abortions among foreign domestic workers but government similarly does not want to change the policies of bi-annual and medical-cum-pregnancy check up.

It is noteworthy that the Singaporean method of protection of foreign workers is by prescribing rules on working conditions and job requirements and enforcing these strictly meting out punishment, including imprisonment, for erring employers. It has also used social pressure such naming and shaming erring employers in Singapore newspapers (Chia Siow Yue, 2011).

These highlight the role of receiving countries in protecting migrant workers. This likewise highlights the importance of the provision in RA 10022 which requires that DFA certify the presence of workers protection laws in receiving countries before deployment can be allowed. It is well-known that many of the Gulf Cooperation Countries (GCC), where majority of our short-term workers go, do not have the basic worker protection laws.

## **7. Summary and Policy Implications**

This paper reviews the migration management infrastructure using the regulatory impact analysis (RIA) framework. Specifically, it describes the migration management infrastructure from the mandates of migration institutions to the procedures put in place to fulfil the mandate. It also reviews the “letter” of the laws and regulations. Finally, it describes both the general impact of the regulations and its impact on a specific sector – the household services workers.

The review finds some indicative cracks in our international acclaimed migration management infrastructure that needs to be highlighted. The main ones are enumerated below.

The number of disputes per deployed worker is stable during the last decade in spite of changes in laws. The resolution on welfare and adjudication cases appears to be satisfactory. However, the mounting unresolved cases of illegal recruitment indicate, at least, lagging administrative capacity to handle cases. There may be a need to designate special courts to try and prosecute these cases.

The main provisions of the 2006 package of reforms to professionalize the household service workers sector are either ignored or not known to migrant workers concerned. What is even more telling is that even the minimum wage provision in the package was apparently violated officially by the POEA Governing Board by allowing to proceed another agreement covering similar workers which stipulates a lower minimum wage. The no placement fee provision is also ignored or hidden through salary deductions.

It has been pointed out that expanding PDOS for HSW to include Language and Culture and Stress Management training lengthened this pre-departure requirement from one day to as long as six days with obvious impact on cost of deployment for workers. As far as the author knows, there has never been an assessment whether this change is worth the additional costs. Perhaps future regulation

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<sup>24</sup> Pregnancy for domestic workers is ground for deportation

proposals should be subjected to Regulatory Impact Analysis so that costs and benefits can be understood and if data allows, quantified. The interviews of HSWs in Singapore have shown that they have allowed their employers a free hand to define the terms of their employment contract when PDOS is supposed to have oriented them of their rights to negotiate their contracts.

The re-enactment of a provision that has been rendered unconstitutional by the Supreme Court is an indication of lack of coordination between branches of government.

Finally, the characteristics of the destination countries, as illustrated by Singapore, determine much whether protection of migrant workers is achieved or not. The current requirement of DFA certification that the country has safeguards to protect the rights of Filipino migrants should be able address this special concern.

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