

Situations of Migrant Workers Stock-taking Discussion for the Recommendations on Policy for Long-term and Short-term Management Migrant Workers on 31 July 2020 at 10:30 a.m.

at the meeting room on the 7th Floor, Social Security Office Building, Bangkok Area 3

1.COVID-19 and Impact on Employment

1.1 Many migrant workers suffered from redundancy or lack income due to the temporary closure of the business. However, they are unable to access government financial aid. MWG expected the number of migrant workers, suffering from the aforementioned issue--yet are inaccessible to government direct assistance, to be more than actual numbers of more complaints we received. It is estimated that there are more than 700,000 migrants (SSO, DOE)

Clarification

1) Migrants who have been registered as SSO insurers cannot receive the unemployment benefits because of *force majeure*, owing to the following circumstances:

(1) The some [migrant] employers have not yet notified the suspension of employment to the Social Security Office. May we inform you that the SSO office has followed up with letters and phone calls, asking employers to notify the work suspension in the case they have not completed the process or there are mistakes to be revised. The employers have been cooperative so that Thai and migrant employees enjoy all the benefits under the law without discrimination.

(2) An employee cannot register for unemployment benefit because of the inter-provincial travel restriction during the lockdown. May we inform that the registration for unemployment benefits from *force majeure* can be done at the website of the Social Security Office at www.sso.go.th, wherever employees are. Otherwise, employees can apply in person at the Provincial Social Security Office or any branch nationwide.

(3) The unemployment benefit registration through the website is complex and does not have the interface in the language that migrant workers understand. Therefore, they have not been aware or informed to a level that they can register themselves. We would like to inform you that the Social Security Office has contacted and requested employers' human resources departments to register both Thai and Migrant employees through the website. We have received kind cooperation from human resource departments in this regard.

2) In the case that an employer did not register migrant workers to avoid to remit the social security contribution, therefore an employer intentionally breaks the law. In this case, an employee cannot claim the social security benefit for unemployment from *force majeure*. We would if the SSO detects an employer of a Thai or migrant worker intentionally committed this offence, we will take legal and civil and criminal actions to penalize an offending employer.

3) For irregular migrant workers who do not have the legal status and are severely affected redundancies, suspension of work at an employer's order, or the work has been suspended due to the government's order to prevent the spread of COVID-19, who cannot access remedies from the Thai government. May we inform that there is a policy to register and regularize migrant workers. If migrant workers do not have a passport and a work permit, or they are working with an employer that has been exempted from social security, they will not be covered under the 1990 Social Security Act.

4) Currently, there are a total number of 2,459,785 regular migrant workers in Thailand, divided into the following categories (as of June 2020):

(1) Skilled workers	155,193 (persons)
- General (Artisans, Experts)	110,671
- Investment Promotion (BOI)	44,522
(2) Life-long work permits	241
(3) Ethnic workers	42,555
(4) General workers	2,261,796
- Underwent nationality verification	3,029

- Applied for permission to work through the MOU	992,756
- Foreign workers permitted by cabinet resolutions, dated 20 August 2019	1,266,011
- Commuting daily border workers or seasonal workers	0

1.2 There are several migrant workers employed as subcontracted workers in industries, which is not permitted under Article 41 and 46 of the 2017 Foreign Workers Administration Royal Ordinance. The Department of Employment considers there should be a measure to inspect subcontracting employment and provide comprehensive assistance. Seriously towards subcontracted migrant workers (DOE).

Clarification

Employers bring migrant workers to work shall not be in the form of worker subcontractor wage subcontract business operators under the 2017 Royal Ordinance Concerning the Management of Foreign Workers and amendments. The Department of Employment has verified types/ qualifications of new employers who applied for hiring migrant workers, therefore the department ensured that the employers are not agencies hiring subcontracted workers or wage subcontracted workers during the application period.

If it is later found that an employer operates a worker subcontractor or the wage subcontract business, migrant workers who had arrived and worked in Thailand may have later switched to work with an employer who operates the said business. If the said offense is detected, the employer will be subject to a fine of not exceeding two hundred thousand Baht. However, additional measures may be imposed during the time the employer or migrant workers notify the change of an employer/ or notify of being employed or discharged from a job. However, if any agency or anyone witnessed such offense, they are advised to inform the Department of Employment for further inspection.

1.3 Ministry of Labor and the Department of Employment should consider ease of changing an employer for migrant workers in compliance with the Articles 51, 52 and 53 of the 2017

Foreign Workers Administration Royal Ordinance. It is urged that the redundancies or termination of employment from COVID-19 should be addressed by shifting to a more flexible approach to job termination and the period a migrant worker is allowed to seek new employment. Additionally, if employers that the business is temporarily suspended during this period but want to hire the migrant workers after the suspension of business, their workers should be able to work for other available employers while the former employers' businesses are not operating. The temporary job change will enable migrant workers and employers to have alternatives and reduce the numbers of workers depending on the unemployment benefit. (DOE)

1.4 The Ministry of Labor and the Department of Employment should consider a measure to assist workers whose contracts were not renewed to the full term due to COVID-19. This measure should reduce negative consequences from the COVID-19 on migrant workers who cannot be repatriated because of lockdown; laid-off migrant workers; migrant workers who could not declare the start of employment, under the condition on reporting to the authority on the start of employment; migrant workers who prepared to depart for MOU registration in a country of origin, but could not do so because of the closing of the border checkpoints. Migrant workers in the above-mentioned category, with existing documents, should be allowed to work with a new employer, until the countries of origin can restart the MOU process. This measure will benefit the restart of employment in the future. (DOE)

Clarification

Foreigners' Working Management Policy Commission (FWMP) In the meeting No. 3/2020, dated 20 July 2020, the meeting approved the migrant worker management guideline for the migrant workers from Cambodia, Laos PRD and, Myanmar after the COVID-19 pandemic in the next phase as follows:

1) The following aliens:

(1) Aliens having one of the three nationalities (Cambodian, Laotian, and Myanmar) who come to work under the MOU

on Employment Cooperation under the [employment] Agreement [for workers] which expires in four years;

(2) Aliens of either Cambodian, Laotian, and Myanmar nationality who have had the Nationality Verification and possess one of the identity documents such as Passport (PP), Travel Document (TD), Certificate of Identity (CI), which the work permit and the visa to stay in the Kingdom expired during 30 September 2019 to 30 June 2020, but did not follow the instruction in the Cabinet of Ministers Resolution, dated 20 August 2019; and

(3) Aliens of either Cambodian, Laotian, or Myanmar, who arrived to work MOU on Employment Cooperation and the Employment Agreement that works permits terminate as a result of the 2017 Foreign Workers Administration Royal Ordinance amendments, namely migrant workers who left a previous employer but could not be re-employed by a new employer within 30 days, etc.

The above-mentioned aliens shall apply for a work permit, undergo health examination/purchase the health insurance, apply for a visa, and apply for non-Thai national identification papers so that they will be allowed to work from 1 November 2020 to 31 March 2022.

2) Aliens using a border-pass under the cross-border employment agreement, either on a daily commuting basis or a seasonal basis, according to Article 64 of the 2017 Foreign Workers Administration Royal Ordinance and have completed their employment term and the border-pass visa/work permit have expired, shall apply for a work permit and undergo health examination/purchase the health insurance. The aliens shall be given a three-month visa for each application. The re-application can be extended until 31 March 2022.

The above-mentioned measures have been in the progress to propose to the Cabinet of Minister for approval.

1.5 We request the Department of Employment to consider adjusting conditions for using the Foreign Workers' Management Fund for the One-Stop Service Center and the provision of financial support and assistance to migrant workers affected by the redundancies or closure of businesses and other hardship from COVID-19. We urge you to consider the budget from other resources such as the interests on deposits from recruitment agencies that bring workers to work in the Kingdom to supplement the budget from the Fund. (DOE)

Clarification

The amendments established the Foreigners' Working Management Fund for assisting foreigners who have an entry for working under this Royal Ordinance and who suffer from violation of the rights under the labor law; Repatriation of foreign workers; Assisting and subsidising State agencies or non-governmental organisations which have proposed projects or work plans in connection with working management, welfare provision, education, public health and labor protection for workers, etc.

However, the use of the Fund shall be following the rules, procedures and conditions prescribed by the Fund Committee.

The agencies are preparing to launch the One-Stop Service Center for Migrant Workers, the Notification of the Foreign Workers' Management Fund Committee for reimbursement of Expenditures and Financial Assistance for Foreign Workers Suffering Problems while Working in Thailand. The subsidies may include food, accommodation, or transportation costs, among others.

2. Labor Protection

We request the Ministry of Labor and the Department of Labor Protection and Welfare improve the grievance handling system by enabling migrant workers to file online complaints. We urge the agencies to work with civil society organization for filing labor right abuse complaints on behalf of migrant workers through the Department of Labor Protection and Welfare's online system. We recommend that civil society organizations should be able to register and receive assigned username to file a complaint on behalf of migrant workers and civil society organizations continue coordination with the Office of Labor Protection and Welfare in the respective area to follow up.

Clarification

The Department of Labor Protection and Welfare has the mission to supervise, monitor, and promote employers and employees to comply with the labor protection law and other relevant laws. It has the mandate to protect every group of employees, including but not limited to migrant

workers, who are entitled to benefits under the laws and the human rights principle on equal treatment and non-discrimination. The Department of Labor Protection and Welfare prioritize workers' basic rights protection and will collaborate with civil society organizations and other stakeholders both the public, private and civil society sectors.

If an employer violates or fails to comply with any kind of the right with financial liability, the 1998 Labor Protection Act 2541 and the amendments such as wages, overtime pays, holiday pays, compensations, insurances, or other forms of monetary liabilities, employees may request the competent officer to implement and to demand such financial liabilities if they wish by virtue of the 1998 Labor Protection Act and the amendments. Employees can **submit a complaint to the labor inspectors** in the locality where they work or where an employer is domiciled, using the KorRor.7 form available in Thai or English. If petitioners cannot submit a complaint in person, they can do so **electronically at http://s90.labour.go.th/e_request/login.php**

The current electronic grievance system is a pilot project to prepare for information systems and an electronic service channel through the Department of Welfare and Labor Protection's information technology system. In the 2020 fiscal year, the Department of Labor Protection and Welfare received the budget the e-Service system development, including the e-filing for employees to demand the financial compensations under the 1998 Labor Protection Act. The system will be completed and launch in October 2020. Anyone who wishes to use the Department's e-Service system must register a username and login with a username/password. A user may file more than one complaint.

Moreover, the Department of Labor Protection and Welfare has several activities **promoting migrant workers' access to rights. The Department organizes training and education activities on** rights and responsibilities under the Thai labor protection law, which migrant workers should be aware of. The basic knowledge to raise awareness for migrant workers on the labor protection law includes the following topics: regular working hours, breaks, holidays, leaves, overtime, holiday pays, wages, termination and compensation, etc. **The Department prepares education and public relations materials**, namely leaflets on the rights and duties of employers and employees to inform employers and employees and to prevent labor trafficking **in four languages (Thai, Burmese, Cambodia and Laotian)**. The Department hopes that when migrant workers understand

the legal protections and benefits under the labor law they will not be abused and enjoy their labor rights. **The Department also hires communication coordinator (interpreters)** to help with counselling on the 1998 Labor Protection Act as well as the activities related to and the implementation of the benefits of migrant workers from Myanmar, Laos PRD, or Cambodia use our services. The Department also conducts other activities relevant to its mandate.

The Department of Labor Protection and Welfare works with civil society and private sector closely. The details are as follows:

1) Technical cooperation with the International Labor Organization (ILO) and the European Union (EU)

The Department co-implementing programs against unacceptable forms of work in the fishing and seafood industries; **2) The Department establish a service center for migrant workers in collaboration with the NGOs**, namely the Fish Market Organization of Thailand, the Family Planning Association of Thailand, Stella Maris Songkla, and Charoen Pokphand Public Company Limited have signed a Memorandum of Understanding to establish **“Welfare and Good Governance Center for Songkhla Fishery Workers.”** the Center improves the quality of life of regular fishery workers by educating workers on the rights, welfares, benefits, counselling, and grievance receiving. Thus, the project enables workers to thrive on the job with a decent basic living condition under the humanitarian principles. The project operates for five years (2016 - 2020).

3) The Department works with non-governmental organizations (NGOs) on child migrant workers, namely: Raks Thai Foundation and the Labor Rights Promotion Network Foundation (LPN) to inform and assist workers. Therefore, the labor protection can be expanded to migrant workers and hard-to-reach employees in the labor protection mandate.

4) The Department and the International Labor Organization (ILO) organized training activities on marine fishery labor inspection under the **Ship to Shore Right Program**. The Program hosted courses for labor inspectors, workshops on labor inspection and supervision of fishery and seafood businesses, training activities for employees, training courses for high-level labor inspectors, aiming at preventing and reducing the use of forced labor, child labor, and unacceptable forms of work, and eliminate labor exploitation.

3. Access to Remedies under the Social Security Fund

3.1 We found that migrant workers had barriers to accessing social security fund remedies because of their employers failed register migrant workers to the social security offices or the employers deducted the social security contributions from workers but did not remit the contribution to the social security offices. Moreover, employers have not been cooperative to meet the conditions required when workers want to demand social security compensation. (SSO)

Clarification

Migrant workers may register for the benefits if they are eligible insurers under the social security system, if they are: 1) Irregular migrants with Myanmar, Laotian and Cambodian nationalities who are temporarily permitted to work in Thailand with a thirteen-digits identification document, with 00 prefixes in non-Thai citizen identity cards (the Pink Cards) issued by the Department of Provincial Administration; and 2) All regular migrant workers regardless of nationalities with identification documents with a thirteen-digit identification number with 601 prefixes in migrant social security insurers' identity cards (the Blue Cards) issued by the Social Security Office. The insured migrant workers can register for the benefits through the Social Security Office website at www.sso.go.th within 2 years from the date they are eligible to receive the social security benefits.

Clarification

The employers must register migrant workers as insurers, regardless of whether the migrant workers may or may not have a work permit. Employees receive social security benefits similar to the regular insured employees in all respects. In the case employers failed to register workers, the employers shall be liable to punishment under the 1998 Social Security Act.

Migrant workers arriving in the Kingdom must obtain a work permit to be able to work legally. Employers hiring migrant workers are obliged to register migrant workers as insurers under the 1994 Workmen's Compensation Act, and amendments and the 1990 Social Security Act and the amendments. The Social Security Office Notification on the registration of Foreign Workers Social Security Registration in 2017, requires migrant workers to have the following documents for registration: 1) A work permit; 2) A passport or other forms of identification papers in case a worker does not have a passport. Migrant workers who have a work permit number in the pink cards and Passport Number

or Temporary Passport Number, or Certificate of Identity Number can register as insurers. They receive all social security benefits as Thai citizen insurers.

The Social Security Office will identify ways to assist workers if, within 15 months before unemployment, migrant workers remit the social security contributions for less than six months.

3.2 We request a consultation is requested for the Social Security Fund ambiguity. For example, an employer register a migrant worker in the social security system, but the worker and the employer have not paid their contributions for six months, is it possible that migrant worker, who is forced to stop working temporarily or is redundant, may use the unemployment benefit. Also, the Social Security Office's online system does not support migrant workers to apply for benefit online because the website is in Thai. (SSO)

The 1990 Social Security Act and the amendment on Article 78 stipulate that employees who are insured are eligible to the unemployment benefit when the contributions have been remitted for at least six months within fifteen months before the unemployment. For that reason, the insurers who have not met the above-mentioned requirement do not meet the criteria. Therefore, they are not eligible for the unemployment benefit. However, the above rules apply equally to Thai insurers and non-Thai insurers.

Clarification

The Social Security Office works with government agencies, civil society organizations and other stakeholders involved to exchange information, analyze the issues, and use a collective and unified approach since the start of the COVID-19 pandemic. The Social Security Office is pleased to collaborate with other sectors for the development of the social security system to meet the needs of the people in the COVID-19 crisis. The Social Security Office provides social protection for affected insurers as a result of the COVID-19 equally, without discrimination, regardless of the status of being Thai or migrant workers.

3.3 We urge the Social Security Office promote the integrative collaboration between civil society organizations and the Social Security Office in the survey of affected workers to determine measures for migrant workers and their families access to equality and equity. (SSO)

4. Management of Migrant Workers during the COVID

4.1 We urge the Ministry of Labor to consider organizing a forum to develop a measure for migrant workers employed in the recovery period. The measure should retain regular workers in the regular system, bring semi-regular or irregular migrant workers to the regularization, and bring migrant workers to work under the COVID-19. We consider the policy and measure that will deliver effective and durable solutions should be made from collective opinions from relevant sectors, including workers, employers, agencies bringing migrant workers to Thailand, the academic sectors, civil society organizations and government agencies. (DOE)

4.2 We urge the Ministry of Labor to consider establishing mechanisms for collaboration among various sectors.

The collaboration can be done in the forms of a collaborative working group for the management of migrant workers during the COVID-19 pandemic.

The working group will formulate a plan to support employment recovery after the COVID to provide a comprehensive solution. (DOE)

Clarification

The Coronavirus 2019 (Covid-19) pandemic affects every country globally without discriminating race, gender, age, etc. There are pressing issues namely: the public health, economic, and social problems that every country has imposed prevention measures against the pandemic, in spite the

measures used vary in each country, depending on the policy, law, budget, social environment, and the cooperation of people.

Since the COVID-19, Thailand has taken measures to prevent the spread of the pandemic through cooperation from every sector. Thailand imposed the travel restriction and public health and hygienic measures such as hand washing, compulsory masks wearing, etc., The measure does not only require

Thai citizens, but also require cooperation from foreign workers or migrant workers to practice the government's measure. It is a challenge to manage migrant workers under the current situation while balancing health authority requirement and economic recovery and stability.

The Center for COVID-19 Situation Administration has approved bringing MOU migrant workers to the Kingdom upon the condition that workers must have a Fit To Travel certificate, including a COVID-19 virus test. After the arrival of migrant workers, the employers must pay for and arrange workers to be in quarantine for fourteen days (Expenditure in Attachment 2). Relevant agencies are preparing for the operation in the next phase.

The Foreigners' Working Management Policy Commission (FWMP) organized a meeting No. 3/2020 on 20 July 2020 and approved the guidelines for the Management of Foreign Workers from Cambodia, Laos PRD, and Myanmar after the COVID-19 in the next phase.

The discussion on managing migrant workers includes:

1. Public health situation;

A large number of migrant workers have not yet undertaken the health examination and have not purchased health insurance because of the COVID-19. Many medical facilities, due to the COVID-19, cannot perform health examination and sell health insurance during this period. Therefore, many migrant workers whose health insurance has expired on 31 March 2020, but could not arrange for health examination and insurance before the said period. Also, the Cabinet of Ministers' resolution to grant lenient measure for migrant workers to reside in Thailand, thus, there will be migrant workers who do not have the health insurance from 1 April 2020 onward. Also, many healthcare facilities currently monitor the COVID-19 pandemic and providing medical care to COVID-19 patients, thus there is restriction and limitation to conduct health examination and selling health insurance for migrant workers. Furthermore, a large number of people waiting for health examination and health insurance application post threats to COVID-19 control and may spread the disease.

The Ministry of Labor, as the primary responsible agency for managing migrant workers, should coordinate and establish a guideline on the extension of the health certificate for migrant workers. It is advised that the existing period should be extended so that migrant workers can acquire health insurance while applying for work permit renewal.

Clarification

The Department of Employment has met with the Ministry of Public Health to consider extending the validity of the health certificate migrant workers with Cambodian, Laotian, and Myanmarese nationals who employers or those authorized to bring workers to the Kingdom has submitted the quota and the name-list of migrant workers within 31 March 2020, but the process could not be completed.

The Ministry of Public Health has approved an extension of the validity of migrant workers' medical certificates, if they underwent a health examination and receiving a 60-day validity medical certificate, effective until 30 November 2020. The practice complies with the extension of stay for migrant workers under the Cabinet of Ministers' Resolution, dated 24 March 2020 and 15 April 2020.

In this regard, the Department of Employment has expedited government agencies in the regions to publicly communicate the matters to employers and entrepreneurs of the extension of the migrant workers' medical certificate extension.
