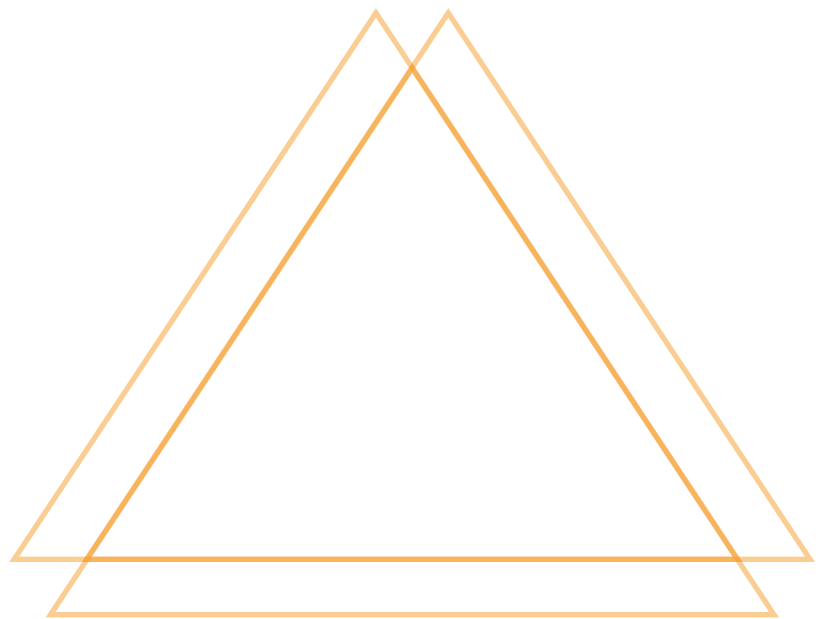




Code of Conduct

Applied to Vietnamese agencies sending workers for overseas employment



VIET NAM ASSOCIATION OF MANPOWER SUPPLY

Code of Conduct

Applied to Vietnamese agencies sending
workers for overseas employment

Version 2018

Foreword

Enhancing benefits for migrant workers through improving the quality of employment opportunities for Vietnamese workers abroad is a matter of great interest to the government, society and the Vietnamese people. In recent years, Vietnamese recruitment agencies recruiting workers for employment abroad have played an important role in this area.

To safeguard the rights of migrant workers and their employers, sustainable business practices, branding and reputation building among Vietnamese recruitment agencies, and ensure compliance with national law and move towards the realisation of international labour standards, the Viet Nam Association of Manpower Supply (VAMAS), the International Labour Organization (ILO), has reviewed, revised and endorsed an updated version of the Code of Conduct (CoC VN) for Vietnamese Association of Manpower Supply member recruitment agencies recruiting workers for employment abroad.

The CoC VN was first issued in 2010, and monitoring and evaluation of participating recruitment agencies' compliance with the CoC VN has occurred for the past five years. The 2018 CoC VN is the result of a revision that considered gender issues and alignment with international standards and developments in the recruitment area, including the Sustainable Development Goals (in particular Goal 8 on decent work and economic growth, Goal 10 on reduced inequality), the ILO Fair Recruitment Initiative and the Domestic Workers Convention, 2011 (No. 189).

Applying the CoC VN voluntarily has brought significant benefits to the development of each participating enterprise, and employment abroad for Vietnamese workers as a whole.

MOLISA highly appreciates the ongoing commitment VAMAS demonstrates for improving recruitment practices for Vietnamese workers and striving for fair migration that benefits the workers and employers through the CoC-VN. MOLISA continues to encourage recruitment agencies in the sector to participate in the CoC-VN monitoring and evaluation. This initiative has been developed with the intention of streamlining the practices of recruitment agencies, enhancing professionalism, responsibility and accountability, and promoting transparency of business activities. MOLISA endorses the revised version and application of the CoC VN as an important means of rating the performance of recruitment agencies and their dealings with workers, domestic and foreign stakeholders.

VAMAS sincerely thanks MOLISA, the Department of Overseas Labour (DOLAB), the ILO Regional Office for Asia and the Pacific and the ILO Office in Viet Nam for their cooperation and support during the development of the CoC VN, and the Vietnamese recruitment agencies recruiting workers for employment abroad for their enthusiastic comments during the drafting.

Thanks are also given to the ILO and UN Women that supported the 2016 review of the CoC VN and its monitoring tool; and the ILO's TRIANGLE in ASEAN programme that most recently supported the process of review and revision of the CoC VN into its current form.

We hope to have further cooperation and support from national and international organizations, individuals and recruitment agencies in the ongoing process of implementing the new CoC VN.

Doan Mau Diep
Vice Minister, MOLISA

Nguyen Luong Trao
Chairman of VAMAS

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Part I: General Provisions

This Code of Conduct:

- Presents the fundamental principles that Vietnamese recruitment agencies recruiting workers for employment abroad should comply with;
- Is based on Vietnamese legislation, ILO Conventions and Recommendations, other relevant international instruments, and the particular local dynamics in Viet Nam;
- Is not a substitute for national law, and is to be applied voluntarily to complement and support compliance with the law; and
- Is an important instrument for recruitment agencies for their better legal compliance; better business management; and prevention of forced labour and trafficking in persons, especially against vulnerable and isolated men and women workers.

Definitions and abbreviations:

- **CoC VN:** the Code of Conduct applied to Vietnamese recruitment agencies recruiting workers for employment abroad.
- **Due diligence:** refers to an enterprise's ongoing process which aims to identify, prevent, mitigate, and account for how it addresses the adverse human rights impacts of its own activities or which may be directly linked to its operations, products or services by its business relationships. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed, (General principles and operational guidelines for fair recruitment, ILO 2017).
- **Employment contract:** is a written agreement signed between a worker and their destination employer.
- **Enterprise sending worker abroad:** the Vietnamese recruitment agencies granted license to send worker abroad by the Ministry of Labour, Invalids and Social Affairs.
- **Forced labour:** all work or service which is exacted from any person under the menace of threat or penalty and for which the said person has not offered themselves voluntarily (Forced Labour Convention, 1930 (No. 29)).

- **ILO:** International Labour Organization.
- **Labour supply contract:** is a written agreement signed between a Vietnamese enterprise, a destination employer and brokers on the conditions and responsibilities of each party in supplying and receiving Vietnamese workers working abroad.
- **Migrant worker (worker):** a person who is engaged or has been engaged in a remunerated activity in a country of which he or she is not a national (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990).
- **MOLISA:** the Ministry of Labour, Invalids and Social Affairs.
- **NGOs:** Non-governmental organizations.
- **Recruitment:** any act of recruitment agencies in examining and selection of workers for employment abroad based on the requirements and criteria of the employers for taking part in the process of sending workers abroad.
- **Recruitment contract:** is a written agreement signed between a Vietnamese enterprise and the migrant worker on the rights and responsibilities of each party during the recruitment and placement of the migrant worker, including full details of costs and fees payable by the migrant worker and the destination employer.
- **Activities related to sending workers abroad by recruitment agencies** include advertising, information dissemination, selection, transport, management and protection migrant workers abroad, return and reintegration.
- **Trafficking in persons:** the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children).
- **VAMAS:** Viet Nam Association of Manpower Supply.
- **Vietnamese recruitment agencies recruiting workers for employment abroad:** those recruitment agencies which are licensed by MOLISA to operate in the field of recruiting workers for employment abroad.

Part II: Operational Principles

Twelve Articles:

1. Legal compliance
2. Business standards
3. Job advertisements
4. Recruitment
5. Training
6. Sending workers abroad
7. Protection of workers abroad
8. Contracts
9. Return and reintegration
10. Dispute settlement
11. Partnership development
12. Fair competition among Vietnamese recruitment agencies

Article 1 Legal compliance

- 1.1 Recruitment agencies and all their staff must comply with laws and regulations related to recruiting Vietnamese workers for employment abroad, especially related to the prevention of forced labour; child labour; trafficking in persons; and the prohibition of discrimination on the basis of race, colour, sex, gender, age, religion, marital status, social identity, trade union affiliation, other affiliation and sexual preference. Recruitment agencies must not discourage women from employment abroad unless there are serious and evidenced risks that women would be particularly discriminated against in the destination country.
- 1.2 Recruitment agencies must contribute to the Overseas Employment Support Fund in accordance with law.

Article 2 Business standards

- 2.1 Recruitment agencies must have clear, transparent and ethical business policies, and operate in a professional manner and in accordance with business laws.
- 2.2 Recruitment agencies must have minimum standards on services they provide and on professional standards for their staff and managers, taking all reasonable steps to ensure the terms and conditions of employment contracts for the workers they recruit are followed. Recruitment agencies must also provide continuous improvement to the knowledge, skills, qualifications and behavioural culture of their staff, and consult with and enable workers to improve their skills while they work abroad.
- 2.3 Recruitment agencies must ensure transparency, legal compliance, gender equality and the voluntarily and informed agreement of the worker on all types of fees that recruitment agencies may collect from workers in exchange for the services they or their partners' provide.
- 2.4 Recruitment agencies must provide assistance to all workers, but in particular vulnerable workers including domestic workers, when they are in trouble or at risk in destination countries, including by ensuring the fair terms and conditions in the contracts signed between recruitment agencies and workers.
- 2.5 Recruitment agencies must compete on the basis of fair and quality-based services.

Article 3 Job advertisements

- 3.1 Recruitment agencies must ensure the content of job advertisements is complete, accurate, honest and clear. Advertisements should include reference to membership of VAMAS and upholding the CoC VN, include a link to VAMAS's website, and state that the enterprise upholds minimum standards as prescribed by Vietnamese law.
- 3.2 Job advertisements must state the occupational qualifications, working conditions genuinely required by the job and costs and fees charged to migrant workers. They must not discriminate directly or indirectly against potential applicants on the basis of race, colour, sex, gender, age, religion, marital status, social identity, trade union affiliation, other affiliation, sexual preference or any other reason in accordance with law.
- 3.3 Job advertisements must not overstate the reality of rights, benefits, wages, bonuses, accommodation and living conditions to be expected by workers in the destination country.
- 3.4 Job advertisements must not understate the contractual responsibilities and obligations of workers, and the difficulties and challenges which workers may face working and living in the destination country.

Article 4 Recruitment

- 4.1 Recruitment agencies must carry out recruitment directly, not through organizations that do not have licenses for introducing overseas jobs or non-staff recruiters.
- 4.2 When necessary, recruitment agencies may cooperate with other authorized agencies as stipulated by law.
- 4.3 In cases where local collaborators are introduced to assist in recruitment, recruitment agencies must instruct and administer them to ensure they comply with the law, and recruitment agencies must be held liable for their actions, including where they cause loss to workers.
- 4.4 Recruitment agencies must recruit workers based on objective criteria and genuine requirements of employers, ensuring non-discrimination on the basis of sex, age, religion, social identity, race, disability, marital status, sexual preference, trade union affiliation, other affiliation, or any other reason in accordance with law.
- 4.5 Recruitment agencies should ensure that all workers sent abroad are at least 18 years of age.

- 4.6 All types of fees that recruitment agencies may collect from workers in exchange for the services they provide or on the worker's behalf to pay for the third party must be set and applied in accordance with law and policy, and the voluntary agreement of workers. Recruitment agencies must provide fully and clearly disclose to workers all information on such fees and ensure that receipts are provided to workers. Such costs include costs associated with documents that will be held by workers, such as visas, work permits and health certificates, along with pre-departure training and transportation costs. The amount collected must not exceed the actual amount of the costs involved.
- 4.7 Recruitment agencies must not collect any recruitment fee from workers and benefit from workers as an inducement to recruit them for a job and ensure that workers are selected in accordance with their time of registration and skills.
- 4.8 Recruitment agencies must sign recruitment contract with workers at least five (5) days prior to their departure, which include full and detailed information related to working conditions, nature of work, rates of pay and pay arrangements, any salary deductions anticipated and working hours. Contracts must be in a language workers understand and be fully explained to the worker prior to signing.
- 4.9 Recruitment agencies must guarantee the confidentiality of job seekers' personal information.

Article 5 Training

- 5.1 Recruitment agencies must organize courses on vocational training and foreign language training for workers before departure as necessary within the specific requirements to perform the employment contract. Training must be in accordance with Vietnamese and destination country requirements including on training duration; facilities for training, accommodation, living and study; and time for departure.
- 5.2 Recruitment agencies must not 'pool' potential migrants through providing training and charging migrant workers for training where deployment is not anticipated.
- 5.3 Recruitment agencies must organize and manage pre-departure orientation training for workers, under the core content framework provided by law, using trainee-centred, interactive training methodologies. They must provide practical information including information on the terms and conditions of the contracts, legal status and rights provided to migrants in the destination country, gender-related issues including sexual harassment and gender-based violence, reproductive health and gendered risks in

certain work. Recruitment agencies must provide workers with a destination country support guide, including contact information for relevant sources of support in cases of difficulty, including local authorities, trade unions and civil society organizations, as well as information on complaint mechanisms.

- 5.4 Recruitment agencies must share with workers information about any relevant law or policy change from Viet Nam or the destination country, along with where to find further information.
- 5.5 Recruitment agencies must ensure all prospective workers learn about and are aware of trafficking in persons and forced labour, discrimination and gender inequality, as well as workers' related rights and responsibilities, what workers should do to take precautions and reduce risk.
- 5.6 Recruitment agencies should examine and award certificates for workers by the end of pre-departure orientation training as regulated by the law.
- 5.7 Recruitment agencies may collect money proportionate to the costs involved for training, in accordance with the law and workers' voluntary approval.
- 5.8 Recruitment agencies must remain committed to agreements made with workers relating to the duration of training and time for departure.
- 5.9 In cases where the length of time before departure is extended otherwise than due to the fault of workers, workers will be provided with the opportunity to attend additional training free of charge, but will not be required to attend any additional training.

Article 6 Sending workers abroad

- 6.1 Recruitment agencies must not send workers abroad if not permitted by the Government.
- 6.2 Recruitment agencies must only use legal and safe means of recruiting workers for employment abroad.
- 6.3 Recruitment agencies must use legal documents and not make use of other travel permits, such as tourist, visitor or business permits, to enable workers to travel abroad.
- 6.4 Recruitment agencies must minimize the transportation costs borne by workers and these costs must be clearly itemized in writing and a receipt provided to workers.
- 6.5 Where appropriate, designated stewards in key transit points will be identified and their contact information made available to workers, to enable safe migration.

- 6.6 Recruitment agencies must provide workers with copies of relevant documents, including their passport, contracts and work permit. Recruitment agencies will ensure the right of all migrant workers to keep their own identification documents and encourage migrant workers to also carry copies of those documents with them.

Article 7 Protection of workers abroad

- 7.1 Recruitment agencies must maintain regular contact with workers abroad during the contract period to stay informed about their employment, working and living conditions, and make records of contact accordingly. Recruitment agencies must contact workers at least twice in the first three months. In addition, recruitment agencies must contact workers in due time before their contract expiry to support and oversee contract renewal and/or completion, as appropriate.
- 7.2 Additional due diligence and ongoing monitoring shall be conducted for women migrant workers, especially if engaged in domestic work. Migrant domestic workers should be contacted monthly for the duration of their contract.
- 7.3 Recruitment agencies must coordinate with foreign partners including employers and Vietnamese representative agencies in the destination country to protect the rights and benefits of migrant workers. Recruitment agencies are aware health checks are undertaken in destination countries which can result in workers being sent home; recruitment agencies must stand by their pre-departure health check results and verify the results of destination health checks to ensure workers are not sent home unnecessarily.
- 7.4 Recruitment agencies must exercise due diligence in assessing hazards, risks, abuse, exploitation or discrimination of all kinds in the workplace, including sexual harassment, sexual abuse, corporal punishment, mental or physical coercion or verbal abuse. Where hazards or risks are identified, recruitment agencies must inform the worker of them, and clearly explain to the worker what disciplinary policies and procedures are in place for responding to the realization of these hazards or risks. Certain risks will be deemed unacceptable, including a high risk of sexual harassment or exploitation, corporal punishment or where a workplace is not taking appropriate measures to ensure occupational health and safety.
- 7.5 Any wage deductions from workers must only take place under conditions prescribed by the laws and regulations of the destination country, and only after deductions are explained and the worker voluntarily accepts these deductions.

- 7.6 Workers must have full access to their savings account in their own name at any time. Recruitment agencies must provide workers with information on safe and secure low-cost remittance options.
- 7.7 Recruitment agencies must ensure destination employers do not retain workers' identity documents, such as their passports and work permits, as well as other personal belongings such as mobile phones and medication, for the purpose of forcing them to work.
- 7.8 At the request of workers, destination employers may keep workers' documents and other personal belongings in a secure place, but must immediately return them to workers at any time on request. Where employers routinely restrict communication or access to workers' identity documents, recruitment agencies will cease sending workers to these workplaces.
- 7.9 Recruitment agencies must maintain relevant registration for workers abroad, if and when they change location.
- 7.10 Recruitment agencies must coordinate with foreign partners and Vietnamese representative agencies abroad to support migrant workers, especially women migrant workers, in the areas of reproductive health, harassment and violence.
- 7.11 Recruitment agencies must establish a model employment contract for domestic work that aligns with the minimum standards in Vietnamese laws, and considers the international protections available under the Convention on Domestic Work (No. 189); ensure access to safe, private and reasonable accommodation, adequate food and conditions; and ensure accessible procedures exist for the investigation of complaints, alleged abuses and fraudulent practices.
- 7.12 Recruitment agencies should provide timely support for workers in serious injury or death. In cases of emergency, including workers, natural disasters, political unrest or armed conflict, recruitment agencies must do everything possible to ensure the safety and appropriate return of workers including liaising with Vietnamese and destination country authorities where necessary, and keeping workers' families informed in the process.

Article 8 **Contracts**

- 8.1 All workers have the right to enter into employment voluntarily and freely, without the threat of any penalty, and to have written contracts in an accessible language with all terms and conditions explained clearly. Ensure that potential migrant workers are able to learn and share from other migrant workers and/or returned migrant workers with experience working with similar employers in a similar business, sector and location whenever possible.
- 8.2 Recruitment agencies must not engage in the following acts when signing contracts with workers:

- Threat or use of force
- Harassment or intimidation
- Fraud or deception
- Coercion
- Abuse of power
- Applying pressure to or influencing any other person in order to induce recruitment

8.3 The content of rights, obligations and conditions for migrant worker in the recruitment contract signed between worker and enterprise is consistent and not lower than that in labour supply contract, and employment contract.

8.4 Recruitment agencies must ensure all fees charged to migrant workers are consistent with the contract, and that workers are provided with written receipts for all payments made by them.

8.5 Negotiations, factory visits and agreement on labour supply contracts must ensure that employment contracts to be signed between workers and employers abroad meet with the following requirements

- clear and transparent regarding details of the work including job or job changing (if there is any)
- working conditions; wages, hours per day; days per week; national holidays; days of annual leave; overtime payment and bonuses
- social insurance; food; accommodation and living conditions
- complaint procedures; dispute settlement procedures and compensation
- transportation expenses
- labour safety and protection; and dealing with cases of accidents, illness and death.

Details must also be provided on all the fees charge and workers' deposits; assistance for sending remittances; responsibility for payment of travel fares to and from the destination country; and medical examinations and treatment; responsibility of employers to pay wage and all remuneration (if any) in full and on time provide written payslips every month including detailing deductions from the salary.

8.6 Recruitment agencies must also ensure employment contracts cover information on workers' rights and obligations, and a detailed breakdown of all salary components and deductions including tax

and social security contributions in the destination country and Viet Nam where applicable. Employment contracts that restrict the right of workers to join trade unions will not be accepted by recruitment agencies, and recruitment agencies will take action to ensure that workers are protected from anti-union discrimination at destination workplaces.

- 8.7 Recruitment agencies must ensure follow applicable law in cases of contract termination, and must not terminate contracts without legitimate reasons.
- 8.8 Contracts of employment must restate the right of workers to unilaterally terminate an employment contract in the following cases:
 - Where their employer uses violence, threats, or denies the freedom of movement of workers
 - Where their employer does not comply with the terms of the contract relating to wage and does not compensate workers in line with contract terms
 - Where their employment contract was signed through fraud and/or deception

Article 9 Return and reintegration

- 9.1 Recruitment agencies must collaborate with employers and relevant agencies in Viet Nam and in destination countries, to facilitate workers' safe and timely return to Viet Nam at the end of the contract period. Recruitment agencies must pay special attention to the needs of women migrant workers, including addressing specific economic, social and psychological needs they may face on return and reintegration due to social stigma.
- 9.2 Workers must not be asked to pay for any costs of early return where their return is not due to their own fault.
- 9.3 Recruitment agencies must fully liquidate the workers' contract, including the return of any deposit fee charged and assist workers with the necessary procedures to reintegrate and regularize their local residency status after their return.
- 9.4 Recruitment agencies must help workers to get prompt access to information about job vacancies and to seek suitable work in Viet Nam or abroad under another contract. Recruitment agencies are encouraged to provide consultancy, job introduction and retraining services to the workers to help them continue their career development or start up businesses.

Article 10 **Dispute settlement**

- 10.1 All disputes between workers and recruitment agencies must be settled in accordance with the contract signed by the parties and Vietnamese law.
- 10.2 All disputes between workers and employers must be settled in accordance with the contract signed by the parties, the laws in the destination country, international standards, treaties to which the Socialist Republic of Viet Nam is a party, and other international agreements which the government has signed with foreign parties.
- 10.3 Dispute settlement procedures abroad must ensure workers are able to access grievance and dispute resolution mechanisms without fear of recrimination or dismissal. Workers must have support from recruitment agencies, officers from Vietnamese representative agencies abroad, interpreters, and legal representatives who speak Vietnamese. Where alternative dispute resolution is sought, it must be conducted by a committee on which there is at least one woman. Any non-judicial grievance mechanisms used should be legitimate, accessible, predictable, equitable, transparent and rights-compatible.

Article 11 **Partnership development**

- 11.1 Recruitment agencies must cooperate with, share information with and support the following:
 - a) Destination employers and brokers
 - b) Localities, vocational training institutions, and state management agencies
 - c) Workers' and employer's organizations
 - d) National women's machinery such as the Viet Nam Women's Union

Article 12 **Fair competition among Vietnamese recruitment agencies**

- 12.1 Recruitment agencies must be united and mutually supportive.
- 12.2 Recruitment agencies must be fair competitors who do not take contracts and partners from other recruitment agencies by excessively raising prices over agreed levels, which would have the effect of burdening workers.

Part III: Application Principles

Principle 1 Commitment of application

- a) The CoC VN is an important component of the operational policies of recruitment agencies, which supports their sustainable development and encourages positive brand recognition.
- b) Recruitment agencies will ensure job seekers, workers, and their Vietnamese and foreign partners, are aware of the CoC VN and their commitment to it, are informed of their annual CoC VN rating, and can share any grievances concerning the application of the CoC VN with the recruitment agencies.

Principle 2 Mechanism of information sharing, awareness raising and capacity building

- a) VAMAS will share information on and advocacy of the CoC VN, along with annual ratings, with all recruitment agencies recruiting workers for employment abroad, as well as labour agencies, local government and the public. A list of recruitment agencies which have registered to apply the CoC VN will be published widely by VAMAS, and VAMAS will develop information materials for distribution, including among Departments of Overseas Labour, Invalids and Social Affairs (DOLISAs), Migrant Worker Resource Centres (MRC) and local banks.
- b) VAMAS will develop an annual award system for the best performing recruitment agencies for each country and work sector, including recognizing best practice for women migrant workers.
- c) Recruitment agencies must display the annual CoC VN ratings (including detailed results) on their websites, in their authorised places of business, and through other appropriate communication channels.
- d) Recruitment agencies must enable and support training on CoC VN application for staff in charge of recruitment, including covering the prevention of forced labour and trafficking in persons, and avoiding recruitment of any person under 18 years of age.
- e) Recruitment agencies must properly inform job seekers, and Vietnamese and foreign partners, about the CoC VN and give them copies of the CoC VN in their relevant language (with a summary document for workers).
- g) VAMAS will set up a mechanism to ensure feedback from workers,

local government, trade unions, NGOs, women's representative organizations, foreign partners, and gender focal points within DOLAB and DOLISAs, on recruitment agencies' CoC VN compliance.

- h) VAMAS will develop a rating set for CoC VN performance by recruitment agencies, including full disclosure of all violations committed by recruitment agencies.
- i) The Assessment Council established by VAMAS will assess and evaluate the application of the CoC VN by recruitment agencies, and will include a representative from VGCL and a representative for women migrant workers.
- k) Recruitment agencies may conduct self-evaluations of their performance against the CoC VN and submit the results to the Assessment Council.
- l) The Assessment Council will evaluate and rate the performance of recruitment agencies in accordance with the CoC VN monitoring tool, taking into account all relevant information sources required by the tool. The ratings will take into consideration feedback from those listed in Principle 2.6 above, and the method of determining ratings will be transparent.

Principle 3 Disciplinary provisions

- a) Where VAMAS becomes aware of violations of the CoC VN, the following disciplinary measures will be immediately applied to recruitment agencies:
 - Issuing of a warning (in cases of minor violations)
 - Informing of stakeholders including DOLAB, DOLISAs, destination employers and Vietnamese representative agencies abroad (in cases of major and/or repeated violations)
 - Exclusion of recruitment agencies from the list of recruitment agencies that participate in the CoC VN
- b) In any event, where VAMAS becomes aware of the possibility of any criminal activity or breaches of law having occurred, VAMAS will immediately refer this information to appropriate authorities in order to have immediately measures to mitigate harm and better protect migrant workers.

Principle 4 Amendment and supplement

- a) The CoC VN will continue to be amended and supplemented in the course of its application, on the basis of its practical operation and with approval from a majority of representative recruitment agencies, worker's organizations and State management agencies.