

(สำเนา)

เลขที่ ๑๖๔๘๑/๒๕๕๑ วันที่ ๓ พ.ย. ๒๕๕๑

สำนักงานเลขาธิการสภาผู้แทนราษฎร

ที่ นร ๐๕๐๓/๑๕๖๑๒

สำนักนายกรัฐมนตรี

ทำเนียบรัฐบาล กทม. ๑๐๓๐๐

๓๑ ตุลาคม ๒๕๕๑

เรื่อง บันทึกความเข้าใจระหว่างกระทรวงแรงงานแห่งสาธารณรัฐเกาหลีและกระทรวงแรงงานแห่งราชอาณาจักรไทยว่าด้วยการจัดส่งแรงงานไทยไปสาธารณรัฐเกาหลี ภายใต้ระบบการจ้างแรงงานต่างชาติ

กราบเรียน ประธานรัฐสภา

สิ่งที่ส่งมาด้วย บันทึกความเข้าใจ ในเรื่องนี้ฉบับภาษาไทย และเอกสารประกอบฉบับภาษาอังกฤษ

ด้วยคณะรัฐมนตรีได้ประชุมปรึกษาลงมติให้เสนอบันทึกความเข้าใจระหว่างกระทรวงแรงงานแห่งสาธารณรัฐเกาหลีและกระทรวงแรงงานแห่งราชอาณาจักรไทยว่าด้วยการจัดส่งแรงงานไทยไปสาธารณรัฐเกาหลี ภายใต้ระบบการจ้างแรงงานต่างชาติ เพื่อขอความเห็นชอบจากรัฐสภา ดังที่ได้ส่งมาพร้อมนี้

จึงขอเสนอบันทึกความเข้าใจดังกล่าว มาเพื่อขอได้โปรดนำเสนอรัฐสภาให้ความเห็นชอบตามรัฐธรรมนูญแห่งราชอาณาจักรไทยต่อไป

ขอแสดงความนับถืออย่างยิ่ง

(ลงชื่อ) สมชาย วงศ์สวัสดิ์

(นายสมชาย วงศ์สวัสดิ์)

นายกรัฐมนตรี

สำนักเลขาธิการคณะรัฐมนตรี

โทร. ๐ ๒๔๔๖ ๘๒๖๒

โทรสาร ๐ ๒๔๔๖ ๘๒๖๖

สำเนาถูกต้อง



(นางสาวรุ่งนภา ชันธิโชติ)

ผู้อำนวยการกลุ่มงานระเบียบวาระ

สำนักงานการประชุม

ณัฐริภา พิมพ์

ทนาย

ตรวจ

ผลประโยชน์ทางเศรษฐกิจ

ผลประโยชน์ทางเศรษฐกิจจากรายได้ส่งกลับประเทศของแรงงานไทยในเกาหลี ซึ่งมีอัตราค่าจ้างโดยเฉลี่ย ประมาณ เดือนละ 852,020 - 1,200,000 วอน หรือ ประมาณ 30,000 - 45,000 บาท เมื่อหักค่าใช้จ่ายส่วนตัวในต่างประเทศ คนละประมาณ 5,000 - 10,000 บาท แล้ว สามารถส่งเงินรายได้เข้าประเทศ ไม่น้อยกว่าคนละ 23,000 บาท/เดือน หรือ 276,000 บาท/ปี ดังนั้น ประมาณการรายได้ส่งกลับประเทศของแรงงานไทยจากการจัดส่งโดย กรมการจัดหางานไปทำงานสาธารณรัฐเกาหลีในระบบ EPS สามารถนำรายได้เข้าประเทศ ไม่น้อยกว่า 6,257 ล้านบาท/ปี ซึ่งเงินรายได้ดังกล่าวกระจายลงสู่ครอบครัวของแรงงานไทยที่ส่วนใหญ่มีถิ่นพำนักอยู่ในพื้นที่ชนบทของประเทศไทย

สำนักงานบริหารแรงงานไทยไปต่างประเทศ

กรมการจัดหางาน กระทรวงแรงงาน

พฤษภาคม 2551

**Memorandum of Understanding between
the Ministry of Labour of the Kingdom of Thailand and
the Ministry of Labor of the Republic of Korea
on the Sending of Workers to the Republic of Korea
under the Employment Permit System (Draft)**

The Ministry of Labour of the Kingdom of Thailand and the Ministry of Labor of the Republic of Korea (hereinafter referred to as the "Sides"),

Respecting the principle of equality and mutual benefit,

Desiring to enhance the existing friendly relations between the two countries through cooperation in the fields of labor affairs and human capacity building and

Recognizing the benefits to be derived from such cooperation by both countries,

Have reached the following understanding:

Paragraph 1 Purpose

The purpose of this Memorandum of Understanding (hereinafter referred to as the "MOU") is to establish a concrete framework for cooperation between the Sides and to enhance transparency and efficiency in the process of sending Thai workers to work in the Republic of Korea (hereinafter referred to as "Korea"), by setting out the provisions for the Sides to follow concerning the sending of workers under the Employment Permit System for Foreign Workers (hereinafter referred to as the "EPS") in Korea.

Paragraph 2 Definitions

For the purposes of this MOU:

- (a) the term "employer" refers to a business owner who obtains permission from the Ministry of Labor of Korea (hereinafter referred to as the "MOL") to employ foreign workers pursuant to the Act on Foreign Workers' Employment of Korea (hereinafter referred to as the "Foreign Employment Act") or a person who carries out specific tasks as a proxy of the business owner;
- (b) the term "job seeker" refers to a Thai national who wants to work in Korea pursuant to the Foreign Employment Act;
- (c) the term "worker" refers to a Thai national who has signed or intended to sign a labor contract with an employer in Korea for the purpose of working in Korea for a certain period pursuant to the Foreign Employment Act;
- (d) the term "sending agency" refers to an agency which has the authority to recruit, and send workers who want to be employed in Korea pursuant to the Foreign Employment Act;
- (e) the term "receiving agency" refers to an agency which has the authority to manage the job seekers' roster and to receive Thai workers from a sending agency of Thailand pursuant to the Foreign Employment Act;

- (f) the term "test agency" refers to an agency authorized by the MOL which is entrusted with the overall implementation of the EPS-Korean Language Test (hereinafter referred to as the "EPS - KLT") including, making test announcements, receiving applications, making test questions, and conducting the test pursuant to the Foreign Employment Act; and
- (g) the term "resident officer" refers to a representative of the MOL or the receiving agency who is dispatched to Thailand, on behalf of the MOL and the receiving agency pursuant to the Foreign Employment Act, to provide support for the process of sending and receiving Thai workers.

Paragraph 3 Sending Agency and Receiving Agency

- 1 The Ministry of Labour of the Kingdom of Thailand (hereinafter referred to as the "MLKT") is the government organization primarily responsible for recruiting, and sending Thai workers to work in Korea. However, in implementing this MOU, the Sides jointly decide that the MLKT designates the Department of Employment (hereinafter referred to as the "DOE") as the sending agency.
- 2 The DOE is a government organization under the authority of the MLKT financed by the national budget and is directly in charge of recruiting, and sending the Thai workers to work in Korea. No other organization than the DOE can take part in the recruiting and sending process under this MOU.
- 3 The MOL is the government agency primarily responsible for receiving Thai workers who are sent to work in Korea under the EPS. However, in implementing this MOU, the Sides jointly decide that the MOL designates the Human Resources Development Service of Korea (hereinafter refer to as the "HRD Korea") as the receiving agency.
4. The HRD Korea is an affiliated agency of the MOL financed by the national budget and will be directly in charge of managing the job seekers' roster and receiving Thai workers.

Paragraph 4 Sending Fee

1. The sending agency will receive the actual costs incurred in the process of receiving application and sending workers from each worker.
- 2 Pursuant to sub-paragraph 1, upon the signature of this MOU, the sending agency will provide the MOL with information on the total amount of the sending fee to be collected per worker as well as a breakdown of the fee. The MOL can request the sending agency to reduce the sending fee if the MOL deems that the fee includes unnecessary items or is assessed to be excessively high when considering Thailand's economic situation (such as national income) and other countries' sending fees.
- 3 The sending agency shall publicly announce in Thailand the sending fee that was jointly decided with the MOL.

- 4 When changes in the sending fee which has originally been jointly decided are inevitable due to inflation or other reasons, the sending agency will inform the MOL and consult on the matter in advance.

Paragraph 5 Implementation of the EPS-KLT

- 1 The MOL will implement the EPS-KLT for an objective selection of job seekers pursuant to the Foreign Employment Act. For the implementation of the EPS-KLT, the MOL designates the HRD Korea as the test agency.
- 2 For the smooth implementation of the EPS-KLT, the MLKT and the sending agency will provide assistance and support in the following areas:
 - (a) distributing and receiving the EPS-KLT application form;
 - (b) providing the sites for receiving applications and conducting of the tests, and maintaining order around the sites;
 - (c) streamlining customs clearance and exempting from customs duties on test-related materials brought into Thailand for conducting and managing the EPS-KLT;
 - (d) facilitating the immigration process including visa issuance for staff of the test agency or other personnel involved in implementing the test;
 - (e) exempting the EPS-KLT application fee from taxation and facilitating remittance; and
 - (f) other assistance as requested by the MOL and the test agency for the fair and efficient implementation of the EPS-KLT
3. The MOL and the test agency shall provide assistance and support as requested by the MLKT and the sending agency for the fair and efficient implementation of the EPS-KLT.
4. Qualifications for the EPS-KLT applicants are as follows:
 - (a) persons aged from 18 to 39 (not exceeding 39 on the test date);
 - (b) persons who have not been convicted of a crime punishable by imprisonment or a more severe punishment;
 - (c) persons who have no record of deportation or departure orders from Korea; and
 - (d) persons who are not restricted from departure from Thailand.
5. The EPS-KLT certificate will be valid for two years from the date when the test result is announced.
6. The test agency and the sending agency may sign an EPS-KLT Service Commitment regulating specific matters regarding the implementation of the EPS-KLT.
7. If necessary, the test agency and the sending agency will designate a public agency(s) to support the EPS-KLT related work through prior consultation. The designated agency will carry out the EPS-KLT related work decided upon by the test agency and the sending agency.
8. If disruption is caused in implementing the EPS-KLT due to lack of cooperation between the test agency and the sending agency, or if the EPS-KLT cannot be implemented for certain reasons, the Sides may resolve through consultation.

Paragraph 6 Recruitment of Job Seekers

- 1 The sending agency will prepare job seekers' roster (hereinafter referred to as the "roster") and send it to the receiving agency.
- 2 When preparing the roster, the sending agency will recruit job seekers who meet the following qualifications:
 - (a) persons who have passed the EPS-KLT, and
 - (b) persons who have passed the medical checkup determined by the MOL.

If the number of qualified job seekers exceeds the allocated number of the Thai job seekers on the roster, the selection will be made according to a method jointly decided upon by the Sides.
- 3 The roster prepared by the sending agency will include the following information:
 - (a) job seeker's personal information (including name, nationality, date of birth, identification number and physical condition);
 - (b) a copy of the job seekers' passport;
 - (c) desired employment conditions (including wage and type of occupation);
 - (d) personal and career background (including education, work experience and certificates).(if any); and
 - (e) information on the EPS-KLT taken by the job seeker (including test date and score)
- 4 The sending agency will inform the job seekers that their inclusion in the roster will not guarantee them any job in Korea.
5. The sending agency will establish necessary IT infrastructure for installation of SPAS (program for sending the roster), and the receiving agency will send the relevant information to the sending agency.

Paragraph 7 Management of Job Seekers' Roster

- 1 The roster will be valid for one year.
- 2 When changes are made in the information on the roster, including job seekers' willingness to find jobs, their contact address, etc., the sending agency will inform the receiving agency of such changes and the reason for the changes.
- 3 The receiving agency can return the roster to the sending agency if there are any errors in the roster, and the sending agency will correct those errors and send the roster back to the receiving agency.
- 4 The MOL will inform the MLKT by the end of March of each year (timing is subject to change) of the types of occupations allowed under the EPS and the allocated number of Thai job seekers on the roster each year.

Paragraph 8 Labor Contract

- 1 Each employer will draw up a labor contract *pursuant to* Foreign Employment Act after selecting a worker on the roster and the receiving agency will send the contract to the sending agency.

- 2 The sending agency will explain the content of the labor contract to each worker so that he/she can fully understand it and decide whether or not to sign the labor contract at his/her own free will.
- 3 Within 14 days of receiving the labor contract, the sending agency will inform the receiving agency whether each labor contract has been signed by the worker, or if not signed, the reason for not signing it. If the decision on the signing of the labor contract is not conveyed within 14 days, the receiving agency may declare the contract uncompleted after consultation with the employer.
- 4 If any job seeker cancels a signed labor contract or does not sign a labor contract twice without any due reason, the receiving agency can exclude him/her from the roster.
- 5 The sending agency will provide the original copy of the labor contract to the worker who signed it and have him/her brought it when going to Korea.

Paragraph 9 Pre-departure Education

- 1 The sending agency will conduct a pre-departure education promptly for the workers who have signed labor contracts so that they can enter Korea in a timely fashion.
- 2 The sending agency will decide the content and length of education through prior consultation with the MOL.
- 3 The sending agency will either conduct the pre-departure education by itself or select a public agency(s) to be entrusted with the pre-departure education through prior consultation with the MOL. If necessary, the sending agency can select a non-public agency to be entrusted with the pre-departure education on the condition that transparency and fairness of the pre-departure education agency is guaranteed. Otherwise its selection on the non-public agency has to be cancelled.

Paragraph 10 Visa Issuance

- 1 The sending agency will inform the workers immediately after receiving the Certificate for Confirmation of Visa Issuance (hereinafter referred to as the "CCVI") from the receiving agency and apply for the visa for the workers at the Korean diplomatic mission in Thailand with the required documents.
- 2 The receiving agency can cancel the labor contract of any worker who does not apply for a visa within three months of the validity period of the CCVI.
- 3 If any worker issued with the CCVI decides not to go to Korea or is unable to go to Korea due to reason such as the employer's cancellation of the labor contract, the sending agency will cooperate in taking measure to cancel the CCVI as requested by the receiving agency.
- 4 The sending agency is the only organization authorized to assist in visa applications, and no other organization can intervene in the process.

Paragraph 11 Entry of Workers

1. The sending agency, in order to keep employers informed as to the progress of the worker's preparations for their entry into Korea, will input information into the EPS Network at every stage. Such information will include the completion of pre-departure education, visa applications, etc.
2. The sending agency and the receiving agency will confirm the entry date for workers who are issued the CCVI at least one week prior to their entry, taking into account the employment training schedule.
3. The sending agency will take necessary measures, including making flight reservations in advance, to ensure that workers enter Korea on the scheduled date.
4. The sending agency and the receiving agency will continue to improve the sending process in an effort to shorten the period before workers may enter Korea.
5. The sending agency and the receiving agency will work closely together to facilitate re-entry procedures for Thai workers who are re-employed pursuant to the Foreign Employment Act.

Paragraph 12 Placement of Workers

1. The MOL will conduct employment training and medical checkup for workers before they start work. The organization(s) in charge of the employment training and medical checkup will be determined by the MOL.
2. In case workers with medical problems are discovered during the medical check up return to Thailand, the receiving agency will inform the sending agency.
3. If a worker returns to Thailand prior to the termination of his/her labor contract period for reasons such as problems in the medical check up during employment education, or refuse to work due to his/her personal reason, he/she will bear the general expenses including the airfare for his/her departure from Korea. In case a worker who has a problem in the medical check up, if he/she is unable to afford such expenses the Thai government will assist in covering the cost of his/her return to Thailand.

Paragraph 13 Employment and Sojourn Management

1. The MLKT and the sending agency will ensure that all workers observe all laws of Korea including the Foreign Employment Act and the Immigration Control Act. The MOL and receiving agency will protect foreign workers' right in accordance with the related labor laws of Korea.
2. The Sides will make efforts for the employment and sojourn management of the Thai workers such as preventing workers from being absent without leave, encouraging their voluntary departure from Korea upon the expiry of their employment period, and reducing the number of illegal Thai workers residing in Korea.

- 3 The MLKT and the sending agency, in order to support the process of employment and sojourn management, may dispatch representative to Korea. Specifics, such as the date and process concerning their dispatch as well as their roles, will be determined through consultations between the Sides in advance.
4. The MOL and the receiving agency will provide cooperation, such as support in issuance of long-term visa, provision of related materials, and responses to interview requests in order to facilitate the tasks of the dispatched representatives.
5. The MLKT and the sending agency will make efforts for the re-employment of workers that voluntarily left Korea under Korea's Program for Voluntary Departure by listing them first in the roster.
6. The Sides will cooperate to ensure the smooth implementation of the Returnee Support Program conducted by the Korean government to help returning workers adapt to their home country.
- 7 If the number of Thai workers absenting themselves from their workplace without leave or staying illegally in Korea exceeds a certain percentage, which is the average of all sending countries, the MOL may take necessary measures such as the reduction of the allocated number of job seekers on the roster or the temporary suspension of the sending of workers.

Paragraph 14 Support in the Sending and Receiving Process

- 1 The MOL, in order to support the process of sending Thai workers to Korea, may dispatch resident officers of the MOL or receiving agency to Thailand.
- 2 The resident officers, through consultations with the MLKT and the sending agency, may assist, monitor, and advise the labor sending process and assist re-employed workers with visa issuance and departure procedures. Specifics, such as the date and process concerning their dispatch, will be determined through consultations between the Sides in advance.
- 3 The MLKT and the sending agency will provide cooperation, such as provision of related materials and responses to interview requests in order to facilitate the tasks of the dispatched officers.

Paragraph 15 Efforts to Enhance the Transparency and Efficiency of the Sending and Receiving Process

1. The Sides will make efforts to ensure the transparency and efficiency of the sending and receiving process. In an effort to enhance transparency, the Sides may establish a complaint center where malpractices can be reported.
2. The MLKT and the sending agency will advertise the key contents and employment procedures of the EPS and the sending fee in Thailand. Specifics, such as the advertising method and dates, will be decided through consultations with the MOL, the receiving agency or resident officer.

3. The MLKT and the sending agency will assist the MOL, the receiving agency or resident officer in advertising the EPS through means such as holding presentations in Thailand.

Paragraph 16 General Provisions

1. With the abolishment of the Industrial Trainee System of Korea as of January 1, 2007, the status of Thai workers who have entered Korea under the system will be decided by the Korean government.
2. In case the Thai workers leave Korea without filing Departure Guarantee Insurance and Return Cost Insurance claims, the unclaimed insurance fund, after the extinctive prescription period, will be entrusted to the Thai government (Labour Section, of Embassy of the Kingdom of Thailand to Korea). The Thai government will make efforts to have the payments reimbursed to beneficiaries and inform the result to the MOL.
3. The sending agency and the receiving agency may sign an implementing instrument regulating specific matters regarding the process of sending and receiving the Thai workers.
4. The Sides may, jointly with relevant authorities if necessary, visit and assess each other's organizations at times jointly decided upon by the Sides to assess the implementation of this MOU.
5. Any differences or disputes which may arise in the interpretation or implementation of this MOU will be resolved through consultations between the Sides.
6. If matters that are not covered by this MOU arise in the sending and receiving process, or if some provisions of the MOU need to be revised, the Sides may revise or add supplementary provisions by mutual written consent.

Paragraph 17 Entry into Force and Term of Validity

1. This MOU will come into force on the date of the signature by the Sides.
2. As soon as this MOU takes effect, the MOU signed between the Sides on August 30th, 2006 will be terminated.
3. This MOU will remain in effect for two years. However, this MOU may be suspended or terminated by either Side if there is any justifiable reason, such as the violation of this MOU.
4. This MOU may be extended with the mutual written consent of the Sides.

Signed in duplicate at on this..... day of.....,2008, in the English language.

Minister of Labour
For the Ministry of Labour
of the Kingdom of Thailand

Minister of Labor
For the Ministry of Labor
of the Republic of Korea