

REPORT ON THE ALLOCATION OF WORK PERMIT TO FOREIGN SKILLED LABOUR

April 2018

Prepared by the Sub-Committee of the PPPAC

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1 Background

At its meeting of 17 March 2017, the Public Private Platform Against Corruption (PPPAC) identified the issue of work permit to foreigners as a risk area which warrants immediate attention from relevant authorities.

2 Composition of the Sub-Committee

Accordingly, it was proposed to constitute a sub-committee of all key stakeholders namely, Tourism Authority, the Board of Investment, Mauritius Institute of Directors (MIOD), Mauritius Export Association (MEXA), Passport and Immigration Office (PIO), Transparency Mauritius, the Prime Minister's Office (PMO) and the Ministry of Labour, Industrial Relations and Employment and Training (MLIRET)

3 Objectives of the Sub-Committee

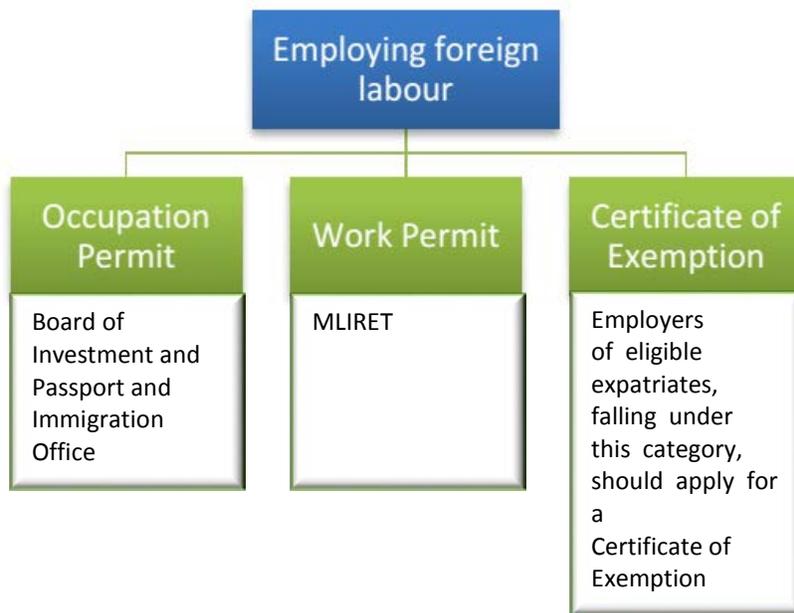
The objectives of the sub-committee were to:

- a) analyse the process for granting of work permit;
- b) identify risk areas, and
- c) make appropriate recommendations.

4 Work Permit & Residence Permit for Foreign Labour – Process

The Non-citizens (Employment Restriction) Act 1973 stipulates that a non-citizen shall not engage in any occupation in Mauritius for reward or profit or be employed in Mauritius unless he holds a valid permit and he engages in the occupation, or is employed in accordance with any condition which may be specified in the permit. The Act also stipulates that “no person shall have a non-citizen in his employment in Mauritius without there being in force a valid permit in relation to that employment.”

Presently, employers willing to avail themselves of the services of expatriates can opt for one of the categories of permits as illustrated below:



In a nutshell, securing work permit for foreign skilled labour in bulk entails the following:

STEP 1	Companies should apply and obtain Permission in Principle first, then apply for Work Permit	MLIRET
STEP 2	Ensure that potential foreign employees meet all requested criteria such as age, experience, health clearance, etc.	MLIRET MHQL
STEP 3	Companies should submit Lodging/ Accommodation Permit	MLIRET MHQL
STEP 4	Companies should submit a copy of Contract of Employment duly vetted by the Labour Division of the MLIRET or documentary evidence	MLIRET

Other conditions for recruitment of such categories of labour are contained in the updated guidelines.

There are, indeed, different categories for permit for employing expatriates and these are:

- **Occupation permit.** Under the Investment Promotion Act 2000 and Immigration Act 1973, the Occupation Permit is a combined work and residence permit that allows foreign nationals to work and reside in Mauritius. An Occupation Permit (OP) may be granted to foreign nationals under the 3 categories: Investor, Self-employed and Professional.
- **Work permit.** Work Permits for non-citizens are issued by the Employment Division of the MLIRE under the Non-Citizens (Employment Restriction) Act 1973. Expatriates meeting the following criteria are eligible for a work permit:
 - (i) Foreign workers should normally be aged between 20 and 60 years. Departure from this policy is exceptionally made for investors and expatriates who are above 60 years and who possess specific expertise.
 - (ii) Foreign workers should possess the skills, qualifications and experience required for the job applied for.
- **Residence permit.** A foreign worker requires both a Residence Permit and a Work Permit to work in Mauritius. Applications for Residence Permit is processed by the Passport and Immigration Office. Work Permits are issued by the MLIRET while Residence Permits are issued by the PIO.
- **Exempt from permit.** The Employment (Non-Citizens) (Restriction) Exemptions Regulations 1970, stipulates that certain categories of expatriates are exempted from a work permit during his/her period of employment in Mauritius.

5 E-Work Permit

Recently, the MLIRET has embarked in the development of an Electronic Work Permit Portal/System which would inherently attempt to limit contact between members of the public and the public officials involved in this process. The portal enables quick access to employers and individuals to the online system for electronic submission of applications and payment. From feedback gathered, the development of the e-work permit is still in its teething phase and will take some time for it to be operational.

6 Corruption Prevention Review

Simply put, corruption may be defined as the abuse of a public or private for private gain. Corruption risks are imminent to structures characterized by high discretionary power, low accountability mechanisms, opacity, amongst others.

A Corruption Prevention Review (CPR) on the allocation of work permits and issue of residence permits to foreign skilled workers have been carried out by the ICAC in 2014. The main objective of the CPR was to review the system and procedures for the allocation of work permit at the MLIRET, the issue of residence permit at the PIO and the issue of clearance by the PMO, following complaints of alleged corruption/malpractices.

Numerous areas of concern have been identified during the CPR which warranted appropriate remedial actions. **The main areas identified by the CPR to be addressed by the respective public bodies were as follows:**

- *Enhancing the allocation of work permit framework by:*
 - Limiting or structuring discretionary powers in the allocation of work permit
 - Formalising the Work Permit Committee
 - Ensuring fairness in the appeal system

- *Streamlining of procedures as follows:*
 - Streamlining the system for the issue of work permits
 - Enhancing the record management system
 - Ensuring a consistent timeframe in the processing of work permits
 - Adhering strictly to the guidelines for the issue of work permits

- *Restructuring the Work Permit Unit:*
 - Restructuring the Fast Track Section of the Work Permit Unit

Following the CPR, a number of recommendations was made to the respective public bodies for them to take appropriate remedial measures to address the corruption risks identified. Some actions have already been taken by the responsible agencies (as at February 2015), whilst others are still being awaited.

The following proposed recommendations have been already implemented by the MLIRET:

SN	Recommendations
1	Records kept at the counter and Registration Unit have been enhanced.
2	Spoilt work permits are being monitored by the Head of the Section and weekly reconciliations of work permits are carried out.
3	The MLIRET is considering rotation of staff within the department.
4	A copy of section 13 of POCA regarding conflict of interests has been circulated to all Heads of Section for dissemination among staff.
5	After the issue of the CPR report, an Officer from the Internal Control Department was posted at the Employment Division at the request of the MLIRET.

Other recommendations which were made to the MLIRET and outcomes following discussions, were as follows:

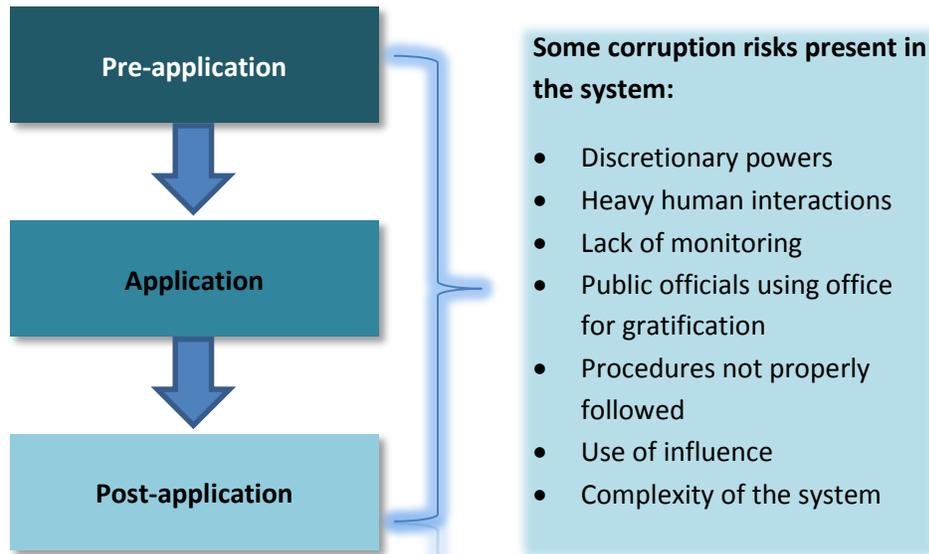
SN	Recommendations	Remarks from the Ministry
1	The Ministry needs to report on its consultation with the State Law Office (SLO), to consider the law where the Minister has the discretion to reverse a collective decision taken by the WPC.	The Ministry reported that appropriate checks and balances are in place to ensure judicious use of discretion. e.g decisions are informed by policy guidelines.
2	The Terms of Reference of the WPC has not been formalised.	The Ministry reported that the Terms of Reference of the Work Permit Committee is mainly to consider applications for work permits and to make recommendations to the Ministry accordingly.
3	The Ministry does not consider it appropriate to establish an Independent Appeal Committee with clear and documented Terms of Reference.	The Ministry reported that there already exists an appeal mechanism whereby any company or employer can appeal against decisions taken by the Ministry regarding work permit. However, other sub-committee members proposed to have an Appeal Committee comprising officers other than those of the work permit sections.
4	The Fast Track Section has not yet been restructured, though the MLIRET is working on it	The fast track section is operational and helps to issue the work permit in 3-4 days

7 Corruption Risks in Issue of Work Permit

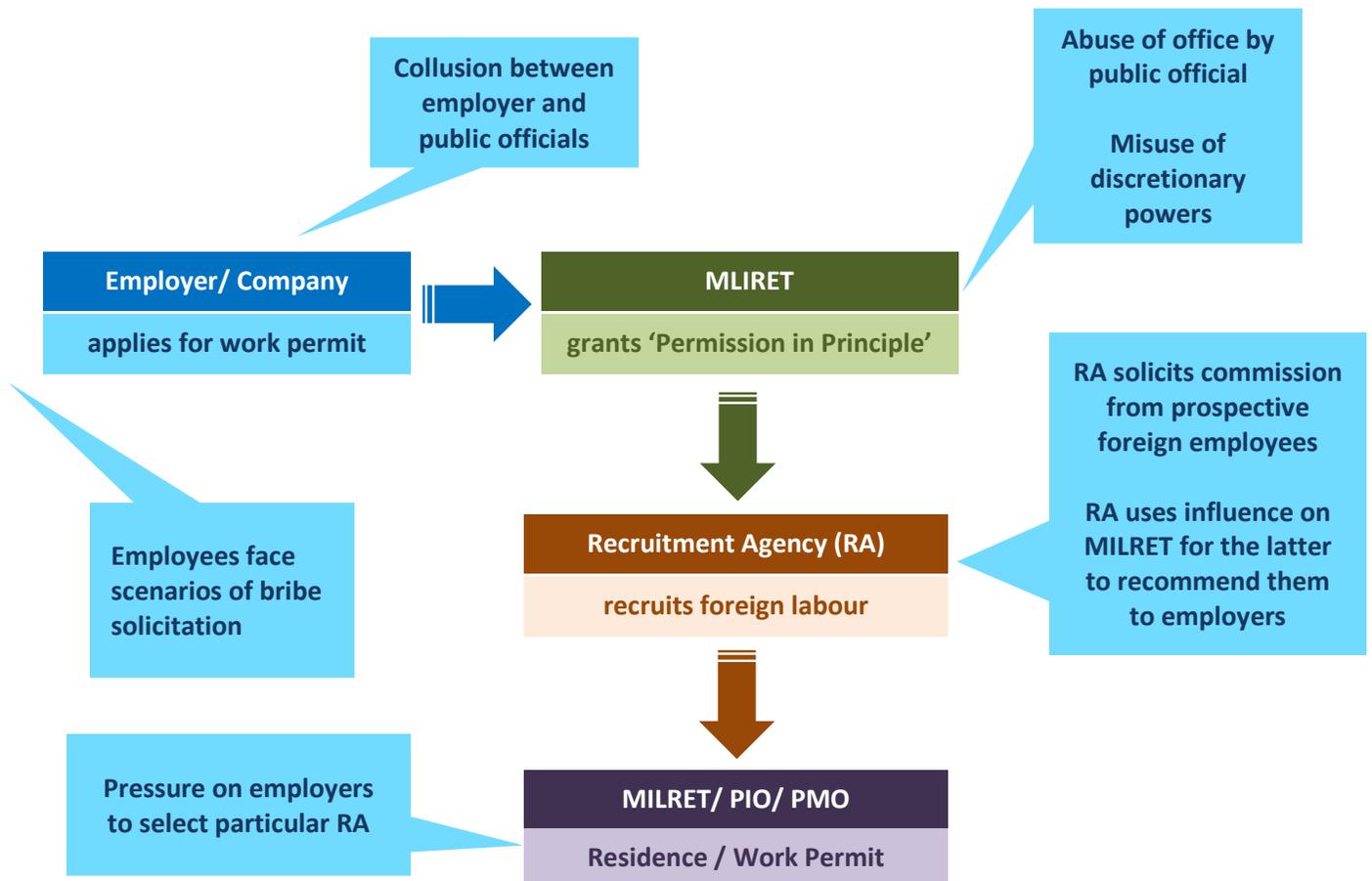
Globally, the issue of work permit for foreign labour is contentious since corruption opportunities or risks seem to be embedded into this process. There seems to be a perception of corruption with regard to the recruitment of foreign skilled labour. Indeed the number of stakeholders in the process of recruitment of such type of labour and the different policies and procedures tend to prompt for perception of wrongdoings being perpetrated in such processes.

Recently an article appeared in the newspaper stating the abuses in the recruitment process of foreign labour. More particularly, **the role of recruitment agencies** in extorting money from prospective employees was highlighted.

On a different note, a number of corruption risks exist at different stages of the work permit system and these risks might be depicted as follows:



The above risks are associated with the manual system of allocation of work permits. Owing to the fact that recruitment of foreign labour encompasses various risks, careful consideration is required on behalf of all parties concerned for an effective recruitment process. Corruption and other risks are very well present in such processes and such risks may be depicted as follows:



To do away with those risks, the e-work permit has been proposed. The e-work permit system intends to speed up the process of obtaining permits, allow for easier tracking and more importantly drives for greater transparency in the process. The e-work permit system attempts to limit human interactions, hence limiting the risk for solicitation and acceptance of bribe.

8 Remaining Corruption Risks Areas and Recommendations

(i) Discretionary powers

'Discretionary powers' remains an issue of concern for issuing permits. The law allows for certain public officials to be endowed with discretionary powers to allow them to ease the process. However, such powers may be used for wrong ends. For instance, in the case of work permit, the Minister has the discretion to reverse a collective decision taken by the WPC. This may become an opportunity for malpractices and corrupt act to thrive.

Following recommendations of the Corruption Prevention Review by the ICAC to review such discretionary powers in consultation with the State Law Office (SLO), no appropriate action was taken by the Ministry of Labour and Industrial Relations and Training to consider amendments to the law.

The Ministry of Labour and Industrial Relations and Training is of the view that although there is a perception to use the 'discretionary powers' for wrong ends, sometimes these allow for positive decisions, for example in emergencies. 'Discretionary powers' are used in extreme situations where there are other factors which have to be taken into consideration. The positive side of 'discretionary powers' should be borne in mind.

Recommendations:

- *Amendment of the law should be envisaged with a view to review the powers conferred to the Minister in reversing decisions taken by the Work Permit Committee.*

(ii) Human Interactions Leading to Collusion

The present manual system favours human contact, which may lead to opportunities to offer, accept and solicit bribes between the public officials and the applicants.

With the proposed e-work permit system, the extent of human interactions in the process of obtaining the permits will be subject to change since limited contacts will reduce opportunities to offer, accept and solicit bribes.

Recommendations:

- *An assessment of the implementation of e-work permit project should be carried out by the Ministry to expedite the process as problems associated with the manual system would be, de facto, eliminated.*

The Ministry highlighted that the e-work permit system is scheduled to be operational by December 2018.

- *A hotline may be put at the disposal of the public to enable them to promptly report malpractices and other wrongdoings with proper assignment of responsibilities to handle the complaints to be made at the level of the Ministry.*

The Ministry reported that there is already a complaints desk at the level of the Ministry.

- *A customer charter may be posted for the attention of applicants.*

The Ministry reported that the guidelines are very comprehensive. However, the recommendation for a customer charter is retained.

(iii) Pressure from Public Officials

Certain private sector companies have complained that they have been pressurized to choose particular recruitment agencies in their recruitment endeavours. Some companies highlighted that such 'pressure' may lead to ineffective recruitment and jeopardise organizational effectiveness and integrity.

Recommendations:

- *Private companies should at all times observe highest standards of compliance with rules and regulations in such recruitment processes since it is always in their interest. Private companies should also be encouraged to report wrongdoings to relevant authorities and reject any type of pressure.*
- *Public officials of the Ministry should be reminded that they work in the public interest and should refrain from exerting any form of pressure on private companies.*

(iv) Perception of High Corruption in the Process of Recruitment of Foreign Labour

Press articles and private radios have recently outcried the issues of concern in the recruitment of foreign skilled employees in Mauritius. Very often this perception of corruption and malpractices, associated with the recruitment of foreign labour is due to delays in the systems, discretionary powers conferred to certain public officials, amongst others.

Recommendations:

The Ministry could consider adopting a proper communication strategy to demonstrate transparency and accountability in the allocation of work permits.

The Ministry reported that with the coming into operation of the e-work permit system, the situation would be remedied considerably.

(v) Monitoring of Expiry and Renewal of Work Permits

Monitoring is the essence of an effective system. It was previously proposed that an early warning signal would be sent to employers through an automatic system at least 3 months before expiry of a work permit subsequently followed by one month notice. Feedback gathered during the sub-committee deliberations have shed light on the fact that the 'early warning signal' to employers to notify them of expiry of work permits is not feasible at the level of the Ministry.

Employers finding themselves in this situation are more likely to seek opportunities to bypass the system collude with public officials.

Recommendations:

The Ministry could consider for the time being, the close monitoring of the 'renewal of work permit' system with a view to avoid possible collusions between public officials and applicants.

The Ministry reported that it is not possible to cater for an 'automatic reminder system' proposal in the actual manual system and that there are backlogs due to the limited staffing. The proposal for an 'automatic reminder system' may be considered in the 2nd phase of the e-work permit project.

In the budget 2017/18, it has been proposed that late applications for work permit renewal will be accepted against payment of penalties.

(vi) Recruitment Agencies

Recruitment agencies are governed by the Recruitment of workers Act 1993 (Mauritius) which define the legal parameters on the recruitment of foreign labour. Recruitment agencies are a key stakeholder in the process of the allocation of work permits. Recently a press article highlighted the various problems including corruption being confronted by recruitment agencies and foreign employees in seeking work and residence permits. Corruption

opportunities in terms of collusion between recruitment agencies, employers, foreign employees and public officials exist in the process.

Recommendations:

In Sri Lanka, with a view to address the ethical standard of licensed recruitment agencies, a grading system was introduced. Agencies that have been convicted of various offences and have more than 10 pending legal cases are graded separately. Those who have not recruited a single worker during the period under review are be disqualified. Preference is given to 'A' grade agencies in overseas promotional campaigns.

It was proposed to develop a grading system for recruitment agencies operating in Mauritius.

The Ministry reported that in Mauritius, recruitment agencies are sanctioned for non-compliance to existing regulations governing them and that the need for a grading system may not be felt as there are only 76 recruitment agencies (as at date) in operation.

The sub-committee recommended that the list of conditions that recruitment agencies have to adhere to, should be strengthened and made stricter to prevent them from involving in malpractices as the task performed by the latter have a direct impact on the image of the country on the international scene.

(vii) Time frame for the Allocation of Work Permits

The Corruption Prevention Review conducted by the ICAC revealed that the there was no established time frame for processing of requests for the 'Permission in Principle' and the prescribed timeframe for the issue of work permits is not always respected. Such practices may lead to potential corruption risks such as bribery, use of influence, amongst others.

The Ministry reported that as at date, the time frame for the processing of applications and allocation of Work Permits is 15 days.

Recommendations:

Following proposals from the PPPAC last meeting, it was proposed that a time frame need to be defined pertaining to the verification of 'correctness and completeness' of applications submitted. The Ministry reported that it would be difficult to assign a timeframe for particular tasks as all applications are different. A fast track system is operational at the Ministry and is working perfectly.

(viii) Procedures too complex

Accordingly to Chan et al. (2015)¹, many companies have complained that the Ministry takes too long to process the applications for work permits for an employer to recruit a foreign worker. The study further revealed that the actual processes for work permit application for a worker to come to work in Mauritius take too long and in many cases employers and recruiting agencies might find themselves in difficulty.

The Ministry reported that as at date, the time frame for the processing of applications and allocation of Work Permits is 15 days. The procedures are well defined in the Guidelines for the allocation of Work Permits which is available online. The procedures appear complex and lengthy when applications are not **complete** (required documents are not submitted) and when these same documents are not **correct**.

Recommendations:

The Ministry could further explore other measures, such as request for additional manpower, with a view to provide a quicker service to applicants, until the coming into operation of the e-work permit system.

The Ministry reported that additional staff have been provided to the Work Permit Department of the Ministry.

9. Measures in the Budget Speech 2018/19 Regarding Allocation of Work Permits

With a view to streamlining and expediting the processing of applications for work permit, the Budget 2018-2019 made a number of amendments to the existing processes as follows:

- a) The checklist for documents required for application of work permits will be reviewed;
- b) Applications, not supported by appropriate documents as per the checklist, will be classified as 'Missing Documents Cases' and will not be entertained;
- c) Companies, having less than 20 employees, will no longer be required to advertise jobs in the press. Instead, they will use the facilities provided by the Employment Information Centres;
- d) A special dedicated Unit will be set up at the Ministry of Labour, Industrial Relations, Employment and Training (MLIRET) to update information regarding accommodation permits and quotas of companies;
- e) The policy regarding ratio of local workers to expatriates will be reviewed in respect of certain sectors;

¹ A proposed Framework for the recruitment of Temporary Foreign Labour (TFL) for the Clothing and Textile industry in Mauritius, Chan Sun C. Alain, Open University Mauritius, Dr. H. Chittoo, Associate Professor, University of Technology Mauritius, Dr. K.S. Sukon, Director General, Open University Mauritius International Journal of Management Sciences and Business Research, Nov-2016 ISSN (2226-8235) Vol-5, Issue 11

- f) The Info Highway Platform will be accessible for sharing of data among MLIRET, Passport and Immigration Office and Prime Minister's Office;
- g) A Dormitory Facilities Scheme will be introduced under which promoters/investors will be allowed to rent dormitories to employers for lodging their foreign labour;
- h) Late applications for work permit/renewal will be accepted against payment of penalties; and
- i) Companies will be allowed to effect payment for work permit fees within a maximum period of 30 days instead of 10 days.