Department of Labour
TE TARI MAHI

Review – Inter-Agency Understanding & Schedules

Letter of Exchange between the New Zealand Department of Labour and Ministry of Labour & Human Resources Development, Kiribati

8 March 2011

Purpose

1. The purpose of this Letter of Exchange is to mark the conclusion and official agreement to amendments to the Inter-Agency Understanding (IAU) and the Facilitative Arrangements that are appended to the IAU as Schedule 1.

Parties

2. The amendments to the Inter-Agency Understanding and the Facilitated Arrangements will come into effect upon once this Letter of Exchange has been signed by the Deputy Chief Executive, Immigration Group and the Secretary of the Ministry of Labour & Human Resources Development, Kiribati.

Communication

3. The text of the amended Inter-Agency Understanding will be made publically available on the Department of Labour website, in line with the current practice.

Attachments

4. Copies of the amended Inter-Agency Understanding and the Facilitated Arrangements have been included with this Letter of Exchange as an attachment for reference purposes.

Nigel Bickle
Deputy Chief Executive – Immigration Group

For Department of Labour of New Zealand

Tebao Awerika
Secretary

For Ministry of Labour & Human Resource Development

SEASONAL RECOGNISED EMPLOYER

INTER-AGENCY UNDERSTANDING 2011: KIRIBATI

Inter-Agency Understanding between the Department of Labour of New Zealand and the Ministry of Labour and Human Resource Development of the Republic of Kiribati in support of New Zealand's Recognised Seasonal Employer Policy

TE MAURI TE RAOI AO TE TABOMOA

Department of Labour

INTER-AGENCY UNDERSTANDING

1. PARTICIPANTS

1.1 This Understanding is between:

- the Department of Labour of New Zealand (" **the Department**") acting on behalf of its Secretary, with responsibility for the administration of the New Zealand Immigration Act 2009

  and

- the Ministry of Labour and Human Resource Development of the Republic of Kiribati ("**the Ministry**") with responsibility for the administration of the Kiribati Employment Ordinance (Cap.30)

  hereinafter referred to as ("**the Participants**").

2. PURPOSE

2.1 The purpose of this Understanding is to set out the arrangements to facilitate access of Kiribati nationals to seasonal work in the horticulture and viticulture industries under New Zealand's Recognised Seasonal Employer Policy.

2.2 Country specific facilitative arrangements are set out in Schedule One of this Understanding.

3. DEFINITIONS

3.1 For the purposes of this Understanding, the following definitions apply:

3.2 Agreement to Recruit ("**ATR**") means an approval for a Recognised Seasonal Employer to offer employment (in planting, maintaining, harvesting, and packing crops) to non-New Zealand national or resident workers;

3.3 Manager, RSE means Manager, Recognised Seasonal Employment of the Immigration Group of the Department;

3.4 Recognised Seasonal Employer ("**RSE**") means a New Zealand employer, whose core area of business is horticulture or viticulture, who has had an application for RSE status approved by Immigration New Zealand ("**INZ**");

4. PRINCIPLES

4.1 The facilitative arrangements must be designed and implemented consistent with the following principles:

- equity of access and opportunity
- transparency of process and decision making
- accountability
- development focused, and
- mitigation of risk.

5. CRITICAL SUCCESS OUTCOMES

5.1 **The Department** enters into this Understanding with a view to achieving the following outcomes, notably:

- achieving objectives of the RSE Policy
- avoiding: overstaying and exploitation of workers; displacement of New Zealand's workforce; and suppression of wage growth in the horticulture and viticulture industries
- securing at least 50% of the available places under the RSE Policy, over the first five years, from eligible Forum Island Countries. To help achieve this goal specific Forum Island Countries will be assisted to establish facilitative arrangements, and
- contributing to the development objectives in the Pacific by fostering sustainable economic development and regional integration under the RSE Policy.

5.2 **The Ministry** enters into this Understanding with a view to achieving the following outcomes, notably:

- Kiribati secures a fair portion of seasonal work opportunities under the scheme
- Kiribati workers are able to generate savings and relevant experience which may contribute to the development of Kiribati
- Kiribati cooperates effectively with New Zealand to maintain the integrity of the arrangements implemented, and
- The cost of transport does not act as a barrier for Kiribati nationals to access opportunities under the RSE Policy.

6. CRITICAL SUCCESS FACTORS

6.1 Facilitative arrangements will be effective if:

- RSEs establish productive relationships with Kiribati and obtain a supplementary workforce to sustain their industries
- objectives are achieved and principles are adhered to
- both Participants have specific and timely information to enable Kiribati to effectively participate in this scheme, and actively participate in monitoring and evaluating measures of success and outcomes resulting, and
- Kiribati nationals enjoy fair access to the RSE Policy, fair and reasonable treatment by RSEs, adjust to New Zealand conditions, derive income and skills, have successful re-entry into their home community and heighten the prospect of return employment in New Zealand.

7. FACILITATIVE ARRANGEMENTS

7.1 The facilitative arrangements under this Understanding must be consistent with the principles and outcomes set out in Sections Four and Five above, mutually determined in writing by both Participants, appended as Schedule One of this Understanding.

7.2 The facilitative arrangements will assist RSEs to recruit from Kiribati, enable Kiribati nationals to access opportunities under RSE Policy, allocate responsibilities and actions to Participants for mitigating risks and ensure compliance and outline cooperation between Participants for information sharing, marketing and other facets important to the success of the RSE Policy.

7.3 The facilitative arrangements must always be consistent with the current RSE Policy.

8. IMMIGRATION DECISIONS

8.1 The decision to grant a visa under the RSE Policy remains the prerogative of the Department with decisions being made on a case by case basis in accordance with requirements laid down in New Zealand immigration legislation, regulations and any applicable Government immigration policy.

9. MARKETING

9.1 The need for Kiribati to market itself to RSEs as a source of reliable seasonal labour is recognised. Where possible, the Department will assist marketing initiatives mounted by the Ministry.

10. INFORMATION COLLECTION

10.1 The Participants will cooperate in the collection and sharing of information in a manner consistent with their applicable laws.

10.2 The Participants will cooperate to monitor and evaluate the RSE Policy and arrangements under this Understanding. Monitoring and evaluation mechanisms will enable the Participants to assess progress against the Participant's critical success outcomes (Section Five) and critical success factors (Section Six), identify successes and inform areas for improvement in arrangements that respective Participants are responsible for. The Participants will in particular cooperate to conduct random surveys of stakeholders to assess efficiency and transparency of recruitment procedures.

10.3 For the purposes of evaluation any information collected from Kiribati workers about their participation in the RSE Policy will be voluntary. The Participants will only use information for statistical or research purposes and will not publish in a form that could reasonably be expected to identify any individuals.

11. PUBLICITY

11.1 The Participants will make efforts to increase awareness and understanding of the RSE Policy in Kiribati and in New Zealand.

11.2 The Participants will act promptly to correct any false or misleading information about the RSE Policy.

11.3 The Participants agree that the IAU document and Schedules will be made publicly available on the Department's website (www.dol.govt.nz). Information contained in this Understanding can be shared with RSEs.

12. REVIEW

12.1 This Understanding will be reviewed at a time mutually determined by the Participants.

12.2 The Participants acknowledge that arrangements under this Understanding are likely to evolve with experience. The Participants will consult as necessary to promptly address and endeavour to resolve any issues arising out of this Understanding or the operation of facilitative arrangements. Such issues may include needs for capacity building through institutional strengthening and/or improvement in co-ordination among government agencies.

13. VARIATIONS/AMENDMENTS/ADDITIONS

13.1 This Understanding may be amended at any time by mutual determination in writing by the Participants.

14. COMMENCEMENT AND TERMINATION

14.1 This Understanding will come into effect upon signature by both Participants and may be terminated by either Participant upon written notice to the other Participant.

14.2 Any evidence of corruption or unethical practice that is not dealt with effectively and immediately will jeopardise participation in the RSE Policy and potentially result in the termination of this Understanding.

15. NOTICES

15.1 The address for notices to the Department for matters related to this Understanding is:

15.2 Manager, RSE
Immigration Group
Department of Labour
PO Box 3705
Wellington
New Zealand

15.3 The address for notices to the Ministry for matters related to this Understanding is:
Director of Labour
Ministry of Labour and Human Resource Development
PO Box 69
Tarawa
Kiribati

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Department of Labour

SEASONAL RECOGNISED EMPLOYER

INTER-AGENCY UNDERSTANDING 2011: KIRIBATI

Schedules

Inter-Agency Understanding between the Department of Labour of New Zealand and the Ministry of Labour and Human Resource Development of the Republic of Kiribati in support of New Zealand's Recognised Seasonal Employer Policy

TE MAURI TE RAOI AO TE TABOMOA

Department of Labour

SCHEDULE 1: FACILITATIVE ARRANGEMENTS

1. Recruitment

The Participants recognise that there are two recruitment paths for Kiribati citizens. RSEs may recruit from a work ready pool of workers facilitated by the Ministry or recruit directly (either in person or through an agent).

1.1 The Work Ready Pool

The Ministry will prepare to the best of their ability a work ready pool of Kiribati citizens which RSEs can recruit from. The work ready pool will comprise workers nominated by Island Councils.

The Ministry will maintain an up to date database of Kiribati citizens who are recruited.

a) Pre-Selection

Island Councils will pre-select candidates, ensuring suitability and fairness, with the support of the Ministry of Internal and Social Affairs. The Ministry will provide Island Councils with information and guidelines to use in the pre-selection process and the number of workers to be nominated.

Once pre-selected, Island Councils will nominate those candidates to the Ministry. Island Councils will assist nominees to prepare information for the screening process.

b) Screening

A Screening Committee will be responsible for screening all nominees for the work ready pool. The Screening Committee will consist of three government officials (one representative from each of the following Ministries: the Ministry, the Ministry of Foreign Affairs and Immigration and the Ministry of Internal and Social Affairs), two church representatives (Catholic and Protestant) and a representative from the Kiribati Association of Non Government Organisations.

Factors that will be taken into account by the Screening Committee will include previous immigration history, as well as the character and health, age criteria as outlined within the RSE Work Policy, with additional consideration of evidence of a work ethic (paid, subsistence or otherwise).

Nominees who pass the screening process will be placed in the work ready pool.

c) Recruiting From the Work Ready Pool

The Ministry will provide a list of the work ready pool and any relevant documents for RSEs to make their selection.

At the RSEs request, the Ministry can select workers from the work ready pool for the RSEs to offer employment to. The RSE will specify to the Ministry, the number and type of workers needed, details of named workers, and any relevant details such as dates by which workers should arrive in New Zealand.

RSEs may wish to re-employ workers from Kiribati who have worked satisfactorily in previous seasons. In cases where workers are not in the work ready pool, the Ministry will contact them directly to confirm their availability. RSEs wanting to conduct interviews in Kiribati will need to obtain a license under the Employment Ordinance (Cap.30). It may be more practical that an RSE work with a licensed agent to do this.

1.2 Direct Recruitment

The Employment Ordinance (Cap.30) requires all persons undertaking recruitment activity in Kiribati to obtain a license. RSEs undertaking direct recruitment should contact the Ministry who will inform them of the names of licensed agents, and the procedure for obtaining a recruitment license in Kiribati. It may be more practical for RSEs to engage a licensed agent to recruit workers from Kiribati. Responsibility for the delivery of Pre-Departure Orientation remains with the Ministry in conjunction with the New Zealand High Commission in Tarawa.

1.3 General

The Department will inform the Ministry, in a timely manner, of approved ATRs involving workers from Kiribati. Licensed agents engaged by RSEs will be paid by RSEs and are prohibited from seeking compensation from workers in exchange for securing an employment agreement under the RSE Work Policy. In order to guard against exploitation of Kiribati citizens only such costs as medical and police certificates and other reasonable costs relating to the work visa application should be charged to the worker. The worker must be made aware that they can complete the visa application without assistance of agents.

The Ministry informs the Department of licenses issued to agents to recruit in Kiribati for evaluation purposes.

The decision to offer employment and to enter into an employment agreement remains with the RSE. A written employment agreement negotiated by the RSE and worker will specify the terms and conditions of employment and must be in accordance with the RSE Policy and New Zealand's employment legislation, including the opportunity for workers to seek independent advice. The RSE and worker must sign the employment agreement before the worker can submit an application to work under the RSE Policy.

2. Visa Processing

An application for a visa to work for an RSE must be made in accordance with the RSE Policy. Application requirements are set out in the RSE Policy and the "Application to Work in New Zealand for a Recognised Seasonal Employer" form. The application fee will be published in the INZ Guide to Fees (NZIS 1028) and on INZ's website **www.immigration.govt.nz/fees**.

Visa applications to work for an RSE must be submitted to the New Zealand High Commission in Tarawa. Applications will be expected to be decided within five to ten working days from submission to the High Commission.

The Department in consultation with the Ministry will develop information sheets outlining the requirements for applications to work in New Zealand for an RSE. The Ministry will cooperate with the Department on translation of information sheets.

Application forms and RSE Policy information sheets will be made available through the New Zealand High Commission and through INZ's website **www.immigration.govt.nz**.

The RSE Policy is available through the INZ website. The Department will inform the Ministry of any updates and changes to the RSE Policy.

The New Zealand High Commission in Tarawa will work with the Ministry to ensure that notification of the receipt of all RSE applications for visas is communicated to the Ministry for the purposes of record keeping.

3. Pre-Departure Orientation

The Department will make available to the Ministry information kits and seminar tools that may be drawn on for purposes of pre-departure orientation and will liaise with the Ministry regarding the translation of relevant parts, where appropriate.

The Ministry with input, where possible, from the New Zealand High Commission in Tarawa will provide comprehensive briefings to all RSE workers selected from the work ready pool before their departure to New Zealand. Such briefings will cover matters such as; differences types of pay rates (hourly versus contract rate), deductions from pay including signing consent forms for deduction, climate, clothing and footwear requirements, taxation, insurance (Kiribati supports compulsory medical insurance for all RSE workers going to New Zealand), health and wellbeing, accident compensation, banking and remitting, budget advice, travel arrangements, and emergency contact details such as the Department's Manager, RSE.

These orientation sessions will stress the importance of adherence to the rules and conditions of RSE visas granted and in particular the briefings will impress upon workers the importance of compliance and the public consequences of any overstaying, displaying a good work ethic and protecting the reputation of Kiribati as a source of seasonal labour for New Zealand's horticulture and viticulture industries. In addition the Ministry will identify the names of each group leader and pass these names onto the employer. The Ministry will stress to workers at Pre-Departure Orientation the importance of supporting their group leaders.

4. Pastoral Care

Workers will enjoy the full protection of New Zealand employment and workplace legislation, in particular legislation concerning safe conditions of work and the payment of minimum wage rates will apply will apply. Workers are eligible to join unions in accordance with those laws. RSEs will address pastoral care as set out in the RSE Policy, this includes:

- transportation to and from the port of arrival and departure
- an induction programme
- suitable accommodation
- transportation to and from the worksite(s)
- access to personal banking
- provision of personal protective equipment
- provision of onsite facilities (toilets, hand washing, first aid, shelter, fresh drinking water)
- necessary language translation e.g. for health and safety purposes, and
- the opportunity for recreation and religious observance.

Workers will be responsible for reasonable costs of accommodation. If RSEs pay the full travel cost, workers have to freely give informed and written consent in deductions that may be taken by RSEs to recover up to half from wages during the term of employment. Pay deductions (apart from tax and ACC levy) must be made as set out in the RSE Policy.

Workers will be covered by Accident Compensation legislation in New Zealand but will not be eligible for free medical services. Where workers require medical services (other than ACC) they are liable to pay the costs incurred. Medical insurance is compulsory for all RSE workers going to NZ.

Workers may bring any concerns arising from the conduct of their RSE to the attention of their team leader (where one exists), employer, union representative, Honorary Consul, and/or the Department staff. The Manager, RSE may investigate any issues unable to be resolved by other parties. The Ministry should inform, in a timely manner, the Department of any complaints received or issues raised. The Department should inform, in a timely manner, the Ministry of any complaints received.

5. Compliance

The New Zealand Government has a zero tolerance for overstaying under the RSE Policy. To ensure the sustainability of the RSE Policy workers need to comply with the visas granted. RSEs are responsible for the payment of costs associated with the repatriation of any of their workers who are found in breach of the terms and conditions of their permit. RSEs are unlikely to seek to recruit further workers from Kiribati if they experience negative consequences for non compliance relating to Kiribati workers. The Participants will cooperate in matters relating to the return of Kiribati workers.

The Department will monitor compliance with employment and workplace legislation, the RSE Policy and general immigration requirements.

The Department will investigate as appropriate, any complaints or issues of non compliance that are brought to its attention. The Department will operate a programme of visits to RSEs to monitor compliance with the RSE Policy.

6. RSE Policy updates

The Department will advise the Ministry of any changes or amendments to the RSE Policy at the earliest opportunity before the changes or amendments are made public. RSE Policy will remain available and updated on the Immigration NZ website **www.immigration.govt.nz**.

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Department of Labour