



**European Bank**  
for Reconstruction and Development

# EBRD Performance Requirement 2: Labour and working conditions

## Guidance note on forced labour

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### At-a-glance summary

All European Bank for Reconstruction and Development (EBRD) clients should ensure that:

- workers are not charged recruitment, processing or placement fees to obtain employment
- workers are not provided loans or advances entailing significant debt that can only be repaid by continued employment with the same company
- only reputable recruitment and employment agencies are used and that there are procedures in place to check their practices and policies
- workers are provided with written terms and conditions of employment for their review and signature before they begin work and that migrant workers receive these terms and conditions before leaving their home country and in a language they understand
- workers retain control and possession of their passports and other personal documents
- workers are free to leave the worksite and their accommodation when they are not working
- workers are free to leave their employment without penalty on giving reasonable notice (in accordance with national law)
- all overtime work is voluntary and compensated in accordance with national laws
- prison labour is only used where prisoners work willingly and their wages and working conditions are comparable to those of non-prison labour.

### EBRD requirements on forced labour – PR2.13

**PR2.13:** “The client will not employ forced labour, which consists of work or service not voluntarily performed that is exacted from an individual under threat of force or penalty, including through abusive and fraudulent recruitment practices. This includes involuntary or compulsory labour, such as indentured labour, involuntary prison labour, bonded labour or similar labour-contracting arrangements, or trafficking in persons.”

This information is intended to assist EBRD clients in their capacity as employers. The EBRD wishes to ensure that working conditions on the projects it finances comply with national labour laws and health and safety regulations, as well as international good practice in these areas. The EBRD's specific requirements are set out in its Performance Requirement 2 (PR2) on labour and working conditions. The provisions on forced labour are as follows:

# 1. What is forced labour?

Forced labour is defined quite broadly and often used alongside or interchangeably with other terms such as people trafficking and modern slavery.

- **Forced labour** is work exacted under the threat of penalty and for which the person has not offered himself or herself voluntarily. Forced labour can involve practices such as threats of dismissal or physical violence, the withholding of identity documents or wages, threats to denounce workers to immigration authorities where their status is illegal, or entangling workers in fraudulent debt.
- **Trafficking in persons** can lead to forced labour. PR2 defines it as the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or 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. PR2 also notes that women and children are particularly vulnerable to trafficking.

- **Modern slavery** is an umbrella term that covers forced labour, trafficking in persons and other exploitative practices, such as forced marriage. For more detailed information, see [Managing the Risks of Modern Slavery: A Good Practice Note for the Private Sector](#), published by the EBRD, the International Financial Corporation (IFC) and CDC Group.

## Indicators of forced labour

A useful approach to identifying cases of forced labour is to focus on indicators of “coercion or penalty” and “involuntariness”. It is, therefore, useful to ask:

1. Has the worker been subjected to a threat or menace of penalty?
2. Has the worker given their consent to work freely and are they free to leave?

For there to be a case of forced labour, there must be evidence of at least one of each indicator type. Moreover, one of the identified indicators must be considered “strong”.

Table 1. Examples of strong indicators	
Coercion or penalty	Involuntariness
Any forms of threat and violence	Debt accrued by workers as a result of fees charged during the recruitment process
Abuse of vulnerability, including threats to denounce a worker to the authorities	Deception about the nature of the work in the recruitment process
The retention of passports or other identity documents	Restriction of workers' freedom of movement
Withholding or non-payment of wages or other promised benefits	Forced overtime

Source: EBRD, IFC and CDC (2018), [Managing the Risks of Modern Slavery: A Good Practice Note for the Private Sector](#), London and Washington, DC.

See page 17 of the Good Practice Note for a detailed overview of the indicators.

## Prison labour

Work carried out by prisoners for private companies does not always amount to forced labour. Forced labour arises where a prisoner is made to work for the benefit of a private company without his or her voluntary consent (see Box 1). Prisoners' conditions of employment (especially wages, social security and health and safety) should be the same as those enjoyed by non-prison workers carrying out similar work, to the greatest extent possible.

### Box 1. Using prison labour in the private sector

Prisoners may undertake *voluntary* work in connection with private commercial activities inside or outside the prison, provided that certain requirements are met in order to ensure true consent.

**The primary requirement is *voluntariness*.** A prisoner's work for a private company must be done of their own free will. There are two main indicators of voluntariness:

#### 1. Formal consent

- Formal written consent must be obtained from prisoners working for private enterprise to confirm voluntariness.
- Workers should not have been subjected to any pressure or threatened loss of privileges to give their consent.

#### 2. Wages and conditions

- Employers should offer prisoners the same level of health and safety and similar terms and conditions of employment (wages, social security) to those offered to workers in free employment.
- It may not be appropriate for an employer to offer prisoners all of the conditions that apply to a free market. Wages do not have to be exactly the same as those paid on the open market, but should be approximately the same. However, it is permissible for prison authorities to deduct appropriately identified sums for food and lodging costs from prisoners' wages.

**Other factors** that should be taken into account to indicate voluntariness include the opportunity to learn new professional or personal skills that may assist the prisoner after their release.

## 2. Checklist: employer actions that can give rise to forced labour

If an employer answers “yes” to any of the questions in the left-hand column of the following checklist, immediate and concrete steps must be taken to ensure that the employment in question does not give rise to forced labour.

<b>Are workers not free to terminate their employment?</b>	If the worker does not feel free to terminate their employment as a result of fees incurred to the employer or an agent, this is an indicator of forced labour.
<b>Are workers not free to leave their workplace as they wish?</b>	Workers should be entitled to leave the workplace or accommodation whenever they wish, subject to reasonable security measures on remote or dangerous sites.
<b>Do workers pay pre-employment recruitment or travel fees?</b>	<p>An employer should bear the costs associated with a worker’s recruitment and workers should not have to pay fees to secure employment. Workers who pay high fees during recruitment are more vulnerable to forced labour once they enter employment.</p> <p>Migrant workers are particularly vulnerable to this and may borrow money from unscrupulous money lenders to pay fees to secure employment (for example, job agency commissions and visa and travel costs), leaving them in debt. This can be compounded by exorbitant interest rates and the presence of numerous intermediaries (such as local brokers, national recruitment agencies and international agencies), causing fees to balloon. Outlawing the payment of recruitment fees by workers is key to preventing forced labour and trafficking in operations and supply chains.</p> <p>See <a href="#">page 65 of the Good Practice Note</a> for further guidance on what constitutes reasonable fees to be borne by workers.</p>
<b>Are wages not paid in full and on time? Are wage advances or loans made to workers?</b>	<p>Delaying wages can amount to forced labour if the promise of owed pay is used to coerce workers into staying in a job or to create dependency. Wages should be paid, at most, monthly and in full, within one week of the end of the pay period.</p> <p>Excessive wage advances or loans should not be provided to workers. Workers must be clearly informed of the terms and conditions surrounding loans and advances, including the schedule for repayment. Loan payments should not exceed 10 per cent of the worker’s wages and the loan term should not exceed six months. Deductions from wages for repayment may only be made where authorised by law or collective agreement.</p>
<b>Does an employer provide services to workers for which they have to pay?</b>	Where employer-provided services are chargeable to workers, these should be optional, clearly noted as chargeable services and not leave workers indebted to the point that they are unable to freely leave their jobs.
<b>Are workers required to work excessive amounts of overtime?</b>	<p>Forced overtime can become a forced labour situation if it is beyond the number of overtime hours allowed by national law or collective agreement and there is an additional element of coercion, such as threats to fire the worker or to never offer the worker overtime again.</p> <p>PR2.16 also requires all overtime work to be voluntary.</p>

## 3. Employer safeguards against forced labour

There are a number of things that an EBRD client should do to ensure that it has the appropriate policies and procedures in place to comply with PR2.13.

- Take steps to ensure that all work, including overtime, is carried out voluntarily.
- Seek to ensure that no fees are charged to workers, either by recruitment agencies or the client (including for travel or accommodation). The client's "no fees" policy should be prominently stated in job advertisements and in contracts with recruitment agencies.
- Use only legitimate and reputable recruitment and employment agencies. Put due diligence procedures in place to check their practices and policies before and over the course of doing business with them.
- Ensure that workers are in possession of their original passports, visas and other identification documents. Employers should provide workers with individual, secure storage facilities for their documents.
- Ensure that workers are free to leave the worksite and accommodation, subject only to appropriate security or logistical restrictions where necessary.
- Ensure that any non-cash benefits (such as accommodation) are valued appropriately and do not impose a substantial financial burden on workers.
- Do not use prison labour without guarantees that it is voluntary (such as formal written consent) and ensure that prison labourers are paid and treated the same as non-prison workers.

## 4. Forced labour in the supply chain

Under PR2, EBRD clients are also required to take steps to address forced labour in their supply chains.

### EBRD requirements on forced labour in the supply chain: PR2.25, PR2.26 and PR2.27

- PR2.25: "As part of the supply chain assessment process outlined in PR1, the client will identify and assess the risk of child labour and forced labour being used in the operations of its primary suppliers."
- PR2.26: "If this risk assessment identifies the presence or significant risks of child labour or forced labour in the operations of the primary suppliers in contravention of ILO standards, or where significant risks of child labour or forced labour are reported in lower tiers of the supply chain of goods and materials which are essential to the core operational functions of the project, the client will take appropriate steps to remedy this in accordance with the following requirements:
  - (i) In relation to child labour, the client will make good faith efforts to remediate or mitigate the problem. The client will only continue to procure such goods or materials from that supplier having received satisfactory undertakings or evidence that the supplier is committed to implementing a programme in accordance with good international practice (GIP) to eliminate such practices within a reasonable time frame. The client will report on progress with the implementation of such programme on a regular basis;
  - (ii) In relation to forced labour, the client will only continue to procure such goods or materials from suppliers having received satisfactory undertakings from the suppliers or evidence that the suppliers have taken appropriate steps to eliminate the conditions that constitute forced labour; and
  - (iii) Where there is a risk of child and/or forced labour, the client will monitor its primary suppliers on an ongoing basis in order to identify any significant changes in its supply chain and new risks or incidents of child and/or forced labour. Additionally, where there is a risk of harm to workers of a primary supplier, the client will require the relevant primary supplier to introduce procedures and other control measures to prevent or reduce the risk of harm to worker health and safety. Such procedures and control measures will be reviewed by the client periodically to ascertain their effectiveness."
- PR2.27: "The ability of the client to fully address these risks will depend upon the client's level of management control or influence over its primary suppliers. Where remedy is not possible, the client will reorient the affected primary suppliers over a reasonable timeframe agreed with the EBRD to suppliers that can demonstrate that they are complying with this PR."

Identifying forced labour in the supply chain can be a difficult process, particularly where there are a large number of suppliers and complex supply chains. PR2.25 requires all clients to assess the risk of forced labour in all primary supply chains as part of the supply-chain assessment process outlined in PR1. PR1 defines primary suppliers as “those suppliers who, on an ongoing basis, directly provide goods or materials essential for the core operational functions of the project”. The due diligence process should include both domestic and international supply chains.

In addition, clients are required to identify “reported” risks of forced labour in the lower tiers of the supply chain. The US Department of Labor’s [list of goods produced by forced labour](#) can help to identify certain risk products and countries. Agriculture is a particular risk sector, especially where there are large numbers of smallholders or where labour intermediaries are routinely used to recruit workers. Examples of good practice in addressing forced labour risk in supply chains include:

- putting in place a clear and transparent company policy that sets out measures to prevent forced labour and trafficking in the supply chain
- training client and supplier staff in identifying forced labour and seeking appropriate remedies
- carrying out initial screening of potential suppliers, including checking for the presence of contextual factors that might suggest a heightened risk of forced labour (see [Page 32 of the Good Practice Note](#) for an overview of contextual factors), making new and existing suppliers aware that the use of forced labour will not be tolerated and providing clear information about what constitutes forced labour
- including forced labour requirements in supplier contracts
- working with suppliers to improve conditions
- monitoring labour practices and working conditions on high-risk sites
- providing effective remedy for identified victims of forced labour where client activities have caused or contributed to forced labour, or collaborating with other parties, including suppliers and government, to ensure effective remedy for victims where a client is linked to the case
- dropping suppliers that fail to make serious efforts to solve forced labour issues, though this should be preceded by clear warnings that make clear the consequences of continued non-compliance.



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