

MACAO SPECIAL ADMINISTRATIVE REGION

Law No. 16/2020

Employment Agency Activity Law

The Legislative Assembly decrees, pursuant to subparagraph (1) of Article 71 of the Basic Law of the Macao Special Administrative Region, that the following shall be enforced as law:

CHAPTER I

General Provisions

Article 1

Object

This Law establishes the general regime for the admission to and conduct of employment agency activity within the Macao Special Administrative Region (Macao SAR).

Article 2

Scope of application

1. This Law shall apply to private entities that conduct the employment agency activity.
2. The provisions of this Law shall not govern the job referral or recruitment services provided free of charge by educational institutions accredited by the Government of the Macao SAR.

Article 3

Definitions

For the purposes of this Law, the following definitions shall apply:

- (1) “Employment agency activity” means the provision of job referral and recruitment services in any way;
- (2) “Job referral” means the provision of information on the labour market to job-seekers, the recording of data on the requirements of the jobs to be performed and their professional qualifications or work experience, etc., and matching such data with the job requirements of the employers intend to recruit, thereby facilitating the establishment of labour relations;

(3) “Employee recruitment” means the provision of information on the labour market to employers, the recording of job vacancies offered by them, in particular the requirements for the proposed jobs, and matching such data with those of job-seekers, thereby facilitating the establishment of labour relations;

4) “Principal person of the organ” means the chairman, president, director-general as well as the person holding equivalent post of an association or a foundation, except the person of the organ of the Supervisory Board.

Article 4

Types of services

The employment agency activity may be classified into fee-charging employment agency activity and non-fee-charging employment agency activity, pursuant to whether a fee is exacted for such services provided to service users.

CHAPTER II

Employment Agency Activity Licence

Section 1

Licensing

Article 5

Licence

1. Any person or entity who conducts the employment agency activity must hold a licence as prescribed in this chapter.

2. The format of the licence shall be approved through an order issued by the Chief Executive published in the Official Gazette of the Macao SAR (hereinafter referred to as the Official Gazette).

Article 6

Requisites for issue or renewal of licence

1. The application for the issue or renewal of an employment agency activity licence shall only be approved to any natural person, company, association or foundation that fulfils the conditions prescribed in this Law.

2. Where the applicant is a natural person, the following conditions must be fulfilled concurrently:

(1) Being a Macao SAR resident;

- (2) Having legal capacity;
- (3) The business premise to be used shall meet the requirements prescribed in paragraphs 1, 2 and 4 of the following article;
- (4) Having fulfilled its tax obligations if any;
- (5) Having proper moral integrity to conduct business;
- (6) Having technical and organizational capabilities;
- (7) In the case of conducting the fee-charging employment agency activity, an effective guaranty as stipulated in Article 9 has been provided;

3. Where the applicant is a company, association or foundation, the following conditions must be fulfilled concurrently:

- (1) Being established according to law
- (2) Having domicile of legal person located in the Macao SAR;
- (3) In the case that the applicant is a company, all the administrators and shareholders shall have proper moral integrity to conduct business; in the case that the shareholder is a legal person, all its administrators or the principal persons of the organ shall have proper moral integrity to conduct business, and any of the shareholders or its administrators of the applicant shall have the technical and organizational capabilities; in the case that the applicant is a joint stock limited company, all its administrators and the shareholders holding 10% or more of the capital shall have proper moral integrity to conduct business; in the case that the shareholder is a legal person, all its administrators or the principal persons of the organ shall have proper moral integrity to conduct business, and any of the shareholders or the administrators of the applicant shall have the technical and organizational capabilities;
- (4) In the case that the applicant is an association or a foundation, all of its principal persons of the organ shall have proper moral integrity to conduct business, and any of its principal persons of the organ shall have the technical and organizational capabilities; however, in the case that the applicant is a association, according to the law or its articles of association, the designated person who is appointed by the competent authority through a resolution of the meeting to engage in the employment agency activity, all of its principal persons of the organ and the appointee shall have proper moral integrity to conduct business, and the appointee shall also have the technical and organizational capabilities;
- (5) In the case of conducting the fee-charging employment agency activity, an effective guaranty as stipulated in Article 9 has been provided;
- (6) Having fulfilled the conditions mentioned in subparagraphs (3) and (4) of the preceding paragraph.

4. For the purposes of subparagraph (5) of paragraph 2, subparagraphs (3) and (4) of paragraph 3, the applicant and the interested party that are not in any of the following circumstances, shall be deemed to have proper moral integrity to conduct business:

(1) Having been sentenced to imprisonment of three years or more, except those whose rights have been restored in accordance with the law;

(2) Having the licence cancelled in accordance with the provisions of subparagraph (10) of paragraph 1 of Article 19 within one year prior to the date of submission of the application.

5. For the purposes of subparagraph (6) of paragraph 2, subparagraphs (3) and (4) of paragraph 3, the applicant and the interested party that fulfil the following conditions concurrently, shall be deemed to have technical and organizational capabilities:

(1) With a high school diploma or above;

(2) With minimum three years' experience in human resource management and job referral or related activities.

6. In addition to the requirements specified in paragraphs 2 and 3, the issue or renewal of a licence shall also take into account the needs of the labour market of the Macao SAR.

7. In the case that the applicant or the interested party mentioned in subparagraphs (3) and (4) of paragraph 3 is within the period of additional penalties stipulated in subparagraph (2) of paragraph 1 of Article 44, in which the employment agency activity is prohibited, the licence shall not be issued or renewed.

Article 7

Requirements of business premise

1. The business premise shall not be located in any real estate inconsistent with the employment agency activity, especially the real estate used for residential, industrial, hotel, public facilities or motor vehicle parking purposes, nor in any other establishments engaged in the employment agency activity.

2. Without prejudice to the provisions of the preceding paragraph, the business premise of a fee-charging employment agency shall be located in real estate used for commercial, service or office building purposes.

3. When conducting activity, the business premise shall:

(1) Have an independent space with independent entrance and exit, for conducting employment agency activity only;

- (2) Have a reception area for service users;
 - (3) Have the appropriate conditions referred to in other laws and regulations on work health and safety in business premises.
4. The name of the business premise shall:
- (1) be expressed in one or both of the official languages of the Macao SAR and may be added in English;
 - (2) not be similar or confused with the name of other business premises engaged in employment agency activity;
 - (3) not contain a name or term that is inconsistent with the employment agency activity or causes confusion or misunderstanding of its activity.

Article 8

Documents required for licence application

- 1. To apply for a licence, the applicant shall complete a specific form provided by the Labour Affairs Bureau, and submit the form accompanied with the documents specified in paragraphs 2, 3 or 4.
- 2. Where the applicant is a natural person, the following documents shall be submitted:
 - (1) Copy of identification document;
 - (2) Certificate of criminal record;
 - (3) Personal resume with educational background and work experience, and a copy of relevant supporting documents;
 - (4) Documents issued by the Financial Services Bureau to prove that the applicant has fulfilled or exempted from tax obligations;
 - (5) A written report on the real estate registry of business premise to be used.
- 3. Where the applicant is a company, the following documents shall be submitted:
 - (1) Business registration certificate, including a copy of the company's establishment documents and its Articles of Association properly updated; however, in the case of a joint stock limited company, a list of all shareholders holding 10% or more of the capital and relevant supporting documents shall be submitted;

(2) A copy of the identification documents of its administrators and the shareholders referred to in subparagraph (3) of paragraph 3 of Article 6; in the case that the shareholder is a legal person, a copy of the identification documents of all its administrators or the principal persons of the organ shall be required;

(3) The criminal record certificates of its administrators and the shareholders referred to in subparagraph (3) of paragraph 3 of Article 6; in the case that the shareholder is a legal person, the criminal record certificates of all its administrators or the principal persons of the organ shall be required;

(4) Personal resume with educational background and work experience of persons with technical and organizational capabilities as set out in subparagraph (3) of paragraph 3 of Article 6, and a copy of relevant supporting documents;

(5) Documents issued by the Financial Services Bureau to prove that the applicant has fulfilled or exempted from tax obligations;

(6) A written report on the real estate registry of business premise to be used.

4. Where the applicant is an association or a foundation, the following documents shall be submitted:

(1) Certificate of registration and leadership structure issued by the Identification Bureau;

(2) A copy of the identification documents of its principal persons of the organ and the appointees referred to in subparagraph (4) of paragraph 3 of Article 6;

(3) The criminal record certificates of its principal persons of the organ and the appointees referred to in subparagraph (4) of paragraph 3 of Article 6;

(4) Personal resume with educational background and work experience of persons with technical and organizational capabilities as set out in subparagraph (4) of paragraph 3 of Article 6, and a copy of p relevant supporting documents;

(5) Minutes of the meeting of the associations referred to in subparagraph (4) of paragraph 3 of Article 6 at which the designated person is appointed by the competent authority through a resolution of the meeting to engage in the employment agency activity;

(6) Documents referred to in subparagraphs (5) and (6) of the preceding paragraph.

5. In addition to the documents referred to in paragraphs 2 to 4, the Labour Affairs Bureau may request the applicant to submit valid supporting documents issued by the competent authorities of the country or region of origin of the non-local resident to whom it intends to recruit, and to submit other appropriate documents or information deemed to be useful for the application approval.

6. The documents specified in the above paragraphs shall be written in one of the official languages of the Macao SAR. The documents which are written in any other language shall be accompanied by a statutory translation made in accordance with Articles 182 to 184 of the Notarization Code, except for those exempted by the Labour Affairs Bureau.

Article 9

Providing a guaranty

1. To ensure that the licence holder engaged in the fee-charging employment agency activity performs the debts to service user due to violation of the provisions of Articles 28 and 29, the applicant shall provide a guaranty issued by the bank operating in the Macao SAR and the beneficiary entity shall be the Labour Affairs Bureau.
2. The amount of guaranty referred to in the preceding paragraph shall be determined through an order issued by the Chief Executive published in the Official Gazette.

Article 10

Period of guaranty

1. The Labour Affairs Bureau shall, within thirty days from the date of receipt of the application, notify the applicant who fulfils the conditions stated in subparagraphs (1) to (6) of paragraph 2 of Article 6 or subparagraphs (1) to (4) and (6) of paragraph 3 of Article 6 to provide the guaranty referred to in the preceding article.
2. The notice requiring the applicant to remedy the defects in the composition of the dossier shall interrupt the calculation of the period referred to in the preceding paragraph.
3. The applicant shall submit the supporting documents of the relevant guaranty within forty-five days from the date of receipt of the notice referred to in paragraph 1. Failure to submit the required documents prior to the expiration of the period will result in the rejection of the related application, unless there is a just cause accepted by the Labour Affairs Bureau.

Article 11

Issue and validity of licence

1. The Labour Affairs Bureau shall issue the licence prescribed in this chapter to applicants who fulfil the conditions provided for in this Law during the following periods:
 - (1) Within fifteen days from the date of receipt of the supporting documents of the relevant guaranty, in the case of the fee-charging employment agency activity;
 - (2) Within thirty days from the date of receipt of the application, in the case of the non-fee-charging employment agency activity.
2. The notice requiring the applicant to remedy the defects in the composition of the dossier shall interrupt the calculation of the period referred to in subparagraph (2) of the preceding paragraph.

3. The licence is valid for two consecutive calendar years from the issue date of the licence until December 31 of the following year.

Article 12

Use and replenishment of guaranty

1. When the investigation indicates that the licence holder has incurred debts to service user due to the violation of Articles 28 and 29, and the licence holder refuses to implement the relevant debts to service user upon receipt of the notice issued by the Labour Affairs Bureau, the Labour Affairs Bureau may use the guaranty referred to in Article 9.

2. In the case that the guaranty is used due to the circumstances mentioned in the preceding paragraph, the licence holder shall replenish the guaranty within forty-five days from the date of receiving the notice of replenishing the guaranty from the Labour Affairs Bureau and submit the relevant supporting documents to the Labour Affairs Bureau.

Article 13

Return of guaranty

1. In the case of licence cancellation specified in Article 19, the guaranty referred to in Article 9 shall continue to take effect within one year after licence cancellation, and shall be held liable for the debts raised during that period, as long as such debts are incurred by the licence holder to service user due to the violation of Articles 28 and 29.

2. The Labour Affairs Bureau shall return the guaranty or its balance within fifteen days after the expiration of the period referred to in the preceding paragraph and the payment of the debt to service user referred to in the preceding paragraph has been completed.

Section 2

Renewal, alteration and reissue of licence

Article 14

Renewal of licence

1. The application for renewal of the licence shall be submitted within forty-five to ninety days prior to the expiration of the licence, with the documents specified in the following paragraphs 2, 3 or 4.

2. In the case that the applicant is a natural person, the following documents shall be submitted:

(1) Certificate of criminal record;

(2) Documents issued by the Financial Services Bureau to prove that the applicant has fulfilled or exempted from tax obligations.

3. In the case that the applicant is a company, the following documents shall be submitted:

(1) The criminal record certificates of its administrators and the shareholders referred to in subparagraph (3) of paragraph 3 of Article 6; in the case that the shareholder is a legal person, the criminal record certificates of all its administrators or the principal persons of the organ shall be required;

(2) Documents referred to in subparagraph (2) of the preceding paragraph.

4. In the case that the applicant is an association or a foundation, the following documents shall be submitted:

(1) The criminal record certificates of its principal persons of the organ and the appointees in subparagraph (4) of paragraph 3 of Article 6;

(2) Documents referred to in subparagraph (2) of paragraph 2.

5. If an application referred to in paragraph 1 is made less than forty-five days prior to the expiration of the licence, the licence renewal fee shall be doubled.

6. In addition to the documents referred to in paragraphs 2 to 4, the Labour Affairs Bureau may request the applicant to submit valid supporting documents issued by the competent authorities of the country or region of origin of the non-local resident to whom it intends to recruit, and to submit other appropriate documents or information deemed to be useful for the application approval.

7. The applicant will be issued a new licence after paying the renewal fee.

8. The validity period of the renewed licence shall be two consecutive calendar years immediately after the expiration of the original licence.

Article 15

Alteration of licence

1. Prior approval of the Director of the Labour Affairs Bureau is required in any of the following circumstances:

(1) Change of licence holder;

(2) In the case that the licence holder is a company, the change of shareholders or the administrators referred to in subparagraph (3) of paragraph 3 of Article 6 shall not prejudice the application of the following paragraph;

(3) In the case that the applicant is an association or a foundation, the change of its principal persons of the organ and the appointees in subparagraph (4) of paragraph 3 of Article 6;

(4) Change of the name and location of business premise;

(5) Change of the type of employment agency activity;

(6) In the case that the licence holder provides the service of hiring non-resident workers, the change of the country or region of origin of the non-local resident to whom it intends to recruit or provides job referral service.

2. Where a licence holder is a company, in the event of succession to the status of a shareholder, the licence holder shall notify the Labour Affairs Bureau within sixty days from the date of the commencement of the succession, and shall submit the application for the change of shareholders within one year from the date of the notice and obtain the approval of the Director of the Labour Affairs Bureau.

3. The provisions of Articles 6 to 10, with appropriate coordination, shall apply to the changes of licence referred to in paragraph 1.

4. In the circumstances stated in subparagraphs (1), (4) to (6) of paragraph 1, a new licence will only be issued to the licence holder after the original licence has been returned.

Article 16

Reissue of licence

1. In the case that the licence is lost or damaged, the licence holder shall apply for reissue.

2. In the case that the licence is damaged, the licence holder shall return the original licence before being reissued a new one.

Article 17

Period of renewal, alteration and reissue of licence

1. The Labour Affairs Bureau shall make a decision on the application for renewal, alteration and reissue of the licence within thirty days from the date of receipt of the application.

2. The notice requiring the applicant to remedy the defects in the composition of the dossier shall interrupt the calculation of the period referred to in the preceding paragraph.

Section 3

Suspension and cancellation of licence

Article 18

Suspension of licence

1. The employment agency activity licence shall be suspended under the following circumstances:

- (1) The licence holder submits a written application for suspension of the licence;
- (2) The licence holder fails to complement the required number of employment service advisers within thirty days specified in paragraph 2 of Article 35;
- (3) Additional penalties are imposed on the licence holder who is prohibited from engaging in the employment agency activity according to the provisions of subparagraph (2) of paragraph 1 of Article 44;
- (4) The protective measures of preventive suspension of operation are applied to the licence holder in accordance with Article 45.

2. In the case that the licence holder applies for suspension of the licence in accordance with the provisions of subparagraph (1) of the preceding paragraph, the suspension period shall not be more than ninety days counted consecutively or separately during the period of validity of the licence.

3. In the case that the employment agency activity licence is suspended, it is not allowed to engage in employment agency activity during the suspension period.

4. The licence suspension shall be cancelled under the following circumstances:

- (1) In the circumstances stated in subparagraph (1) of paragraph 1, the suspension period expires;
- (2) In the circumstances stated in subparagraph (2) of paragraph 1, the licence holder has complemented the required number of employment service advisers;
- (3) In the circumstances stated in subparagraphs (3) or (4) of paragraph 1, the prohibition period expires.

Article 19

Cancellation of licence

1. The employment agency activity licence shall be cancelled under the following circumstances:

- (1) The licence holder fails to apply for renewal before the expiry of the licence;
- (2) Death or extinction of the licence holder;
- (3) The licence holder submits a written application for cancellation of the licence;

- (4) There is no operation conducted within ninety days from the date of issue of the licence, except in case of force majeure;
 - (5) The business premise is closed for forty-five consecutive days or ninety discontinuous days during the validity period of the licence, unless there is a just cause accepted by the Labour Affairs Bureau;
 - (6) The licence holder does not fulfil the conditions for the issue or renewal of the licence stipulated in paragraphs 2 or 3 of Article 6, except in the case of paragraph 2 of Article 15;
 - (7) The licence holder fails to replenish the guaranty in accordance with paragraph 2 of Article 12;
 - (8) The employment agency is licenced by providing false statements, false data or other illegal means;
 - (9) The licence is suspended for more than ninety days due to the licence holder's failure to complement the required number of employment service advisers in accordance with paragraph 2 of Article 35;
 - (10) The licence holder violates the provisions of paragraphs 1 or 3 of Article 42, or has the administrative infractions specified in paragraphs 1 to 3 of Article 43 three times in two years.
2. The licence holder shall return the licence within ten working days after being notified by the Labour Affairs Bureau, except in the case referred to in subparagraph (2) of the preceding paragraph.
 3. Cancellation of the licence does not entitle to a refund of the fees charged.

Section 4

Branch

Article 20

Establishment and requirements of a branch

1. A licence holder may apply for the addition of branches of the same type of activity.
2. The branch shall fulfil the conditions prescribed in Article 7, and the name of its business premise shall be identical to that of the business premise contained in the employment agency activity licence, marked with "Branch".

Article 21

Documents required for branch licence application

To apply for the establishment of a branch, the applicant shall complete a specific form provided by the Labour Affairs Bureau, and submit the form accompanied with a written report on the real estate registry of business premise to be used.

Article 22

Issue and validity of branch licence

1. The Labour Affairs Bureau shall, within thirty days from the date of receipt of the application specified in the preceding article, issue a branch licence to the applicant who fulfils the conditions provided for in Article 20.
2. The notice requiring the applicant to remedy the defects in the composition of the dossier shall interrupt the calculation of the period referred to in the preceding paragraph.
3. The validity period of a branch licence shall be identical to that of the employment agency activity licence.

Article 23

Renewal, alteration, reissue and suspension of branch licence

1. The renewal of the branch licence shall be solicited, accompanying the renewal application of the employment agency activity licence.
2. The provisions on the renewal, alteration, reissue and suspension of the employment agency activity licence, with appropriate coordination, shall apply to the renewal, alteration, reissue and suspension of the branch licence.

Article 24

Cancellation of branch licence

1. The branch licence shall be cancelled under the following circumstances:
 - (1) The licence holder fails to apply for renewal before the expiry of the branch licence;
 - (2) The employment agency activity licence is cancelled;
 - (3) The licence holder submits a written application for cancellation of the branch licence;
 - (4) There is no operation conducted within ninety days from the date of issue of the branch licence, except in case of force majeure;
 - (5) The branch is closed for forty-five consecutive days or ninety discontinuous days during the validity period of the branch licence, unless there is a just cause accepted by the Labour Affairs Bureau;

- (6) The branch fails to fulfil the conditions stipulated in paragraphs 1, 2 and 4 of Article 7.
 - (7) The branch is licenced by providing false statements, false data or other illegal means;
 - (8) The branch licence is suspended for more than ninety days due to the branch licence holder's failure to complement the required number of employment service advisers in accordance with paragraph 2 of Article 35.
2. In the case of cancellation, the branch licence holder shall return the branch licence within ten working days after being notified by the Labour Affairs Bureau.
 3. Cancellation of the branch licence does not entitle to a refund of the fees charged.

CHAPTER III

Operations

Article 25

Obligation of confidentiality

1. Licence holders, members of their agencies and employees are obliged to comply with the duty of professional confidentiality with respect to the information acquired when conducting the activity, even after the termination of their activities or duties.
2. A shareholder of a licence holder shall also subject to the obligation to maintain confidentiality with respect to the information acquired referred to in the preceding paragraph by reason of his/her identity, even after the termination of his/her identity as a shareholder.
3. The obligations referred to in the above two paragraphs are suspended only when the judicial authorities exercise their functions or when the competent entity performs supervisory functions.

Article 26

Cooperation obligations

When the officers of the Labour Affairs Bureau perform their supervisory duties, after properly identifying themselves, the licence holders, their shareholders, administrators, principal persons of the organ, appointees and employees shall:

- (1) Allow the relevant personnel to access and stay in the monitored places and business premises until the supervisory work is completed;

(2) At the request of relevant personnel, make statements, produce and provide required documents and information related to the employment agency activity.

Article 27

Other obligations

1. The licence holder shall:

(1) Ensure that the business premise operates at least within the business hours declared when applying for employment agency activity licence;

(2) Display the employment agency activity licence in a conspicuous place at the entrance and exit of its business premise;

(3) The employment service advertisement or information published and released by the employment agency shall state the activity licence registration number and the name of the business premise of the employment agency;

(4) Fill in and submit to the Labour Affairs Bureau by the 20th of the following month the Job Matching Record Form and the Service Provision Record Form approved by the Director of the Labour Affairs Bureau;

(5) Keep the Service Provision Record Form for three years;

(6) Provide relevant living information to employees to facilitate their adaption to local life;

(7) When there are accidents or disputes incurred by labour relations, intervene and coordinate to solve the problems between the employers and employees at the request of service users;

(8) Cooperate with competent authority to deal with accidents or disputes incurred by labour relations.

2. In the case that the business hours referred to in subparagraph (1) of the preceding paragraph are changed, the Labour Affairs Bureau shall be informed within ten working days after the change.

3. A licence holder who conducts the fee-charging employment agency activity shall:

(1) List out the service fees and submit the list to the Labour Affairs Bureau within three working days;

(2) Post the list of service fees in a conspicuous place at the entrance and exit of its business premise;

(3) Any change to the list of service fees referred to in the above subparagraph (1) shall be submitted to the Labour Affairs Bureau within three working days after the change.

Article 28

Service fees

1. A licence holder who conducts the fee-charging employment agency activity shall only charge service fees to service users for providing the following services:

(1) Employment agency service;

(2) Provide support services required for the establishment and termination of labour relations at the request of service users.

2. For the purposes of subparagraph (2) of the preceding paragraph, and without prejudice to the relevant provisions of other laws and regulations, the relevant support services shall only include:

(1) Handling the relevant procedures for the establishment or termination of labour relations;

(2) Assisting and arranging employee to travel to work place;

(3) Assisting and arranging the employee to return to place of residence or travel to other destinations, upon termination of the labour relation.

3. For the purposes of paragraph 1, the licence holder shall comply with the following rules:

(1) The service fee charged to the employer shall not exceed the amount specified in the list of service fees;

(2) The total amount of service fee charged to an employee shall not exceed 50% of the first-month's basic remuneration stipulated in the labour contract;

(3) In the case of a non-resident worker whose stay permit period has expired and a new stay permit is applied for by the current employer, no service fee shall be charged to the non-resident worker.

4. The service fee charged by the licence holder to the employee for providing the services mentioned in paragraph 1 can only be collected from the employee at one time sixty days after the establishment of the labour relation, except under the circumstances specified in the following paragraph.

5. In the case that the duration of the labour relation referred to in the preceding paragraph is less than sixty days, the service fee can be collected from the employee at one time on the date of termination of the labour relation.

6. When collecting the service fee, the licence holder shall issue a receipt in duplicate, each party shall hold one copy, which shall contain:

(1) Name of service user;

- (2) The registration number of the activity licence and the name of the licenced business premise;
- (3) Signature of the representative of the licence holder;
- (4) The services provided and the corresponding amount in a detailed manner;
- (5) The issue date of the receipt.

7. The licence holder shall keep the receipt specified in the preceding paragraph for three years from the issue date.

Article 29

Refund or reduction of service fees

1. The licence holder shall refund or reduce the service fees under the following circumstances:
 - (1) In the case of the service user whose labour contract is unilaterally terminated during the probation period, the licence holder shall refund or reduce the 50% service fee charged pursuant to the preceding article to the service user whose labour contract is unilaterally terminated, unless the two parties agree on a higher amount;
 - (2) A non-local resident fails to apply for or obtain an employee's stay permit due to personal reason, the licence holder shall refund or reduce the 50% service fee charged pursuant to the preceding article to the employer, unless the two parties agree on a higher amount.
2. The licence holder shall return the service fee referred to in the preceding paragraph within three days after receiving the written notice from the service user.

Article 30

Prohibitions

1. When conducting the employment agency activity, the following acts are prohibited:
 - (1) Collect any money from or pay any money to an employee as an intermediary;
 - (2) Provide or disclose false or discriminatory employment information;
 - (3) Provide job referral services to minors without written permission of their legal guardians;
 - (4) Introduce work prohibited by law to minors;

(5) Arrange persons without a valid employment service adviser licence to exercise the duties referred to in paragraph 2 of Article 33;

(6) Detain the identification documents or property of the job-seekers or employees;

(7) Abet service users to accept or provide illegal work.

2. When conducting the employment agency activity, licence holders of the fee-charging employment agency activity are prohibited from being involved in the following acts:

(1) Recruit non-local residents who are not from the country or territory of which the licence is granted, or provide job referral services to such non-local residents;

(2) Commit any of the acts referred to in subparagraph (2) of Article 3 to non-local residents or non-resident workers who stay in the Macao SAR.

3. When conducting the employment agency activity, licence holders of the non-fee-charging employment agency activity are prohibited from being involved in the following acts:

(1) Provide services of hiring non-resident workers;

(2) Charge service fees to service users.

Article 31

No concurrent duty

Without prejudice to the provisions of Article 34, no one is allowed to be the licence holder for both fee-charging and non-fee-charging purposes, or concurrently hold the duty of the shareholder, administrator, principal person of the organ or appointee referred to in subparagraphs (3) and (4) of paragraphs 3 of Article 6.

Article 32

Application to branch

The provisions of this chapter shall apply to the operation of branches.

CHAPTER IV

Employment Service Adviser System

Article 33

Employment service adviser

1. At least one person with a valid employment service adviser licence is required to be present for each business premise where the employment agency activity is conducted.
2. The employment service adviser shall perform the following duties:
 - (1) Provide information on labour legislation when service users enquire;
 - (2) Facilitate the job matching for service users;
 - (3) Verify the record forms referred to in subparagraph (4) of paragraph 1 of Article 27.
3. In the performance of the duties, the employment service adviser shall:
 - (1) Have a good understanding of the laws and regulations related to employment agency activity;
 - (2) Encourage compliance with the provisions of Articles 25 to 30 during the conduct of employment agency activity.

Article 34

Exclusivity

The employment service adviser can only assume the post in one of the business premises where the employment agency activity is conducted, and shall not, concurrently, be the licence holder of another employment agency, or a shareholder, administrator, principal person or appointee referred to in subparagraphs (3) and (4) of paragraph 3 of Article 6.

Article 35

Notice and complement of employment service adviser

1. The licence holder of employment agency shall notify the Labour Affairs Bureau in writing within ten working days of the occurrence of any of the following circumstances:
 - (1) Start of assuming the post;
 - (2) Transfer to another business premise of the licence holder;
 - (3) Termination of the post.

2. In case of breach of the provisions of paragraph 1 of Article 33, the licence holder of employment agency shall complement the required number of employment service advisers within thirty days from the date of occurrence of such situation.

Article 36

Requisites for issue or renewal of licence

1. A natural person who concurrently fulfils the following conditions, may apply to the Labour Affairs Bureau for the issue or renewal of an employment service adviser licence:

- (1) Being a Macao SAR resident;
- (2) Having legal capacity;
- (3) With a high school diploma or above;
- (4) With a vocational skill certificate issued by the Labour Affairs Bureau after passing its vocational skill test for employment service adviser;
- (5) Not having been sentenced to imprisonment of three years or more, except those whose rights have been restored in accordance with the law;
- (6) Not having the licence cancelled pursuant to subparagraph (6) of paragraph 1 of Article 41 within one year prior to the date of submission of the application.

2. In the case that the applicant is within the period of additional penalties stipulated in paragraph 2 of Article 44, in which engaging in the job of employment service adviser is prohibited, the licence shall not be issued or renewed.

3. The format of the adviser licence shall be approved through an order issued by the Secretariat for Economy and Finance published in the Official Gazette.

Article 37

Documents required for the issue or renewal of licence

1. To apply for an employment service adviser licence, the applicant shall complete a specific form provided by the Labour Affairs Bureau, and submit the form accompanied with the following documents:

- (1) Copy of identification document;
- (2) Copy of education certificate;

(3) Copy of vocational skill certificate of employment service adviser;

(4) Certificate of criminal record.

2. The application for renewal of the employment service adviser licence shall be submitted within thirty days to sixty days prior to the expiration of the licence, with the documents specified in subparagraph (4) of the preceding paragraph.

3. If an application referred to in the preceding paragraph is made less than thirty days prior to the expiration of the licence, the licence renewal fee shall be doubled.

Article 38

Issue, renewal and validity of licence

1. The Labour Affairs Bureau shall issue the employment service adviser licence to the applicant within fifteen days from the date of receipt of the application for issue or renewal of the licence.

2. The notice requiring the applicant to remedy the defects in the composition of the dossier shall interrupt the calculation of the period referred to in the preceding paragraph.

3. The employment service adviser licence is valid for three consecutive calendar years from the date of issue until March 31 of the third calendar year.

Article 39

Reissue

The provisions on the reissue of the employment agency activity licence, with appropriate coordination, shall apply to the reissue of the employment service adviser licence.

Article 40

Suspension of licence

1. The employment service adviser licence shall be suspended under the following circumstances:

(1) The licence holder submits a written application for suspension of the licence;

(2) Additional penalties are imposed on the licence holder who is prohibited from engaging in the job of employment service adviser according to the provisions of paragraph 2 of Article 44.

2. In the case that the licence holder applies for suspension in accordance with the provisions of subparagraph (1) of the preceding paragraph, the suspension period shall not be more than 12 months counted consecutively or separately during the period of validity of the licence.

3. In the case that the employment service adviser licence is suspended, it is not allowed to engage in the job of employment service adviser during the suspension period.

4. The licence suspension shall be cancelled under the following circumstances:

(1) In the circumstances stated in subparagraph (1) of paragraph 1, the suspension period expires;

(2) In the circumstances stated in subparagraph (2) of paragraph 1, the prohibition period expires.

Article 41

Cancellation of licence

1. The employment service adviser licence shall be cancelled under the following circumstances:

(1) The licence holder fails to apply for renewal prior to the expiry of the licence;

(2) Death of the licence holder;

(3) The licence holder submits a written application for cancellation of the licence;

(4) The licence holder does not serve as an employment service adviser for one hundred and eighty consecutive days or three hundred and sixty discontinuous days during the validity period of the licence, unless there is a just cause accepted by the Labour Affairs Bureau;

(5) The licence holder does not fulfil the conditions for the issue of the licence stipulated in paragraph 1 of Article 36;

(6) The licence holder violates the provisions of Article 34, or has the administrative infractions specified in paragraph 2 of Article 42 three times in three years.

2. The licence holder shall return the licence within ten working days after being notified by the Labour Affairs Bureau, except in the case referred to in subparagraph (2) of the preceding paragraph.

3. Cancellation of the licence does not entitle to a refund of the fees charged.

4. In the case of cancellation of the adviser licence in the circumstances stated in subparagraph (6) of paragraph 1, the application for the issue of a new employment service advisor licence can only be submitted after completion of the training for employment service adviser held by the Labour Affairs Bureau, and passing the test for vocational skills.

CHAPTER V

Sanctionatory Regime

Article 42

Engaging in activity without a valid licence

1. Whoever does not hold a valid licence for employment agency activity or engage in employment agency activity in violation of the provisions of paragraph 3 of Article 18, or sets up a new branch to conduct the employment agency activity without a valid branch licence, shall be punished with a fine of \$50,000 (fifty thousand patacas) to \$100,000 (one hundred thousand patacas).
2. Whoever assumes the post of employment service adviser without a valid licence or in violation of the provisions of paragraph 3 of Article 40, shall be punished with a fine of \$10,000 (ten thousand patacas) to \$20,000.00 (twenty thousand patacas).
3. Whoever violates the provisions of subparagraph (5) of paragraph 1 of Article 30, shall be punished with a fine of \$100,000 (ten thousand patacas) to \$20,000.00 (twenty thousand patacas) for each person involved in the infraction.

Article 43

Other administrative infractions

1. Whoever violates the provisions of paragraph 3 of Article 7; paragraphs 1 and 2 of Article 15; subparagraph (7) of paragraph 1, subparagraph (1) of paragraph 2 and subparagraph (1) of paragraph 3 of Article 30; and Article 31, shall be punished with a fine of \$20,000.00 (twenty thousand patacas) to \$50,000 (fifty thousand patacas).
2. Whoever violates the provisions of paragraphs 1, 3-5 of Article 28; Article 29; subparagraphs (1) and (6) of paragraph 1, subparagraph (2) of paragraph 2 and subparagraph (2) of paragraph 3 of Article 30, shall be punished with a fine of \$20,000.00 (twenty thousand patacas) to \$50,000 (fifty thousand patacas) for each person involved in the infraction.
3. Whoever violates the provisions of subparagraphs (3) and (4) of paragraph 1 of Article 30, shall be punished with a fine of \$100,000 (ten thousand patacas) to \$250,000 (twenty-five thousand patacas) for each person involved in the infraction.
4. Whoever violates the provisions of subparagraphs (2) and (3) of paragraph 1, paragraph 3 of Article 27; subparagraph (2) of paragraph 1 of Article 30; Article 34; and paragraph 1 of Article 35, shall be punished with a fine of \$5,000 (five thousand patacas).
5. Whoever violates the provisions of Article 26; subparagraphs (1), (4) , (5) of paragraph 1, paragraph 2 of Article 27; and paragraph 7 of Article 28, shall be punished with a fine of \$2,000 (two thousand patacas).

6. Whoever violates the provisions of paragraph 6 of Article 28 shall be punished with a fine of \$2,000 (two thousand patacas) for each person involved in the infraction.

Article 44

Additional penalties

1. For the administrative infractions stipulated in Articles 42 or 43, the following additional penalties shall be imposed on the licence holder of employment agency or those who conduct the employment agency activity without a valid licence, either alone or together:

(1) Closure of the business premise for a period of one month to one year;

(2) Prohibition of the employment agency activity for a period of one month to two years.

2. As for the administrative infractions stipulated in Articles 42 or 43, an additional penalty that taking up the post of employment service adviser are prohibited for one month to one year, may be imposed on the employment service advisers or those who are engaged in the employment service advisers without a valid licence.

3. The additional penalty shall be applied appropriately according to the severity of the administrative infractions and the fault degree of the offender.

Article 45

Protective measures

If there are signs that the continuation of service provision by the offender will cause serious or irreparable damage to the public interest, especially when there is a risk of evidence destruction or loss, or the offender continues to commit an offence, protective measures of preventive suspension of operation may be taken against the offender after considering the severity of the act and the fault degree of the offender.

Article 46

Competency and appeal

1. The Director of the Labour Affairs Bureau has the authority to make decisions on the issue, renewal, alteration, reissue, suspension and cancellation of employment agency activity licences, branch licences and employment service adviser licences.

2. The enforcement of the penalties prescribed by this Law shall be within the purview of the Director of the Labour Affairs Bureau, and this authority may also be delegated to others.

3. The decision of the Director of the Labour Affairs Bureau can be appealed to the administrative court.

Article 47

Liability of legal persons

1. Legal persons, although improperly constituted, associations with no legal personality and special committees, shall be liable for the offences under this Law committed by their organs or representatives in their name and for their collective interests.
2. The liability referred to in the preceding paragraph shall be excluded when the offender acts against the orders or express instructions of the authority.
3. The liability of the entity referred to in paragraph 1 shall not exclude the liability of the relevant offender.

Article 48

Joint liability

1. If the offender is a legal person, its administrator or the person representing the legal person in any other way, shall be jointly and severally liable with the legal person for the payment of the fine, when being judged responsible for the relevant infraction.
2. Where the fine is applied to an association with no legal personality or to a special committee, the fine shall be paid with the common assets of the association or the committee; and in the absence or insufficiency thereof, the fine shall be paid jointly and severally with the assets of each of the associates or committee members.

Article 49

Recidivist

1. Within one year from the date when the administrative penalty decision becomes non appealable, and less than five years from the date when the last administrative infraction was committed, the person who commits an identical administrative infraction again shall be regarded as a recidivist.
2. In the case of recidivist, the minimum limit of the applicable fine shall be increased by one quarter, while the maximum limit remains unchanged.

Article 50

Performance of omitted obligations

If the failure to perform constitutes an offence, the penalty imposed and the payment of the fine shall not exempt the offender from the relevant obligation which he/she may still perform.

Article 51

Procedure

1. In the event of administrative infractions, the Labour Affairs Bureau shall compose a dossier and file a complaint, and notify the suspected offender.
2. A period of fifteen days shall be fixed in the notice of complaint to facilitate the defense of the suspected offender.
3. The fine shall be paid within fifteen days from the date of notice of the penalty decision. The offender shall submit the proof of the fine paid to the Labour Affairs Bureau within five days immediately following the deadline.
4. If the offender fails to pay the fine after the expiration of the period specified in the preceding paragraph, the Labour Affairs Bureau shall send the relevant documents together with the compulsory collection certificate to the Financial Services Bureau for compulsory collection in accordance with the tax enforcement procedures.

Article 52

Notice

1. The Labour Affairs Bureau shall give notice directly to the person to be notified, or by registered letter at the following address, assuming that the person to be notified receives the notice on the third day from the date of registration of the letter or, if the third day is not a working day, on the first working day immediately following that day:
 - (1) The correspondence address designated by the person to be notified;
 - (2) If the person to be notified is a resident of the Macao SAR, the notice shall be made according to the last residence as recorded in the archives of the Identification Bureau;
 - (3) If the person to be notified is a legal person and the domicile or permanent representative office is located in the Macao SAR, the notice shall be made according to the last domicile recorded in the archives of the Identification Bureau or the Commercial and Movable Property Registry.
2. The presumption referred to in the preceding paragraph can only be reversed by the person to be notified if the person to be notified is made to receive the notice after the date on which the notice is presumed to have been received by reason of the confirmation of the cause attributable to the postal service.

CHAPTER VI

Transitory and Final Provisions

Article 53

Supervision

1. The supervision of compliance with this Law shall be within the purview of the Labour Affairs Bureau, without prejudice to the other authorities conferred by law.
2. The officers of the Labour Affairs Bureau enjoy the power of the public authorities in the performance of their supervisory duties. In particular, in the event of opposition or resistance in the performance of their duties, they may, in accordance with the law, request the police and the administration to provide the necessary assistance.

Article 54

Notification and publication

1. The Labour Affairs Bureau shall inform the Financial Services Bureau and the Public Security Police Force of the following matters:
 - (1) Issue or alteration of employment agency activity licence and its branch licence;
 - (2) Cancellation of employment agency activity licence and its branch licence;
 - (3) Suspension of employment agency activity licence and its branch licence;
 - (4) Decision on protective measures;
 - (5) Decision on additional penalties.
2. The Labour Affairs Bureau shall, through information channels, publish and update the list of employment agency activity licences and branch licences, as well as the list of holders of employment service adviser licences, including, in particular, the name of the business premise engaged in the employment agency activity, the name of the holder of employment service adviser licences, the registration number and period of validity of such licences, and the information under subparagraphs (3) to (5) of the preceding paragraph.
3. The Labour Affairs Bureau shall also publish in the Official Gazette the following matters, without prejudice to the effect of the cancellation decision already made:
 - (1) Cancellation of employment agency activity licence as stipulated in Article 19;
 - (2) Cancellation of branch licence as stipulated in Article 24.

Article 55

Processing of personal data

In accordance with the provisions of Law No. 8/2005 - Personal Data Protection Act, the Labour Affairs Bureau, within the necessary scope of exercising the functions and powers conferred by this Law, conducts the processing and interconnection of personal data with other public entities that have the relevant data required by the application of this Law.

Article 56

Fees

1. Fees are payable for applications for the following matters, the amount of which shall be determined through an order issued by the Chief Executive published in the Official Gazette:

(1) Issue, renewal, alteration and reissue of activity licence of fee-charging employment agency and its branch licence;

(2) Issue, renewal and reissue of employment service adviser licence.

2. For the purposes of paragraph (1) of the preceding paragraph, the fee for the issue of the licence shall be calculated on a monthly basis, and one twenty-fourth shall be calculated every month or less than one month but full fifteen days.

3. For the purposes of subparagraph (2) of paragraph 1, the fee for the issue of the licence shall be calculated on a monthly basis, one thirty-sixth of which shall be calculated for each month or less than one month but full fifteen days.

Article 57

Destination of fees and fines

Fees and fines shall be credited to the Social Security Fund revenue.

Article 58

Transitory provisions

1. The provisions of this Law shall apply to those private entities that have been licenced as employment agencies before their entry into force, but shall not prejudice the application of the provisions of paragraphs 2 to 7.

2. Those employment agency activity licences issued before this Law comes into effect shall continue to be valid until the expiration of the validity period.

3. When applying for renewal in accordance with Article 6, the licence holders of employment agency referred to in paragraph 1 shall be exempted from fulfilling the conditions of technical and organizational capabilities as stipulated in subparagraph (6) of paragraph 2, subparagraphs (3) and (4) of paragraph 3 of Article 6, and the provisions of paragraph 4 of Article 7.

4. The business premises of employment agency referred to in paragraph 2 shall comply with the provisions of paragraphs 1-3 of Article 7 within one hundred and eighty days from the effective date of this Law.

5. When applying for an employment service adviser licence, the following persons are exempted from the requirements of having a high school diploma or above as stipulated in subparagraph (3) of paragraph 1 of Article 36:

(1) A natural person who has been granted a valid employment agency activity licence prior to the effective date of this Law; or a shareholder of the company, a administrator or a principal person of the organ of an association in the case that the licence holder is a company or an association;

(2) Employees who have been engaged in employment agency activity for minimum five years prior to the date of promulgation of this Law.

6. In the case of exemption described in subparagraph (2) of the preceding paragraph, the applicant shall submit personal resume with work experience and a copy of relevant supporting documents.

7. The provisions of paragraph 5 shall also apply to applications for renewal of employment service adviser licence and applications made pursuant to paragraph 4 of Article 41.

Article 59

Subsidiary legislation

For matters not specifically provided for in this Law, the provisions of the Code of Administrative Procedure and the General regime and Procedures for Administrative Infractions (Decree-law No.52/99/M of October 4) shall be subsidiarily applicable.

Article 60

Repeals

The following provisions shall be repealed:

(1) Decree-law No. 32/94/M of July 4;

(2) Order No. 152/94/M of July 4.

Article 61

Entry into force

1. This Law shall enter into force on March 15, 2021, without prejudice to the provisions of the following paragraph.

2. From the day following the promulgation of this Law, the Labour Affairs Bureau may initiate administrative procedures for the issue of employment service adviser licence in accordance with the provisions of Articles 36 to 38, paragraphs 5 and 6 of Article 58.

Approved on September 3, 2020.

President of the Legislative Assembly, Kou Hoi In.

Signed on September 7, 2020.

To be published.

Chief Executive, Ho Iat Seng.