



## **REPÚBLICA DE MOÇAMBIQUE**

### **COUNCIL OF MINISTERS**

#### **Decree No. 36/2016**

**of 31 August**

Arising from the need to review the legal framework set out in the Decree No, 6/2001 of 20 February, with a view to adjusting it in keeping with the labour legislation in force and thus meet the current market demands, in the light of paragraph 2, article 83 and 269 both of Law No. 23/2007 of 1 August, (the Labour Law), the Council of Ministers Decrees:

Article 1. The Regulation governing the licensing and operation of Private Employment Agencies, enclosed herewith, which is part of the present Decree, is approved.

Article 2. They are excluded from the provisions of this Regulation, activities related to dock workers.

Article 3. Decree no. 6/2001 of 20 February is revoked and Subclass 78300 regarding other supply of human resources, Class 7830, Group 783 Division 78, N Service, Annexure II, Decree 34/2013 of 20 August.

Article 4. The present Decree enters into force 30 days from the date of its publication.

Approved by the Council of Ministers, on 2nd August 2016.

To be published thereof.

The Prime Minister, Carlos Agostinho do Rosário.

# **Regulation governing Private Employment Agencies**

## CHAPTER I

### **(General Provisions)**

#### ARTICLE 1

##### **(Definitions)**

The definitions used in this Regulation appear in the attached Glossary, of which is part thereof.

#### ARTICLE 2

##### **(Object)**

Private Employment Agencies have as a goal the temporary cession of one or more national workers to users within the national territory or overseas subject to entering into a temporary employment contract and of utilization.

#### ARTICLE 3

##### **(Services rendered)**

Private Employment Agencies render recruitment services to place workers temporarily in the employ of a third party sole or collective who determines their tasks and supervises their work.

#### ARTICLE 4

##### **(The Gratuitous Principle)**

No person may charge a fee to any jobseeker for providing employment services to that jobseeker.

#### ARTICLE 5

##### **(Use of license)**

Transfer of the license to third parties to render the services of a Private Employment Agency is prohibited.

#### ARTICLE 6

##### **(Regime for employment of foreign citizens)**

Employment of foreign citizens within the national territory is governed by a specific legislation.

## CHAPTER II

### **Licensing and operations of Private Employment Agencies**

#### SECTION I

##### Operations of Private Employment Agencies

#### ARTICLE 7

##### **(Authorization)**

It is incumbent on the Minister responsible for labour or to whom he entrusts such powers to authorize the activities of Private Employment Agencies.

#### ARTICLE 8

##### **(Requirements for authorization)**

1. The following should appear in the application, cumulatively:
  - a) Name, age, nationality and place of residence of the applicant, should it be a sole proprietor or appointment of a proxy or head office, in case of a company.
  - b) Name of sole proprietor or company designated as "Private Employment Agency";
  - c) Address of the Agency;
  - d) Type of license intended;
  - e) VAT number
2. The same application should be submitted with the following documents:
  - a) Identity document for Agencies under individual name;
  - b) Registration in case of a company;
  - c) Affidavits by the applicant that he will provide a Guarantee within 15 days after notice of authorization of the application;
  - d) Proof of payment of a fee the equivalent of 10 minimum salaries in the non-financial service sector.
  - e) registration report from the national institute of social security in which appears the number of contributor for administrative confirmation purpose;
  - g) Quittance certificate from the entity responsible for finance.

## ARTICLE 9

### **(Procedures)**

1. The application referred to in the foregoing article should be submitted to the relevant authority and specialized in employment matters in the province where the Private Employment Agency intends to establish its business.
2. The relevant authority and specialized in employment matters in the province shall submit the application to the central organ together with a checklist of documents, including an inspection report on the premises from where the Private Employment Agency will operate.
3. The relevant authority and specialized in employment matters shall produce a report pertaining the application received from the province and submit it to the Minister responsible for Labour.
4. Upon authorization of the application, the applicant is notified and requested to produce the mandatory Guarantee.
5. The application should be finalized within 25 days from the date of its reception.
6. The Private Employment Agency that opens a branch office should formally notify the relevant authority and specialized in employment matters in its area of jurisdiction.

## ARTICLE 10

### **(Guarantee)**

1. The applicant intending to operate a Private Employment Agency should issue a Guarantee in favour of the relevant authority and specialized in employment matters to the amount of 100 minimum wages in force in the non-financial service sector.
2. The aforesaid Guarantee is especially meant to pay pending compensation owed to workers recruited by the agency in light of the authorization, irrespective of its cause, and in compliance with other obligations imposed by the public treasury.
3. The guarantee may be in the form of a bank guarantee or insurance modality.
4. The Guarantee should be updated every year based on the minimum wage in force in the non-financial service sector.
5. The Guarantee update should be made within 30 days from the date the Decree revising the national sectoral minimum wages is published.
6. There should be full reimbursement of the amount of the Guarantee used, within 90 days, whenever credit payments are made in favour of workers, and proof of its restoration should be submitted to the licensing entity.
7. In the event of definitive closure of the Private Employment Agency, the effects of the Guarantee cease upon settlement of credit claims by workers and the balance is paid over to the Agency.

## SECTION II

### Licensing of Private Employment Agency

#### ARTICLE 11

##### **(Type of License)**

1. The following licenses are issued to operate as Private Employment Agency in terms of the underlying legal framework:

a) Normal License;

b) Special License.

2. A normal license is issued for recruitment and cession of workers to user enterprises in the national territory.

3. A Special license is issued for recruitment and cession of workers to user enterprises overseas.

4. The two types of licenses referred to above may be granted to the same Private Employment Agency, upon authorization by the Minister responsible for Labour or to whom he entrusts such powers.

#### ARTICLE 12

##### **(Competence to issue license)**

1. It is incumbent on the relevant authority and specialized in labour matters to regulate the activities of a Private Employment Agency, by issuing a License.

2. The License referred to above is issued only upon proof of a Guarantee referred to in article 10 of this Regulation.

#### ARTICLE 13

##### **(Validity of License)**

The first License is valid for a period of five years from the date of issue.

#### ARTICLE 14

##### **(Renewal of License)**

1. Renewal of the license is requested to the Minister responsible for Labour or to whom he entrusts such powers.

2. The authorization of the application referred to above is subject to the followings conditions:

a) Positive assessment of the performance of the Private Employment Agency.

b) Absence of serious violations of this Regulation and related labour legislation.

c) Payment of a fee to the amount of 7 times the minimum wage in force in the non-financial service sector.

3. The License is renewable for successive periods of five years.

## ARTICLE 15

### **(Suspension and cancellation of license)**

1. The licenses referred in paragraph 1 of this Regulation may be suspended on one of the following grounds:

- a) Not operating for six consecutive months after the agency has been licensed.
- b) Provide any service that it is not authorised to perform in terms of its license.
- c) Operate with an expired license.

2. The suspension may be waived upon proof that the cause of the suspension has ceased and subject to payment of half of the amount of the fee referred to in paragraph 2 of the foregoing article.

3. The licenses are withdrawn when there is a gross and repeated violation of general and special duties foreseen by this Regulation, namely failure to submit business reports within the established timeframes and operating with an expired license.

## CHAPTER III

### **Applicable procedures for recruitment and cession of workers**

#### SECTION 1

##### Cession of workers in the national territory

#### ARTICLE 16

### **(Requirements for cession of workers in the national territory)**

The following requirements apply for cession of workers in the national territory:

- a) Hold a normal license;
- b) Enter into a individual employment contract with the worker to be ceded;
- c) Enter into a user contract with a user enterprise.

#### ARTICLE 17

### **(Duration of a temporary employment contract within the country)**

1. The temporary employment contract is entered into for a period not exceeding two years and may be renewed twice pending an agreement by the parties.

2. The duration of the employment contract exceeding the period referred to above implies the integration of the ceded worker as a permanent staff member of the user enterprise, without prejudice to the regime applicable to small and medium enterprises.

3. Failure to integrate the worker in the terms referred to above gives the worker the right to a compensation in terms of the provisions of the Labour Law in force.

## SECTION II

### Cession of workers to work overseas

#### ARTICLE 18

##### **(Requirements for cession of workers to work overseas)**

For cession of workers to work overseas, the Private Employment Agencies should meet the following requirements:

- a) Hold a special license;
- b) Enter into an individual employment contract with the worker to be ceded;
- c) Enter into a User contract with a user enterprise.

#### ARTICLE 19

##### **(Formalities for user contract for overseas)**

The user contract referred to above should be endorsed by the relevant authority and specialized in employment matters with the following mandatory clauses:

- a) Full particulars of the Private Employment Agency and its representative, name, head office address, telephone number and duration of the contract.
- b) Full particulars of the user enterprise overseas and its representative; name of the user enterprise, nature of work, duration of the contract and basic salary.
- c) Personal particulars of the worker; full name, number and date of issue of passport, place of issue, date of birth, telephone, parents' names, name of spouse or first degree family and contact details, place of residence, town, zone, house number, district, province and type of transport used to the country of destination vice versa.

## CHAPTER IV

### **Rights and Obligations**

#### SECTION 1

#### Obligations of Private Employment Agencies

#### ARTICLE 20

#### **(General Obligations)**

Private Employment Agencies have the following general obligations:

- a) Within 15 days notify the licensing entity in the Province of any changes with regards to head office and identity of the representative of the agency.
- b) Include in all contracts, notices and communications, the number and date of issue of the license to operate;
- c) Keep a quarterly report of ceded workers with names, sex, number of identity document or passport, social security number, starting date and duration of contract, country, place of work, work for which he or she is contracted to perform, salary and economic sector of the user enterprise;
- d) Submit reports, with data referred to above in an appropriate format, to the authority responsible for employment and specialized in labour matters in the province by not later than the 15th day at the beginning of every quarter;
- e) Submit a report on the activities developed the previous to the relevant authority and specialized in employment matters in the province by 31st January, stating the number of jobseekers recorded and cessions made by area of activity and occupation.

#### ARTICLE 21

#### **(Special obligations)**

In their operations, Private Employment Agencies should refrain from:

- a) discriminating workers based race, sex, religion, political affiliation, social background or any discriminatory practice;
- b) Collect and keep data not relevant to assess the fitness of the jobseeker for the post for which he or she is candidate;
- c) Divulge personal particulars of jobseekers without their prior consent;
- d) Directly or indirectly charge workers any type of fee or charges for the services rendered;

- e) Recruit workers under the legally permitted age or employment with wages below the established national minimum salary for the activity concerned and any other practices that violate the labour legislation in force.
- f) Recruit workers for work considered illegal or against their dignity in the Republic of Mozambique.
- g) Practice or allow acts aimed at excluding or discriminating workers socially and professionally.
- h) Cede the license to third parties.

## ARTICLE 22

### **(Special obligations for recruitment to overseas)**

1. For the purpose of ceding workers overseas , Private Employment Agencies have the following obligations:

- a) Enter into a cession contract with a user enterprise overseas and the worker to be ceded;
- b) Certify the work conditions provided by the user enterprise regarding the nature of work, place of work, duration of contract, accommodation, meals, remuneration, transport to work, repatriation of the work an payment of insurance cover.
- c) Inform the worker prior to departure to his country of destination, the work conditions offered by the companies in his employment contract;
- d) Inform the workers the habits and customs of the country where he or she is going to work;
- e) Refrain from fraudulent acts or form of coercion to lead the worker into error;
- f) Ensure, whenever the ceded workers agree to enter into the contract and all its clauses that it is out of their own will, by making an affidavits;
- g) Compensate the worker for losses or damages arising from the performance of his or her duties in terms of the contract or caused by the user enterprise overseas;
- h) Refrain from charging, personally or by proxy, workers to be ceded overseas any pecuniary amount or in kind;
- i) Cover travel expenses of the worker from the place of recruitment to the place of work, including meals and accommodation during the trip to and fro.
- j) Take responsibility for removal and funeral expenses of deceased workers who die overseas, irrespective of the cause of death;
- k) Ensure the repatriation of the worker in the event of non-compliance with the contract for reason not attributable to the jobseeker, within a period of 3 months upon cession.

2. Cession contracts entered into between Private Employment Agencies and user enterprises overseas should uphold the equality principle in the treatment of migrant workers, namely with regards to remuneration, medical assistance, working hours, rest period, annual leave and compensation work accidents and occupational diseases.

3. For control purposes by the relevant Labour Administration authorities, Private Employment Agencies should keep a specific database of the ceded workers, specifically including:

- a) Full particulars and qualifications of the worker;
- b) Date and duration of the contract;
- c) Country of destination and identification of the company the worker has been ceded to;
- d) Date of termination of the contract and expected date of return to the country of origin.

## SECTION II

### Rights and obligations of the jobseeker

#### ARTICLE 23

##### **(Obligations)**

1. The jobseekers referred to in the present Regulation bind themselves to uphold and promote respect of laws, individual employment contracts and the relevant collective bargaining instruments and to cooperate in productivity improvement in the companies to which they have been ceded to.

2. The jobseekers have the obligation to comply with the tests and questionnaires and provide information that has been requested by Private Employment Agencies, in good faith.

#### ARTICLE 24

##### **(Rights)**

The jobseeker either within the national territory or for overseas is entitled to the following rights:

- a) To be informed by the Private Employment Agency before the process begins about the methods and techniques for recruitment he or she is subject to and the rules related to confidentiality of the results obtained as well as the compulsory nature of replies to tests or questionnaires;
- b) Get a written information regarding the rights related to the employment relation offered by the employer;
- c) have access, correct and confirm information provided by him or her to the Private Employment Agency during the cession process;
- d) Get from the Private Employment Agency a proof document of a registered jobseeker;

- e) Refuse to reply questionnaires or tests not related to professional fitness or related to private life.

## ARTICLE 25

### **(Obligations of the worker to be ceded overseas)**

The employee to be ceded to work overseas should:

- a) undergo the required medical tests;
- b) Accept and uphold the norms in force in the host country, including work rules of the user enterprise.

## CHAPTER V

### **Monitoring and penalty regime**

## ARTICLE 26

### **(Monitoring)**

It incumbent on the General Labour Inspectorate to monitor compliance of the present Regulation.

## ARTICLE 27

### **(Penalties)**

1. Any person who performs the functions of a Private Employment Agency without license is in breach of this Regulation and such act is punishable by closing the agency and a fine ranging from 5 to 10 national minimum wages in force in the non-financial services sector.
2. Failure to pay the fee for ceding workers to work overseas carries a fine ranging from 5 to 10 minimum wages in force in the non-financial sector, for each ceded worker.
3. demanding payment either in money or in kind from the work seeker in respect of the services rendered carries a fine ranging from 5 to 10 minimum wages in force in the non-financial service sector.
4. Repeated offence is punished by a double of the fine in its minimum and maximum.
5. In the event of serious and repeated breach of this Regulation, that translates into bad performance in the annual assessment, the relevant authority and specialized in employment matters, based on substantiated report from the employment sector in the Province, may decide the closure of the Private Employment Agency concerned until such time the infringement corrected.

ARTICLE 28

**(Use of fees)**

The fees collected in terms of the present Regulation are disbursed as follows:

- a) 60% to the Public Treasury
- b) 40% for promotion of employment initiatives

CHAPTER VI

**Transitional Provisions**

ARTICLE 29

**(Existing Private Employment Agencies)**

The existing Private Employment Agencies in good standing from the date this Regulation enters into force, should within 12 months make the necessary arrangements to comply with the provisions of the present Regulation.

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