

Draft Regulation of Private Recruitment Agencies

International Labour Organization, 2013

Introduction:

The private recruitment agencies in Lebanon are regulated under Resolution no. 13/1 issued in 2009 by the Minister of Labour. A draft was submitted in 2010 by former Minister Butros Harb. The present deliverable aims at revisiting both documents and suggesting a new perspective in the light of the international conventions.

The objectives of the new perspective based on International labour standards and International conventions are the followings:

A. Promote a successful and feasible cooperation between the private agencies and the National Employment Office (hereinafter referred to as NEO): Currently the mission of the private agencies is very broad, almost covering all aspects of migrant work, such as matching between employer and employee, getting the prior approval and visa, bringing in the employee, completing the required work and residence permits, settlement of conflicts that may arise between the employer and employee during and after completion of the probation period, the change of employer, the “replacement” of employee, hosting the employee, etc... Some of these tasks are stipulated by the Ministerial decision, while some others are carried out without any legal basis due to absence of effective monitoring and lack of alternatives. Undoubtedly, the current situation has over the years reinforced the sponsorship system and drastically affected the rights of the most disadvantaged party to the contract. Therefore, there is a need to reconsider the role of the private agencies with the view to revive the role of the NEO. We suggest restricting the role of the private agencies to matching between employee and employer and bringing in the employee to Lebanon. Upon arrival to Lebanon, the role of the agencies is over. From this point onwards, the NEO shall take over in accordance with the rules and regulations stipulated in the Lebanese laws. However, we shall take into consideration two facts:

1. The first is that the NEO may not be capable to handle all these issues on the spot. We are specifically referring to the financial, administrative and human deficits.
2. The second is that the private agencies will be very reluctant to accept such reforms and will harshly lobby against the integration of such recommendations.
3. Accordingly, it is highly recommended to set up a transitional phase to ensure the gradual transfer of powers to the NEO. However, the

related concern is that the transitional will become the permanent. Therefore, we recommend initiating a transitional phase of power delegation from the NEO to private agencies on a case-by-case basis.

B. Promote satisfactory guarantees for migrant workers:

1. Impose new obligations such as:
 - a. witness the signature of the standard contract by both employer and employees prior to departure from the country of origin
 - b. deposit a bank guarantee to cover compensations against agencies
 - c. sign an agreement with the private agencies in the sending countries
 - d. protect confidentiality of the migrant workers
 2. Impose new prohibitions:
 - a. prohibition of sideline businesses which could disadvantage the migrant worker
 - b. prohibition to open more than one agency at any time in order to avoid monopoly
 - c. prohibition to collect money from the worker
 - d. prohibition to collect the remaining fees from employer prior to the successful completion of the probation period
 - e. prohibition to provide services to employers who are involved in labor disputes
- prohibition to recruit for jobs involving unacceptable hazards or subjugating the workers to abuse or discrimination.

C. Provide incentives to encourage compliance with the new regulations: the agency shall have the right to increase the number of prior approvals per year in case of fulfilling certain requirements, mainly:

1. The non-existence of court verdicts related to violation of this Decision and absence of prosecutions for human trafficking crimes.

The acceptance of monitoring against trafficking by NGOs accredited by the Ministry.

D. Establish an effective complaint and monitoring system:

1. The suspension and revocation of license in certain instances.
2. The right to the Minister to accredit such persons or NGOs as he thinks fit to be inspectors of agencies on human trafficking crimes.

3. The obligation of inspection on private agencies is also found in the Decree on labor inspection.
4. The right of the worker to file a complaint against the agency either to the Ministry of Labor or the judiciary.

Draft Regulation for Private Placement Agencies to Bring in Migrant Workers

Chapter I: General Provisions:

Article 1:

Terms and Definitions:

For the purpose of this Decision, the terms mentioned below shall have the following meanings:

1. Standard Contract: Employment contract for migrant workers classified in Category ... issued by the Ministry of Labor.
2. National Employment Office (hereinafter referred to as NEO): A public office established by virtue of the Decree-Law no. 80/1977, under the tutorship of the Ministry of Labor.
3. Persons with an interest in the Agency: owner(s), shareholders, partners, directors and signatory persons.
4. Prior approval: the approval granted by the Ministry of Labor to bring in the migrant worker.
5. Private Placement Agency to bring in migrant workers (hereinafter referred to as Agency): any Lebanese natural or legal person, independent of the public authorities, which provides services for matching offers of employers living in Lebanon and applications for placement from foreign workers (category ...), without the private Placement agency becoming a party to the employment relationships which may arise there from.
6. Probation period: one month for both parties. For workers newly employed in Lebanon, the probation period shall be of three months.
7. Processing of personal data of workers: the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

8. Signatory person: a Lebanese natural person who is eligible according to the commercial circular to sign on behalf of the Private Recruitment Agency.

Chapter II: Licensing of the Agency:

Article 2: Operation of recruitment agencies:

1. A person shall not open, keep, operate or maintain an agency without first obtaining a license in accordance with the provisions of this Decision.
2. A person shall not open, keep, operate or maintain directly or indirectly more than one agency at any time.
3. Any person who is involved in the supervision, auditing or monitoring of agencies and the granting or renewal of licenses and/or any of his/her relatives within the fourth civil degree of consanguinity or affinity cannot be a person with an interest in any agency.
4. Any person who opens, keeps, operates or maintains an employment agency is prohibited from operating a tourist establishment including but not limited to hotels, tourist residences, restaurants, night clubs, super night clubs, travel agencies, sales agencies of airline companies, tourist transport, etc...
5. For the purpose of this Article, the husband, wife and their children are one person in law.

Article 3: Requirements for license:

An application for a license to the Ministry of Labour must fulfill the following requirements:

1. An application addressed to the employment division of the Labor force department.
2. A certificate of a bank guarantee of at least 100 million L.L. issued by a recognized bank in Lebanon. This bank guarantee shall be forfeited upon first request of the NEO in case of a final judicial decision sentencing the Agency to compensate an employer or a migrant worker for any breach of their rights. The guarantee shall only be released upon a clearance letter from the NEO confirming the lapse of 6 months from the date of suspension, revocation, surrender or expiration of the license and the non-existence of claims against the Agency.
3. A certificate of the powers of the signatory person(s). The Latter must be Lebanese.

4. A pledge by the signatory person, registered and certified by the notary public and related to the implementation of the Ministry of Labor laws and regulations and to undertaking the responsibility for any breach.
5. A copy of the registration certificate and commercial circular of the Agency and a certificate of non-liquidation and bankruptcy which dates back to a maximum period of three months and that contain the placement of migrant workers and that doesn't use the terms employment and insurance mediation.
6. A copy of the title deed or the lease contract as registered with the municipality. The address must be the effective place of work and exclusively allocated to the business of the Agency.
7. A clean judicial record of the persons with interests in the Agency that dates back to a maximum period of one month.
8. A copy of the identity documents and family certificate of the above-mentioned parties that dates back to a maximum period of three months.
9. A certificate of the appointment of an annual auditor from the list of accredited auditors and the approval of the appointed auditor.
10. A copy of the proxy signed at a notary public for the appointment of a delegate of the Agency at the Ministry of Labor. The proxy shall include the power of the proxy to sign on behalf of the Agency at the Ministry of Labor.

Article 4: Processing the Application:

1. The Ministry of Labor shall, within two months, from the receipt of the application, grant or refuse to grant the license.
2. Each license shall contain the name of the licensee, the address of the agency, all persons with interests in the Agency, and the number and date of issuance of the license.
3. The license must be posted in a conspicuous place in the agency.

Article 5: Validity of License and Renewal:

1. The license is granted for one year renewable at the sole discretion of the Ministry of Labor.
 2. The application for renewal of the license shall include the auditor's report, the list of prior approvals granted to the Agency during the previous year and final results with specifications on the country of origin.
- Failure to abide by these requirements shall result in rejection of the renewal application.

Article 6: Amendment of License:

1. Without prejudice to the right of inheritance, any act aiming at changing the ownership of the Agency or transferring its shares in full or in part shall be subject to the prior approval of the Ministry.
2. Any change of address of the Agency is also subject to the prior approval of the Ministry.
3. In both cases, the Ministry may grant or refuse amendment of the license in accordance with the provisions of this Decision.

Article 7: Appointment of Delegates:

Each agency is entitled to appoint one delegate at the Ministry of Labor.
The appointed delegate shall not be a delegate for another agency.

Chapter III: Process of Bringing in Migrant Workers:

Article 8: Prior Approvals:

The Agency is entitled to ... prior approvals per year. In case the Agency wishes to exceed this number, it shall submit a separate request at the time of renewal of the license and enclose supporting evidence that it fulfills the following additional requirements:

1. It should be registered as a Company, with a minimum capital of ... LL.
2. Proof of the educational background (diploma, university degree, vocational qualification in a field related to personnel management, job placement, consultation...) of the license holder and management staff.
3. A lapse of five years from the date of incorporation.
4. Non-existence of court decisions related to the violations of this Decision and absence of prosecutions for trafficking crimes since the incorporation of the Agency.
5. Undertaking to accept monitoring against trafficking by NGOs working on migrant workers and credited by the Ministry of Labor in accordance with Article ... below.
6. Undertaking to respect and abide by the Code of Conduct between private placement agencies.

In all cases, the number of prior approvals shall not exceed

Article 9: Requirements for Prior Approvals:

1. The Agency shall sign an agreement with a licensed agency in the country of origin in accordance with the model set up by the Ministry of Labor and stating specifically the respective responsibilities of the two agencies and that the remaining fees shall be collected only upon successful completion of the probationary period.

2. The Agency shall carry out an investigation about the employer in order to ensure that the data in the employment contract is accurate. In this respect, the Agency is responsible towards the worker for severe negligence or intentional misinformation which caused substantial damage to the interests of the employee.

3. The Agency shall ensure that the recruited worker fits the job requirements. In this respect, the Agency in Lebanon and the agency in the country of origin are jointly and severally responsible towards the employer for severe negligence or intentional misinformation which caused substantial damage to the interests of the employer.

4. The Agency shall witness the signature of the standard contract by the employer in Lebanon. The Agency shall ascertain that the worker was duly informed of the terms and conditions of his/her work assignment as set up in the standard contract and that s/he signed the standard contract prior to leaving his or her country of residence or origin.

5. The Agency shall ensure that the employer opens a Bank account with a guarantee of at least the amount of six months' salary in a private bank in order to ensure the payment of wages, other financial dues and compensation (if any).

Article 10: Post Arrival to Lebanon:

Starting date of arrival to Lebanon, the agency shall only act upon the request of the worker, in coordination with the NEO, in accordance with the following regulations:

1. The agency shall get from the NEO a delegation of its powers as defined in Article ... of Decree no. ... on a case by case basis.

2. The agency shall transfer the file to the NEO with a proof on either:

- Reimbursement by the new employer of fees paid by the previous employer according to the formula integrated in the standard contract or
- Filing a lawsuit by the worker against the previous employer.

Article 11: Collection of Fees:

Agencies shall charge fees and expenses according to the scale fixed by the Ministry of Labor, when available.

Agencies are prohibited from collecting any fees or sums of money from the worker, whether directly or indirectly, to their own benefit or the benefit of workers, their families or relatives, subject to revocation of license and reimbursement of the money.

The remaining fees shall be collected through the Bank upon successful completion of the probation period. Only 50% of the fees and the transportation cost from the country of origin to

Lebanon may be required upon signature of the contract from the employer and paid directly by him or her.

Article 12: Confidentiality:

The processing of personal data of workers by Agencies shall be:

- (a) done in a manner that protects this data and ensures respect for workers privacy;
- (b) limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.

Article 13: Anti-Trafficking:

The agency, persons with an interest in the Agency and the staff shall refrain from any act prohibited under Law no. 164/2011 on human trafficking and ensure, within their competence, that the obligations under this Law are respected by their clients. Any act sanctioned under this Law shall be immediately reported by the Agency to the Ministry of Labor.

Article 14: Obligations of the Agencies:

1. Agencies shall treat workers without discrimination on the basis of race, color, sex, religion, nationality or any other form of discrimination.
2. Agencies shall keep records for a minimum of three years.
3. Agencies shall establish its own files with numbered pages duly stamped by the Department of Labor Force, containing the following: the name of the worker, her/his nationality, the name of the employer and his/her full address, the number of the prior approval form, its date and the date of entry to Lebanon, address in the country of origin, address in Lebanon, name of the contact person in the country of origin and in Lebanon.
4. Agencies shall cooperate with the NEO as defined by the Ministry of Labor.

Article 15: Prohibitions on Agencies:

1. Agencies are prohibited under this Decision to employ migrant workers with a view to making them available to a third party, which assigns their tasks and supervises the execution of these tasks.
2. Agencies shall not knowingly recruit workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind.
3. Agencies are prohibited from providing services to applicants for employment under 18 years of age.

4. Agencies are prohibited from providing services to a hirer that is involved in a labor dispute at the time such services are sought.
5. Agencies are prohibited from dealing with an individual or agency, whether in or outside Lebanon, for the purpose of placing a foreign worker in Lebanon, unless this individual or agency is a licensed intermediary in the respective jurisdiction.
6. Agencies shall not publish humiliating, demeaning or degrading advertisements. They shall also refrain from publishing any false, fraudulent or misleading information, representation, notice or advertisement. All printed advertisements of an agency shall contain the licensed name and address of the agency.
7. Agencies shall abstain from all illegal practices that tie workers to their own agencies or to specific employers.
8. Agencies shall abstain from hosting the worker in their premises.

Chapter IV: Governmental Regulatory Responsibilities:

Article 16: Settlement of Disputes:

In case of disputes between the agency and the employer, the dispute shall be referred to the court. The judgment must be notified to the Ministry of Labor by the Agency.

In case of disputes between the agency and the worker, the worker may lodge a complaint either to the ministry of labor or the judiciary. The agency may only resort to the judiciary. All judicial claims or decisions filed by the worker against an agency shall be notified to the Ministry of Labor by the Agency.

Article 17: Monitoring:

In accordance with Article 8 above, the Minister may accredit such persons or non-governmental organizations as he thinks fit to be inspectors of agencies for the purpose of investigating complaints of human trafficking.

Inspection may include inspection of the premises, a desk audit, review of files related to the migrant workers, and interviews with any person with interest in the Agency or staff.

Agencies are obliged to provide the inspectors with additional information upon request.

Additional details on the implementation of this Article shall be provided by a Ministerial Decision.

Article 18: Suspension and Revocation of the License:

1. The Ministry shall suspend the license and hence prohibit the granting of new prior approvals in case of breach of any provision stipulated in article 14.
2. The Agency may, following a minimum period of three months, ask for the removal of suspension. In this case, it shall submit supporting evidence of the measures undertaken to remedy the cause of suspension.
3. The Ministry may revoke the license in case of breach of any provision stipulated in articles 6, 10, 12 and 15 (6).
4. The Ministry shall immediately revoke the license in the following cases:
 - If at any time, the agency or any person with an interest in this Agency is convicted of human trafficking.
 - In case of breach of any provision stipulated in articles 11, 15 (1, 2, 3, 4, 5, 7 and 8).

Article 19: Initiating and Updating a Public Register:

The Ministry shall issue and regularly update a public and accessible register for all licensed agencies including all relevant data, in particular the name of the licensee, the address of the agency, the persons with interest in the Agency and the number, date of issuance and expiration of the license.

Article 20: Transitional Period:

Existing licensed agencies shall comply with the new provisions within 3 months from the entry into force of this Decision.

Article 21: Publication:

This decision shall be published where needed and shall repeal all that is contrary to or contradicting its provisions.