

## LICENSING AND OPERATION OF PRIVATE EMPLOYMENT AGENCIES



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In light of the massive implementation of major economic projects in the country and the growing number of private employment agencies, the need arose to adapt current employment legislation to the needs of the employment market. As a result, the legal rules on private recruitment and placement of workers were reviewed, and this process culminated in the approval of Regulations on the Licensing and Operation of Private Employment Agencies (Regulamento de Licenciamento e Funcionamento das private employment agencies - Decree NO. 36/2016, of 31 August<sup>1</sup> (referred to in this newsletter as the “RLFAPE”). The RLFAPE does not apply to port workers and to the hiring of foreign workers, which are both regulated by specific legislation.

In its initial provisions, the RLFAPE provides that the object of private employment agencies is the temporary placement of one or more **Mozambican workers** to users inside the country or abroad.

The scope of application of the RLFAPE makes it very clear that private employment agencies may only hire foreign nationals to join their own staff, and not to be placed with third parties.

In terms of their operations, these agencies essentially provide Mozambican workers registered for that purpose to a third party – an individual or company that is Mozambican or foreign – which is responsible for determining the tasks of the temporary workers and for supervising their work.

Importantly, the RLFAPE has provided clear regulations on the procedures applicable to recruitment and placement of Mozambican workers, their rights and duties, the supervision of the agencies and the system of sanctions for any infringements the agencies may commit.

<sup>1</sup> Repeals Decree no. 6/2001 of 20 February Subclass 78300 referring to other supply of human resources, Class 7830, Group 783, Division 78, Services N, Annex II of Decree no. 34/2013, de 02 de Agosto.

## AUTHORISATION AND LICENSING OF PRIVATE EMPLOYMENT AGENCIES

The authorisation for private employment agencies to operate is granted, upon application by the interested party, by the Minister of Employment, or by anyone to whom the Minister delegates powers for that purpose<sup>2</sup>. The RLFAPE makes changes to the requirements for the authorisation application, which is submitted to the authority that issues licences, the National Institute of Employment and Professional Training (Instituto Nacional de Emprego e Formação Profissional - "INEFP"). Besides the previously required identification details of the applicant and location of the agency, it is now also necessary to provide the following information:

- Age, nationality and address of the applicant / an indication of the representative and legal office (depending on whether the applicant is an individual or company);
- Corporate name including the words "Agência Privada de Emprego" (Private Employment Agency);
- Type of licence required;
- Single Tax Identification Number (NUIT);
- Identity card of the individual or public deed of incorporation of the company;
- Declaration of provision of security 15 days after notification of granting of the authorisation<sup>3</sup>;
- Proof of payment of the fee<sup>4</sup>;
- Certificate of registration at the National Institute of Social Security; and
- Certificate of discharge issued by the competent tax office.

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Licences<sup>5</sup> are non-transferable and valid for a period of five years, renewable for equal and successive periods. The RLFAPE establishes two types of licences, namely:

- Normal – for the recruitment and placement of workers with users inside Mozambique; or
- Special – for the recruitment and placement of workers with users outside Mozambique.

Under the RLFAPE, the licence may be suspended<sup>6</sup> if any of the following occurs:

- Non-operation of the agency for six consecutive months;
- Provision of services other than those indicated in the licence; and
- Operating as a private recruitment agency with an expired licence.

The RLFAPE also provides that the licence can be revoked if the agency does not send annual activity reports<sup>7</sup> to the INEFP by the applicable deadlines, or if the agency operates repeatedly with an expired licence.

## PROCEDURES APPLICABLE TO RECRUITMENT AND PLACEMENT OF WORKERS

Recruitment under the Normal Licence requires:

- Possession of a Normal Licence;
- Signature of an individual temporary employment contract with the worker to be placed, with a maximum duration of two years, which may be renewed no more than twice, by agreement. If this rule is not respected, the worker will become part of the user's staff or will be entitled to compensation if that is refused; and
- Signature of a use agreement with the user.

Recruitment under the Special Licence requires:

- Possession of a Special Licence;
- Signature of an individual employment contract with the worker to be placed; and
- Signature of a use agreement with the user, which must be endorsed by the INEFP and must contain the details of the agency, the user abroad and the worker.

An important change introduced by the RLFAPE is the imposition on agencies of an obligation to ensure respect for the principle of equal treatment of immigrant workers in terms of remuneration, medical and medicines assistance, duration of work, rest periods, holidays and compensation for work accidents and occupational diseases.

<sup>2</sup> The authorisation is granted to single person companies or to legal entities (companies).

<sup>3</sup> The previous rules only required a bank guarantee for agencies that recruit people to work abroad.

<sup>4</sup> In an amount corresponding to 10 minimum salaries in the non-financial services sector.

<sup>5</sup> The same entity can be granted both types of licences, as long as it obtains the proper authorisation.

<sup>6</sup> The previous rules did not provide for this sanction.

<sup>7</sup> Report sent by 31 January, with an indication of the activities carried out in the preceding calendar year, the number of candidates for employment registered and the number of placements made by branch of activity and by profession.

### SUPERVISION AND SANCTIONS

The Inspectorate General of Employment is responsible for supervision of compliance with the rules established by the RLFape which provides for the following sanctions for the various types of infringement committed:

- Absence of licence – closure of the agency and application of a fine of between 5 and 10 national minimum salaries as in force in the non-financial services sector;
- Failure to pay the fee due for assignment of Mozambican workers abroad or requiring payment for the services provided to the candidate for work (in cash or in-kind) – a fine of between 5 and 10 national minimum salaries as in force in the non-financial services sector;
- Re-offending – a fine of double the minimum and maximum limits, and
- Serious and repeated infringement of the RLFape that translates into poor performance reported in the annual evaluation – closure of the infringing private employment agency until it remedies the situation that gave rise to the infringement.

It is important to note that 60% of the fees charged to complete the procedure for licensing the activity go to the Public Treasury and the remaining 40% go to the INEFP for actions to promote employment.

In its final and transitional provisions, the RLFape granted a period of 12 months to agencies legally incorporated at the date it comes into force to adapt to the requirements established in the new Regulations.

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HILDEBRANDO DE MELO - ANGOLA

Night, 2009 (detail)

Bricolage sobre papel canson ou not 59 X 42  
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