

Employment and Job-Seeker Protection Act, B.E. 2528 (1985)

Translation

BHUMIBHOL ADULYADEJ, REX.

Given on the 17th Day of August B.E. 2528;

Being the 40th Year of the Present Reign

His Majesty King Bhumibhol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on employment and job-seeker protection;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1

This Act is called the "Employment and Job-Seeker Protection Act, B.E. 2528 (1985)".

Section 2

This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3

The Employment and Job-Seeker Protection Act, B.E. 2511 shall be repealed.

Section 4

In this Act:

"Employment" means a business that provides a job to a job-seeker and provides a worker to the employer, with or without service charge, including any request for money, property or other benefits in return of service to provide works for job-seekers;

"Service charge" means money or other benefits paid as consideration in return of employment;

"Expense" means expense incurred in employment;

"Licensee" means a licensee to the employment license under this Act;

"Agent" means a person who is registered by the licensee as agent under this Act;

"Office" means the employment office of the licensee;

"Job-seeker" means a person who desires to work for other persons in return of wage in form of money or other benefits;

"Skill testing" means any act which is conducted to test working skill of, and to issue testing result certificate to, the job-seeker, irrespective of whether testing fee has been collect or not;

"Training" means the employer organizes the employees to get training in order to increase their working knowledge, skill, language, attitude or proficiency and to enhance their working efficiency;

"Fund" means the Fund for Job-Seekers Working Abroad;

"Committee" means the Committee of the Fund for Job-Seekers Working Abroad;

"Registrar" means the Central Employment Registrar and Changwat Employment Registrar;

"Competent official" means a person appointed by the Minister for the execution of this Act;

“Director-General” means the Director-General of the Department of Employment;

“Minister” means the Minister having charge and control for the execution of this Act.

Section 5

The Minister of Labor and Social Welfare shall have charge and control for the execution of this Act, and the power to appoint the registrar and competent official, to issue the Ministerial Regulations prescribing fees not exceeding the rates prescribed hereto attached, granting exemption from fees and prescribing other acts or issuing regulations for the execution of this Act.

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

CHAPTER I

Central Employment Registration Office, Changwat Employment Registration Office and Employment Office

Section 6

There shall establish the Central Employment Registration Office in the Department of Employment, and the Central Employment Registrar shall have the powers and duties under this Act.

In Changwat other than Bangkok Metropolis, there may establish the Changwat Employment Registration Office being under direct control of the Central Employment Registration Office, and the Changwat Employment Registrar shall have the powers and duties under this Act.

The establishment of the Changwat Employment Registration Office shall be published in the Government Gazette.

Section 7

There shall establish the Employment Office in the Department of Employment, the Ministry of Labor and Social Welfare, to be called the “Employment Office of the Department of Employment” having duty to help, with no charge, people to find work.

The branches of the Employment Office of the Department of Employment may be established if the Director-General thinks fit.

CHAPTER II

Domestic Employment

Section 8

No person shall undertake the domestic employment for a job-seeker, except where the license is granted by the registrar.

The application for, and the issuance of, a license shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulations.

The registrar shall grant license or notify, in writing, a refusal order to the application for registration together with justification thereof to the applicant within sixty days as from the date of receiving the application with correct and complete details as prescribed by the Ministerial Regulations.

In necessary case which the registrar is unable to issue the license or to have refusal order within the period as prescribed in paragraph three, such period shall be extended for not

more than two times, not exceeding thirty days each time. In this case, the registrar shall notify the extension of such period and justification thereof to the applicant before the expiration of the period under paragraph three or the extended period, as the case may be.

Section 9

The applicant for a domestic employment license shall have the qualifications and shall not be under the prohibitions as follows:

- (1) being of Thai nationality;
- (2) being not less than twenty years of age;
- (3) not being a licensee of the employment license;
- (4) not being under a suspension period in the case where the employment license of a licensee has been suspended;
- (5) not being a licensee whose employment license has been revoked;
- (6) not being an incompetent or quasi-incompetent;
- (7) not being, or used to be, a person of disgraceful behavior or defective moral;
- (8) not being a director, partner or manager of the juristic person who is a licensee of the employment license;
- (9) not being a director, partner or manager of the juristic person whose employment license has been revoked or being under appeal;
- (10) not having been sentenced by a final judgment of the Court or any legitimate order to a term of imprisonment for any offense which dishonesty is, subjected to the provisions of laws, the element thereof or any offense under this Act;
- (11) giving money to the registrar as security for the execution of this Act in an amount as prescribed by the Ministerial Regulations which shall not be less than one hundred thousand Baht.

In the case where the applicant is a juristic person, such juristic person shall have Thai nationality, and its manager shall have qualifications and not be under the prohibitions under paragraph one.

Section 10

A license shall be valid within the area of Changwat as specified therein for the period of two years as from the date of its issuance.

A domestic employment licensee who desires to renew the license shall submit the renewal application not less than thirty days before the expiry date of the license. Upon such submission, the applicant may continue his or her undertaking until the registrar has issued a refusal order to the renewal application.

The application for, and the permission to, the renewal of the license shall be in accordance with the rules, procedure and condition as prescribed by the Ministerial Regulations.

The permission to, or the refusal order of, the renewal application shall be made within thirty days as from the date of receiving the application with correct and complete details as prescribed by the Ministerial Regulations.

Section 11

A domestic employment licensee shall have to display his or her license at the conspicuous place in its office as specified therein.

No domestic employment licensee shall establish the office at a hotel, dormitory, entertainment place, pawnshop, any place where gambling has been organized regularly or other places as notified by the Minister.

Section 12

The domestic employment licensee who desires to relocate his or her office or establish temporarily office outside the locality under the license shall request for permission of the registrar.

The application of a request and the granting of permission shall be in accordance with the regulations determined by the Minister. In this case, the provisions of Section 10 paragraph four shall apply mutatis mutandis.

Section 13

The domestic employment licensee who desires to change his or her manager shall request for permission of the registrar.

The application of a request and the granting of permission shall be in accordance with the regulations determined by the Minister. In this case, the provisions of Section 10 paragraph four shall apply mutatis mutandis.

Section 14

In the case where the refusal order of the registrar is made to the application for license, renewal of license, relocation of office, establishment of temporarily office or changing of manager, the applicant or domestic employment licensee shall have the right to appeal such refusal order to the Minister within thirty days as from the date of receiving the letter notifying such order or the expiration date of the period under Section 8 paragraph four or Section 10 paragraph four, as the case may be.

The decision of the Minister shall be final.

Section 15

A domestic employment licensee shall register the employees and agents with the registrar in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulations, and shall keep the register thereof which is made in the form as determined by the Director-General at the office in order to be examined by the job-seekers during the working hours.

An employee and agent shall not be employee or agent of another domestic employment agency simultaneously, and shall have qualifications and not being under the prohibitions under Section 9. In this case, the qualification under Section 9 (1) and (2) shall not apply to the employee.

A license granted to any domestic employment licensee shall cover the registered employees or agents of such licensee.

An act related to the employment done by the registered employees or agents of the domestic employment licensee shall be deemed as an act of the licensee.

Section 16

In submitting a request for agent registration under Section 15, the domestic employment agency shall give security for each agent to the registrar in an amount as prescribed by the Ministerial Regulations, but not less than fifty thousand Bath each. The security may be cash, Thai government bond or letter of guarantee of the bank.

In the case where the agent violates the provisions of this Act and such violation cause any damage to the job-seeker, if there is a reasonable ground to belief that such violation made by the agent, the registrar shall notify, in writing, the domestic employment agency. If the domestic employment agency fails to refute within thirty days as from the date of receiving the notification, the registrar shall have the power to pay compensation from the security under paragraph one to the job-seeker for the actual damage thereof.

Section 17

In the case where the security given by the domestic employment licensee under Section 9 (11) and Section 16 paragraph one is decreased on account of the payment under this Act,

the registrar shall order, in writing, the licensee to give additional security to fulfill the prescribed amount within thirty days as from the date of receiving the order.

Section 18

The security given by the domestic employment licensee under Section 9 (11) and Section 16 paragraph one shall not be liable to execution as long as the licensee has not terminated the employment business or the licensee has terminated the employment business but he or she has not been discharged from liability under this Act.

In the case where the employment business has been terminated, the domestic employment licensee may ask for the return of the given security under Section 9 (11) when total obligation incurred under this Act has been performed. If the remaining obligation is less than the given security, the registrar shall have the power to reduce security in an amount equal to the outstanding obligation.

The domestic employment licensee may ask for the return of the given security under Section 16 paragraph one when the agent ceases from being agent with no obligation to be performed under Section 16 paragraph two.

In the case where the domestic employment licensee fails to ask for the return of the given security within five years as from the date the employment business has ceased, such given security shall devolve on the State.

Section 19

The domestic employment licensee who desires to employ job-seekers from any Changwat other than Changwat under license shall request for permission of the registrar.

The application of a request and the granting of permission shall be in accordance with the regulations determined by the Minister.

Section 20

The domestic employment licensee, manager, employee or agent shall, in carrying out of duties outside the office, present the identification card to all relevant persons.

The form of the identification card of the domestic employment licensee, manager, employee or agent shall be determined by the Director-General.

The identification card under paragraph two shall be valid for one year as from the issuance date.

The request for, and the issuance of, the identification card shall be in accordance with the regulations as determined by the Minister.

Section 21

The manager, employee or agent who ceases from being manager, employee or agent shall return the identification card to the registrar or the domestic employment licensee within seven days as from the date he or she ceases from being manager, employee or agent.

The licensee who receives the returned identification card under paragraph one shall send such identification card to the registrar within seven days as from the date of receiving such identification card from the manager, employee or agent.

Section 22

In the case where the license or identification card is lost or damaged, the domestic employment licensee shall request for a substitution of the license or identification card, as the case may be, within fifteen days as from the date of knowing such lost or damage.

The request for, and the issuance of, a substitution of the license or identification card shall be in accordance with the regulations as determined by the Minister.

Section 23

The domestic employment licensee shall, in an employment, conclude employment contract with job-seekers.

The form of the employment contract under paragraph one shall be determined by the Director-General

Section 24

No agent shall conclude the employment contract with job-seekers for the domestic employment licensee, except where written authorization of such licensee has been made in the form determined by the Director-General and such licensee has informed, in writing, such authorization to the registrar.

Right of the job-seeker or third person who acts in good faith shall not be deteriorated on account of the agent has not been authorized by the licensee or the power of attorney has not been made in the form as determined by the Director-General.

Section 25

A domestic employment licensee shall act in compliant with the followings:

- (1) preparing the registration book, account and documents related to business of the licensee in accordance with the form with particulars as determined by the Director-General;
- (2) preparing and submitting the monthly employment report, made in the form as determined by the Director-General, to the Registrar within the tenth day of the following month.

If it appears a ground to be registered or recorded in the registration book, account or documents related to business of the licensee, the licensee shall register or record such ground therein within seven days as from the date such ground has appeared.

Section 26

No domestic employment licensee shall demand or receive any money or property from a job-seeker other than service charge or expense.

Service charge or expense under paragraph one shall be demanded or received not exceeding the rate as determined by the Minister.

Section 27

No domestic employment licensee shall demand or receive service charge or expense before the circumstance that the employer accepts the job-seeker to work as employee and makes the first payment of wage to such employee.

Upon receiving service charge or expense, a domestic employment licensee shall issue a receipt to the job-seeker in accordance with the form as determined by the Director-General.

Section 28

In the case where a job-seeker fails to get a job as stipulated in the employment contact, earns wage less than the amount stipulated in the employment contract or gets a job which is not stipulated in the employment contract, a domestic employment licensee shall arrange such a job-seeker to go back to the office or temporally office where a licensee conclude the employment contact with such job-seeker. In this case, a licensee shall be responsible for travel expense, accommodation and meals of a job-seeker and shall return the service charge and expense received under Section 27 to a job-seeker. A job-seeker shall have to have a written notice to the registrar under Section 25 (2) within fifteen days as from the date such arrangement shall be made.

In the case where a job-seeker refuses to go back or agrees to earn wage less than the amount stipulated in the employment contract or gets a job which is not stipulated in the

employment contract, a domestic employment licensee shall not arrange a job-seeker to go back. In this case, a licensee shall have to have a written notice to the registrar under paragraph one.

Section 29

In the case where the registrar acknowledges whether there is a ground that a domestic employment licensee has to arrange a job-seeker to go back under Section 28 paragraph one, but a domestic employment licensee fails to do so within fifteen days as from the date such arrangement shall be made, the registrar shall arrange a job-seeker to go back with the security money deposited under Section 9 (11).

CHAPTER III Overseas Employment

Section 30

No person shall undertake the overseas employment for a job-seeker, except where the license is granted by the registrar.

The application for, and the issuance of, a license shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulations.

Section 31

The applicant for the overseas employment license shall be a company limited or public company limited and shall have the qualifications and not being under the prohibitions as follows:

- (1) its registered and paid up capital shall be prescribed by the Ministerial Regulations, but shall not less than one million Baht;
- (2) its capital belongs to shareholders of Thai nationality for not less than three-fourth of the total capital, and the number of shareholders of Thai nationality shall not less than three-fourth of the total number of the shareholders;
- (3) not being a licensee of the employment license;
- (4) not being under a suspension period in the case where the employment license of a licensee has been suspended;
- (5) not being a licensee whose employment license has been revoked;
- (6) its manager having the qualifications and not being under the prohibitions as prescribed under Section 9;
- (7) giving money to the registrar as security for the execution of this Act in an amount as prescribed by the Ministerial Regulations which shall not less than five hundred thousand Bath.

Section 32

Apart from the employment business, the overseas employment licensee shall not run the businesses as prescribed by the Ministerial Regulations.

Section 33

The security to be deposited by the overseas employment licensee under Section 31 (7) may be cash, Thai government bond or letter of guarantee of the bank.

A licensee may request for the changing of security.

In the case where the security given by such licensee is decreased on account of the payment under this Act, the registrar shall order, in writing, the licensee to give additional security to fulfill the prescribed amount within thirty days as from the date of receiving the order.

Section 34

The security given by the overseas employment licensee under Section 31 (7) and Section 16 paragraph one which is applied mutatis mutandis under Section 47 shall not be liable to execution as long as the licensee has not terminated the employment business or the licensee has terminated the employment business but the licensee has not been discharged from liability under this Act.

In the case where the employment business has been terminated, the overseas employment licensee may ask for the return of the given security under Section 31 (7) when total obligation incurred under this Act has been performed. If the remaining obligation is less than the given security, the registrar shall have the power to reduce security in an amount equal to the outstanding obligation.

In the case where the overseas employment licensee fails to ask for the return of the given security within five years as from the date the employment business has ceased, such given security shall devolve on the fund.

Section 35

The overseas employment licensee who desires to enroll or notify enrollment job-seekers in advance shall request for permission to the registrar.

The application of a request and the granting of permission shall be in accordance with the regulations determined by the Minister, and the provision of Section 10 paragraph four shall apply mutatis mutandis.

Section 36

In sending a job-seeker to work abroad, the overseas employment licensee shall act as follows:

- (1) submit, prior to sending a job-seeker to work abroad, the employment contract which is concluded by and between the overseas employment licensee or its agent and a job-seeker, together with conditions in hire of services which are concluded by and between the overseas employer or its authorized agent and a job-seeker as well as other evidences as notified by the Director-General, to the Director-General for consideration;
- (2) organize a job-seeker to have medical examination in accordance with the rules and procedure, and at the infirmary, as notified by the Director-General;
- (3) organize a job-seeker to have a skill testing in accordance with the rules as notified by the Director-General of the Department of Skill Development;
- (4) organize a selected job-seeker who passes a skill testing to get training on laws, custom and tradition of the country in which the job-seeker is going to work, including working conditions, at the Central Employment Registration Office, Changwat Employment Registration Office or other institutions as notified by the Director-General;
- (5) submit a list specifying name and work place of a job-seeker, together with a copy of the employment contract to the Central Employment Registrar within seven days as from the departure date of a job-seeker;
- (6) notify, in writing and together with a list specifying name and work place of a job-seeker, the Thai Labor Office to the country where a job-seeker is working for information within fifteen days as from the arrival date of a job-seeker. In the case where there is no the Thai Labor Office to such country, such notification shall be made, within the aforesaid period, to the Royal Thai Embassy or the Royal Thai Consulate to such country or the Royal Thai Embassy or the Royal Thai Consulate or other persons having duty in taking care of the Thai in such country.

- (7) report monthly to the Central Employment Registrar within the tenth day of the following month in the case where there is a job-seeker who fails to go to work abroad under the employment contract.

The provisions of (3) shall not apply to a job-seeker who has had the still testing certificate in the field to be employed.

The report under (7) shall be made in the form as determined by the Director-General.

Section 37

The overseas employment licensee shall organize the overseas employer who concludes the hire of services contract with a job-seeker to remit money to the fund established under Section 52 for each job-seeker. If it is unable to organize the overseas employer to do so, the licensee shall have the duty to remit money to the fund.

In the case where the Employment Office of the Department of Employment is a person who undertake the overseas employment for a job-seeker, the Director-General shall organize the overseas employer to remit money to the fund under paragraph one. If it is unable to organize the overseas employer to do so and a job-seeker expresses his or her intention to work abroad and agrees to remit money to the fund upon his or her own, the Director-General shall have the power to collect money from such job-seeker so as to remit to the fund.

The remittance of money to the fund shall be in accordance with the rules, procedure, period of time and rates as prescribed by the Ministerial Regulations. Such rates may be varied upon the country or region to be sent a job-seeker to.

Section 38

No overseas employment licensee shall demand or accept service charge or expense from a job-seeker in advance for exceeding thirty days before the departure date. If it is necessary, the overseas employment licensee may request the Central Employment Registrar to extend such period. If it is appropriate, the Central Employment Registrar may extend such period. The extension to such period shall be made only one time for not exceeding thirty days.

The demand or acceptance of money under paragraph one shall be made only to the employment under the contract permitted by the Director-General under Section 36.

Section 39

In the case where a job-seeker reaches the country of employment but has not got a job as stipulated in the employment contract, the overseas employment licensee shall act as follows:

- (1) arrange such job-seeker to go back to Thailand and shall be responsible for travel, accommodation, meals and other necessary expenses to such job-seeker until he or she arrives Thailand;
- (2) notify, in writing, the Thai Labor Office to such country for information within fifteen days. In the case where there is no the Thai Labor Office to such country, such notification shall be made to the Royal Thai Embassy or the Royal Thai Consulate to such country or the Royal Thai Embassy or the Royal Thai Consulate or other persons having duty in taking care of the Thai in such country. A copy of such notification shall also be sent to the Central Employment Registration Office.

Section 40

In the case where a job-seeker reaches the country of employment, but has got wage, position or other benefits which are different from the provisions of the employment contract, such job-seeker may request the overseas employment licensee to arrange him or her to go back to Thailand or may agree to work for the wage, position or benefits which are different from the provisions of the employment contract. If a job-seeker request the

overseas employment licensee to arrange him or her to go back to Thailand, such job-seeker shall notify his or her intention, in writing, to the licensee or agent of the licensee to such country for information within ninety days as from the date he or she has acknowledged that he or she has got wage, position or other benefits which are different from the provisions of the employment contract. In the case where it is unable to notify the licensee or agent of the licensee to such country, such notification shall be made to the Royal Thai Embassy or the Royal Thai Consulate to such country or the Royal Thai Embassy or the Royal Thai Consulate or other persons having duty in taking care of the Thai in such country so as to inform further to the licensee.

In the case where a notification under paragraph one has been made by a job-seeker, the provisions of Section 39 shall apply *mutatis mutandis*.

In the case where a job-seeker agrees to work for wage, position or other benefits which are different from the provisions of the employment contract, the licensee shall not be responsible for the arrangement of a job-seeker to go back to Thailand, but still be responsible for an act under Section 39 (2).

Section 41

In the case where a job-seeker has come back to Thailand upon an arrangement of the overseas employment licensee who has the duty to arrange a job-seeker to go back to Thailand under Section 39 or Section 40, such overseas employment licensee may submit a request to the Director-General to pay him or her from the fund a compensation in an amount equal to one-half of all expenses which has been paid under Section 39. If the Director-General is of opinion whether the circumstance that a job-seeker fails to have got a job, wage, position or other benefits as stipulated in the employment contract is not caused by any fault made by the licensee and the licensee has tried his or her best to make a job-seeker to get a job, wage, position or other benefits as stipulated in the employment contract or the licensee has tried his or her best to arrange a job-seeker to go back to Thailand as soon as possible, the Director-General shall have an order to pay compensation from the fund to the licensee.

Section 42

In the case where the overseas employment licensee has notified a job-seeker of his or her readiness to arrange a job-seeker to go back to Thailand under Section 39 (1) or Section 40, but a job-seeker refuses to go back to Thailand within sixty days as from the date of being notified, the licensee shall act in accordance with Section 39 (2) and shall deposit money at the Central Employment Registration Office in an amount determined by the Central Employment Registrar to be paid for travel expense, accommodation, meals and other necessary expenses for the trip to Thailand of such job-seeker.

The amount of money which has been paid from the fund by the official in arranging such job-seeker to go back to Thailand shall be deducted from money deposited by the licensee under paragraph one. The remaining money shall be returned to the licensee without delay. If the deposited money is insufficient, the Central Employment Registrar shall deduct the deposited security under Section 31 (7).

In the case where a job-seeker fails to go back to Thailand within ninety days as from the date the licensee has deposited money under paragraph one without reasonable ground, the licensee shall not be responsible for the arranging such job-seeker to go back to Thailand and may ask for the return of such money.

When the job-seeker under paragraph one arrives Thailand, the licensee who acts in compliance with this Section shall have the right to request the Director-General to pay from the fund a compensation for all paid expenditure. In this case, the provisions of Section 41 shall apply *mutatis mutandis*.

Section 43

If it appears to the Central Employment Registrar that there is the circumstance which the overseas employment licensee has to arrange a job-seeker to go back to Thailand under

Section 39 (1) or Section 40, but the licensee fails to do so within days as from the date which such has occurred, the Central Employment registrar shall arrange such job-seeker to go back to Thailand.

In arranging a job-seeker to go back to Thailand under paragraph one, the Central Employment Registrar shall advance money from the fund and shall notify the licensee to refund such money within the determined period. If the licensee fails to refund such money within the determined period, the Central Employment Registrar shall deduct such amount of money from the deposited security under Section 31 (7).

Section 44

In the case where a job-seeker has got wage, position or other benefits as stipulated in the employment contract, but he or she fails to perform obligations under such contract, the overseas employment licensee shall not be responsible for arranging such job-seeker to go back to Thailand, but shall act in compliance with Section 39 (2).

Section 45

In the case where a job-seeker has got wage, position or other benefits as stipulated in the employment contract and he or she has worked until the employment contract has expired, but he or she fails to go back to Thailand without reasonable ground within thirty days as from the date the employment contract has expired or the longer period as stipulated in the employment, or he or she has got a new job within such period, the overseas employment licensee shall not be responsible for arranging such job-seeker to go back to Thailand, but shall act in compliance with Section 39 (2).

Section 46

In the case where the overseas employment licensee is unable to arrange a job-seeker to depart within the period under Section 38, or where a job-seeker fails to have got a job, wage, position or other benefits as stipulated in the provisions of the employment contract and a job-seeker do not desires to do such job, the overseas employment licensee shall return the collected service charge and expenses to a job-seeker within thirty days as from the expiration date of the period under Section 38 or from the date a job-seeker arrives Thailand, as the case may be.

In the case where a job-seeker is unable to work until the expiration of the period as stipulated in the employment contract on account of the termination of employment which is not caused by a job-seeker, the licensee shall return, within thirty days as from the date a job-seeker asking for such return, to a job-seeker the collected service charge and expenses in the proportion to the period which a job-seeker has worked.

In the case where a job-seeker has got wage less than the wage as stipulated in the employment contract, but he or she desires to do such job, the licensee shall return, within thirty days as from the date a job-seeker asking for such return, to a job-seeker the collected service charge and expenses in the proportion to the actual wage received by a job-seeker.

In the case where the licensee fails to comply with paragraph one, paragraph two or paragraph three, the Central Employment Registrar shall deduct such service charge and expenses from the security deposited under Section 31 (7) and return such money to a job-seeker.

The Registrar shall, upon an implementation in accordance with paragraph four, notify the licensee fro information without delay.

Section 47

The provisions of Section 8 paragraph three and paragraph four, Section 10, Section 11, Section 12, Section 13, Section 14, Section 15, Section 16, Section 17, Section 18 paragraph three, Section 19, Section 20, Section 21, Section 22, Section 23, Section 24, Section 25, Section 26 and Section 27 paragraph two of Chapter II on domestic employment shall be applied to the overseas employment mutatis mutandis.

CHAPTER III BIS
Skill Testing Unit

Section 47 bis

No person shall undertake skill testing of a job-seeker, except where the license is granted by the Director-General of the Department of Skill Development.

The application for, and the issuance of, a license for skill testing of each occupation shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulations.

The provisions of paragraph one shall not apply to skill testing organized by a State agency as prescribed by the Ministerial Regulations. Such Ministerial Regulations may prescribe the rules, procedure and conditions to be complied by such State agency.

Section 47 ter

A skill testing licensee shall have to display his or her license at the conspicuous place in the skill testing unit as specified therein.

Section 47 quarter

In undertaking of skill testing, a skill testing licensee shall have a skill testing advisor and shall act in compliance with the rules and procedure as notified by the Director-General of the Department of Skill Development.

Section 47 quinque

No skill testing licensee shall demand or receive any money, property or other benefits from a job-seeker other than skill testing fee.

The skill testing fee under paragraph one shall be demanded or received not exceeding the rate as determined by the Director-General of the Department of Skill Development.

Section 47 sex

A skill testing licensee shall prepare the registration book, account and documents related to business of the licensee in accordance with the rules and procedure as notified by the Director-General and those documents shall be ready for inspection of the competent official.

Section 47 septem

A license shall be valid for two years as from its issuance date.

If a skill testing licensee desires to renew the license, a request for such renewal shall be submitted before the expiration date of the license for not less than thirty days. Upon a submission of such request, a skill testing licensee may undertake its business until the refusal order to such request is made by the Director-General of the Department of Skill Development.

The application for, and the permission of, a renewal of a license shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulations.

Section 47 octo

In the case where the Director-General of the Department of Skill Development refuses to grant a license or to renew a license, the applicant or the skill testing licensee shall have the right to appeal to the Minister within thirty days as from the date of receiving such refusal.

The decision of the Minister shall be final.

During an appeal against the refusal order to a request for a renewal of a license, the Minister may order the appellant to continue its business.

Section 47 novem

In the case where a license is lost, destroyed or materially demolished, the skill testing licensee may submit a request for its substitution, in accordance with the regulations as determined by the Director-General of the Department of Skill Development, to the Director-General of the Department of Skill Development within fifteen days as from the date such lost, destroy or material demolish has known to the licensee.

CHAPTER IV Working Abroad

Section 48

A job-seeker who desires to travel to work abroad by himself or herself with no employment contract with the overseas employment licensee under Chapter III shall notify the Director-General or a person entrusted by the Director-General before traveling for not less than fifteen days.

The notification shall be made in the form as notified by the Director-General.

Section 48/1

A job-seeker whose money is remitted to the fund under Section 37 by himself or herself or by the employer or the overseas employment licensee, or a job-seeker traveling to work abroad by himself or herself under Section 48 who voluntary remits money to the fund at the rate determined by the Ministerial Regulations under Section 37 before leaving the Kingdom, shall be entitled to the benefits of the fund in accordance with the regulation as determined by the Minister under Section 53 through out the period of the hire of service contract concluded by such job-seeker.

A job-seeker who still staying or working abroad shall be entitled to the benefits of the fund under Section 53 for the period of five years as from the expiration date of the hire of service contract or the date such contract is terminated.

If a job-seeker who is entitled to the benefits of the fund under paragraph two concludes the hire of service contract with the new or former employer and desires to continue the benefits of the fund under paragraph two, such job-seeker or employer shall remits money to the fund within sixty days as from the expiration or termination date under paragraph two.

Section 49

No employer in Thailand shall take an employee to work abroad, except where a permission of the Director-General is granted.

The application for, and the issuance of, a permission shall be in accordance with the regulations as determined by the Minister.

Section 49 bis

The sending of an employee who works in the undertaking, and under the objectives, of the employer to get training abroad shall be made in accordance with these rules:

- (1) if the training period is less than forty-five days, such matter shall be notified to the Director-General or a person entrusted by the Director-General in the form as notified by the Director-General. Such notification shall be made before an employee is leaving the Kingdom;
- (2) in the case of (1), if an employee has to receive money or legal benefits abroad less than the rate and rules as determined by the Director-General, a permission of the Director-General or a person entrusted by the Director-General shall be granted;

- (3) if the training period is less than forty-five days, a permission of the Director-General or a person entrusted by the Director-General shall be granted. The application for, and the granting of, a permission under paragraph one (2) or (3) shall be prescribed by the Ministerial Regulations.

No money or any benefit shall be collected in sending an employee to get training.

The employer who sends an employee to get training abroad shall be responsible for the returning to the Kingdom of such employee in accordance with the rules and procedure as determined by the Director-General.

Section 50

No employer abroad or its representative shall undertake a recruitment of an employee in Thailand to work abroad, except where such undertaking is made by through the Employment Office or the Department of Employment.

Section 51

When a job-seeker reaches the country of employment, he or she shall notify, in writing, the Thai Labor Office to such country within fifteen days as from the arrival date. Such notification shall specify name, domicile in Thailand and dwelling place and work place abroad. If there is no Thai Labor Office to such country, such notification shall be made to the Royal Thai Embassy or the Royal Thai Consulate to such country or the Royal Thai Embassy or the Royal Thai Consulate or other persons having duty in taking care of the Thai in such country within the aforesaid period.

CHAPTER VI

Fund for Job-Seekers Working Abroad

Section 52

There shall establish a fund in the Department of Employment called the "Fund for Job-Seekers Working Abroad", to be used for the undertakings under Section 53. The fund consists of money and other properties as follows:

- (1) Government subsidy;
- (2) money remitted to the fund by the overseas employment licensees, employers or job-seekers under this Act;
- (3) interest of the fund;
- (4) money or other properties donated by others;
- (5) security devolved on the fund under Section 34.

Money and other properties under paragraph one shall be remitted into the fund without remitting to the Ministry of Finance as State revenue.

The administration and the control of spending of the fund shall be in accordance with the regulations determined by the Minister with approval of the Minister of Finance.

Section 53

The fund shall be paid to support the following undertakings:

- (1) arranging job-seekers abandoned abroad to return to Thailand;
- (2) assisting job-seekers who work or going to work abroad or their statutory heirs;
- (3) selecting and organizing skill testing and training to job-seekers prior to work aboard;

in accordance with the regulations determined by the Minister.

Section 54

There shall be the Board of the Fund for Job-Seekers Working Abroad, consisting of the Director-General as Chairperson and not more than six members appointed by the Minister. The Director of the Office of Overseas Employment Administration shall be ex officio member and secretary.

Section 55

A member appointed by the Ministers shall hold office for a term of three years.

In the case where there is an appointment of a new member during the term of office of the appointed members, irrespective of whether it is an additional or replacing appointment, the newly appointed member shall remain in office for the remaining term of the appointed members.

A member who vacates from office may be reappointed, but not more than two consecutive terms.

Section 56

In addition to vacating office at the end of the term under Section 55, a member appointed by the Minister vacates office upon:

- (1) death;
- (2) resignation;
- (3) being dismissed by the Minister;
- (4) being a bankrupt;
- (5) being an incompetent or quasi-incompetent;
- (6) having been sentenced by a final judgment of the Court or legal order to a term of imprisonment, except for an offence committed through negligence or a petty offence.

Section 57

At a meeting of the Board the presence of not less than one-half of the total number of the members shall constitute a quorum. If the Chairperson is unable to attend the meeting, or is unable to perform his or her duty, the members shall select one among themselves to preside over at the meeting.

A decision shall be made by a majority of votes.

In casting votes, each member shall have one vote. In case of an equality of votes, the person who presides over at a meeting shall cast an additional vote as a casting vote.

Section 58

The Board shall have the powers and duties as follows:

- (1) to give recommendations to the Minister in the issuance of the regulations under Section 52 and Section 53;
- (2) to give advices to the Director-General, registrar and competent official for the execution related to the fund under this Act.

Section 59

The Minister shall, with a view to earn interest from money of the fund under Section 52 (2) (3) (4) and (5), have the power to deposit such money with the bank which is a State enterprise, either saving or times account, or to purchase government securities.

Section 60

The Director-General or a person entrusted by the Director-General shall have the power and duty to order payment of money of the fund to support the undertakings under Section 53.

Section 61

The Central Employment Registrar shall, within ninety days as from the end of the fiscal year, prepare a balance sheet of the fund for the elapsed fiscal year and publish it in the Government Gazette.

CHAPTER V BIS

Employment Development and Job-Seekers Protection Committee

Section 61 bis

There shall be a committee called the "Employment Development and Job-Seekers Protection Committee," consisting of the Permanent Secretary of the Ministry of Labor and Social Welfare as Chairperson, a representative of the Ministry of Foreign Affairs, a representative of the Office of the National Economic and Social Development Board, a representative of the Royal Thai Police, a representative of the Department of Skill Development, a representative of the Department of Employment as ex officio members and not more than eight members appointed by the Minister which at least three of the appointed members shall be persons having knowledge in employment and job-seekers protection, one member shall be appointed from the employee and one member shall be appointed from the employer. The Director of the Office of Overseas Employment Administration shall be ex officio member and secretary.

The Committee may appoint any person to be assistant secretary of the Committee.

Section 61 ter

The Committee shall have the powers and duties as follows:

- (1) to give recommendation to the Minister related to policy and measure in employment and job-seekers protection;
- (2) to give recommendation to the Minister related to the counter measures for problems incurred in an employment and job-seekers protection;
- (3) to give recommendation to the Minister related to measures for prevention and suppression of deceiving and fraud against job-seekers;
- (4) to give counsels and advices on overseas employment standard to all related agencies;
- (5) to give counsels, guidelines and practices for enhancing people to get job and developing skill of Thai labor to all related agencies;
- (6) to give counsel and advice related to the determination of testing standard and procedure in skill testing to all related agencies;
- (7) to perform other acts as entrusted by the Council of Ministers or the Minister.

Section 61 quarter

The provisions of Section 55, Section 56 and Section 57 shall apply mutatis mutandis to the Employment Development and Job-Seekers Protection Committee.

Section 61 quinque

The Employment Development and Job-Seekers Protection Committee may appoint a sub-committee to consider or perform any act as entrusted by such Committee.

CHAPTER VI

Control

Section 62

A job-seeker who leaves the Kingdom shall have to pass job-seekers checkpoint and shall submit the form as notified by the Director-General to the competent official at such checkpoint.

The job-seekers checkpoint under paragraph one shall be established by the notification of the Minister. Such notification shall be published in the Government Gazette.

Section 63

If it appears to the competent official that any person has no evidence related to work or training abroad as prescribed by this Act, the competent official shall have the power to inhibit such person from traveling out of the Kingdom as necessary according to the circumstance of the case. In this regards, the competent official shall clarify reasons of such inhibition in the record.

The overseas employment licensee shall be responsible for all damages incurred from an inhibition order under paragraph one. If such travel is not organized by the overseas employment licensee, a job-seeker shall be responsible for such damage.

Section 64

The licensee who is a natural person shall use the words "Employment Agency" to compose its business name, and the licensee who is a juristic person shall use the words "Employment Partnership" or "Employment Company" in front of its business name.

Section 65

No person other than the licensee shall compose its business name with the words "Employment Agency," "Employment Partnership" or "Employment Company" or foreign letters having the same meaning, except for the purpose of applying for employment license.

Section 66

The employment advertisement shall be in accordance with the regulations determined by the Minister.

Section 67

In the execution of duties, the registrar or competent official shall have the power as follows:

- (1) to enter into the office or other places related to the employment, training or skill testing during the sunrise or working hours so as to examine and control the execution of this Act;
- (2) to seize or attach registration book, accounts, documents or other evidences related to the employment, training or skill testing in the case where there is a reasonable ground to believe that there is an offense under this Act;
- (3) to summon or order an employment licensee, manger, agent, employee, job-seeker, sender of any person to get training, trainee, skill testing licensee or other related person to give statement or fact or to submit documents or other evidences for its consideration.

In the execution of duties under (1) or (2), the registrar or competent official shall present its identification card to the related person and such person shall render facilities for such execution of duties as appropriate.

The identification card of the registrar or competent official shall be in the form as determined by the Minister.

Section 68

In the execution of duties under this Act, the registrar and competent official shall be the competent official under the Penal Code.

Section 69

In the case where a licensee;

- (1) is disqualified or having prohibited qualification under Section 9 or Section 31;
- (2) fails to comply with, or acts in violation to, the provisions of this Act or Ministerial Regulations or regulations issued under this Act;

The registrar shall have the power to order such licensee to act or to correct such act within the determined period or to suspend the license for not more than one hundred and twenty days each time.

Section 70

In the case where:

- (1) a licensee fails to comply or correct any act according to the order of the registrar under Section 69 paragraph two within the determined period;
- (2) a license of the licensee has been suspended within the period of one year or a license has been suspended for two times and there is a reasonable ground to suspend such license again;
- (3) the registrar is of the opinion that the licensee is unable to continue acting in compliance with this Act or Ministerial Regulations or regulations issued under this Act;
- (4) the registrar is of the opinion that an act of the licensee who fails to comply or act in compliance with this Act or Ministerial Regulations or regulations issued under this Act is a serious matter or public cheating;

The registrar shall have the power to revoke the license.

Section 71

The suspension or revocation order shall be made in writing and shall be notified to the licensee. In the case where a licensee is not found or refuses to receive such order, such order shall be posted at the conspicuous place in the office of a licensee. In this regards, it shall be deemed that such order is known to a licensee on the posting date.

During the suspension period, no licensee shall perform any act related to the employment, except the sending of job-seekers to work abroad as permitted by the Director-General under Section 36 (1) before the suspension date.

A licensee who is its license is suspended or revoked shall be responsible for the sending of job-seekers under its responsibility back to their domicile or Thailand, as the case may be, until being discharged from liability under this Act, and shall have duty to report on job-seekers under its responsibility to the registrar.

Section 72

The licensees whose license is suspended or revoked shall have the right to appeal to the Minister within thirty days as from the date of receiving the order.

The decision of the Minister shall be final. An appeal against the suspension or revocation order to the Minister under paragraph one shall not stay the execution under the order.

Section 72 bis

In the case where the skill testing licensee fails to comply with, or acts in violation to, the provisions of this Act or Ministerial Regulations or regulations issued under this Act, the Director-General of the Department of Skill Development shall have the power to order such licensee to act or to correct such act within the determined period, to suspend the license for the specified occupation or to revoke the license, as the case may be.

The suspension or revocation order shall be made in writing and shall be notified to the licensee. In the case where a licensee is not found or refuses to receive such order, such

order shall be posted at the conspicuous place in the skill testing unit of a licensee. In this regards, it shall be deemed that such order is known to a licensee on the posting date. Such order may also be in the newspaper widely circulated in such locality.

During the suspension period, no licensee shall perform any act related to skill testing as specified in the suspension order.

The provisions of Section 72 shall apply *mutatis mutandis* to the appeal against the suspension or revocation order of the skill testing license.

CHAPTER VII

Penalties

Section 73

Whoever violates Section 8 paragraph one, Section 47 bis or Section 47 quinqué shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding sixty thousand Baht, or to both.

Section 74

Whoever fails to comply with Section 11, Section 12 paragraph one, Section 13 paragraph one, Section 20 paragraph one, Section 21, Section 23 paragraph one, Section 24 paragraph one or those Sections which are applied *mutatis mutandis* by Section 47, or fails to comply with Section 35 paragraph one, Section 36 (3) or (7) or Section 47 quarter, shall be liable to a fine of not exceeding twenty thousand Baht.

Section 75

Whoever fails to comply with Section 15 paragraph one, Section 19 paragraph one, Section 22 paragraph one or those Sections which are applied *mutatis mutandis* by Section 47, or fails to comply with Section 36 (2) (4) (5) or (6), Section 47 ter, Section 47 novem, Section 48, Section 64 or Section 65, shall be liable to a fine of not exceeding five thousand Baht.

Section 76

Whoever fails to comply with the order of the registrar under Section 17 or Section 33 paragraph three shall be liable to imprisonment for a term of not exceeding six months and to a fine two times of the amount of money to be given as additional security.

Section 77

Whoever falsely represents as employee or agent of a licensee shall be liable to imprisonment for a term from one year to three years or to a fine from twenty thousand Baht to sixty thousand Baht, or to both.

Section 78

Whoever fails to comply with Section 25 or Section 25 which is applied *mutatis mutandis* by Section 47, Section 36 (1) or Section 47 sex shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht, or to both.

Section 78 bis

Whoever falsely makes a record or report under Section 25 or Section 25 which is applied *mutatis mutandis* by Section 47, or Section 47 sex shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding twenty thousand Baht, or to both.

Section 79

Whoever violates Section 26, Section 27 which is applied *mutatis mutandis* by Section 47, or Section 38 shall be liable to imprisonment for a term of not exceeding one year and to a

fine five times of the amount of service charge and expenses collected excessively or in advance or three times of money or other properties accepted as security for such service charge or expenses.

Section 80

Any licensee who fails to comply with Section 28 paragraph one or Section 39 (1) shall be liable to imprisonment for a term of not exceeding two years or to a fine of not exceeding forty thousand Baht, or to both.

Section 81

Any licensee who fails to give written notice under Section 28, Section 39 (2), Section 40 paragraph three, Section 42 paragraph one, Section 44 or Section 45 shall be liable to a fine of not exceeding five thousand Baht.

Section 82

Whoever violates or fails to comply with Section 30 paragraph one, Section 49, Section 49 bis paragraph one or paragraph three or Section 50 shall be liable to imprisonment from three years to ten years or to a fine from sixty thousand Baht to two hundred thousand Baht, or to both.

Section 83

Whoever violates Section 32 shall be liable to a fine of not exceeding ten thousand Baht to fifty thousand Baht.

Section 84

Any overseas employment licensee who fails to remit money to the fund under Section 37 shall be liable to a fine twenty thousand Baht or three times of the amount of money to be remitted to the fund depends on whichever is greater.

Section 85

Any overseas employment licensee who has received service charge or expenses from a job-seeker but fails to send a job-seeker to work abroad without reasonable ground shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding sixty thousand Baht, or to both.

Section 86

Any licensee who violates Section 40 paragraph two shall be liable to penalty as prescribed in Section 80 or Section 81, as the case may be.

Section 87

Whoever fails to comply with Section 62 shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht, or to both.

Section 88

Whoever advertises an employment in violation of, or incompliance with, regulations determined by the Minister under Section 66 shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding sixty thousand Baht, or to both.

Section 89

Whoever obstructs the registrar or competent official in the execution of his or her duties under Section 67 shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding twenty thousand Baht, or to both.

Section 90

Whoever fails to render facilities to the registrar or competent official in the execution of his or her duties under Section 67 shall be liable to a fine of not exceeding five thousand Baht.

Section 90 bis

Whoever violates the order of the registrar or competent official under Section 67 (3) shall be liable to imprisonment for a term of not exceeding one month or to a fine of not exceeding two thousand Baht, or to both.

Section 90 ter

Any domestic employment licensee who violates or fails to comply with Section 71 paragraph two shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding sixty thousand Baht, or to both.

Any overseas employment licensee who violates or fails to comply with Section 71 paragraph two shall be liable to imprisonment from three years to ten years or to a fine from sixty thousand Baht to two hundred thousand Baht, or to both.

Section 91

Whoever fails to comply with Section 71 paragraph three shall be liable to penalty as prescribed in Section 80 or Section 81, as the case may be.

Section 91 bis

Whoever fails to comply with Section 72 bis paragraph three shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding sixty thousand Baht, or to both.

Section 91 ter

Any person who deceives another person that he or she is capable to provide job or to send another person to get training abroad and he or she obtains, by such deceive, money, properties or other benefits from the deceived person shall be liable to imprisonment from three years to ten years or to a fine from sixty thousand Baht to two hundred thousand Baht, or to both.

Section 92

If an offender who shall be liable to penalty under this Act is a juristic person, a manager or representative of such juristic person shall be liable to penalty as prescribed for such offense, except where such person can prove that he or she takes no part in the committing of the offense of such juristic person.

Section 93

With regard to offences under this Act which is punishable with fine only or with fine or imprisonment of not exceeding six months, the following person shall have the power to settle them.

- (1) Director-General, for the offense under this Act other than (2);
- (2) Director-General of the Department of Skill Development, for the offense related to skill testing under this Act.

The Director-General or the Director-General of the Department of Skill Development may entrust the power under paragraph one to Changwat Governor so as to settle the offenses committed in such Changwat.

In the case where there is an investigation, if the inquiry official found that any person commits an offense under this Act which may be settled and such person agrees to conclude the settlement, the inquiry official shall proceed the case to the Director-General, Director-General of the Department of Skill Development or Changwat Governor, as the case may be, within seven days as from the date such person agrees to conclude the settlement.

If the offender pay the full amount of settlement fine within the specified period which shall not exceed thirty days, such case is deemed to be settled under the Criminal Procedure Code.

If the offender does not agree to conclude the settlement or fails to pay the full amount of settlement fine within the period as prescribed in paragraph four, the case shall be continued.

Transitory Provisions

Section 94

All Ministerial Regulations and notifications issued under the Employment and Job-Seeker Protection Act, B.E. 2511 which still be in force prior to the date this Act comes into force shall remain in force as long as they are not contrary to, or in consistent with, this Act until the Ministerial Regulations, rules and notifications issued under this Act come into force.

Section 95

The employment license granted under the Employment and Job-Seekers Protection Act, B.E. 2511 prior to the date this Act comes into force shall be valid until its termination date, but such licensee shall act in compliance with Section 64 within one hundred and twenty days as from the date this Act comes into force. During such period, Section 74 shall not apply.

In the case where the licensee whose license has been granted prior to the date this Act comes into force desires to engage the overseas employment after the date this Act comes into force shall act in compliance with this Act before engaging the overseas employment.

Section 96

For the purpose of requesting assistance from the Fund for Job-Seekers Working Abroad under this Act, a job-seeker who has been sent to work abroad by an overseas employment licensee under the Employment and Job-Seekers Protection Act, B.E. 2511 may request right and benefits from the fund if he or she remits money to the fund at the rate as prescribed by the Ministerial Regulations under Section 37 and submits documents and evidences as determined by the Director-General through the Central Employment Registration Office within one hundred and twenty days as from the date such Ministerial Regulations come into force.

If the Central Employment Registration Office found that all requirements has been fulfilled, it shall notify a job-seeker and such job-seeker shall be entitled to right and benefits as from the date the Central Employment Registration Office has received money, documents and evidences under paragraph one.

Countersigned by

General Prem Tinsulananda

Prime Minister

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