

THE PRIVATE RECRUITMENT AGENCIES BILL

(No. XII of 2023)

The main object of this Bill is to repeal the Recruitment of Workers Act and replace it with a new and more appropriate legislative framework. The Recruitment of Workers Act, which was enacted some several years back, has stood the test of time but needs certain changes. Therefore, this new legislation consolidates and strengthens the law with regard to the recruitment of citizens of Mauritius for employment locally and abroad, and for the recruitment of non-citizens for employment in Mauritius.

2. The Ministry responsible for the subject of employment, being the enforcement agency, will have more powers with regard to regulating the activities for the recruitment of workers and it will enable the Ministry to keep abreast of new developments and challenges in this area.

3. This Bill also reflects ethical recruitment standards in line with the recommendations of the International Labour Organisation (ILO) and the International Organisation for Migration (IOM).

4. Accordingly, with the changes being brought, the Bill –

- (a) provides that no person who operates in Mauritius shall recruit a worker to work in Mauritius or abroad, unless he is licensed as a private recruitment agency;
- (b) provides that the recruitment of workers applies to both citizens and non-citizens;
- (c) prohibits a person who holds a foreign licence for the recruitment of workers to carry on the business of recruitment of workers in Mauritius;
- (d) prohibits the recruitment of a non-citizen worker, other than a non-citizen resident worker, who is already in employment in Mauritius for employment with another employer in Mauritius or for employment abroad;
- (e) provides that no person shall do any marketing, canvassing, advertising, or do any other activity, with a view to recruiting a worker unless he is licensed as a private recruitment agency;
- (f) prohibits deceitful and misleading advertisements and canvassing for wrongful inducement for the recruitment of workers;

- (g) provides that no person shall charge a worker any fee in relation to his recruitment and all cost for his recruitment, including his travel expenses, shall be borne by his employer;
- (h) gives more powers to the enforcement agency with regard to the variation, suspension and revocation of a licence for the recruitment of workers;
- (i) makes provisions for matters connected, related and incidental thereto.

S. S. CALLICHURN

*Minister of Labour, Human Resource Development
and Training, Minister of Commerce and
Consumer Protection*

14 July 2023

THE PRIVATE RECRUITMENT AGENCIES BILL
(No. XII of 2023)

ARRANGEMENT OF CLAUSES

Clause

- | | |
|---|---|
| PART I – PRELIMINARY | 12. Sharing of information |
| 1. Short title | 13. Employment of key personnel of private recruitment agency |
| 2. Interpretation | 14. Transfer of shares and change in directors |
| 3. Application of Act | 15. Change of address |
| PART II – RESTRICTIONS ON RECRUITMENT OF WORKERS | 16. Repatriation of non-citizen workers |
| 4. Recruitment of workers | PART V – POWERS OF INSPECTION, SEIZURE AND SUMMONS |
| 5. Fees for recruitment | 17. Powers of inspection and seizure |
| PART III – LICENSING OF PRIVATE RECRUITMENT AGENCIES | 18. Power to summon |
| 6. Application for licence | PART VI – MISCELLANEOUS |
| 7. Renewal of licence | 19. Unlawful possession of licence |
| 8. Variation, suspension and revocation of licence | 20. Tampering with licence |
| 9. Issue of duplicate licence | 21. Misleading advertisement |
| 10. Transfer of licence | 22. Offences and penalties |
| 11. Display of licence | 23. Regulations |
| PART IV – RESPONSIBILITIES OF PRIVATE RECRUITMENT AGENCIES | 24. Repeal |
| | 25. Saving and transitional provisions |
| | 26. Commencement |

A BILL

To repeal the Recruitment of Workers Act and replace it with a new and more appropriate legislative framework with regard to the recruitment of workers for employment in Mauritius and abroad

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Private Recruitment Agencies Act 2023.

2. Interpretation

In this Act –

“advertisement” means any material, whether written, published, broadcasted or otherwise, containing an invitation for employment;

“canvass” includes to solicit an employer, a candidate for employment or a worker in relation to an employment opportunity in such a manner so as to constitute a nuisance or wrongful inducement to hire his services;

“key personnel”, in relation to a private recruitment agency, means –

- (a) an administrative officer employed by the private recruitment agency; and
- (b) any other person having general control over, and management of, the business activities of the private recruitment agency;

“licence” means a licence issued under section 6(7);

“Minister” means the Minister to whom responsibility for the subject of employment is assigned;

“Ministry” means the Ministry responsible for the subject of employment;

“non-citizen” has the same meaning as in the Non-Citizens (Employment Restriction) Act;

“non-citizen resident” means a non-citizen who is, pursuant to section 3(6) of the Non-Citizens (Employment Restriction) Act, not required to be the holder of a work permit for employment in Mauritius;

“Permanent Secretary” means the Permanent Secretary of the Ministry or any officer of that Ministry to whom he has delegated any of his powers under this Act;

“private recruitment agency” means a company which is issued with a licence under this Act;

“recruitment activities” includes –

- (a) marketing, canvassing or advertising, whether through an online platform, with a view to recruiting a worker;
- (b) collating the biodata or resumption of a worker;

- (c) submitting an application on behalf of an employer, a recruitment agency which operates abroad, a worker or any other person for recruitment;
- (d) completing administrative and other procedures for the purpose of enabling a worker to secure the necessary permits, tests and clearances in relation to his employment; and
- (e) any other activity carried out by a person with a view to recruiting a worker;

“trafficking in person” has the same meaning as in the Combatting of Trafficking in Persons Act;

“worker” means a person who is, against remuneration, engaged for a lawful activity;

“wrongful inducement” includes any fraudulent misrepresentation of the facts with the intent to persuade an employer, a candidate for employment or a worker into agreeing to a contract or transaction.

3. Application of Act

(1) Subject to subsection (2), this Act shall not apply to a person, including an employer, who directly recruits a worker to work for him.

(2) Where a person, including an employer, intends to recruit a non-citizen, other than a non-citizen resident, to work for him, he shall undertake such recruitment in accordance with such guidelines as may be issued by the Ministry.

PART II – RESTRICTIONS ON RECRUITMENT OF WORKERS

4. Recruitment of workers

(1) No person, including a person who holds a foreign recruitment licence issued in a foreign country, shall –

- (a) on behalf of an employer, recruit a worker to work for that employer; or
- (b) carry out recruitment activities,

unless he is licensed as a private recruitment agency under this Act.

(2) Subsection (1) shall apply –

(a) to a person –

(i) who operates in Mauritius;

(ii) whether he recruits a worker for gain or reward;

(b) for the recruitment of a worker, whether –

(i) to work in Mauritius or abroad;

(ii) the worker is a citizen or non-citizen;

(c) to an employer whether he operates in Mauritius or abroad.

(3) Notwithstanding subsection (1), no person, including a private recruitment agency, shall –

(a) recruit a non-citizen, other than a non-citizen resident, who is in employment in Mauritius or is in Mauritius without a valid work permit or occupation permit for employment with another employer in Mauritius or abroad; or

(b) carry out any recruitment activity with a view to recruiting a non-citizen, other than a non-citizen resident, who is in employment in Mauritius or is in Mauritius without a valid work permit or occupation permit for employment with another employer in Mauritius or abroad.

(4) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine of not less than 500,000 rupees and not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

5. Fees for recruitment

(1) No private recruitment agency or employer, including an employer referred to in section 3(2), shall charge a worker any fee in relation to his recruitment.

(2) A private recruitment agency shall, in relation to the recruitment of a worker, charge the employer such fee as may be prescribed.

(3) All cost for the recruitment of a worker, including his travel expenses from or to Mauritius, shall be borne solely by the employer.

(4) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to fine of not less than 500,000 rupees and not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

PART III – LICENSING OF PRIVATE RECRUITMENT AGENCIES

6. Application for licence

(1) Any person who intends to operate a private recruitment agency shall make an application to the Permanent Secretary.

(2) No application shall be granted unless the private recruitment agency is a company duly registered under the Companies Act.

(3) An application made under subsection (1) shall –

(a) be in such form and manner as may be prescribed;

(b) be accompanied by such fee as may be prescribed.

(4) The Permanent Secretary may, on receipt of an application made under subsection (1) –

(a) consult such person or authority as he may determine;

(b) request the applicant to furnish such additional information or document as he may require; and

(c) inspect the business premises of the applicant.

(5) The Permanent Secretary may grant or reject an application.

(6) (a) Where the Permanent Secretary rejects an application, he shall, not later than 14 days of his decision, inform the applicant in writing.

(b) An applicant who is aggrieved by the decision of the Permanent Secretary under paragraph (a) may, not later than 21 days after having been informed of the decision, appeal to the Minister.

(7) Where the Permanent Secretary grants an application, he shall –

- (a) require the applicant to deposit, as security, such sum as may be prescribed; and
- (b) on payment of such fee as may be prescribed,

issue a licence on such terms and conditions as he may determine.

(8) A licence issued under subsection (7) shall be valid for a period of 3 years.

7. Renewal of licence

(1) Every private recruitment agency shall, at least 90 days before the expiry of its licence, make an application to the Permanent Secretary for the renewal of its licence.

(2) An application for renewal shall be accompanied by such renewal fee as may be prescribed.

(3) The Permanent Secretary may, on receipt of an application under subsection (1) –

- (a) consult such person or authority as he may determine;
- (b) request the private recruitment agency to furnish such additional information or document as he may require; and
- (c) inspect the business premises of the private recruitment agency.

(4) The Permanent Secretary may grant or reject an application.

(5) (a) Where the Permanent Secretary rejects an application, he shall, not later than 14 days of his decision, inform the private recruitment agency in writing.

(b) Any private recruitment agency who is aggrieved by the decision of the Permanent Secretary under paragraph (a) may, not later than 21 days after having been informed of the decision, appeal to the Minister.

(6) Where the Permanent Secretary grants an application, he shall –

- (a) require the private recruitment agency to deposit, as security, such sum as may be prescribed; and
- (b) on payment of such fee as may be prescribed,

renew its licence on such terms and conditions as he may determine.

8. Variation, suspension and revocation of licence

(1) The Permanent Secretary may vary, suspend or revoke a licence where he is satisfied that –

- (a) the private recruitment agency has breached this Act or any regulations made thereunder;
- (b) the private recruitment agency has breached any condition attached to its licence;
- (c) the private recruitment agency has provided false or misleading information for the issue or renewal of its licence;
- (d) the private recruitment agency has failed to collaborate with the Permanent Secretary during inspections;
- (e) the private recruitment agency has failed to comply with any instructions or guidelines issued by the Ministry;
- (f) the private recruitment agency has not been operational for a continuous period of 6 months;
- (g) the private recruitment agency is wound up or otherwise dissolved;
- (h) the business premises of the private recruitment agency are no longer suitable for the purpose of which the licence was issued;
- (i) the private recruitment agency has been engaged in, or suspected to be engaged in, or convicted for, trafficking in persons;
- (j) the private recruitment agency has committed such criminal offence that renders him no longer to be a fit and proper person to continue to hold the licence;

- (k) the private recruitment agency has acted in a manner which is, or which may be, detrimental to the interests of a person who has recourse to its services;
- (l) the private recruitment agency has wrongfully induced a person who seeks employment, whether by deceit, false promises or fraud; or
- (m) the private recruitment agency or any director, manager, majority shareholder or any other key personnel of the private recruitment agency has been convicted of an offence involving fraud or dishonesty.

(2) A private recruitment agency shall surrender its licence to the Permanent Secretary not later than 7 days after the licence has been varied, suspended or revoked.

(3) (a) Where the Permanent Secretary suspends a licence under subsection (1), it may, in addition, direct the private recruitment agency to take such corrective measures within such time frame as he may determine.

(b) Where the private recruitment agency fully complies with a direction under paragraph (a), the Permanent Secretary shall restore the licence.

(c) Where the private recruitment agency fails to comply with a direction under paragraph (a), the Permanent Secretary may revoke its licence.

(4) Notwithstanding subsections (2) and (3), the Permanent Secretary may, pending proceedings for the revocation of the licence, suspend the licence forthwith where, in the public interest, it is urgent that the private recruitment agency immediately ceases to carry on the business of recruiting workers.

(5) Where the Permanent Secretary suspends a licence, no refund of the licence fee shall be made, nor any compensation paid in respect of the suspension period.

9. Issue of duplicate licence

(1) Where the licence of a private recruitment agency is lost, defaced or damaged, the private recruitment agency may make an application to the Permanent Secretary for a duplicate licence.

(2) (a) On receipt of an application made under subsection (1), the Permanent Secretary shall make such enquiry as he deems necessary.

(b) Where, after making an enquiry, the Permanent Secretary is satisfied that the licence is lost, defaced or damaged, he may issue a duplicate licence to the private recruitment agency, subject to the duplicate licence bearing the word "DUPLICATE".

(3) A duplicate licence shall be issued –

(a) on payment of such fee as may be prescribed; and

(b) on the same terms and conditions as the original licence.

(4) Where a licence which was lost is subsequently found, the private recruitment agency shall forthwith –

(a) inform the Permanent Secretary; and

(b) surrender the original licence to the Permanent Secretary.

10. Transfer of licence

(1) A licence issued under this Act shall not be transferrable.

(2) Any private recruitment agency who transfers its licence to another person shall commit an offence and shall, on conviction, be liable to a fine of not less than 500,000 rupees and not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

11. Display of licence

(1) Every private recruitment agency shall display in a conspicuous place its licence and the conditions of its licence.

(2) Any private recruitment agency that operates in more than one place of business shall display –

(a) the original of the licence at its principal place of business; and

(b) a certified copy of the licence at every other place of business.

(3) Any private recruitment agency that contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

PART IV – RESPONSIBILITIES OF PRIVATE RECRUITMENT AGENCIES

12. Sharing of information

For the purposes of this Act, every private recruitment agency shall provide to the Permanent Secretary –

- (a) in respect of a non-citizen, other than a non-citizen resident, his name, passport number and residential address;
- (b) in respect of an employer, his name, National Identity Card number, address of place of business and residential address of the employer.

13. Employment of key personnel of private recruitment agency

(1) No private recruitment agency shall employ a key personnel to work for him where that key personnel has been convicted for fraud or dishonesty.

(2) Where a private recruitment agency employs a key personnel who has been convicted of fraud or dishonesty, its licence shall be revoked.

14. Transfer of shares and change in directors

(1) Where a private recruitment agency intends to transfer the shares of its company or change the directors of the company, it shall make an application to the Permanent Secretary for such change.

(2) Where a private recruitment agency transfers the shares of its company or changes the directors of the company without the approval of the Permanent Secretary, its licence shall be revoked.

15. Change of address

(1) Where a private recruitment agency intends to change the address of its business premises, it shall make an application to the Permanent Secretary for such change.

(2) Where a private recruitment agency changes the address of its business premises without the approval of the Permanent Secretary, its licence shall be revoked.

16. Repatriation of non-citizen workers

Any non-citizen worker who –

- (a) becomes incapacitated or is found, following a medical examination, to be unfit for duty;
- (b) is not engaged for employment after being recruited for a reason for which he is not responsible; or
- (c) is found to have been recruited by force, misrepresentation or mistake,

shall be repatriated to his country of residence at the expense of the private recruitment agency.

PART V – POWERS OF INSPECTION, SEIZURE AND SUMMONS

17. Powers of inspection and seizure

(1) The Permanent Secretary may, where he has reasonable grounds to suspect that any activity in contravention with this Act is being carried out in the business premises of a private recruitment agency, make an application to the Magistrate for a warrant authorising him to enter, search and inspect such premises.

(2) The Magistrate may, on good cause shown, issue a warrant authorising the Permanent Secretary to enter, search and inspect the business premises.

(3) Where an inspection is carried out under subsection (2), the Permanent Secretary shall –

- (a) require the private recruitment agency, its employee or agent or, the person in charge of the premises, to –
 - (i) produce any document, record or article kept in connection with the recruitment of workers;
 - (ii) give the designated officer all reasonable assistance and provide such information as may be required for the purpose of the inspection;

- (b) seize any document, record or article that he has reason to suspect to have been used, or intended to be used, in connection with the recruitment of workers, or make copies or extracts from such document or record.

(4) Where any document, record or article is seized under subsection (3), the Permanent Secretary shall give to the private recruitment agency, its employee or agent, or the person in charge of the premises, a receipt signed by him, specifying the particulars of the document, record or article that is seized.

18. Power to summon

(1) The Permanent Secretary may summon to his office any private recruitment agency or any worker recruited by a private recruitment agency for an enquiry under this Act.

(2) Any person who fails to comply with a summons issued by the Permanent Secretary under subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

PART VI – MISCELLANEOUS

19. Unlawful possession of licence

(1) No person, other than a private recruitment agency, shall be in possession of a licence or a copy of a licence.

(2) Any person, other than a private recruitment agency, who has in his possession a licence or a copy of a licence shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

20. Tampering with licence

(1) No person shall –

- (a) alter, deface or, in any manner, tamper with a licence;
- (b) affix or have in his possession, a licence that is tampered.

(2) Any person who –

- (a) alters, defaces or, in any manner, tampers with a licence;

(b) affixes or has in his possession, a licence that is tampered,

shall commit an offence and shall, on conviction, be liable to a fine of not less than 500,000 rupees and not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

21. Misleading advertisement

(1) No private recruitment agency shall make any deceitful or misleading advertisement in relation to the recruitment of workers.

(2) Where, in the opinion of the Permanent Secretary, an advertisement is misleading, he shall direct the private recruitment agency to withdraw or modify it and the private recruitment agency shall comply with such direction.

(3) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

22. Offences and penalties

Any person who otherwise contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

23. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide –

(a) for the levying of fees and the taking of charges; and

(b) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

24. Repeal

The Recruitment of Workers Act is repealed.

25. Saving and transitional provisions

(1) Any licence issued under the repealed Act which, on the commencement of this Act, is still valid shall, not later than 6 months after the commencement of this Act, lapse.

(2) The holder of a licence referred to in subsection (1) shall, not later than 3 months after the commencement of this Act, make an application for a licence under this Act.

(3) Any application made for a licence under the repealed Act and which is pending on the commencement of this Act shall be dealt with in accordance with this Act.

(4) In this section –

“repealed Act” means the Recruitment of Workers Act.

26. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
