FOREIGN EMPLOYMENT AGENCY

CHAPTER 150
FOREIGN EMPLOYMENT AGENCY

AN ACT TO REGULATE THE CARRYING ON OF THE BUSINESS OF A FOREIGN EMPLOYMENT AGENCY AND THE RECRUITMENT BY PERSONS CARRYING ON THAT BUSINESS, OF PERSONS FOR EMPLOYMENT ABROAD, AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[23rd March, 1981.]

1. This Act may be cited as the Foreign Employment Agency Act.

2. (1) A person shall not carry on the business of a foreign employment agency unless he is the holder of a licence issued under this Act and otherwise than in accordance with the terms and conditions of that licence.

   (2) A person who, on the appointed date, is carrying on the business of a foreign employment agency on the authority of a licence issued under the Fee-Charging Employment Agencies Act may, notwithstanding anything to the contrary in subsection (1) of this section, continue to carry on that business—

   (a) until the expiration of a period of thirty days after the appointed date; or

   (b) where he has made an application for a licence under this Act, within the period of thirty days after the appointed date, until the determination of that application or where the application is refused until the time for appealing against that refusal has expired, or where an appeal is made against the refusal until the determination of that appeal.

3. (1) The State shall be entitled through the Commissioner with the assistance of such officers as may be necessary, to carry on the business of a foreign employment agency and charge for any service rendered by the Commissioner such fees as may be determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.

   (2) The provisions of this Act other than the provisions of subsection (1) shall not apply to and in relation to the State.

   (3) No public corporation shall be entitled to carry on the business of a foreign employment agency.

4. (1) An application for a licence shall be made to the Commissioner in writing and shall contain the following particulars:

   (a) the full name and address of the applicant;

   (b) whether the applicant is an individual, firm or a company;

   (c) if the applicant—

      (i) is an individual, whether he is a citizen of Sri Lanka;

      (ii) is a firm, whether the partners of the firm are citizens of Sri Lanka;

      (iii) is a company, whether the majority of the shares in the capital of the company is held by citizens of Sri Lanka;

   (d) if the applicant is a firm or a company, the full name and address of the persons in charge of the business;
5. A licence shall not be granted unless—

(a) the applicant—

(i) if an individual, is a citizen of Sri Lanka;

(ii) if a firm, is a firm the partners of which are citizens of Sri Lanka; or

(iii) if a company, is a company, the majority of whose shares in the capital of the company is held by citizens of Sri Lanka; and

(b) the applicant if an individual, or in the case of a firm or company, the person to be in charge of the business, is a person of good repute; and

(c) the premises in which the business is to be carried on are suitable, having regard to the locality in which the premises are situated, the size of the premises and the facilities in those premises.

6. (1) Before the issue of a licence, the Commissioner shall direct the applicant—

(a) to enter into an agreement with the Commissioner—

(i) to carry on the business in a morally or otherwise irreproachable manner; and

(ii) to take all steps as are reasonably possible to ensure that the terms and conditions imposed on an employer abroad under the contract of employment to be entered into by that employer with a person recruited for employment abroad by the foreign employment agency in relation to which the licence is applied for, are observed by that employer;

(b) to enter into a bond with the Commissioner with two sureties in such sum not less than one hundred thousand rupees, as may be determined by the Commissioner, for the satisfaction of claims which might arise in connexion with the business or any contract of employment referred to in paragraph (a); and

(c) to pay the prescribed fee for the licence.

(2) Where the applicant fails to comply with the directions issued under subsection (1), the Commissioner shall refuse to grant him a licence.

7. Every licence shall—

(a) be in the prescribed form; and

(b) unless it is cancelled earlier, be in force for a period of twelve months from the date of its issue.

8. A licence may be renewed by the Renewal of Commissioner for a period or periods not exceeding one year at a time on application made to him within one month before the expiry of the licence if—
(a) the Commissioner is satisfied that
the licensee has observed the
provisions of this Act or any
regulation made thereunder or of
any agreement or bond entered into
by the licensee under this Act or has
not been convicted of any offence
under this Act or any regulation
made thereunder, and

(b) the licensee pays the prescribed fee
for the renewal of the licence.

Cancellation of a licence, 9. (1) The Commissioner may cancel
any licence if he is satisfied that the licensee—

(i) has contravened any of the
provisions of this Act or of any
regulation made thereunder or of
any agreement or bond entered into
by the licensee under this Act;

(ii) has been convicted of an offence
under this Act or any regulation
made thereunder;

(iii) has not complied with any
directions issued by the
Commissioner to the licensee under
section 20 or section 22; or

(iv) has furnished in any application or
in any return or in any written
information or written explanation
sent by the licensee under this Act,
any particulars which to the
knowledge of the licensee are false
or incorrect.

(2) The cancellation of a licence under
subsection (1) shall not take effect until the
time for appealing against the decision of
the Commissioner has expired or if an appeal
has been made until the appeal is disposed of.

10. Where the Commissioner decides to
refuse the grant or the renewal of a licence;
or

(b) cancelling the licence,
may appeal against the decision to the
Secretary to the Ministry within fourteen
days of the date on which the decision is
communicated to him.

(2) Such Secretary may on any appeal
under subsection (1)—

(a) allow the appeal and direct the
Commissioner to grant or renew a
licence - or

(b) disallow the appeal.

(3) The Commissioner shall comply with
any direction issued to him under subsection
(2).

12. The licensee shall display
prominently in the premises on which the
business is carried on the licence granted to
him.

13. A licensee shall not charge, directly
or indirectly, for any services rendered by
the licensee, a fee in excess of the prescribed
fee for those services.

14. (1) A licensee shall within thirty
days of any change in the particulars stated
in his application for a licence, inform the
Commissioner in writing of the change.

(2) Nothing in subsection (1) shall
authorize the licensee to carry on any
business otherwise than in accordance with
the terms and conditions of the licence.

15 (1) A licensee shall not issue any
advertisement or notice calling for
applications from persons for employment
abroad or take any other action in
connection with or incidental to such
employment without the prior approval in
writing of the Commissioner.

(2) For the purpose of obtaining the
approval of the Commissioner under
subsection (1), the licensee shall submit to
the Commissioner, the following
particulars:—
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17. (1) The Commissioner may refuse to approve the recruitment of any class or category of persons for employment abroad—

(i) if in his opinion—

(a) the services of that class or category of persons are vital to the economic development of Sri Lanka; or

(b) having regard to the current and prospective demand of the services of that class or category of persons, the departure of persons of that class or category from Sri Lanka will adversely affect the national economy; or

(c) having regard to the skills of that class or category of persons, the terms and conditions of employment offered to them are not satisfactory; or

(ii) if the employment offered is not regulated by law in the country in which such employment is offered.

(2) A licensee who is aggrieved by a decision of the Commissioner refusing to approve the recruitment of any class or category of persons for employment abroad, may, within fourteen days of the date on which such decision is communicated to him, appeal against such decision to the Secretary to the Ministry.

(3) Such Secretary may, on any appeal made under subsection (2)—

(a) allow the appeal and direct the Commissioner to approve the recruitment of the class or category of persons to whom the appeal relates; or

(b) disallow the appeal.

(4) The Commissioner shall comply with any direction issued to him under subsection (3).
18. (1) The contract of employment between the employer abroad and the person recruited for employment by such employer shall, before it is signed by such employer or his agent and such person, be read and explained to such person in a language that he understands.

(2) Two copies of the contract referred to in subsection (1) shall as soon as the contract is signed, be forwarded to the Commissioner by the licensee or such agent to be certified by such Commissioner, prior to the departure from Sri Lanka, of the person recruited for employment.

(3) As soon as the Commissioner certifies the copies of such contract under the provisions of subsection (2), he shall inform such licensee or agent of the same and shall forward for registration, one copy of such contract to the Ministry charged with the subject of Labour of the country of the employer abroad.

19. Every licensee shall maintain such records as may be prescribed.

20. (1) The Commissioner may at any time by written directions require a licensee to send him before the date specified in any such direction—

(a) a return containing such particulars as he may require in relation to the business of the foreign employment agency carried on by the licensee;

(b) evidence of remittance to a bank in Sri Lanka, of the commission payable by the employer on whose behalf the licensee recruits any person for employment abroad; and

(c) such written information or written explanation as he may require in respect of any particulars stated in any return sent by the licensee.

(2) The licensee to whom a direction under subsection (1) is issued shall comply with the direction within such time as shall be specified in the direction.

21. (1) The Commissioner or any person authorized by the Commissioner in writing in that behalf may—

(a) for the purpose of ascertaining whether the provisions of this act and any regulation made thereunder are complied with, enter and inspect, at all reasonable hours of the day or night, the premises in which the business of a foreign employment agency is carried on by a licensee; and

(b) inspect, and take copies of, any records required by or under this Act or any regulation made thereunder to be kept in respect of that business.

(2) Every person who obstructs or delays the Commissioner or any person authorized by him in that behalf in the exercise of any power conferred by subsection (1) shall be guilty of an offence under this Act.

22. The Commissioner may issue to a licensee such directions as he may think necessary for the purposes of making the licensee to comply with the provisions of this Act and any regulation made thereunder and any licensee to whom any such direction is issued shall comply with such direction within such time as shall be specified in the direction.

23. (1) Where the Commissioner receives a complaint from any person recruited for employment abroad or employed abroad—

(a) that the terms and conditions imposed on an employer by the contract of employment in relation to him have not been observed by that employer; and

(b) that the licensee who recruited him for employment abroad has, in breach of the agreement entered into by the licensee with the Commissioner under section 6 (1) (a), failed to take such steps as are reasonably possible to ensure that those terms and conditions are observed by the employer,
the Commissioner may, after such inquiry as he may deem necessary, direct the licensee to pay that person such sum of money as may be determined by the Commissioner to be sufficient to defray the expenses, including cost of passage to Sri Lanka, incurred by that person as a result of the breach of those conditions by the employer.

(2) The Commissioner shall at any inquiry held under subsection (1) give the parties affected an opportunity to be heard.

24. (1) The Minister may make regulations in respect of any matter in respect of which regulations are authorized by this Act to be made or required by this Act to be prescribed.

(2) Every regulation made under subsection (1) shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under subsection (1) shall as soon as convenient after its publication in the Gazette be brought before Parliament for approval and any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

(4) The date on which any regulation is deemed to be so rescinded shall be published in the Gazette.

25. Every person who—

(a) contravenes any provisions of this Act or of any regulation made thereunder; or

(b) furnishes any return, written information or written explanations containing any particulars which to his knowledge are false and incorrect,

shall be guilty of an offence and shall on conviction by a Magistrate be liable to a fine not exceeding one thousand five hundred rupees or to imprisonment of either description to a term not exceeding eighteen months or to both such fine and imprisonment.

26. Where any offence under this Act is committed by a body of persons then—

(a) if the body of persons is a body corporate, every person who at the time of the commission of that offence was a director or officer of that body corporate; or

(b) if the body of persons is a body other than a body corporate, every person who at the time of commission of the offence was a member of that body,

shall be deemed to be guilty of the offence:

Provided, however, that such director, officer or member shall not be deemed to be guilty of that offence if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of that offence.

*28. In this Act, unless the context otherwise requires—

"appointed date" means the 23rd day of March, 1981;

"business of a foreign employment agency" means business (whether or not carried on by charging fees or otherwise and whether or not carried on in conjunction with any other business) of providing services (whether by provision of information or otherwise) for the purpose of finding persons employment with employers abroad or of supplying employers abroad with persons for employment by them abroad and includes the issue of an advertisement or notice calling for applications from persons for employment abroad or taking of any other action in connexion with or incidental to such employment;

* Section 27 (repealing and amending provision) is omitted.
"Commissioner" means the person for a time being holding the office of Commissioner of Labour and includes a person for the time being holding the office of Deputy or Assistant commissioner of Labour.

"Employer" includes a body of employers;

"licence" means a licence issued under this Act; and

public corporation means any corporation, board or other body which was or is established by or under any written law other than the Companies Ordinance,* with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise.

* Repealed and replaced by the Companies Act, No. 17 of 1982.