NEGARA BRUNEI DARUSSALAM

TAMBAHAN KEPADA

WARTA KERAJAAN

BAHAGIAN II

Disiarkan dengan Kebenaran

SUPPLEMENT TO

GOVERNMENT GAZETTE

PART II

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

EMPLOYMENT AGENCIES ORDER, 2004

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

EMPLOYMENT AGENCIES ORDER, 2004

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam hereby makes the following Order —

Citation and long title.

1. (1) This Order may be cited as the Employment Agencies Order, 2004.

(2) The long title of this Order is "An Order to regulate employment agencies".

Interpretation.

2. In this Order, unless the context otherwise requires —

"authorised officer" means a public officer appointed by the Minister under subsection (2) of section 3;

"Commissioner" means the Commissioner of Labour appointed under subsection (1) of section 3 of the Labour Act (Chapter 93);

"employment agency" means any agency or registry carried on or represented as being or intended to be carried on (whether for the purpose of gain or reward or not) for or in connection with the employment of persons in any capacity, and includes any registry set up by an employer for the sole purpose of recruiting persons for employment on his own behalf;

"licence" means a licence granted or renewed under this Order;

"Minister" means the Minister responsible for labour matters;

"permanent resident" means a person to whom either a Residence Permit or an Entry Permit has been issued under the Immigration Act (Chapter 17).

Administration of Order.

3. (1) The Commissioner of Labour shall be the officer in charge of the general administration of this Order and any Deputy Commissioner of Labour or Assistant Commissioner of Labour appointed under the Labour Act (Chapter 93)

may, subject to the provisions of this Order, perform all the duties imposed and exercise all the powers conferred on the Commissioner by this Order and every duty so performed and every power so exercised shall be deemed to have been duly performed and exercised for the purposes of this Order.

(2) The Minister may in writing appoint such public officers with such powers as he may consider necessary for carrying into effect the provisions of this Order.

Non-application of Order.

4. Nothing in this Order shall apply to any employment agency wholly maintained or wholly managed by any department of the Government.

Other laws not affected.

5. Nothing in this Order shall operate to relieve any employment agency of any duty or liability imposed upon it by any other written law or to limit any powers given to any public officer by any other written law.

Persons carrying on employment agency to be licensed.

6. (1) No person shall carry on an employment agency unless he is the holder of a licence granted by the Commissioner:

Provided that it shall not be a contravention of this section if a person who was carrying on the business of an employment agency before the commencement of this Order and who has applied for a licence under this Order within the time allowed by subsection (4) of section 7 continues to carry on such business until the determination of his application for the licence.

(2) Any person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding $5,000, imprisonment for a term not exceeding one year or both and in the case of a second or subsequent conviction to a fine not exceeding $10,000, imprisonment for a term not exceeding 3 years or both.

Application for licence.

7. (1) Any person who desires to obtain a licence shall make an application to the Commissioner in the prescribed form and shall pay the prescribed fee.

(2) Upon receiving an application under subsection (1), the Commissioner shall consider the application and may grant a licence on payment of the

prescribed fee and on such conditions as he may determine or may refuse to grant a licence.

(3) The Commissioner may at any time vary or revoke any of the existing conditions of a licence or impose new conditions.

(4) Every person carrying on the business of an employment agency before the commencement of this Order shall apply to the Commissioner for a licence within one month of such commencement, and any person who fails to do so is guilty of an offence and liable on conviction to a fine not exceeding $5,000, imprisonment for a term not exceeding 3 years or both.

Security.

8. (1) The Commissioner may, before granting a licence, require the applicant to give such security as he may determine.

(2) Any sum deposited under this section may be forfeited in whole or in part at the discretion of the Commissioner on the revocation of the licence under section 17.

Form of licence.

9. Every licence shall be in the prescribed form.

Conditions to be fulfilled for grant of licence.

10. No licence to carry on the business of an employment agency shall be granted unless —

(a) where such business is to be carried on by an individual, he is a citizen or permanent resident of Brunei Darussalam;

(b) where such business is to be carried on by a partnership, the partners are citizens or permanent residents of Brunei Darussalam;

(c) where such business is to be carried on by a body corporate, all of the shares in the capital of the body corporate are held by citizens or permanent residents of Brunei Darussalam;

(d) the person in charge of and every employee or agent whose duties are connected with such business —

(i) is a person of good character;

(ii) is not an undischarged bankrupt; and

(iii) has not been convicted of any offence and sentenced to a fine of more than $2,000 or to imprisonment for a term of more than one year for any offence;

(e) there are suitable premises for carrying on such business;

(f) such individual who, or the partnership or body corporate which, is to carry on such business undertakes that such business will be carried on in a morally and irreproachable manner; and

(g) such other conditions as may be prescribed for the purposes of this section are fulfilled.

Period for which licence in force.

11. Unless revoked under section 17, a licence shall continue in force for 2 years from the date of grant of the licence.

Renewal of licence.

12. Application for renewal of a licence shall be made to the Commissioner on payment of the prescribed fee at least 3 months before the expiry date and in the prescribed form.

Place of business as stated in licence.

13. Every licensee shall only carry on his business in the place stated in the licence and shall not change his place of business or set up another place of business without the prior written approval of the Commissioner.

Display of licence.

14. A licensee shall display his licence at all times in a conspicuous place on the premises where the business is carried on.

Notification of change of person in charge or partnership.

15. (1) A licensee shall, within 14 days after any change in its person in charge, notify the Commissioner in writing of full particulars of such change.

(2) If the licensee is a partnership, it shall, within 14 days after any change of partnership, notify the Commissioner in writing of full particulars of such change.

Notification of cessation of business.

16. (1) When an employment agency has ceased to carry on business, the licensee shall within 14 days of such cessation —

(a) notify the Commissioner in writing; and

(b) deliver his licence to the Commissioner.

(2) On receipt of the notification and licence under subsection (1), the Commissioner shall immediately cancel the licence.

Revocation of licence.

17. (1) The Commissioner may revoke a licence if he is satisfied that the licensee —

(a) is contravening or has contravened any of the provisions of this Order or any Regulations made thereunder;

(b) has failed to comply with any provision of his licence or with any of the conditions of his licence;

(c) has carried on or is carrying on an employment agency in a manner likely to be detrimental to the interests of his clients; or

(d) has ceased to carry on an employment agency for which he has been licensed or, if the licensee is a body corporate, goes into liquidation, is wound up or otherwise dissolved.

(2) The Commissioner shall, before revoking any licence under subsection (1), give the licensee notice in writing of his intention to do so, specifying a date, not less than 21 days after the date of the notice, upon which such revocation shall take effect and calling upon the licensee to show cause to the Commissioner why such licence should not be revoked.

(3) When the Commissioner has revoked a licence under subsection (1), he shall forthwith inform the licensee by notice in writing of the revocation.

(4) An order of revocation shall not take effect until the expiration of 14 days after the order has been served on the licensee.

(5) If within the period stated in subsection (4) the licensee gives due notice of appeal to the Minister, the order of revocation shall not take effect until it is confirmed by the Minister or the appeal is withdrawn.

Effect of revocation.

18. (1) Where an order of revocation becomes effective under section 17, the licensee shall forthwith cease to carry on the employment agency.

(2) Subsection (1) shall not prejudice the enforcement by any person of any right or claim against the licensee or by the licensee of any right or claim against any person arising out of or concerning any matter or thing done prior to the revocation of the licence.

(3) No refund of the licence fee shall be made if the licence in respect of which it was paid is revoked.

Appeals.

19. Any person who is aggrieved by the refusal of the Commissioner to grant a licence or by a decision of the Commissioner to revoke a licence may, within 14 days of the date of receipt of the notice of such refusal or revocation, appeal in writing to the Minister, whose decision shall be final.

Fees for services rendered.

20. No licensee shall charge or receive any form of fees, remuneration, profit or compensation otherwise than as provided in this Order or in any regulations made thereunder.

Sharing of fees prohibited.

21. No licensee shall share the fees charged by him with contractors or contractors' agents to whom applicants for employment are sent for work.

Advertisement.

22. (1) No employment agency shall advertise unless the advertisement contains —

(a) the licence number; and

(b) correct information relating to the vacancies, the qualifications thereof and the term and conditions of employment.

(2) Any employment agency shall furnish a copy of the advertisement to the Commissioner.

(3) Any employment agency in breach of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding $2,000, imprisonment for a term not exceeding 6 months or both.

Power to summon.

23. (1) For the purposes of holding inquiries under section 25 and of investigating into allegations of failure to comply with any provision of this Order or of any regulations made thereunder, the Commissioner may summon before him the licensee or any person whom he considers capable of giving information respecting the affairs of an employment agency and the Commissioner may require the licensee or person to produce any document in his custody or power relating to that employment agency.

(2) The Commissioner may examine on oath, either orally or by written interrogation, any person summoned to appear before him under subsection (1).

(3) A person summoned shall be bound to attend at the time and place mentioned in the summons and shall be bound to answer truthfully all questions put to him by the Commissioner and shall produce all documents required to be produced by him.

(4) No answer which a person is legally bound to give under subsection (3) shall be proved against him in any criminal proceedings except in a prosecution for giving false evidence by such answer.

(5) Any person who fails to comply with subsection (3) is guilty of an offence and liable on conviction to a fine not exceeding $2,000, imprisonment for a term not exceeding 3 months or both.

Maintenance of records.

24. (1) Every employment agency shall maintain in the prescribed form —

(a) records of registration showing the names, addresses, identity card numbers and qualifications of the workers;

(b) records of vacancies and all aspects relating to the vacancies, that is, the number of vacancies, the qualifications of candidates required, the names and addresses of the employers notifying the vacancies, the places of

employment where the vacancies occur and the terms and conditions of employment;

(c) records of placement of workers;

(d) records of fees collected; and

(e) any other records as may be required by the Commissioner.

(2) Such records shall be preserved by the licensee and shall be available for inspection for at least 4 years from the recording thereof.

Commissioner may institute proceedings.

25. If upon inquiry, whether upon an allegation of failure to comply with any provision of this Order or of any regulations made thereunder or otherwise, the Commissioner is satisfied that an offence has been committed or that the complaint is well founded, he may institute such proceedings as he may consider necessary.

Returns.

26. The Commissioner may at any time by written direction require an employment agency to send him in the manner and within the period specified in such direction —

(a) a return relating to any or all records required to be maintained under section 24;

(b) a notification of changes in any person in charge of or employed by or as an agent of the employment agency;

(c) a return containing any other particulars as he may require in relation to the business of the employment agency; and

(d) such written information or written explanation as he may require in respect of any particulars stated in any return sent by such employment agency.

Power to enter and inspect premises.

27. (1) The Commissioner or any authorised officer may, at any reasonable time and without previous notice, enter and inspect any employment agency or any premises reasonably suspected of being used for the purposes of an employment agency, and examine all records required to be maintained under

section 24 and all books and other documents found on the premises, which may appear to him to be the property of or to have been used for the purposes of an employment agency and remove them for further examination.

(2) In the course of an inspection under this section, the Commissioner may —

(a) put questions concerning the business of the employment agency to the person in charge of such agency and to any other person whose evidence he may consider necessary, and all such persons shall be legally bound to answer such questions truthfully to the best of their ability;

(b) require the person in charge of the agency to produce to him all or any of the records required to be kept under this Order;

(c) seize or take copies of any record produced to him under paragraph *(b)*;

(d) seize any other record or document in the premises of such agency or in the possession of any person found in such premises where the Commissioner believes that an offence against this Order or any regulations made thereunder has been committed.

(3) Any person may refuse to comply with any demand or order by an authorised officer acting or purporting to act under this Order if the officer refuses on demand to declare his identity or to produce his authority.

(4) Any person who obstructs or interferes with the Commissioner or any authorised officer in the exercise of any power or the performance of any duty conferred under this Order is guilty of an offence.

(5) For the purpose of this section, the Commissioner and any authorised officer shall have the same power of investigation as a police officer under Chapter XIII of the Criminal Procedure Code (Chapter 7).

Liability of licensee for act of servant.

28. Whenever any licensee would be liable under the provisions of this Order or of any regulations made thereunder to any fine for any act, omission, neglect or default, he shall be liable to the same fine for every similar act, omission, neglect or default, of any agent or servant employed by him in the course of the operation of employment agency in respect of which he holds a licence.

Power to issue directions.

29. The Commissioner may issue to any employment agency such directions as he may think necessary for the purposes of ensuring that the running of such agency is in accordance with the provisions of this Order, and any such agency to whom any such direction is issued shall comply with it within such time as stated therein.

Exemption.

30. The Minister may, by order published in the *Gazette*, exempt any employment agency and any trade, profession or occupation from all or any of the provisions of this Order either absolutely or subject to such conditions as he may think fit to impose, and may, at any time, revoke any such exemption or cancel, alter or add to any such conditions.

Offences by licensee.

31. Any licensee who —

(a) charges or receives himself or through another person, for his services, any sum greater than the prescribed fee;

(b) knowingly and voluntarily deceives any person by giving false information;

(c) instigates or induces any person not to admit in to his service any worker who has not applied for employment, work or position through his employment, agency;

(d) places or seeks to place any person in any occupation injurious to the public interest;

(e) knowingly sends, directs or takes any person to any place for immoral purposes or to a place where that person is likely to be morally corrupted; or

(f) lends, transfers or assigns or who attempts or purports to lend, transfer or assign his licence to any another person,

is guilty of an offence and upon conviction be liable to a fine not exceeding $5,000, imprisonment for a term not exceeding 2 years or both.

Offences.

32. Every person who —

(a) not being the licensee, uses a licence issued by the Commissioner;

(b) makes or furnishes any application, return, written information or written explanation containing any particulars which to his knowledge is false or incorrect in any material particular; or

(c) being a licensee, fails to comply with any provision of his licence or with any of the conditions of his licence,

is guilty of an offence and liable on conviction to a fine not exceeding $2,000, and in respect of a second or subsequent offence to a fine not exceeding $5,000, imprisonment for a term not exceeding 6 months or both.

Regulations.

33. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be prescribed under this Order and for the due administration thereof.

(2) Such regulations may include such incidental, consequential any supplementary provisions as the Minister may consider necessary or expedient.

Offences committed by bodies corporate.

34. Where an offence against this Order which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of that offence and liable to the proceeded against and punished accordingly.

Compounding.

35. The Commissioner or any person authorised by him may in his discretion compound any offence against sections 13, 14, 15, 16, 21, 22 and 24, or against such other provisions of this Order or of any regulations made hereunder as may be prescribed as an offence by regulations made under section 33 which may be

compounded by collecting from the person reasonably suspected of having committed the same a sum of not exceeding $600.

General penalty.

36. Any person who contravenes any provision of this Order (except section 12 or section 22(2)) for which no penalty is provided is guilty of an offence against this Order and shall on conviction be liable to a fine not exceeding $2,000, imprisonment for a term not exceeding 6 months or both.

Amendment of Chapter 93.

37. The Labour Act is amended —

(a) in section 2, by deleting the definition of "worker-recruiter";

(b) by repealing section 47;

(c) by repealing section 53.

Made this 8th. day of Zulkaedah, 1425 Hijriah corresponding to the 20th. day of December, 2004 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

No. S 85

EMPLOYMENT AGENCIES ORDER, 2004

EMPLOYMENT AGENCIES (FORMS, FEES AND MISCELLANEOUS PROVISIONS) REGULATIONS, 2004

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement.

2. Application for grant or renewal of licence.

3. Form of licence.

4. Records.

5. Fees.

FIRST SCHEDULE — FORMS

SECOND SCHEDULE — FEES

EMPLOYMENT AGENCIES ORDER, 2004

EMPLOYMENT AGENCIES (FORMS, FEES AND MISCELLANEOUS PROVISIONS) REGULATIONS, 2004

In exercise of the power conferred by subsection (1) of section 33 of the Employment Agencies Order, 2004, the Minister of Home Affairs, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

Citation and commencement.

1. These Regulations may be cited as the Employment Agencies (Forms, Fees and Miscellaneous Provisions) Regulations, 2004 and shall commence on the same day as the Employment Agencies Order, 2004.

Application for grant or renewal of licence.

2. (1) An application under subsection (1) of section 7 of the Order for the grant of a licence shall be in Form 1 of the First Schedule and shall also contain such other information as the Commissioner may require.

(2) An application under section 12 of the Order for renewal of a licence shall be in Form 2 of the First Schedule and shall also contain such other information as the Commissioner may require.

Form of licence.

3. A licence granted or renewed under the Order shall be in Form 3 in the First Schedule.

Records.

4. Records required to be maintained under section 24 of the Order shall be in Form 4 and Form 5 of the First Schedule and shall include such other records as the Commissioner may require.

Fees.

5. An applicant for the grant or renewal of a licence shall pay the fees prescribed in the Second Schedule.

FIRST SCHEDULE (regulations 2(1) and (2), 3 and 4)

FORM 1

EMPLOYMENT AGENCIES ORDER, 2004

APPLICATION FOR GRANT OF LICENCE

1. Status of applicant —

   Individual / partnership / limited company

2. Particulars of applicant —

   (i) Name : Mr / Miss / Mrs / Messrs .....

   .....

   (ii) Residential address : .....

   .....

   ..... Tel : .....

   (iii) Present employment or business : .....

   .....

   (iv) Identity Card no. : .....

   (v) Whether undischarged bankrupt : Yes / No

   (vi) Whether convicted of any offence : Yes / No

   Details of conviction : .....

   Penalty : .....

3. Particulars of person in charge of agency —

   (i) Name : .....

   (ii) Residential address : .....

(iii) Present employment or business : .....

.....

(iv) Identity Card no. : .....

(v) Whether undischarged bankrupt : Yes / No

(vi) Whether convicted of any offence : Yes / No

Details of conviction : .....

Penalty : .....

4. Name / intended name of employment agency : .....

.....

5. Place / intended place of business of employment agency : .....

.....

.....

.....

6. If applicant is a limited company, please state —

(i) Paid up capital : .....

(ii) Percentage of shares held by citizens of Brunei Darussalam : .....

.....

7. Date intended to commence business : .....

8. Date first commenced business : .....

I do solemnly and truly declare that the facts stated in this application are correct to the best of my knowledge and belief and I undertake to carry on the business in a morally irreproachable manner.

I undertake that I will place a cash bond and provide a surety bond for the issue of a licence as required by the Order.

.....
(Signature of applicant)

Name : .....

Designation : .....

Date : .....

For official use only –

Date received : .....

Checked by : .....

Date applicant interviewed : .....

Date premises inspected : .....

Licence approved / refused : .....

Licence no. : .....

FORM 2

EMPLOYMENT AGENCIES ORDER, 2004

APPLICATION FOR RENEWAL OF LICENCE

Name of applicant : .....

Address of applicant : .....

.....

..... Tel. No. : .....

Identity Card no. : .....

Name of employment agency : .....

Address of employment agency : .....

..... Tel. No. : .....

Present licence no. : .....

Date of expiry of present licence : .....

.....
(Signature of applicant)

Name : .....

Designation : .....

Date : .....

For official use only –

Date received : .....

Checked by : .....

Date applicant interviewed : .....

Date premises inspected : .....

Licence approved / refused : .....

Licence no. : .....

FORM 3

LICENCE NO. : .....

EMPLOYMENT AGENCIES ORDER, 2004

LICENCE TO CARRY ON BUSINESS OF EMPLOYMENT AGENCY
(issued under section 7(1) / section 12 of the Employment Agencies Order, 2004)

(1) ..... of .....
(Name of person / partnership / company) *(Address)*

.....

is hereby licensed under the provisions of the Employment Agencies Order,

2004 to carry on at .....

.....
(situation of the premises)

the business of an employment agency.

(2) This licence is issued subject to the provisions of the Employment Agencies Order, 2004 and all regulations made thereunder.

(3) This licence is valid for the period of 2 years from the date of issue.

.....
Commissioner of Labour

Date of issue : .....

FORM 4

EMPLOYMENT AGENCIES ORDER, 2004

REGISTER OF APPLICANTS FOR EMPLOYMENT

Serial number	Date of registration	Particulars of applicants						Fees received			Details of employment secured		
		Name and address	Identity Card no.	Date of birth	Sex	Race	Qualifications and experience	Registration	Placement	Date employed	Name and address of employer	Wage /salary per month	Occupation

FORM 5

EMPLOYMENT AGENCIES ORDER, 2004

RECORDS OF VACANCIES RECEIVED

Serial number	Name and address of employer	Nature of business	Name of vacancy	Number of vacancies	Date vacancy notified	Place of work	Terms and conditions of employment	Qualifications and experience required	Number engaged

SECOND SCHEDULE (regulation 5)

FEES

On application for grant of licence	$ 500
On application for renewal of licence	$ 500

Made this 10th. day of Zulkaedah, 1425 Hijriah corresponding to the 22nd. day of December, 2004.

PEHIN ORANG KAYA JOHAN PAHLAWAN
DATO PADUKA HAJI AWANG ADANAN BIN
BEGAWAN PEHIN SIRAJA KHATIB
DATO SERI SETIA HAJI MOHD. YUSOF
Acting Minister of Home Affairs,
Brunei Darussalam.

Dicetak oleh AWANG MOHIDIN BIN HAJI DAUD, Pengarah Percetakan,
di Jabatan Percetakan Kerajaan, Bandar Seri Begawan BB3510, Negara Brunei Darussalam.

Harga B$5.00