

L.N. 270 of 2023

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)**

Employment Agencies Regulations, 2023

IN EXERCISE of the powers conferred by article 48(2) of the Employment and Industrial Relations Act, the Minister responsible for employment and industrial relations, has made the following regulations:-

1. (1) The title of these regulations is the Employment Agencies Regulations, 2023. Citation and commencement.

(2) The provisions of these regulations shall come into force on 1st April 2024:

Provided that first time applicants are being granted a transitional period of two (2) months from the coming into force of these regulations in order to fulfil their obligations in accordance with these regulations.

2. In these regulations, unless the context otherwise requires: Interpretation.

"Act" means the Employment and Industrial Relations Act; Cap. 452.

"Administration Board" means the Employment Agencies Administration Board established by regulation 19;

"advertisement" includes any advert in any publication or broadcast on any radio or television station or cable network;

"Agencies Guarantee Fund" means the Employment Agencies Guarantee Fund established by article 21A of the Act;

"Appeals Board" means the Employment Agencies Appeals Board established by article 21B of the Act;

"applicant for employment" includes any person who seeks to avail themselves of opportunities for employment which are offered by an employment agency or employment business;

"competent person" means a fit and proper person approved by the Director to manage an employment agency or employment business and who meets the criteria established in

B 2254

these regulations, including but not limited to those established in regulation 8;

"conditions of employment" shall have the same meaning as defined in the Act;

"Director" means the Director General responsible for employment and industrial relations, and includes any officer within the department responsible for employment and industrial relations who is authorised by the Director to act on his behalf;

Cap. 579.

"editor" shall have the same meaning assigned to it by the Media and Defamation Act;

"employer" includes a partnership, company, association or other body of persons, whether vested with legal personality or otherwise;

"employment" shall have the same meaning assigned to it in the Act;

"employment agency" or "employment business" means any natural or legal person carrying out any relevant activity in Malta:

- (a) for the recruitment of persons for employment in Malta or outside Malta;
- (b) as a temporary work agency; or
- (c) as an outsourcing agency,

and in the case of a legal person whose objects in its memorandum of association include the carrying out of the said relevant activities as well as the activities ancillary or incidental thereto, but do not include objects which are not compatible with the services of an employment agency or employment business;

"employment services" include the keeping of any register of applicants for employment or the referral of applicants for employment, the placing in employment of applicants for employment; the placing of advertisements for the filling of employment vacancies, the interviewing and selection of applicants for employment and the offering of employment contracts for, or on behalf of any employer to applicants for employment, the assignment of employees to user undertakings, whether such assignment is made by the employment agency or

employment business through the activity of a temporary work agency or that of an outsourcing agency;

"licensee" means the holder of a licence to operate an employment agency or an employment business;

"Minister" shall have the same meaning assigned to it in the Act;

"outsourcing agency" means a natural or legal person, and in the case of a legal person whose objects in its memorandum of association include the carrying out of the relevant activities as well as all activities ancillary or incidental thereto, but do not include such objects which are not compatible with the services of an outsourcing agency, who enters into contracts of employment or employment relationships with employees and who assigns, whether on a regular or on an irregular basis, the employees to user undertakings to work there temporarily, by being physically present at the premises of the user undertaking or working remotely, under the supervision, direction and control of the outsourcing agency, whether or not such activity is the main or ancillary activity of the outsourcing agency;

"temporary agency worker" means a worker who has entered into a contract of employment or an employment relationship with a temporary work agency and who is assigned, whether on a regular or on an irregular basis, to a user undertaking to work temporarily under its supervision, direction and control;

"temporary work agency" means a natural or legal person, and in the case of a legal person whose objects in its memorandum of association include the carrying out of the relevant activities as well as all the activities ancillary or incidental thereto, but do not include such objects which are not compatible with the services of a temporary work agency, which enters into contracts of employment or employment relationships with temporary agency workers and who assigns, whether on a regular or on an irregular basis, the temporary agency workers to user undertakings to work there temporarily under their supervision, direction and control, whether or not such activity is the main or ancillary activity of the temporary work agency;

"user undertaking" includes any employer or any person other than an applicant for employment who makes use of any services provided by an employment agency or employment business.

B 2256

Conditions for
operating
employment
agencies or
businesses.

3. (1) No person shall operate an employment agency or an employment business unless:

(a) such person is the holder of a valid licence issued by the Director authorising the person to operate such an employment agency or employment business in premises specified in the licence and in relation to either the recruitment of persons for employment in Malta or outside Malta, or temporary work agency, or outsourcing agency; or

(b) such person is lawfully established to conduct business as an employment agency in a Member State of the European Union, and has informed the Director that they are providing the services of an employment agency in Malta:

Cap. 500.

Provided that for the purposes of these regulations, "lawfully established" shall be read and construed in accordance with the Services (Internal Market) Act:

Cap. 500.

Provided further that the Director may impose any necessary requirements on persons referred to in paragraph (b) in accordance with the Services (Internal Market) Act and it shall be an obligation on persons referred to in paragraph (b) to adhere to the said requirements:

Provided further that a licence may only be granted for one (1) activity, specifically, either-

(a) for the recruitment of persons for employment in or outside Malta, or

(b) to render any one (1) or both of the following activities:

(i) the activities of a temporary work agency, and,
or,

(ii) the activities of an outsourcing agency,

as the applicant shall determine:

Provided further that a separate licence for each such activity shall be required:

Provided further that natural persons shall qualify to be granted a licence to operate any employment agency or employment business if they are twenty-five (25) years of age or more.

(2) The procedure which shall be followed for a licence to be issued under these regulations shall be as follows:

(a) an applicant for a licence in accordance with sub-regulation (1)(a) shall not less than twenty-one (21) days before submitting the application:

(i) display notice of the application in a place where it can be conveniently read by the public on or near the premises from which the employment agency or employment business is or is to be carried out and adopt such measures as the applicant can reasonably take to keep that notice so displayed for a period of twenty-one (21) days; and

(ii) advertise notice of the application in two (2) daily newspapers; and

(b) a notice made under this regulation shall indicate the name and address of the applicant, and in cases where the applicant is a legal person, the applicant's registration number, its registered office, and the address of the premises from which the employment agency or employment business is located or is to be carried out, which premises shall be suitable in terms of the applicable law.

(3) In the following cases a licence shall not be required and the provisions of sub-regulation (1) shall not apply to:

(a) any employer who carries out any recruitment related activity connected to any employment in such employer's own undertaking or in any undertaking in which such employer participates in the day to day management as an active partner or for any company in which such employer's company has an interest as majority shareholder, provided that if any advertisement is placed for the filling of any vacancy, the identity of the employer shall be clearly specified in the advertisement;

(b) any recruitment related activity provided by an employment agency on behalf of any employer whose identity is clearly specified in an advertisement inviting applicants for employment;

(c) any outsourcing agencies in so far as they carry on any of the services listed in the First Schedule, in respect of such services; and

B 2258

Cap. 594.

(d) Jobsplus while carrying out the functions of an employment agency, whether through the agency of other persons, or as agent or otherwise on behalf of other persons in accordance with the Employment and Training Services Act.

(4) The employment agency or employment business shall not operate under any agreement or any other arrangement with any user undertaking which provides for exclusivity in the provision of any employment services to such user undertaking, and any agreement or alternative arrangement providing for a form of exclusivity shall be null and void.

(5) An employment agency or employment business providing services of recruitment of persons for employment shall not register any employees under its own name, except when such employees are required to perform duties specifically and exclusively for such employment agency or employment business. To ensure compliance with this provision, the employment agency or employment business shall provide the Director with a list of persons employed by it, which list shall be officially obtained from Jobsplus, and this upon the submission of the original application for a licence under these regulations, upon every submission of an application for a renewal thereof, and whenever requested by the Director for the purpose of this sub-regulation.

(6) No user undertaking shall seek employment services from any provider unless such provider is a licensed employment agency or employment business in accordance with these regulations. Any person who, during any ongoing investigation or process undertaken in virtue of these regulations, is found to be in breach or failing to comply with the provisions of this sub-regulation shall be guilty of an offence under these regulations.

Transitory provisions in respect of existing or new employment agencies or businesses providing the recruitment of persons.
Cap. 594.

4. (1) Any person who, prior to the entry into force of these regulations, was engaged in any activity or operation relating to employment agencies or employment business, providing recruitment of persons, and is in possession of a valid licence to do so under the Employment and Training Services Act or regulations issued thereunder, may continue to perform such activities as authorised under their existing licence conditions until such existing licence expires:

Provided that any such person shall apply for a new licence in accordance with regulation 3(1) with the Director at least two (2) months before the expiration of any existing licence or, if the existing licence expires earlier than two (2) months from the day of the coming into force of these regulations, not later than one (1) month from the

day of the coming into force of these regulations. Any existing licence expiring within the said one (1) month period shall be deemed to have been extended accordingly.

(2) In the period between the date when these regulations come into force and the date when the new licences come into effect, the authorised provider shall follow all directions and conditions that the Director may establish:

Provided that when such conditions are inconsistent with the existing licence, the new conditions shall prevail.

(3) Any person applying for a licence as a first time applicant shall submit an application as from the 1st of January 2024.

(4) Identity Malta Agency shall not accept any application for a residence permit in accordance with the Single Application Procedure for a Single Permit as regards Residence and Work and a Common Set of Rights for those Third-Country Workers Legally Residing in Malta Regulations from any person who in accordance with these regulations is bound to have a valid licence, after the coming into force of these regulations, unless such person is in possession of a valid licence. S.L. 217.17.

5. (1) Applications for licences to operate an employment agency or employment business shall be submitted to the Director in such form as the Director may require. Each application shall include the following particulars: Application for licence and renewal.

(a) in the case of natural persons, the name, address and a valid identification document number, and in the case of a legal person, the name of that legal person, its registered address and the registration number;

(b) the Value Added Tax registration number, Income Tax registration number of the applicant and in the case of a legal person a good standing certificate in respect of the applicant issued by the Malta Business Registry, not earlier than one (1) month from the date of application;

(c) address of the place where the activity is proposed to be carried out, which place shall be covered by a permit showing that the premises can be used for commercial purposes in Category D – Commercial Uses, Class 4A, paragraph (c) in accordance with the Development Planning (Use Classes) Order or by any other relevant permit as long as the Director is satisfied that the premises are suitable for the purposes they are intended for. A copy of the relevant permit shall accompany the application; S.L. 552.15.

B 2260

(d) detailed information about the activities to be carried out. Such information shall include:

(i) a description of the services proposed to be provided;

(ii) the method of financing of the employment agency or of the employment business proposed to be offered;

(iii) a declaration by the applicant to the effect that a notice of intention has been displayed by the applicant and that advertisements have been published in at least two (2) daily newspapers as required by the provisions of regulation 3(2)(ii). A copy of the notice and of the newspapers showing the advertisements shall accompany the application; and

(iv) the name, address and the registration number of a valid identification document and the *curriculum vitae* indicating the date of birth, educational and professional qualifications and professional experience of the competent person.

(2) Applications, whether submitted by a first time applicant or a licensee for renewal of a licence, shall also be accompanied by a recent tax compliance certificate or equivalent, which shall not be dated earlier than one (1) month prior to the date of application, issued by the Commissioner for Tax and Customs indicating the registration details and tax compliance status of the competent person, the applicant and of each of the applicant's directors and shareholders where the applicant is a legal person.

(3) An application for the granting or renewal of a licence shall be accompanied by the fees listed in the Second Schedule.

(4) Every application submitted to the Director in accordance with regulation 3(1)(b) shall include:

(a) the name of the employment agency and its registered address, which shall be in a Member State;

(b) the name, the address and the registration number of a valid identification document of the competent person authorised by the employment agency or employment business to carry out the functions of the employment agency or employment business in Malta and proof that the person is legally established in

another Member State; and

(c) the address of the place in Malta where the activity is proposed to be carried out.

(5) Upon applying for the renewal of a licence to the Director, the person seeking renewal shall provide a signed declaration by the competent person stating that such person is still carrying out the duties as the competent person for that employment business or employment agency at the time of the said application.

(6) An application for a licence shall be accompanied by evidence that the applicant shall be able to provide a bank guarantee in favour of the Administration Board in accordance with regulation 20(1) as well as any other terms that the Administration Board may require.

(7) An application for a licence by a first time applicant or by a licensee for a renewed licence shall contain or be accompanied by such other information and particulars as the Director may require, including but not limited to that relating to the applicant or the licensee, the competent person, and where the applicant or the licensee is a legal person, to the applicant's or the licensee's directors, shareholders and any person having a beneficial interest in the applicant or the licensee, and shall be verified in the manner and to the extent required by the Director.

(8) The Director shall, at any time throughout the application process for a licence or its renewal, and throughout the validity of a licence, request the applicant or the licensee, as the case may be, to provide such information and particulars as the Director may require in order to enable him to exercise his functions under these regulations, and such information may include but shall not be limited to comprehensive and verifiable payroll documentation, including but not limited to salary records, and any other pertinent financial records pertaining to employees of the applicant or the licensee, as the case may be.

(9) The Director may, from time to time, issue procedural guidelines to specify the operational aspects and interpretations under these regulations.

6. An application for a licence under these regulations shall not be considered by the Director unless it is accompanied by a certificate, signed by or on behalf of the applicant, stating that the applicant has complied with the provisions of regulation 3(2) and a copy of the newspapers containing notice of the application in

Notice of
intention.

B 2262

accordance with these regulations.

Conditions of a
licence.

7. (1) A licence to operate an employment agency or an employment business in accordance with regulation 3(1)(a) shall be issued by the Director for a period of one (1) year beginning from the date specified in the licence for its commencement. Such licence shall be renewed for further periods each of one (1) year, or for a longer period, not exceeding two (2) years, as the Director may specify in the case of first time renewals, taking into account the operational system of the department of employment and industrial relations, subject to the submission of a request for such renewal and the continuous fulfilment of the requirements laid down in these regulations:

Provided that when a request for renewal has been received prior to the expiry of a valid licence, the licence shall remain valid until a decision is taken by the Director with regard to the request for renewal of the licence.

(2) Licences shall be issued by the Director subject to the conditions laid down in the Act or these regulations as may be in force from time to time and subject to such conditions as the Director may establish down in the licence to ensure the proper management of the employment agency or employment business or for the protection of the user undertakings, and in particular of applicants for employment. Such conditions may be varied by the Director.

(3) The holder of a licence granted by virtue of these regulations or the person referred to in regulation 3(1)(b) shall keep displayed on the premises to which the licence relates or from which the business of an employment agency or employment business is carried out, as the case may be, in such a position that it can be readily seen by persons entering those premises and displayed prominently on any website that the holder of the licence may use for the purpose of the employment agency or employment business to which the licence relates:

(a) the licence granted by virtue of these regulations, if applicable; and

(b) a copy of these regulations which shall be available for inspection by any interested person:

Provided that failure to comply with the provisions of this sub-regulation shall constitute an offence in terms of these regulations.

(4) It shall be a condition of any licence that a competent person shall be available at all times to manage the employment agency or employment business. For this purpose, the competent

person shall be employed by the employment agency or employment business on a full-time basis and shall, throughout such employment, be allowed to occupy such position with one (1) such employment agency or employment business only:

Provided that the employment agency or employment business may appoint a designated employee to assist the competent person to fulfil their function effectively and, whenever necessary, to temporarily replace the competent person when absent. In any case, the employment agency or employment business shall obtain the prior approval of the Director and his eligibility shall be subject to the same criteria established for the competent person. Any designated employee shall work under the direction of the competent person.

(5) (a) When the existing competent person is no longer employed with the employment agency or employment business, and the new competent person is pending approval by the Director, the employment agency or employment business shall, as soon as practicable on becoming aware of such fact, notify the Director in writing thereof and provide the Director with the details of the employee who, shall be assuming temporarily the role of competent person and to whom any requests or queries are to be addressed, which employee may be a previously appointed designated employee;

(b) the Director shall also be notified whether the termination of employment of the competent person was in any way related to the implementation of the competent person's obligations in accordance with these regulations and whether this had any implication that should be brought to the attention of the Director. The notification referred to in sub-regulation (5)(a) shall be made within fifteen (15) days from the date of termination of the competent person's employment.

(6) Failure to comply with the provisions of this regulation shall constitute an offence in terms of these regulations.

(7) The person referred to in regulation 3(1)(b) shall ensure that a competent person is available at all times to manage the employment agency or employment business. The provisions of sub-regulations (4) to (6) shall apply *mutatis mutandis* to the competent person referred to in this sub-regulation.

(8) Where it is intended to effect any change in the place where the activity of the employment agency or employment business is carried out, or in the class of activity to be carried out, or any substantial change in the procedures or any transfer of business is intended, the licensee or the person referred to in regulation 3(1)(b)

B 2264

shall notify the Director in writing of the proposed change not later than one (1) month before the proposed change. Failure to notify the Director shall constitute an offence in terms of these regulations:

Provided that nothing in this sub-regulation shall be considered as an authorisation to the holder of a licence to operate any business in accordance with regulation 3(1)(a) other than in accordance with the provisions of the said licence:

Provided further that every licence issued in accordance with these regulations shall be endorsed with notice of the effect of this regulation.

(9) A transfer of a licence to another person shall be deemed to be complete once it is approved in writing by the Director. When applying for a transfer of a licence, the licensee shall provide the Director with the name, address and the registration number of a valid identification document of the person to whom it is intended to transfer the licence and all the particulars and documents specified in regulation 5 in respect of the person to whom the licence is to be transferred.

Competent
person.

8. (1) A competent person nominated in accordance with these regulations shall be:

(a) a Maltese citizen;

(b) a citizen of another Member State of the European Union entitled to equal treatment to Maltese citizens;

(c) a citizen of any other country who is entitled to equal treatment to Maltese citizens in matters related to employment by virtue of the application to that country, of European Union legislation and treaty provisions dealing with the free movement of workers; or

(d) any other person who is entitled to equal treatment to Maltese citizens in terms of the law or by virtue of European Union legislation and treaty provisions, on account of their family relationship with persons referred to in paragraphs (a), (b) or (c);

and in any case, be a resident in Malta.

(2) The Director shall seek the advice of the Identity Malta Agency or Community Malta Agency, including any one of their respective officers, with regard to the interpretation of sub-regulation (1) and in relation to the verification of compliance of the competent

persons in accordance with the criteria laid down in these regulations.

(3) In addition to the provisions of sub-regulation (1), a competent person shall:

(a) (i) have not less than six (6) years experience in any activity which includes the management of human resources; or

(ii) have not less than three (3) years experience in any activity which includes the management of human resources and be in possession of a university degree in a field which, in the opinion of the Director, is relevant to the management of an employment agency or employment business; and

(b) provide a reference letter from their previous employer or from a warranted professional, which letter shall include an attestation of good moral character and, in the case of the letter being provided by their previous employer, of the relevant experience in the management of human resources.

(4) The competent person shall be responsible for the proper management of the employment agency or employment business.

(5) It shall be the responsibility of the applicant to ensure that the Director is notified in writing of the name, address, the registration number of a valid identification document, and that the Director is provided with the *curriculum vitae*, qualifications and testimonials of experience of the person nominated by the applicant as a competent person to manage the employment agency or employment business and of any designated employee appointed by the applicant to assist the competent person, together with the submission of the application.

9. (1) The Director may refuse an application submitted by a first time applicant or a licensee for the renewal of a licence, or may revoke a licence or vary any of the conditions of a licence, as the case may be, on any of the following grounds:

Refusal or revocation or varying of licence.

(a) that the applicant has failed to comply with any of the provisions of these regulations, the Act or of any other regulations made thereunder, or has failed to comply with any conditions laid down in the licence, and the applicant has failed to remedy such non-conformity within thirty (30) days from the date of a communication of the Director of such ground, provided that such non-conformity may be remedied. If the applicant fails to remedy such non-conformity within the said period or if the non-conformity may not be remedied, then in

B 2266

such cases there shall be a ground for refusal or revocation of a licence;

(b) that in the case where the applicant is a legal person, the actual activities of the applicant are not compatible with its objects in accordance with the definition of employment agency or employment business in regulation 2 and the applicant has failed to remedy such default within thirty (30) days from the date of a communication of the Director of such ground;

(c) that according to the determination of a Working Committee, the competent person is not a fit and proper person to provide the services concerned, based on a full vetting process undertaken by the Malta Police Force, or is no longer employed by the licensee in accordance with these regulations;

(d) that according to the determination of a Working Committee, the applicant, where this is a natural person, or any of the directors of the applicant, where this is a legal person, are not individuals who are fit and proper persons, based on a full vetting process undertaken by the Malta Police Force;

(e) that, according to the determination of a Working Committee, in the case of a legal person, any person who directly or indirectly owns or controls twenty-five percent (25%) or more of the capital or voting rights in the applicant, or otherwise exercises control over the management of the applicant, is not a fit and proper person, based on a full vetting process undertaken by the Malta Police Force;

(f) without prejudice to paragraphs (c) to (e), that any of the persons mentioned in the said paragraphs has, as from the date of coming into force of these regulations, been convicted by a Court in respect of the breach of:

(i) any law relating to immigration, including but not limited to human trafficking; or

(ii) the Act or any regulations issued thereunder, unless the relevant person, having been so convicted for the first time since the date of the coming into force of these regulations, has remedied the breach within thirty (30) days from the date of conviction by the Court, provided such breach may be remedied; if the relevant person fails to remedy such breach within the said period, or if the breach may not be remedied, then in such cases there shall be a ground for refusal or revocation of a licence; in addition, if

the relevant person has been convicted in respect of the breach of any law relating to employment for a second time, irrespective of whether the prior breaches have been remedied or not, or if there are pending cases, then in such case this shall also be a ground for refusal or revocation of a licence;

(g) that the applicant does not have a clean record of compliance with tax and social security obligations, including but not limited to having any unpaid taxes or outstanding tax debts and, or unpaid contributions to Malta's social security system and has failed to remedy such default within thirty (30) days from the date of a communication of the Director of such ground;

(h) that in the case where the applicant is a legal person, the name of the applicant is not consistent with its activities as outlined in paragraph (b) and the applicant has failed to remedy such default within thirty (30) days from the date of a communication of the Director of such ground;

(i) that the Director has acquired knowledge and evidence indicating that the applicant or licensee, as the case may be, has knowingly entered into arrangements with any third party who has charged any fees or demanded any payment from applicants in exchange for employment services;

(j) that the licensee or the competent person nominated by the licensee to manage the employment agency or employment business or any other person responsible for the running of the employment agency or employment business has charged any fees or demanded any payment from applicants for any employment services;

(k) that the applicant for a licence or the licensee, or where the applicant or licensee is a legal person, any director of the applicant or licensee, or every person who directly or indirectly owns or controls twenty-five (25%) or more of the capital or voting rights in the applicant for a licence or the licensee, or otherwise exercises control over the management thereof, or any competent person nominated by the applicant for the licence or by the licensee has been convicted by any Court of any offence under these regulations or in relation to any of the criminal offences mentioned in sub-regulation (2)(d) or (e);

(l) that the licensee has failed to keep the Director informed of any change in the nature of the activities carried out

B 2268

or the procedures adopted or has failed to provide the Director as required by these regulations with the particulars of the person nominated by him as a competent person to manage the employment agency or employment business or to act as a designated employee to assist the competent person;

(m) that the applicant has provided information or made declarations or statements to the Director in relation to the application for the issuing of a licence or its renewal, which were known by the applicant to be inaccurate, false or misleading in any material respect, or information provided recklessly or he made a declaration or statement which is inaccurate, false or misleading in any material respect;

(n) that the employment agency or employment business has been or is being improperly conducted and the licensee has failed to remedy such default within thirty (30) days from the date of a communication of the Director of such ground;

(o) that the applicant has failed to provide, or maintain throughout the applicability of any licence issued, a bank guarantee on the terms provided in accordance with regulation 20(1) and has failed to remedy such default within thirty (30) days from the date of a communication by the Director on such ground;

(p) that a first time applicant or a licensee applying for a renewed licence has failed to provide any information requested by the Director within the time stipulated by the Director or has withdrawn or abandoned the application at any time during a period of twelve (12) months commencing to run from the date of submission of the application; or

(q) that the refusal or revocation or variation of the licence is considered by the Director as desirable for the protection of the general public or the reputation of Malta.

(2) For the purpose of this regulation, the term "full vetting process" that shall be undertaken by the Malta Police shall include but not be limited to a thorough investigation and evaluation of a relevant person's background including whether such person:

(a) has been indicted of any offence before the Criminal Court and such person has been found guilty;

(b) is listed with the International Criminal Police Organization (Interpol) or Europol;

(c) is an actual or potential threat to national security, public policy or public health of Malta;

(d) has at any time, been charged with and found guilty of crimes related to:

- (i) terrorism;
- (ii) fraud and money laundering;
- (iii) funding of terrorism;
- (iv) crimes against humanity;
- (v) war crimes;
- (vi) crimes that infringe upon such Protection of Human Rights and Fundamental Freedoms as established by the European Convention on Human Rights; and
- (vii) exploitation of workers;

(e) has at any time been charged and found guilty of any of the following criminal offences:

- (i) paedophilia;
- (ii) defilement of minors;
- (iii) rape;
- (iv) violent indecent assault;
- (v) inducing persons under age to prostitution;
- (vi) abduction;
- (vii) living off the earnings of the prostitution of others; and
- (viii) sexual abuse;

(f) has at any time been found guilty of, or has criminal charges brought against such person for any criminal offence punishable with more than two (2) years imprisonment other than an involuntary offence;

(g) is or is likely to be involved in any activity which may cause disrepute to Malta;

B 2270

(h) has been denied a visa to a country with whom Malta has visa-free travel arrangements and has not subsequently obtained a visa from that same country;

(i) is named or listed in international sanctions applying restrictive measures on such person that the Director is bound by law, or has opted, to follow.

In addition, for the purpose of this sub-regulation, the term "Working Committee" shall refer to and consist of a committee that shall be established by the Director, as it may deem appropriate, in order to review the results obtained from a full vetting process undertaken by the Malta Police Force in accordance with the provisions of this sub-regulation, and to ensure that any decision is adequately taken, which committee shall be composed of the Director, a senior member of the department of industrial and employment relations selected by the Director, an advocate appointed by the Minister and a member of Identity Malta Agency appointed by the Chief Executive Officer of the said Agency.

(3) The Director shall, by means of a public statement, make public the fact that the licence of the applicant has been finally revoked or not renewed on any of the grounds laid down in sub-regulation (1) and shall disclose the name of the person sanctioned, which persons may include the applicant and, or the competent person, the particular breach of the provisions of these regulations and the punishment or measure imposed. Such public statement shall be published by the Director in any press release and, or on any website maintained by the department responsible for employment and industrial relations, for such period of time as the Director shall deem fit. The Director shall further notify of such facts:

(a) Identity Malta Agency who, upon receipt of such notice, shall take every necessary measure to ensure that no application for a residence permit submitted by the person sanctioned shall be processed in accordance with the Single Application Procedure for a Single Permit as regards Residence and Work and a Common Set of Rights for those Third-Country Workers Legally residing in Malta Regulations, save where any application is submitted in relation to any employees already employed by the applicant as at the date of receipt of such notice; and

(b) the Malta Police Force:

Provided that the public statement and notifications shall be

S.L. 217.17.

made not later than one (1) week from the date of final revocation or non-renewal of a licence taking into consideration the time for the filing of an appeal or any appeal filed in accordance with these regulations.

(4) The sanctioned person shall be considered as a black listed person as defined in the Public Procurement Regulations and shall, on this ground, be prohibited from being given a public contract, as also defined by the said regulations, and the Director shall, for the purpose of enforcement of this sub-regulation, notify of the facts referred to in sub-regulation (1) the Director of Contracts for the inclusion of the person so sanctioned to the black list. S.L. 601.03.

(5) (a) Where the Director intends to:

(i) vary any condition to which the licence is subject or to impose a new condition thereon;

(ii) to refuse an application for the licence or its renewal; or

(iii) to revoke a licence,

he shall give the applicant or the licensee, as the case may be, a notice in writing of this intention setting out the reasons for such decision:

Provided that in setting out the reasons for such decision, account shall be taken of any restrictions that may be considered as necessary and proportionate measures to protect the sources and confidentiality of legally privileged information collected in the course of the application process or any process undertaken thereafter, to safeguard important information objectives of general public interest of Malta, to protect national and public security, or as may be otherwise imposed by any applicable law.

(b) A notice given under paragraph (a) shall state that the recipient of the notice may, within such reasonable period of time after receipt thereof as may be stated in such notice, being a period of not less than forty-eight (48) hours and not longer than thirty (30) days, make representations in writing to the Director giving reasons why the proposed decision should not be taken. The Director shall consider any representation so made before arriving at a decision.

(6) The Director shall, as soon as practicable, notify his decision in writing to the applicant or the licensee, as the case may be.

B 2272

(7) Any person who has not obtained a licence in accordance with these regulations or whose licence has been revoked shall immediately cease to provide the services of an employment agency or employment business. This shall be without prejudice to the provisions of regulation 22.

(8) Any and all communications or notices that may be given by the Director under these regulations may also be given by electronic means.

No payment shall be demanded.

10. (1) No payments or charges shall be demanded or levied on any applicant for any employment services or any employee in consideration of such employment services or in consideration of any process by which such employment services are provided.

(2) No deductions shall be made from the wages of any employee for any services rendered by an employment agency or employment business.

Procedures to be observed.

11. Without prejudice to any other relevant provisions in any regulations, orders or other subsidiary legislation made under or kept in force under the Act, an employment agency or employment business shall observe the following procedures:

(a) when issuing advertisements for the filling of vacancies or when making any form of publicity of the employment agency or employment business or for any user, or in any other official communication or in private agreements, the licence number or any other identification registration number issued by the Director shall be included;

(b) in the case of an employment agency or employment business carrying the activity for the recruitment of persons for employment, the licensee and in the absence of the licensee the competent person, shall keep records indicating the names, address, the registration number of a valid identification document, qualifications and job experience of applicants for employment and records indicating the name, address, Value Added Tax registration number and Income Tax registration number of the users of such employment services. Such records shall be subject to inspection at any time by inspectors appointed under the Act;

S.L. 452.126.

(c) in the case of temporary work agencies or outsourcing agencies, records need to be kept in accordance with the Transparent and Predictable Working Conditions Regulations. Such records shall be subject to inspection at any time by inspectors appointed under the Act;

(d) in the case of an employment agency or employment business carrying the activity for the recruitment of persons for employment, it shall be the responsibility of the employment agency or employment business to ensure that no applicants for employment are referred to any user undertaking unless the user undertaking has provided such agency or business with precise information about the vacancy to be filled, including an adequate job description, the terms and conditions of employment offered, any special requirements of the employer and any other information that may be required by virtue of any other applicable law. The employer shall ensure to provide any applicants for employment engaged by him with a written agreement incorporating the terms and conditions of employment;

(e) in the employment of seamen, it shall be the responsibility of the employment agency or employment business as well as of the user undertaking to ensure that the provisions of the Merchant Shipping Act are complied with; Cap. 234.

(f) failure to comply with the provisions of paragraphs (a) to (e) shall constitute an offence in terms of these regulations.

12. (1) It shall not be lawful for any employment agency or employment business: Employment of expatriates.

(a) to seek to provide employment in Malta for an expatriate, unless such employment is authorised in accordance with the provisions of the Immigration Act; and Cap. 217.

(b) to seek to hire the services of an expatriate to any employer in Malta, unless the hire of such services is authorised under the provisions of the Immigration Act. Cap. 217.

(2) For the purposes of this regulation "expatriate" means a person requiring a licence from the Minister responsible for immigration to exercise any profession or occupation or hold any appointment or be employed by any other person or engage in business in Malta, in accordance with article 11 of the Immigration Act. Cap. 217.

13. (1) In the case of an employment agency or employment business carrying the activity for the recruitment of persons, it shall be the responsibility of such agency or business to forward a reply in writing within one (1) month to every applicant for employment who had forwarded an application in writing in response to any advertisement. Such reply shall include an acknowledgement of the application and it shall indicate the name of the employer or of the employment agency or employment business, as the case may be. Advertisements.

B 2274

(2) It shall not be lawful for any employment agency or employment business carrying the activity for the recruitment of persons, which places an anonymous advertisement to request applicants for employment to forward, in response thereof, any photograph of the applicant for employment or any document which includes any photograph of the applicant for employment.

(3) When an advertisement is placed by any employment agency or employment business without any specific vacancy in view, the employer or the employment agency or employment business, as the case may be, shall specify such fact in the advertisement.

(4) Failure to comply with any of the provisions of the preceding sub-regulations constitutes an offence in terms of these regulations.

(5) It shall be the responsibility of the editor when publishing or broadcasting, as the case may be, any advertisement, to ensure that the provisions of regulation 11(a) and the provisions of sub-regulation (2) have been complied with. Any editor who publishes or broadcasts any advertisement in breach of these provisions shall be guilty of an offence in terms of these regulations.

Confidential
information.

14. Any information provided to any employment agency or employment business by any applicant for employment or by any user undertaking shall be guarded as confidential, and it shall not be divulged for any purpose other than for the reasons for which it had been provided, except with the consent in writing of the person providing the information, or without such consent for purposes of complying with the provisions of regulation 11(b), or in compliance with any order issued by a competent Court, or any request by the Director in pursuance of any investigation into any complaint or claim referred to it or in accordance with these regulations. Any breach of this regulation shall constitute an offence in terms of these regulations.

Coercion.

15. (1) It shall prohibited and considered unlawful for any licensee to undertake any action or measure that results or may result in:

(a) the restriction of movement of any employees making use of their employment services, including but not limited to the withholding of identification documents, physical confinement or the creation of financial dependencies. Any licensee shall ensure that employees making use of his employment services, are allowed the freedom to seek other employment without fear of any financial or other consequences that may result in a deterrent for them doing so;

(b) deceiving any employees making use of his employment services, into incurring substantial debts with the consequence that the said employees are not able to leave their employment or seek other employment opportunities;

(c) any employees making use of their employment services, not being able to terminate their employment through the use of threats, coercion or other retaliation measures or for fear of facing such exploitative situations and not being able to seek other employment opportunities; or

(d) forcing or coercing employees making use of their employment services, to work against their will and be subjected to involuntary labour.

(2) Should the Director be notified by the Malta Police Force, Identity Malta Agency, the Principal Immigration Officer or any competent authority dealing with employment that any licensee or applicant for a licence, whether original or renewed, has acted in breach of the provisions of sub-regulation (1), the Director shall revoke any existing licence or refuse to issue or renew any such licence, as the case may be, whereupon the applicable provisions relating to such revocation or refusal shall *mutatis mutandis* apply.

(3) The provisions of sub-regulation (1) shall be without prejudice to any other consequence of the act or omission of the offender under civil or criminal law.

16. The Director shall have at any time the right to examine the books, including any records of any licensed employment agency or employment business or of any other employment agency or employment business carrying out its activities in Malta in accordance with the Act and the regulations made thereunder, or to request any information which in the opinion of the Director is reasonably required for ensuring that the conditions of any licence issued by the Director or the provisions of these regulations are being complied with, or for protecting the interests of applicants for employment. Failure to comply with any demand made by the Director in accordance with this regulation shall constitute an offence in terms of these regulations:

Director's
rights.

Provided that the Director shall also have at any time the right to examine the books, including any records, of any natural or legal person operating as an employment agency or employment business without a licence.

17. No person may perform the services referred to in article 110(6) of the Constitution.

Article 110 of
the Constitution.

B 2276

Burden of proof.

18. The burden of proof to prove the subsistence of any of the material facts referred to in these regulations shall, in all cases, rest with the employment agency or employment business.

Administration
of the Agencies
Guarantee Fund.

19. (1) The Agencies Guarantee Fund shall be administered by an Administration Board, which shall be composed of:

(a) a Chairperson nominated by the Minister;

(b) the four (4) representatives of employees appointed on the Employment Relations Board in accordance with article 3(2)(c) of the Act;

(c) the four (4) representatives of employers appointed on the Employment Relations Board in accordance with article 3(2)(d) of the Act;

(d) a member nominated by the Minister responsible for finance;

(e) the Chairperson of Jobsplus; and

(f) a person appointed by the Minister who shall be a member of the legal profession.

(2) The Administration Board shall regulate its own procedure.

(3) The Administration Board shall keep proper books of account and records regarding claims registered and paid out of the Agencies Guarantee Fund and any reimbursements which are obtained by the Administration Board in accordance with regulation 20(5)(d).

(4) The Administration Board shall have the power to appoint experts to assist it in any matter under its consideration, as may be required.

(5) The Administration Board shall publish an annual report of its activities, together with the annual audited accounts of the Agencies Guarantee Fund.

(6) The Administration Board shall have a distinct legal personality and shall be capable of entering into contracts, of suing and being sued, and doing all such things and entering into such transactions as are incidental or conducive to the fulfilling of its objectives.

(7) The legal and judicial representation shall vest in the Chairperson or in any other member of the Administration Board

whom the Chairperson may authorise in writing for such purpose.

(8) The address of the Administration Board shall be any such address which may be in use from time to time as the head office of the Department responsible for employment and industrial relations, and any correspondence shall be addressed to the Chairperson.

20. (1) For the purpose of ensuring compliance by any temporary work agency or outsourcing agency with the licence obligations and adherence to the relevant provisions of these regulations throughout the term of the licence, the relevant agency shall, prior to the commencement date of the licence in accordance with these regulations, provide a bank guarantee in favour of the Administration Board, the amount of which shall be the total of twenty thousand euro (€20,000) for agencies having a number of employees which is less than twenty (20) employees and for agencies having a number of employees which is equal or greater than twenty (20), twenty thousand euro (€20,000) and a sum equivalent to two percent (2%) of the total annualised wages payable to all the employees of the applicant as at the date of the application, whether for the first time or for a renewal, up to a maximum of three hundred thousand euro (€300,000).

Bank guarantee
and its
utilisation.

(2) If the Director revokes or refuses the renewal of a licence of any temporary work agency or outsourcing agency for any of the grounds set out in regulation 9(1), the Director shall immediately notify the Administration Board thereof, whereupon the Administration Board shall take all the necessary action so that the bank guarantee shall be forfeited in full in favour of the Administration Board and deposited into the Agencies Guarantee Fund.

(3) Any employee whose employment is terminated by a temporary work agency or outsourcing agency, as the case may be, because of the revocation or non-renewal of a licence on the basis of any of the grounds set out in regulation 9(1), shall inform the Director and the Administration Board of such event within two (2) months from the date of such termination.

(4) Should the Administration Board determine and confirm that the employee's employment was terminated in accordance with sub-regulation (3), such employee shall be eligible to receive a share of the amount of the bank guarantee provided by such employee's employer whose bank guarantee has been forfeited in accordance with sub-regulation (2).

(5) The Administration Board shall distribute the amount of

B 2278

the bank guarantee referred to in sub-regulation (4), equally among all the employees of the same employer whose bank guarantee has been forfeited in accordance with sub-regulation (2) and who shall have informed the Administration Board of their termination of employment within the time period referred to in sub-regulation (3).

(6) The employee shall, on notifying the Administration Board, forward any documentation which may be necessary to enable the Administration Board to make its determination of the employee's eligibility to the share of the amount of the bank guarantee and the Administration Board may request any information from any person to enable it to perform its obligations, and it shall be the duty of any such person to cooperate fully with the Administration Board.

(7) The Administration Board shall release the bank guarantee within three (3) months from the date of notification by the Director of the termination or non-renewal of the licence, as long as the Director is satisfied that the temporary work agency or outsourcing agency, as the case may be, shall no longer carry on any activities requiring such licence in accordance with these regulations, and that all the obligations under the licence and these regulations have been met.

(8) The provisions of this regulation shall be without prejudice to the right of the employee to refer any entitlement for any unpaid wages or any related matter to the Director or to any remedy that the employee may have under any other provision of law.

Punishments.

21. (1) Any person who breaches any provision of these regulations shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not less than five thousand euro (€5,000) but not exceeding seven thousand euro (€7,000):

Provided that when a person is convicted of having received any payment from any applicant for employment or of having made any deductions from the wages due to an employee in consideration of any services provided by an employment agency or employment business, the Court shall, in determining the punishment, take into consideration any refund made by such person to the applicant for employment services of any payment received or deduction made:

Provided further that if the offence consists in the operation of an employment agency or employment business without being in possession of a valid licence in accordance these regulations, any person responsible therefor shall be guilty of an offence, and shall on conviction be liable, to a fine (*multa*) of not less than twenty-five thousand euro (€25,000) but not exceeding thirty thousand euro

(€30,000).

(2) The provisions of sub-regulation (1) shall be without prejudice to the right of the Director to revoke or vary the conditions of a licence of any employment agency or employment business in accordance with regulation 9(1), to the forfeiture of the bank guarantee in accordance with regulation 20(2), and to any other consequence of the act or omission of the offender under civil or criminal law.

(3) Where an offence is committed by the applicant or any other body or association of persons, be it corporate or unincorporated, every person who at the time of the commission of the offence was a director, competent person, manager or other similar officer of the applicant or such body or association, or was purporting to act in any such capacity, shall be guilty of that offence, unless such person proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

22. (1) Without prejudice to the provisions of these regulations, an appeal shall be filed to the Appeals Board with respect to: Appeals.

(a) any failure to inform an applicant or a licensee, as the case may be, of the refusal of its application for a licence or the renewal thereof, or of the revocation or variation of its licence, in accordance with regulation 9(1) and the consequences arising therefrom in accordance with these regulations;

(b) any refusal of an application for a licence, whether original or renewed, or the revocation of a licence in accordance with regulation 9(1), and the consequences arising therefrom in accordance with these regulations; and

(c) any variation of a licence in accordance with regulation 9(1).

(2) The provisions of the Act relating to the Appeals Board shall apply *mutatis mutandis* to appeals that may be brought before the Appeals Board in accordance with this regulation.

B 2280

FIRST SCHEDULE

(regulation 3)

The following services shall be exempt from the application of these regulations and shall not require a licence when they are provided through an outsourcing agency:

(a) professional services where the person providing those services is in possession of a warrant, or its equivalent, to exercise that profession, including but not limited to the profession of advocate, auditor, or certified public accountant;

(b) technical services where the person providing those services makes available their technical knowledge, experience, skill, know-how or processes and provides services in relation thereto, such as those performed in relation to the installation, maintenance and repair of equipment and machinery; and

(c) surveying services in relation to machinery and vessels.

This exemption shall also apply in the event that the said services are provided by employees at the premises of the user undertaking where they are outsourced.

In the event of reasonable doubt as to whether the operation of a particular service would be subject to a licence in accordance with these regulations, the matter shall be conclusively determined by the Director.

SECOND SCHEDULE

(regulation 5(3))

The following licence fees shall be applicable:

(a) for recruitment services:

(i) a licence fee of three thousand euro (€3,000), shall be paid to the Director upon the submission of an application by a first-time applicant;

(ii) a fee of one thousand five hundred euro (€1,500) shall be paid to the Director upon the submission of every application for the renewal of a licence;

(b) for temporary work agencies or outsourcing agencies:

(i) a licence fee of three thousand euro (€3,000)

shall be paid to the Director upon the submission of an application by a first-time applicant;

(ii) a fee of one thousand five hundred euro (€1,500) shall be paid to the Director upon the submission of every application for the renewal of a licence;

Such fees shall not be refunded to the applicant if the application or any renewal is refused.
