

[LEGAL NOTICE NO. ]

**EMPLOYMENT RELATIONS PROMULGATION 2007**

**(No. 36 of 2007)**

**EMPLOYMENT RELATIONS (EMPLOYMENT AGENCIES) REGULATIONS 2008**

PURSUANT to Section **264** of the Employment Relations Promulgation 2007, the Minister for Labour, Industrial Relations, Employment, Local Government, Urban Development and Housing, acting on the advice of the Employment Relations Advisory Board, hereby makes the following Regulations.

**PART 1 — PRELIMINARY**

*Citation and commencement*

1.-(1) These regulations may be cited as the Employment Relations (Employment Agencies) Regulations 2008.

(2) These regulations shall come into force on the day appointed by the Minister and published in the Fiji Republic Gazette.

*Scope*

2.-(1) These regulations shall apply to all activities defined as "employment agency" or "employment business" under these Regulations.

(2) Pursuant to the provisions of Section **264(1)** (i) and (t) of the Promulgation, these regulations are aimed to secure the proper conduct of employment agencies or employment businesses and to protect the interests of persons availing themselves of the services of such agencies whether as persons seeking employment or employers, and such regulations may without prejudice to the generality of the foregoing in particular make provision -

- (a) requiring employment agencies or employment businesses to be authorized;
- (b) requiring persons running such agencies and businesses to keep records as may be prescribed;

- (c) prescribing the qualifications required for persons running such agencies and businesses;
- (d) regulating advertising by persons running such agencies and businesses; and
- (e) regulating the provision of services by persons running such agencies and businesses in respect of persons who seek employment within or outside Fiji.

*Definitions*

3.-(1) In these regulations, unless the context otherwise requires:

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

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

"authorization" means authorization by the Permanent Secretary under Section **37(4)** of the Employment Relations Promulgation 2007 ("the Promulgation") or under regulation 4(1) of these Regulations;

"authorized person" also includes any person to whom an authorization is transferred upon the death of the holder in terms of subregulation 4(9);

"competent person" means a fit and proper person approved by the Permanent Secretary to manage an employment agency or employment business and who is in possession of the qualifications and the experience laid down in regulation 10 of these regulations;

"conditions of employment" includes wages, the period of employment, the hours of work, leave and repatriation;

"employment" also includes self-employment;

"employment agency" or "employment business" means any activity carried out by a natural or legal person in Fiji for the enlisting, registration, recruitment or deployment of persons for employment in Fiji or outside Fiji. It excludes any public

employment exchanges or public authority.

"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 adverts 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;

"mercenary" is any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
- (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
- (d) Is not a member of the armed forces of a party to the conflict; and
- (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

A mercenary is also any person who, in any other situation:

- (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
  - (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or
  - (ii) Undermining the territorial integrity of a State;
- (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;
- (c) Is neither a national nor a resident of the State against which such an act is directed;
- (d) Has not been sent by a State on official duty; and
- (e) Is not a member of the armed forces of the State on whose territory the act is undertaken.

"Ministry" means the Ministry responsible for the administration of the Promulgation;

"Permanent Secretary" means the Permanent Secretary for the Ministry, and includes any officer or inspector of the Ministry who is authorized by the Permanent Secretary to act on his or her behalf;

"person" includes a body of persons and a body corporate established by law;

"Promulgation" means the Employment Relations Promulgation 2007;

"user" 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; and

"worker" includes a jobseeker.

(2) For all other definitions, reference should be made to Part 1, Section 4 of the Employment Relations Promulgation 2007.

## **PART 2 — AUTHORIZATION OF EMPLOYMENT AGENCIES**

### *Employment agencies and businesses to be authorized*

4.-(1) Without prejudice to the provisions of the Promulgation, every person who carries on an employment agency or an employment business must be the holder of a current authorization granted by the Permanent Secretary under this Part, authorizing the person to carry on such an agency or business in premises specified in the authorization.

(2) An applicant for an authorization under this Part shall, not less than twenty-one days upon making his or her application -

(a) advertise notice of the application in one daily newspaper and the *Fiji Republic Gazette*.

(3) A notice under subregulation (2) -

(a) shall state the name and address of the applicant, and where the applicant is a company or other body of persons the name and address of all the directors or like officers of the company or body of persons; and

(b) shall state the address of the premises at which the employment agency or employment business is or is to be carried on and the class of business carried on or to be carried on at those premises.

(4) No application for an authorization under this Part shall be entertained by the Permanent Secretary unless it is accompanied by a certificate, signed by or on behalf of the applicant, stating that he or she has complied with the provisions of subregulation (2) and a copy of the newspaper containing notice of the application.

(5) An application for an authorization in respect of an employment agency or an employment business may be refused by the Permanent Secretary on any of the following grounds:

- (a) that the applicant is an individual under the age of twenty-one;
- (b) that the applicant is a person who on account of misconduct or for any other sufficient reason is unsuitable to hold an authorization in respect of an agency or business of the intended class;
- (c) that the applicant is subject of an undischarged receiving order or is an undischarged bankrupt, or is or was a director of a company wound up by a court in the last 5 years preceding application;
- (d) that any person (other than the applicant) who is or is to be concerned with the carrying on of the employment agency or employment business is a person who, on account of misconduct or for any other sufficient reason is unsuitable to be associated with an agency or business of the intended class;
- (e) that the premises at which the employment agency or employment business is or is to be carried on are unsuitable in respect of an agency or business of the class in question; or
- (f) that the employment agency or employment business has been or is being improperly conducted.

(6) An employment agency or employment business may levy a charge on an applicant for employment in respect of the applicant's registration of interest or enlisting with the agency's database, and to provide employment related services.

(7) An authorization may be revoked by the Permanent Secretary on any of the grounds specified in subregulation (5)(a) to (f) or for a breach of the provisions of subregulation (6).

(8) Unless revoked, an authorization shall continue in force for one year (or such longer period, not exceeding five years, as the Permanent Secretary may specify in any particular case) beginning with the date specified therein for its commencement:

Provided that where the holder of an authorization has duly applied before its expiry for a further authorization, the previous authorization shall not expire until the commencement of the further authorization or, if the application is refused, until the refusal is notified to him or her by the Permanent Secretary.

(9) Where the holder of an authorization dies, the authorization shall be deemed to have been transferred on his death, if he or she was the sole holder, to his or her next of kin, and if he or she was a joint holder, to the surviving holder, or if the holder is a business or company, to any successor under the law, so however that no such transfer shall be made unless the transferee, or transferees if more than one, are persons qualified to hold an authorization under this Part.

(10) It shall be the duty of the holder of an authorization under this Part, within thirty working days of any change in the particulars accompanying the application for that authorization under subregulation (1), to give to the Permanent Secretary notice in writing of the change:

Provided that nothing in this subregulation shall be taken as authorizing the holder of an authorization to carry on any business otherwise than in accordance with the provisions of the authorization.

(11) Every authorization granted under this Part shall be endorsed with notice of the effect of subregulation (10).

(12) The holder of an authorization under this Part in respect of any employment agency or employment business shall keep displayed on the premises to which the authorization relates in such a position that it can be readily seen by persons resorting to those premises -

- (a) the authorization; and
- (b) a copy of any regulations under the Promulgation which apply to the employment agency or employment business, as amended from time to time.

(13) Any person who contravenes any of the provisions of subregulations (1), (6), (10) and

(12) shall be guilty of an offence against these Regulations.

*Representations on refusal or revocation of an authorization*

5.-(1) Where the Permanent Secretary intends to refuse to grant or transfer an authorization, or to revoke the same under regulation 4, he or she shall notify the applicant for, or the holder of, the authorization or the person to whom it is requested that the authorization be transferred, of his or her intention and the reasons.

(2) A person who receives a notification of the intention of the Permanent Secretary as is mentioned in subregulation (1) may make written representations to the Permanent Secretary within thirty working days of the receipt of such notification.

(3) If the Permanent Secretary receives such representations within the time specified in subregulation (2), he or she shall consider them and -

(a) if he or she decides not to proceed with his or her intentions and accordingly decides to grant or not to revoke or transfer the authorization, he or she shall notify the applicant or holder of his or her decision;

(b) in any other case, the Permanent Secretary shall notify the applicant or holder accordingly, and the latter may, within fifteen days from such notification, appeal to the Minister.

(4) Any aggrieved person may appeal to the Minister within 3 months of refusal, and specify any new or further information which may assist the Minister to make a determination.

(5) The Minister must notify the applicant of his or her decision within 14 days.

**PART 3 — CONDITIONS FOR OPERATING EMPLOYMENT AGENCIES**

*Conditions for Conducting Employment Agencies or Business*

(6) The provisions of regulation 4(1) and (2) applies, except:

(a) in respect of any employer who carries out any employment service related to any employment in his own undertaking or in any undertaking in which he or she participates in the day to day management as an active partner or for any company in which his 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 is clearly specified in the advertisement; and

(b) in respect of any employment service provided by an employment agency on behalf of any employer whose identity is clearly specified in an advertisement inviting

applicants for employment.

*Application*

7.-(1) Subject to the provisions of Section **37** of the Promulgation, an application for an authorization for carrying on an employment agency or employment business shall be submitted to the Permanent Secretary on the form prescribed in the First Schedule of these Regulations.

- (2) Each application shall include the following particulars:
- (a) name, address, , photo identification, Value Added Tax registration number and Income Tax registration number of the applicant;
  - (b) address of the premises where the activity is proposed to be carried out;
  - (c) 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 procedures proposed to be followed by applicants for employment and by users;
    - (iii) the schedule of fees to be charged to any jobseeker or for any service to be provided;
    - (iv) a statutory declaration by the applicant that a notice of intention has been advertised in one newspaper and the *Fiji Republic Gazette*, as required by the provisions of regulation 4. A copy of the page of the newspaper and *Fiji Republic Gazette* showing the advertisements shall accompany the application; and
    - (v) the name, address and the curriculum vitae showing the date of birth, educational and professional qualifications and professional experience of the applicant and the person or substitute who is to manage the employment agency or employment business; and
    - (vi) a cash flow projection or a business plan.

(3) Applications shall be accompanied by a recent Police clearance of the applicant and of the person, if different from the applicant, who is to manage the employment agency or employment business.

(4) An authorization fee of \$1,000, shall be paid to the Ministry together with each application. A \$20,000 surety bond shall be provided to the Ministry. Such authorization fee shall not be refunded to the applicant if the application is refused. The Ministry will return the surety bond if the application is refused.

Provided that the Ministry will keep the surety bond for the duration of the authorization, and return to the applicant at the end of the authorization.

(5) Every applicant or authorized person must ensure that the surety bond is current for the duration of the authorization.

(6) Subject to the provisions of regulation 9, a new authorization granted or authorization renewed shall be valid for a period of twelve months (or such longer period, not exceeding five years, as the Permanent Secretary may specify in any particular case) from the date of issue, and notification of the grant or renewal shall be published in the *Fiji Republic Gazette*.

#### *Conditions of authorization*

8.-(1) Subject to the provisions of Section **37** of the Promulgation, an authorization to carry on an employment agency or an employment business shall be issued by the Permanent Secretary for a period of one year (or such longer period, not exceeding five years, as the Permanent Secretary may specify in any particular case), but may be renewed for further periods each of one year (or such longer period, not exceeding five years, as the Permanent Secretary may specify in any particular case):

Provided that when an application for renewal has been received prior to the expiry of an authorization in force, the authorization shall remain in force until it is revoked by the Permanent Secretary or until a decision is taken by him or her with regard to the application for renewal of the authorization.

(2) Authorizations shall be issued by the Permanent Secretary on the form prescribed in the Second Schedule of this Regulations subject to the conditions laid down in the Promulgation or in any regulations made thereunder, as may from time to time be in force, and subject to such conditions as the Permanent Secretary may lay down in the authorization, to ensure the proper management of the employment agency or employment business or for the protection of the users, and in particular of jobseekers. Such conditions may be varied by the Permanent Secretary, on notice to the applicant.

(3) The authorized person shall keep the authorization and its current renewal as well as a notice stating that a copy of these regulations is available for inspection, displayed on the premises to which the authorization relates, in such a position that it can be readily seen by persons who resort to the premises, and shall also keep a copy of these regulations available for

inspection by any such person. A person who fails to comply with the provisions of this paragraph commits an offence against these regulations.

(4) It shall be a condition of any authorization that a competent person is available at all times to manage the employment agency or employment business, provided that the authorized person may nominate one or more competent persons to act as substitutes for the authorized person nominated by him or her, if such person is not at any time available for any reason. A person who fails to comply with the provisions of this paragraph commits an offence against these regulations.

(5) 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 authorized person shall notify the Permanent Secretary in writing of the proposed change within thirty working days of the proposed change. A person who fails to notify the Permanent Secretary shall commit an offence against these regulations.

(6) Where an authorization has been transferred by succession in terms of subregulation 4(9), the authorized person shall produce the authorization to the Permanent Secretary together with the following:

- (a) a copy of the death certificate of the previous holder and a statutory declaration witnessed by a justice of peace or a commissioner for oaths, that the authorized person is entitled to the authorization by succession on inheritance or by the operation of law;
- (b) photo identification, a recent Police clearance of the person to whom the authorization has been transferred or is sought to be transferred;
- (c) the Value Added Tax registration number and the Income Tax registration number of the person to whom the authorization has been transferred or sought to be transferred; and
- (d) the name, address, identity card number, recent Police clearance and curriculum vitae showing the educational and professional qualifications and professional experience of the person, if different from the authorized person, who is to manage the employment agency or employment business;

Provided that this information need not be submitted if the competent person who was

managing for the previous authorization holder is retained.

(7) Pending the registration of the transfer by succession, if the identity and whereabouts of the executor of the estate is known, the transferee shall notify the executor of the estate of the deceased in writing and of the heirs of the steps the transferee is taking, to ensure that the provisions of these regulations are complied with.

(8) No transfer of an authorization to another person shall be complete before it is approved in writing by the Permanent Secretary. When applying for a transfer of an authorization, the authorized person shall furnish the Permanent Secretary authorization on all the particulars and documents specified in subregulation 6 in respect of the person to whom the authorization is to be transferred.

(9) Sub-regulation 7(4) applies to an application for transfer.

(10) An applicant may appeal a revocation or variation of authorization to the Minister, within 3 months of such revocation or variation.

#### *Competent person*

9-(1) A competent person nominated by an authorized person or by an applicant for an authorization to manage an employment agency or employment business, or to act as substitute for such person, shall:

- (a) be not less than twenty-one years of age;
- (b) have:
  - (i) not less than five years' experience in any activity which includes the management of human resources; or
  - (ii) be in possession of a University degree or diploma in a field which, in the opinion of the Permanent Secretary, is relevant to the management of an employment agency or employment business.

(2) A competent person nominated by the applicant for an authorization or by the authorized person to manage an employment agency or employment business shall be responsible for the proper management of the employment agency.

(3) It shall be the responsibility of the applicant for an authorization or of the authorized person, as the case may be, to ensure that the Permanent Secretary is notified in writing of the name, address, identity card number, and that he or she is furnished with the curriculum vitae,

qualifications and with a recent Police clearance of the person nominated by him or her as a competent person to manage the employment agency or employment business and of any person or persons nominated by him or her to act as substitute for such person.

(4) It shall be a condition of every authorization that a competent person is employed to manage the employment agency or business; and that, where such competent person is not employed, the Permanent Secretary may revoke the authorization.

(5) Nothing in these regulations shall prevent any applicant for an authorization or any authorized person from nominating himself or herself as competent person, provided that the applicant for an authorization or the authorized person, as the case may be, is qualified according to these regulations and is approved by the Permanent Secretary as a competent person.

*Refusal or revocation or varying of authorization*

10. The Permanent Secretary may refuse or revoke an application, as the case may be on any of the following grounds:

- (a) that the applicant is under twenty-one years of age; or
- (b) has failed to comply with the provisions of these regulations; or
- (c) that the applicant or the person nominated by him or her as a competent person to manage the employment agency or employment business is unsuitable; or
- (d) that the applicant is subject of an undischarged receiving order or is an undischarged bankrupt, or is or was a director of a company wound up by a court in the last 5 years preceding renewal or transfer;
- (e) that the premises where the employment agency or employment business is proposed to be carried out or where any of the employment services contemplated in the application for an authorization, renewal or transfer or in the authorization is proposed to be carried out, as the case may be, do not comply with the Public Health Act or the Health and Safety at Work Act; or
- (f) that the applicant has failed to comply with any of the provisions of the Promulgation or of these regulations or of any other regulations in force under the Promulgation, or has failed to comply with any conditions laid down in the authorization; or
- (g) that the authorized person or the competent person nominated by him or her to manage the employment agency or business or any other person responsible for the running of the employment agency or employment business has charged any unauthorized fees or demanded any unauthorized payment from applicants for

- employment; or
- (h) that the applicant for an authorization or the authorized person or any competent person nominated by the applicant for the authorization or by the authorized person has been convicted by any Court of fraud, or of any offence under these regulations, or has been imprisoned for 12 months or more on any felony; or
  - (i) that the authorized person has failed to register the employment agency or employment business under the Companies Act or Registration of Business Names, or has failed to secure a business license for the agency under the relevant local or rural authority; or
  - (j) that the authorized person has failed to keep the Permanent Secretary informed of any change in the nature of the activities carried out or the procedures adopted or has failed to furnish the Permanent Secretary as required by these regulations with the particulars of the person nominated by him or her as a competent person to manage the employment agency or employment business.

*Provisions of regulation 5 to apply*

11. Where the Permanent Secretary intends to refuse to grant or transfer or intends to revoke or vary an authorization, the provisions of regulation 5 shall apply.

*No deduction from wages without consent.*

12. An authorized person may charge a fee as authorized for any services provided, but cannot demand any deductions from the wages of any worker for any services rendered by an employment agency or employment business, unless consented to by the worker.

Provided that an employment agency or business must not deduct from the wages of any worker for any services already paid for, or for any services to be provided in the contract, to which the user has paid the employment agency or business a fee.

*Procedures to be observed*

13.-(1) 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 business or for any user, the authorization number shall be quoted;
- (b) No person seeking employment outside Fiji shall be referred for employment outside Fiji unless a copy of the contract of employment proposed to be offered

to such person has been attested by the Permanent Secretary or a labour officer: Provided that the Permanent Secretary may exempt the authorized person from submitting such contract where it appears to him or her that the interests of the person selected are adequately protected;

- (c) The authorized person shall be responsible to ensure that all the conditions specified under the Third Schedule of these Regulations are included in the foreign contract of employment;
- (d) Where a person is employed by an employment agency or employment business and referred to an employer by it to perform a service temporarily for that employer, the employment agency or employment business shall not charge such employer rates for the services provided which is less than those payable by such employer to his regular workers for similar work;
- (e) The authorized person shall keep records showing names, address, identity card number, qualifications and job experience of applicants for employment and records showing the name, address, Value Added Tax registration number and Income Tax registration number of the jobseekers of employment services. Such records shall be retained for periods of at least six years and they shall be subject to inspection at any time by labour officers or labour inspectors appointed under the Promulgation. The authorized person shall ensure that the particulars including name, address and identity card number of persons employed through the employment agency, if any, as well as the name, address, Value Added Tax registration number and Income Tax registration number, if any, of the user with whom such persons have been employed, are submitted to the Ministry not later than four weeks from the date on which such employment has been effected;
- (f) It shall be the responsibility of an employment agency or employment business to ensure that applicants for employment are only referred to any user where the user has furnished the employment agency with suitable information about any vacancy to be filled, including an adequate job description, the terms and conditions of employment offered, and any special requirements of the user. The user shall undertake to furnish any applicants for employment engaged by him or her with a written agreement incorporating the terms and conditions of employment; and
- (g) In the employment of seafarers, it shall be the responsibility of the employment agency or employment business as well as of the user to ensure that the provisions of the Third Schedule are complied with.

(2) A person who fails to comply with any of the provisions of paragraphs (a) to (g) of these regulations commits an offence against these regulations.

*Advertisements*

14.-(1) It shall be the responsibility of any employment agency or employment business to forward a reply in writing within one month to every applicant for employment who forwards an application in writing in response to any advertisement. A reply shall include an acknowledgement of the application, a receipt for any fee paid, indicate the timeframe by which certain services may or will be provided, and the name of the employer or of the employment agency or employment business, as the case may be.

(2) An employment agency or employment business must not place an anonymous, advertisement to request applicants for employment to forward, in response, any photograph of the jobseeker for employment or any document which includes any photograph of the applicant for employment, except in cases where the need for a photograph is a condition of engagement.

(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) A person who fails to comply with any of the provisions of the preceding paragraph of this regulation commits an offence against these regulations.

*Confidential employment*

15.-(1) Any information furnished to any employment agency or business by any applicant for employment or by any user shall be carefully guarded as confidential, and it shall not be divulged for any purpose other than that for which it had been furnished, except with the consent in writing of the person furnishing the information, or without such consent for purposes of complying with the provisions of paragraph (d) of regulation 13 of these regulations or in compliance with any order by a Tribunal, Court, or any request by the Permanent Secretary in pursuance of any investigation into any complaint referred to it.

(2) Any person who breaches this regulation commits an offence against these Regulations.

*Access to records and information*

16.-(1) The Permanent Secretary or any labour officer or labour inspector under the Employment Relations (Administration) Regulations shall have at any time the right to examine the books, including any records, of any authorized employment agency or employment business, or to demand any information, which in his or her opinion is reasonably required for ensuring that the conditions of any authorization issued by him/her or the provisions of these regulations are being complied with, or for protecting the interests of applicants for employment, or for advising the Minister on the review of any policy relating to these Regulations.

(2) A person who fails to comply with any demand made by the Permanent Secretary or the labour officer in pursuance of this regulation commits an offence against these Regulations.

*Restriction on providing jobseekers in industrial disputes*

17.-(1) Subject to subregulation (2), an employment agency or employment business shall not introduce or supply a jobseeker to a hirer or employer to perform-

- (a) the duties normally performed by a worker who is taking part in a strike or other industrial action ("the first worker"), or
- (b) the duties normally performed by any other worker employed by the hirer or employer and who is assigned by the hirer or employer to perform the duties normally performed by the first worker,

unless in either case the employment agency or employment business does not know, and has no reasonable grounds for knowing, that the first worker is taking part in a strike or other industrial action.

(2) Subregulation (1) shall not apply if, in relation to the first worker, the strike or other industrial action in question is an unlawful strike for the purposes of section **177** of the Employment Relations Promulgation 2007.

*Penalties and Prohibition Order*

18. Any person who contravenes any provision of these regulations shall be guilty of an offence and shall on conviction be liable to a fine of not less than \$4,000 and not more than \$10,000 or to a term of imprisonment not exceeding 12 months or both, 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 a worker in consideration of any services provided by an employment agency or employment business, other than as authorized, the Court shall in determining the penalty, take into consideration any refund made by such person to the applicant for employment of any payment received or deduction made.

*Prohibition Order*

19.-(1) The Employment Relations Tribunal established under Section **202** of the Employment Relations Promulgation 2007 or the Employment Relations Court established under Section **219** of the Employment Relations Promulgation 2007 may, on application of the Permanent Secretary, make an order prohibiting a person from carrying on, or being concerned with the carrying on of, an employment agency or employment business for up to 10 years on the grounds that the person concerned is unsuitable because of misconduct or any other sufficient reason.

(2) A prohibition order may -

- (a) prohibit a person from running an employment agency or employment business, or any description of employment agency or employment business specified in the order for the period of time specified in the order; or
- (b) impose certain conditions under which a person may be allowed to run an employment agency or employment business.

*Schedule of Fees*

20.-(1) Every person must submit a schedule of fees they intend to charge the jobseeker, and the user, to the Permanent Secretary with his or her application.

- (2) The Permanent Secretary may vary any schedule of fees, to be justifiable or reasonable.
- (3) A person may not charge any jobseeker or user any fees which is unauthorized.
- (4) In the absence of a schedule of fees, the fees stated in the Fourth Schedule will apply.

**PART 4 — RESOLUTION OF COMPLAINTS**

*Raising of complaints*

21. A worker, former worker or other person may complain to the Permanent Secretary that a person has contravened any provision of these Regulations.

*Resolving of complaints*

22.-(1) Upon receiving a complaint, the Permanent Secretary shall exercise relevant powers under the Promulgation and the Employment Relations (Administration) Regulations to investigate and to ensure compliance.

(2) If the complaint cannot be settled by either party or by the Permanent Secretary, then the complaint can be referred by any party or the Permanent Secretary to the Mediation Services or the Employment Relations Tribunal or the Employment Relations Court, consistent with relevant procedures under the Employment Relations Promulgation 2007.

**PART 5 – PENALTIES**

*Fine and/or imprisonment*

23. Any person who contravenes any provision of these Regulations commits an offence, and unless otherwise provided, shall be liable on conviction, for a fine not exceeding \$20,000 or to imprisonment not exceeding 2 years or both.

**PART 6 – PROHIBITION OF MERCENARIES**

*Prohibition*

24.-(1) An employment agency or authorized person is prohibited from recruiting, using, financing or training of mercenaries.

(2) Any person who contravenes a provision of this regulation shall be guilty of an offence and shall on conviction be liable to a fine of \$20,000 or to a term of imprisonment of 2 years or both.

## PART 7 — REVOCATION

### *Revocation of Regulations and Schedules*

25. (1) Subject to Section **265** of the Promulgation, the following Regulations and Schedules, including Parts 9 to 12 of the Sugar Industry Act (Cap 206) are revoked -

Employment Regulations (e.g. Regulations 3, 4, 5 and 20);

First Schedule - General Form of Written Contract of Service (Regulation 4(1);

Second Schedule – Form of Written Batch Contract of Service (Regulation 4(2);

Third Schedule – Form of Foreign Contract of Service (Regulation 4(3);

Fourth Schedule – Form of Bond for Security for the Payment of Wages (Regulation 5);

Fifth Schedule – Scale of Fees (Regulation 20); and

All Orders, Legal Notices and Schedules made under the Employment Regulations of the Employment Act (Cap 92).

(2) By virtue of subregulation (1), the responsibilities of the Industrial Commissioner under Section 22 and the functions of the Sugar Industry Tribunal under Section 26 of the Sugar Industry Act (Cap 206) that relate to matters covered under the jurisdiction of the Employment Relations Promulgation 2007, are hereby revoked.

**DATED this ..... day of.....2008.**

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**Lekh Ram Vayeshnoi**

**Minister for Labour, Industrial Relations, Employment, Local Government, Urban Development and Housing**

**FIRST SCHEDULE  
(Regulation 7)**

**APPLICATION FOR AUTHORIZATION OF AN EMPLOYMENT AGENCY  
OR EMPLOYMENT BUSINESS**

(Regulation 7(1) of the Employment Relations (Employment Agencies) Regulations 2008)

1. Name of applicant/business/company ..... Name of authorised person.....
2. Address.....  
.....  
.....  
Telephone number ..... facsimile number .....  
E-mail address ..... website address .....
3. If the applicant is a company or body corporate or a body of persons, a list signed by the applicant showing the name, and address of each director or of each officer acting in a like capacity shall be annexed.
4. Value Added Tax registration number of applicant .....
5. Income Tax registration number of applicant .....
6. The address of the premises at which the business is to be carried out:  
.....
7. Activities proposed to be carried out:  
.....  
.....
8. Particulars of the competent person nominated by the applicant:  
Name: .....  
Address .....  
Date of birth .....  
Qualifications and experience:  
.....  
.....  
.....
9. Recent Police clearance and curriculum vitae of the applicant, competent person and substitute shall be attached. Certified true copies of certificates shall be produced.

9. Cash flow projections or business plan to be provided:

.....  
.....

10. Describe the procedures proposed to be followed by:

(i) applicants for employment:

.....  
.....

(ii) users:

.....  
.....

11. The following declaration is to be filled in and signed by applicant:

I declare that the particulars given above are to the best of my knowledge correct. I also declare that a notice of intention has been advertised in the following newspaper and *Fiji Republic Gazette* as shown below:

Name of newspaper Date of publication Date of publication in the *Fiji Republic Gazette*

.....  
.....

A copy of the page of the newspaper and *Fiji Republic Gazette* showing the advertisements are attached.

Signature of applicant ..... Date .....

**SECOND SCHEDULE  
(Regulation 8)**

**AUTHORIZATION TO OPERATE AN EMPLOYMENT AGENCY OR EMPLOYMENT  
BUSINESS**

(Regulation 8(2) of the Employment Relations (Employment Agencies) Regulations 2008)

Date: .....

An authorization is hereby being granted in terms of regulation 9 of the Employment Relations (Employment Agencies) Regulations 2008 to:

Name of authorized person: .....Identity Document number.....

Address.....

Value Added Tax registration number .....

Income Tax registration number .....

for carrying out the employment agency or employment business described below:

.....  
.....  
.....

from premises situated at:

Address of premises: .....

.....

This authorization is being issued subject to the provisions of Part 5 of the Employment Relations Promulgation 2007, and the Employment Relations (Employment Agencies) Regulations 2008, and to the following special conditions:

.....  
.....

The authorized person shall be required to display a copy of this authorization and of the Employment Relations (Employment Agencies) Regulations 2008 in a place on the premises where they can be easily seen and read by the persons who resort to the premises.

This authorization shall be valid for a period of one year from the .....

PERMANENT SECRETARY



**THIRD SCHEDULE**  
**(Regulation 13)**

**FORM OF FOREIGN CONTRACT OF SERVICE**

(Regulation 13(1) of the Employment Relations (Employment Agencies) Regulations 2008)

**Part I**

**AN AGREEMENT** made at ..... between ..... of..... (employer)  
and the person named in Part II as the worker on the conditions set forth in Part III.

**PART II**

**Particulars of Worker—**

(i) Name .....

(ii) Address.....

Particulars of worker's family (if accompanying him or her)---

(a).....(age and relationship)

(b).....(age and relationship)

(c).....(age and relationship)

(d).....(age and relationship)

**PART III**

**(A) General Conditions of Contract -**

1. Place of employment.....

2. Nature of employment.....

3. ---(a) Duration of contract -

for.....calendar months/weeks/days commencing

with the departure of the worker from .....

on.....

(b) The contract may only be terminated in accordance with the law and  
practice of the territory of .....

4.---(a) Rate of wages-

.....per month/week/day/hour.

Currency of wages

With the exception of the sum of .....which shall be remitted each week/month to.....of (address) .....on ..... of each week/month, wages shall be paid..... weekly/monthly during the duration of.....

(b) \*The employer shall in addition to cash wages, pay the worker a meal/transport/accommodation allowance of..... per month/week/day or a per diem in lieu of allowance. Such allowance or per diem shall be paid with effect from..... and shall cease on termination of the contract:

Provided that if food is not included in the cost of the transport provided by the employer in accordance with paragraph 5(c) the allowance shall continue to be paid for the duration of the journey to the worker's home.

(c) The employer shall at his or her own expense provide transport by..... for worker/and his or her family\* from the place where the contract was attested to the place where the contract is to be performed and on the termination of the contract the employer shall at his or her own expense provide transport by ..... to the worker's home.

(d) The employer shall, unless the worker has broken his or her contract of service or the contract is frustrated or its performance prevented by an act of God, provide his or her worker with work in accordance with the contract during the period for which the contract is binding, on a number of days equal to the number of working days expressly or impliedly provided for in the contract, and if the employer fails to provide work as aforesaid he or she shall pay to the worker, in respect of every day on which he or she shall so fail, wages at the same rate as if the worker had performed a day's work.

6. \*The employer shall at all times, at his or her own expense provide reasonable housing accommodation for the worker/and his or her family\*at or near to place of employment.

(Where the employer elects not to provide housing accommodation, he or she must pay the worker such sufficient sum, as rental, in addition to his or her wages, as will enable the worker to obtain reasonable accommodation.)

7. The contract, except in so far as is inconsistent with its express terms, shall be subject to the provisions of the Employment Relations Promulgation 2007 and the Workmen's Compensation Act (Cap.94):

Provided that if there are in force at the place of employment laws in relation to labour standards and workers compensation more favourable to the worker than those in force in Fiji, the contract shall be subject to the provisions of the laws in force at the place of employment.

**(B) Other Conditions of Contract –**

In addition to the 'General Conditions of Contract' specified under paragraph (A) of Part III, the following additional conditions of contract shall also be provided by the employer –

1. Local Agent to have a valid Agency Agreement with parent Overseas Company;
2. Declaration of status of Overseas Company;
3. Local Agent to have a relevant Business Registration;
4. Local Agent to have a Business License from appropriate Local or Rural Authority;
5. Local Agent to have a Foreign Contract Authorization from the Permanent Secretary;
6. Local Agent to provide a Bond to the Labour Ministry as required under the Regulations;
7. Clear repatriation procedures in case of death, injury or abscondment to be in place;
8. Decent wages during on-the-job training overseas to be provided to the worker before actual contract employment commenced;
9. Appropriate Occupational Health and Safety (OHS) Policy to be designed and procedures to be implemented as part of contract compatible with Fiji's OHS legislation;
10. Effective OHS Committee or equivalent representation established by employer in workplace;
11. Effective OHS Risk Management system put in place by the employer to safeguard the worker;
12. Issuing of acceptable Personal Protective Equipment (PPE) to workers where relevant;
13. Employer to deliver appropriate OHS Training for the worker;
14. Granting of annual holiday return trip for the worker
15. Granting of annual leave, bereavement leave and sick leave provisions etc relative to the Employment Relations Promulgation 2007 and its subsidiary legislations;
16. Granting of special leave for voting in National Election;
17. Compulsory pre-departure Orientation and Counseling by the employer;
18. Employer to undertake pre-departure Training;
19. Employer to have in place clear hostage taking policy and procedures, where applicable;
20. Compulsory pre-departure Police Clearance for all workers;
21. Compulsory pre-departure medical examination to be compatible with contract content;
22. Essential pre-departure Clearance from the Disciplined Forces, where applicable; and
23. Post-Traumatic Stress management de-briefing and counseling on return.

**PART IV**

**I agree to abide by the conditions of this contract.**

.....

Signature of Employer

.....

Signature or thumb-print of Worker

Date ....., 20....

**PART V**

**I CERTIFY** that I have examined the person named herein as the worker, and that such person is physically and mentally fit to perform the work contemplated by this contract.

.....

Signature of Medical Officer

Date.....,20.....

**PART VI**

**I CERTIFY** that I have read over and explained this contract to both parties named therein as the worker and employer and that they, with full understanding of the meaning of the contract, and have voluntarily assented.

(ii)

.....

Signature of Attesting Officer

.....

Designation

Date....., 20.....

Notes –

A worker is required to be medically examined before his or her departure from Fiji.

Foreign contracts are required to be attested by the Permanent Secretary or a labour officer before the worker leaves Fiji;

**FOURTH SCHEDULE**  
**(Regulation 20)**

**SCHEDULE OF FEES**

An employment agency or employment business must not charge more than the fees set out below:

To list jobseekers on a database	Free
To secure jobseeker employment locally	a charge to be paid by the user
To secure jobseeker employment overseas	a charge to be paid by the user
To assist jobseeker with application	Free
To search an agency's database	\$1.13 per search.
For a print out from a database	56 c per page.
For additional services	Maximum of \$50 per hour or part thereof.

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