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Supplement to the Sierra Leone Gazette Vol. CXLXIII, No. 82
dated 10th November, 2022

OVERSEAS EMPLOYMENT AND MIGRANT WORKERS ACT, 2022

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No.



Sierra Leone

2022

A BILL ENTITLED

**Overseas Employment and Migrant Workers
Act, 2022**

Short title.

Being an Act to provide for the regulation of overseas employment, to provide for the protection of the rights and welfare of migrant workers and members of their families and to provide for other related matters.

[

]

Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires-

"business" means a trade, undertaking, operation or establishment, whether corporate or private;

"citizen" means a citizen of Sierra Leone as defined in the Citizenship Act, 1973 (Act No. 4 of 1973);

"Commissioner" means the Commissioner of Labour appointed by the Public Service Commission;

"departure" means the emigration of a citizen from Sierra Leone to a foreign country;

"dependent" means a spouse, mother, father, children, brother or sister, or any other household member who is financially dependent on a migrant worker;

"employer", means an overseas or a Sierra Leonean or an entity, who has employed a migrant worker;

"licence" means a licence granted to a person under subsection (1) of section 8;

"licensee" means a person granted a licence to engage in the recruitment of a citizen for the purpose of overseas employment under subsection (1) of section 8;

"migration" means the departure of a citizen from Sierra Leone for the purpose of employment in a trade or profession, in a foreign country;

"migrant worker" means a citizen who has migrated to a foreign country for the purpose of employment in a trade or profession and is staying in that country;

"migrant worker" means a citizen who, for wages -

- (a) is in the planning process to migrate for work or is departing to a foreign country for work;
- (b) is employed in a trade or profession in a foreign country; or
- (c) has returned to Sierra Leone -
 - (i) at the end of; or
 - (ii) without having completed, his tenure of employment in a trade or profession from a foreign country;

"Migration Unit" means a Unit established within the Ministry of Labour and Social Security;

"Minister" means the Minister responsible for labour and social security;

"Ministry" means the Ministry of Labour and Social Security;

"overseas employment" means the employment of a citizen in a foreign country;

"person" means a natural person, company, association of persons, partnership, firm, statutory or any other kind of body including their agents;

"recruitment" means the hiring of workers for overseas employment by an overseas or Sierra Leonean employer directly or through a recruitment agent, by means of a contract entered into orally or in writing, by enlistment of workers subsequent to publishing or circulating an advertisement for recruitment of workers;

"Rules" mean rules made under this Act.

Application. 2. This Act shall apply to overseas employment and migrant workers.

Non application. 3. This Act shall not apply to-

(a) a person employed by the Government of Sierra Leone or of a local authority, who, with the permission from the competent authorities, is going overseas-

(i) on official duty;

(ii) for the purposes of education or training;

(iii) for employment with an international or multilateral organisation;

(b) a student, a trainee, or a tourist;

(c) a person emigrating at self-initiative for employment in a foreign government, international or multilateral organisation;

(d) a person emigrating to a foreign country for the purpose of-

- (i) medical treatment and care;
- (ii) religious function; or
- (iii) business or investment purposes;
- (e) a dependent of any citizen employed overseas or lawfully staying overseas; or
- (f) a person who initially emigrated for education and later accepted employment in a foreign country; and
- (g) a person emigrating for a purpose which is not in conflict with this Act.

PART II - RECRUITMENT OF MIGRANT WORKERS, LICENCE ETC.

4. The Ministry shall have a Migration Unit which shall, subject to the direction and approval of the Minister, regulate all activities relating to the recruitment and emigration of workers from Sierra Leone for the purpose of overseas employment.

Migration Unit.

5. (1) A person shall not engage in the recruitment of a citizen for the purpose of overseas employment unless on a licence issued under this Act.

Recruitment without licence prohibited.

(2) A person who engages in the recruitment of a citizen without a valid licence in contravention of subsection (1) commits an offence and shall be liable on conviction to a fine not less than 60 months national minimum wage or to a term of imprisonment of not less than 5 years or to both such fine and imprisonment.

6. (1) A person shall not be eligible to apply for a licence for the recruitment of a citizen for the purpose of overseas employment under section 5 unless he -

Eligibility for recruitment licence.

- (a) is a Sierra Leonean;
- (b) has attained the age of 21 years;
- (c) is of sound mind;
- (d) is not insolvent;
- (e) has not been convicted of human trafficking, money laundering, international terrorism or any other serious crime; and
- (f) has not been convicted of a criminal offence involving immorality or dishonesty, and a period of 2 years has not elapsed since the completion of the punishment.

(2) An application for a licence to engage in the recruitment of a citizen under subsection (1) may be made in favour of a company, association of persons, partnership, firm, statutory or any other kind of body if in case of -

- (a) a company, it has not less than 60% shares of that company; and
- (b) a partnership, firm or any other legal entity, 60% capital or ownership in that partnership firm or legal entity is owned or controlled by Sierra Leonean.

Application
for licence.

7. (1) An application for a licence to engage in the recruitment of a citizen under this Act shall be made in writing to the Commissioner of Labour for the approval of Minister and shall be in such form as the Minister may by statutory instrument prescribe.

(2) An application under subsection (1) shall be accompanied by-

- (a) certified copy of the applicant's trade licence;
- (b) certified copy of the certificate of payment of tax, prescribed fee, including a copy of the Tax Identification Number;
- (c) valid National Social Security and Insurance Trust clearance certificate;
- (d) bank statement indicating financial solvency;
- (e) police clearance certificate;
- (f) in case of a company, its Memorandum of Association, Articles of Association and certificate of incorporation;
- (g) evidence that the surety-money has been paid by the applicant to the Migration Unit;
- (h) an affidavit declaring that while sending migrant workers overseas, fees and other amounts in excess of the ceiling prescribed by the Minister under this Act, shall not be charged; and
- (h) an undertaking stating that while sending workers overseas, false promises shall not be made to any person and that fraudulent actions shall not be practiced.

8. (1) Upon receipt of an application under section 7, a licence to engage in the recruitment of a citizen for the purpose of overseas employment shall be granted to an applicant. Grant or refusal of application.

(2) An application for a licence to engage in the recruitment of a citizen for the purpose of overseas employment shall not be granted where the conditions under subsection (2) of section 7 have not been fulfilled.

(3) Where an application is refused under subsection (2), the applicant may apply to the Minister for review of the decision within such time as the Minister may by statutory instrument prescribe.

Duration
and renewal
of licence.

9. A licence issued under subsection (1) of section 8 shall remain valid for a period of 12 months from the date of issue and shall, upon the payment of the prescribed fee, be renewed upon the submission of the following to the Commissioner -

- (a) a report of the business activities of the employer in the previous year;
- (b) an audited financial statement of the business of the employer;
- (c) valid National Social Security clearance certificate of the employer; and
- (d) evidence of payment of the prescribed renewal fee.

Suspension
and
cancellation
of licence.

10. (1) A licence issued under subsection (1) of section 8 shall be suspended or cancelled where -

- (a) the licence was obtained by fraudulent means;
- (b) the conditions of licence were violated;
- (c) the licence was not renewed within the prescribed time;
- (c) this Act or regulations relating to the recruitment of citizens for overseas employment is violated;

- (d) the person to whom a licence has been issued has been convicted of a criminal offence involving fraud, dishonesty, or human trafficking;
- (e) the recruitment of a citizen for the purpose of overseas employment is not in the interest of the citizen; or
- (f) in case of a company, organisation, a partnership, firm or any other legal entity, the licensee is duly wound up or dissolved.

(2) Where a licence is suspended or cancelled under subsection (1), the licensee may, within 30 days of such suspension or cancellation, appeal to the Minister for a review and the Minister shall review the case within 60 days of the appeal and the decision of the Minister shall be final.

(3) The Minister shall under subsection (1) take appropriate measures to protect the rights and interests of those persons who may have been enlisted for recruitment related services with that recruitment agent.

11. Notwithstanding anything contained in this Act, the Minister may, by notification published in the *Gazette*, revoke a licence issued under subsection (1) of section 8, if he considers such revocation of the licence to be in the public interest. Revocation of licence.

12. (1) Where a licence is cancelled under section 10, the Minister may direct that the whole or part of the surety-money paid by the licensee be confiscated for the purpose of compensating an affected migrant worker or paying the cost of repatriation of a migrant worker who was sent overseas under that licence. Forfeiture of surety.

(2) The Minister shall where the surety-money under subsection (1) is inadequate to compensate the affected migrant worker or pay the cost of repatriation, direct the person whose licence has been cancelled to pay an appropriate amount of compensation or pay the cost of repatriation of a migrant worker who was sent overseas under the licence.

(3) Surety-money paid by the licensee under this Act shall be returned to the licensee at the expiration of the validity period of the licence or to his estate at the death of the licensee.

Branch
offices.

13. A licensee may with the approval of the Minister open one more branch offices.

Duties of
licensee.

14. A licensee who recruits a migrant worker shall be responsible-

- (a) for the protection of migrant worker;
- (b) for the registration of the migrant worker under section 16;
- (c) for obtaining migration clearance for the migrant worker under section 17;
- (d) to ensure the employment of the migrant worker;
- (e) to ensure good workplace conditions for the migrant worker in accordance with the terms and conditions of his employment contract and to maintain communication with the employer for that purpose;
- (f) to ensure that the migrant worker is medically fit before departure; and
- (g) to discharge any other duties as the Minister may by statutory instrument prescribe.

15. (1) A licence issued under this Act is not transferable. Transfer of licence, change of address, etc.
- (2) Where a licensee is a company, partnership, firm, or any other legal entity, a member shall not transfer individual share without the approval of the Minister.
- (3) A licensee shall not change the address of his office without the approval of the Minister.
- (4) Where a licensee changes the address of his office under subsection (3), the new address shall be published in prominent newspapers and a copy thereof submitted to the Migration Unit.

PART III—REGISTRATION OF MIGRANT WORKERS,
MIGRATION CLEARANCE, etc.

16. (1) The Migration Unit shall maintain a Register of Migrant Workers. Registration of migrant Workers.
- (2) The Register of Migrant Workers under subsection (1) shall contain such information as the Minister may, by statutory instrument prescribe, including-
- (a) the trade or profession of the migrant worker; and
 - (b) the passport details of the migrant worker;
 - (c) details of guarantor of migrant worker;
 - (d) police clearance for migrant worker;
 - (e) medical report of the migrant worker;
 - (f) record of birth certificate indicating that the migrant worker has attained the age of 18 and over.

Migration
clearance.

17. (1) A licensee shall not take a citizen overseas for employment unless -

- (a) the citizen has attained age 18 years and above;
- (b) he obtains a migration clearance issued by the Migration Unit.

(2) A migration clearance under subsection (1) shall not be issued, unless the licensee produces -

- (a) a valid licence to engage in the recruitment of a citizen for the purpose of overseas employment granted under subsection (1) of section 8;
- (b) evidence that the migrant worker has been registered in the Register of Migrant Workers under subsection (1) of section 16;
- (c) an employment contract, work permit or a no objection certificate, a valid visa issued by the appropriate authorities of the country of employment.

(3) Where a migration clearance is obtained under subsection (1), the Migration Unit shall issue a migration clearance card bearing information concerning a migrant worker, including biometric details, employment contract, trade or profession, journey or destination.

Place of
departure.

18. A citizen shall not depart from Sierra Leone for overseas employment unless at such place as the Minister may, by statutory instrument prescribe.

19. (1) Where the Minister is satisfied that the migration of a citizen to a particular country shall be against the interest of the citizen and his family or that his health or safety may be jeopardised in that country, the Minister may, by order, restrict the migration to that country.

Protection of
migrant
workers and
their families

(2) The Minister may, in the interest of the public or for preservation of human resources, temporarily restrict migration of a Citizen or a category of citizens to another country for the purpose of employment.

(3) The Minister may enter into agreement with another country for the purpose of -

- (a) permitting the inspection of facilities provided for migrant workers, to ensure that conditions at work are compatible with international standards;
- (b) increasing opportunities for overseas employment
- (c) improving management of migration, repatriation and reintegration of migrant workers;
- (d) ensuring the welfare of migrant workers including members of their families;
- (e) protection of the rights, safety and human dignity of migrant workers;
- (f) ensuring the right of migrant workers' access to information, travelling documents and the right to redress if their rights are violated; and

- (g) ensure that the labour laws of both country of origin and destination shall be respected by both parties.

(4) The Minister may, for the purpose of the welfare and development of migrant workers and their families, undertake financial and welfare programmes, including bank loans, tax-exemptions, saving schemes, investment opportunities and other facilities.

PART IV - EMPLOYMENT CONTRACT

Employment
contract.

20. (1) A licensee shall cause to be concluded an employment contract between a recruited migrant worker and an employer.

(2) An employment contract under subsection (1) shall -

- (a) contain conditions relating to the migrant worker's -
- (i) wages;
 - (ii) accommodation facilities;
 - (iii) duration of employment;
 - (iv) compensation amount in the event of death, occupational disease or injury; and
 - (v) cost of migration to and return from the foreign country;
 - (vi) vacation leave;
 - (vii) full insurance including medical and life; and

- (b) be terminated by either party when there is a breach of a term of the contract of employment.

(3) A licensee who concludes an employment contract between a migrant worker and an overseas employer under subsection (1) shall be deemed to be a representative of the overseas employer and the licensee and the overseas employer shall be liable jointly and severally for any contravention of this Act.

PART V - MIGRANT WORKERS WELFARE AGREEMENTS AND PROGRAMMES

21. The Minister may enter into agreement with another country for the purpose of -

Migrant workers welfare agreements.

- (a) permitting the inspection of facilities provided for migrant workers, to ensure that conditions at work are compatible with international standards;
- (b) increasing opportunities for overseas employment;
- (c) improving management of the migration, repatriation and reintegration of migrant workers;
- (d) ensuring the welfare of migrant workers including members of their families;
- (e) protection of the rights, health, safety and human dignity of migrant workers; and
- (f) ensuring the protection of the right of migrant workers to information and the right to redress if their rights are violated.

Financial
and welfare
programmes.

22. The Minister may, for the purpose of welfare and development of migrant worker and the members of his family, undertake financial and welfare programmes, including bank loans, tax-exemptions, saving schemes, investment opportunities and other facilities.

PART VI—OVERSEAS EMPLOYMENT AND MIGRANT
WORKERS COMMITTEE

Overseas
Employment
and Migrant
Workers
Committee.

23. (1) There shall be an Overseas Employment and Migrant Workers Committee which shall consist of the Commissioner who shall be Chairman and the following other members -

- (a) a representative from the Ministry of Labour and Social Security, not below the rank of director;
- (b) a representative from the Ministry of Foreign Affairs and International Cooperation, not below the rank of director;
- (c) a representative from the Ministry of Finance not below the rank of director;
- (d) a representative from the Ministry of Social Welfare, not below the rank of director;
- (e) a representative from the Ministry of Internal Affairs, not below the rank of director;
- (f) a representative from the Ministry of Youth Affairs, not below the rank of director;
- (g) a representative from the Ministry of Health and Sanitation, not below the rank of director;
- (h) a representative from the Ministry of Local Government and Rural Development, not below the rank of director;

- (i) a representative from the Department of Immigration, not below the rank of director;
 - (j) a representative from the Office of National Security, not below the rank of director;
 - (k) a representative from the National Airport Authority, not below the rank of director;
 - (l) a representative from the Sierra Leone Employers Federation, not below the rank of director;
 - (m) a representative from the Sierra Leone Labour Congress not below the rank of director;
 - (n) a representative from the Transnational Organised Crime Unit, not below the rank of director;
 - (o) a representative from civil society organisation, specialising in labour matters, not below the rank of director;
 - (p) a representative from the Sierra Leone Overseas Recruitment Agencies Association, not below the rank of director;
- (2) The committee shall be responsible to -
- (a) advise the Minister on matters relating to overseas employment and migrant workers; and
 - (b) perform any other function, subject to this Act, as may be assigned to it by the Minister.

(3) The Committee shall meet, at least once every 3 months, for the dispatch of its functions, at such time and place as the Chairman may determine.

(4) The Chairman shall preside at all meetings of the Committee and in his absence, a member elected by the members present, from among their number, shall preside.

(5) The quorum for a meeting of the Committee shall be 7.

PART VII - OFFENCES, PENALTIES AND TRIAL

Sending
migrant
workers.

24. A person who -

- (a) sends or assists to send a citizen overseas for the purpose of employment or enters into contract on behalf of another person without a licence;
- (b) receives or attempts to receive any sum of money or a payment in any other form by giving a person a false undertaking to provide overseas employment;
- (c) withholds without any valid reason, the passport, visa, and migration related documents of a migrant worker; or
- (d) makes a person fraudulently migrates or induces a person to enter into a contract for migration by giving a false promise of high wages, benefits and facilities, or engages in fraudulent activities in any way with regard to a migrant worker,

commits an offence and is liable upon conviction to a fine not less than 60 months national minimum wage or to a term of imprisonment of not less than 5 years or to both such fine and imprisonment.

25. A person who publishes, without the approval of the Minister, an advertisement for the purpose of recruitment for overseas employment, commit an offence and is liable upon conviction to a fine not less than 17 months national minimum wage or to a term of imprisonment of not less than one year or to both such fine and imprisonment. Publishing unauthorised advertisement.
26. A person who, by unlawful means, obtains demand notes, visa or work permit for overseas employment from an employer in a foreign country, commits an offence and is liable on conviction to a fine not less than 84 months national minimum wage or to a term of imprisonment of not less than 7 years or to both such fine and imprisonment. Unlawful collection of demand note, visa or work permit etc.
27. A person who arranges or assists in the departure of a citizen for overseas employment from Sierra Leone through a place other than a place of departure prescribed by the Minister under section 18, commits an offence and is liable upon conviction to a fine not less than 117 months national minimum wage or to a term of imprisonment of not less than 10 years or to both such fine and imprisonment. Using unlawful means for departure arrangements.
28. A person who commits an offence for which no specific penalty is provided under this Act, is liable upon conviction to a fine not less than 17 months national minimum wage or to a term of imprisonment of not less than 6 months or to both such fine and imprisonment. Penalty for other offences.
29. A person who knowingly or willfully aids, abets or instigates another person to commit an offence under this Act, commits an offence and is liable upon conviction to the same punishment as the principal offender. Abetting or instigating an offence.
30. (1) Notwithstanding anything contained in the Criminal Procedure Act, (Act No. 32 of 1965), offences under this Act shall be tried by the High Court. *Trial.

(2) A trial under subsection (1) shall be concluded within 6 months from the date of first hearing.

(3) Where a trial under subsection (1) does not conclude within the timeframe under subsection (2), the Judge may, extend such time for not more than 2 months.

(4) A Judge under subsection (3) shall send a progress report to the Chief Justice stating the reason for such extension.

PART VII—MISCELLANEOUS

Complaints
to Minister.

31. (1) A person aggrieved by a decision under this Act, other than a decision of the High Court, may file a complaint with the Minister.

(2) On receipt of a complaint under subsection (1), the Minister shall investigate the complaint and complete such investigation within 30 working days and dispose of the complaint within 3 months from the date of completion of the investigation.

Rules.

32. (1) The Minister may, by statutory instrument, make such rules as he may consider necessary or expedient for giving effect to this Act.

(2) Notwithstanding the generality of subsection (1) the Minister may make rules relating to -

- (a) licence fees;
- (b) classification of licences; and
- (c) licensee recruitment fees.

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to provide for the regulation of overseas employment, to provide for the protection of the rights and welfare of migrant workers and members of their families and to provide for other related matters.

This Bill is divided into seven parts-

Part I - Preliminary—provides for the interpretation of certain terms and expressions in the Bill.

Part II - Recruitment of migrant workers, licence, etc.—provides for the procedure for obtaining licence and the recruitment of migrant workers.

Part III - Registration of migrant workers, migration clearance, etc.—deals with the obligation of a licensee to register migrant workers and to obtain migration clearance issued by the Migration Unit for migrant workers before departure for overseas employment. It also provides that the Minister may restrict the migration of a citizen for overseas employment if he is satisfied that such migration would be against the interest of the citizen or that his health or safety may be jeopardised in a foreign country.

Part IV - Employment contract - deals with the employment contract between the recruited migrant worker and the employer. A licensee who concludes an employment contract between a migrant worker and an overseas employer is deemed to be a representative of the overseas employer is jointly and severally liable with an overseas employer for any contravention of this Act.

Part V - Migrant workers welfare agreements and programmes - makes provision for the Minister to enter into an agreement with a foreign country for the purpose of-

- (a) permitting the inspection of facilities provided for migrant workers to ensure that conditions at work are compatible with international standards;
- (b) increasing opportunities for overseas employment;

- (c) improving management of the migration, repatriation and reintegration of migrant workers;
- (d) ensuring the welfare of migrant workers including members of their families;
- (e) protection of the rights, safety and human dignity of migrant workers; and
- (f) ensuring the protection of the right of migrant workers to information and the right to redress if their rights are violated.

Part VI - Overseas Employment and Migrant Workers Committee- recognizes the existence of the Overseas Employment and Migrant Workers Committee and describes its functions.

Part VII - Offences, penalties and trial - prescribes penalties for offences committed under this Act. It also provides that notwithstanding anything contained in the Criminal Procedure Act, (Act No. 32 of 1965), offences under this Act shall be triable by the High Court.

Part VIII - Miscellaneous- confers power on the Minister to make Rules for the purpose of giving effect to the provisions of this Act. It also provides that a person aggrieved by a decision other than the decision under this Act may file a complaint with the Minister.

MADE this 13th day of October, 2022

ALPHA OSMAN TIMBO ,
Minister of Labour and Social Security,

FREETOWN
SIERRA LEONE.