THE LABOUR INSTITUTIONS ACT, 2007 (SECTIONS 55-60) AND REGULATIONS ON PRIVATE RECRUITMENT AGENCIES

ABRIDGED VERSION

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EXECUTIVE SUMMARY

Kenya's vision 2030 identifies Human Resource Development and Labour Employment as integral Foundations for National Transformation. The Employment policies and regulations are therefore invaluable tools in facilitating the creation of decent, productive and sustainable employment opportunities. The country has instituted regulatory frameworks that provides a roadmap to address impacts and challenges of migration and are informed by relevant international, regional and national frameworks including the ILO Conventions, the regulations and Acts on Labour Migration, the Kenya Vision 2030, the Big 4 agenda, the Sustainable Development Goals (SDG), the Global Compact for Migration (GCM), Migration Governance Framework, the African Union Migration Framework and the Intergovernmental Authority on Development (IGAD) regional migration policy framework aimed at promoting safe, orderly and humane migration.

The National Employment Authority (NEA) was established in April, 2016 by an Act of Parliament (the National Employment Authority Act 2016) which effectively provided the legal framework and mandates for its operations. The Act provides for a comprehensive institutional framework for employment management; to enhance employment promotion interventions; to enhance access to employment for youth, minorities and marginalized groups and for connected purposes. NEA therefore plays a big role towards the realization of the aspirations of Vision 2030 and the Sustainable Development Goals (SDG) through Actions to support the creation of globally competitive and adaptive human resource base in which every Kenyan enjoys decent and gainful employment.

TABLE OF CONTENTS

EXECUTIVE SUMMARY i
TABLE OF CONTENTS ii
DEFINITION OF TERMS iii
LIST OF TABLES iv
LIST OF FIGURES iv
LIST OF ACRONYMMS iv
INTRODUCTION 1
LABOUR INSTITUTIONS ACT, 2007 2
REGISTRATION OF EMPLOYMENT AGENCIES 2
DUTIES OF PERSONS OPERATING EMPLOYMENT AGENCIES 3
POWERS OF EMPLOYMENT OFFICERS 4
OFFENCES UNDER THE ACT 5
GENERAL PENALTY 5
REGULATIONS 5
LABOUR INSTITUTIONS (PRIVATE EMPLOYMENT AGENCIES) REGULATION, 2016 6
REGISTRATION OF PRIVATE RECRUITMENT AGENCIES 6
REQUIREMENTS FOR REGISTRATION OF PRIVATE RECRUITMENT AGENCIES 6
EMPLOYMENT ACT, 2007 (EMPLOYMENT MANAGEMENT) 12
NOTIFICATION OF VACANCIES 12
NOTIFICATION OF FILLING OR ABOLITION OF POST 12
NOTIFICATION OF TERMINATION OF EMPLOYMENT 12
FILLLING OF ANNUAL EMPLOYEE RETURNS 13
REQUENTLY ASKED QUESTIONS 14
CONCLUSION 17

DEFINITION OF TERMS

Employment Agency;	any person, company, institution, agency or any organization that helps find jobs for persons seeking employment or assists employers in finding persons to fill positions that are open.
Registration;	grant of authority in writing to a private employment agency to recruit Kenyans to work locally or abroad.
Director ;	the Director of Employment appointed under section 30 of the Labour Institutions Act, 2007;
Foreign employment;	employment of Kenyan workers outside Kenya under a valid contract of employment;
Manager;	a person who heads, supervises or controls the operations of a private employment agency or branch thereof;
Principal;	an employer hiring Kenyans for employment through a registered employment agency;
Application;	a formal request to be considered for or to be allowed to conduct recruitment activities submitted to the National Employment Authority.
Employment record;	any record required to be kept by an employer
Duties;	a task or action that one is required to perform as part of one's job.
Powers ;	the ability or capacity to do something or act in a particular way.
Offence ;	a breach of a law or rule; an illegal act.
Regulations;	a rule or directive made and maintained by an authority.

LIST OF TABLES

Table 1: Fees and Charges (Second Schedule of Legal Notice No. 110) 10

LIST OF FIGURES

Figure 1: Process for Licensing a Private Recruitment Agency _____ 8
Figure 2: Process for Revoking a License of a Private Recruitment Agency _____ 9

LIST OF ACRONYMMS

ABN	Acknowledgement of Birth Notification
ELRC	Employment and Labour Relations Court
GCM	Global Compact for Migration
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organization
IMS	Integrated Management System
IOM	Organization for Migration
NEA	National Employment Authority
PRA	Private Recruitment Agency
SDG	Sustainable Development Goals

INTRODUCTION

Private Recruitment Agencies (PRAs) have emerged as key actors in the labour market. The ILO Convention No. 96 recognized the role played by fee charging private employment agencies and encouraged countries not only to recognize them but also support their role. ILO Convention Number 181 on private employment agencies went further to make provisions for private employment agencies to operate and charge fees and ensure that workers right are protected. . Further, Convention 122 on national employment policies requires member states to pursue an active policy designed to promote full, productive and freely chosen employment.

Kenya has put in place supportive regulatory frameworks through legislation to manage Private Recruitment Agencies (PRAs) and Labour Migration in general. First, the NEA Act 2016, provides for registration of PRAs and notification, Secondly, the Labour Institutions Act, 2007, make provisions on the management of PRAs. Additionally, the Labour institutions (Private Employment Agencies) Regulations 2016, was developed to streamline the registration and operations of Private Recruitment Agencies (PRAs). More so the Employment Act 2007, makes provisions on Labour Administration, employment management as well as foreign contract of service. Lastly, the Security Amendments of 2014 established an Intermenstrual Committee that applies strict measures in the vetting of PRAs and accreditation process.

The government's ongoing initiatives for the National Labour Migration Policy and National Labour Migration Bill have incorporated ideas from key stakeholders in migration management which once adopted will promote safe and ethical recruitment practices.

LABOUR INSTITUTIONS ACT, 2007

Part VII **(Sections 55-60)** of Kenya's Labour Institutions Act of 2007 has provisions to regulate the activities of private employment agencies that engage in internal and cross-border recruitment. These include registration requirements and process, obligations on agency directors, powers of employment officers, recruitment-related offences and appeals procedures as well as the regulations.

REGISTRATION OF EMPLOYMENT AGENCIES

In order to operate legally, Section 55 of the Act stipulates that all employment agencies or bureau are required to seek and obtain government approval prior to sending Kenyan Citizens for employment outside Kenya and for employment of foreigners.

The Director of Employment is the custodian of the register containing all registered employment agencies

Application for registration of employment agencies is made to the Director in the prescribed form. They are then vetted by the Inter-ministerial Committee.

The inter-ministerial committee is established under the Security Laws(Amendment)Act, 2014 S54A comprising officers from:-

a) the Ministry responsible for immigration;
b) the Ministry responsible for labour;
c) the Ministry responsible for security;
d) the Attorney-General; and
e) the Ministry responsible for foreign affairs.

The main functions of the committee include;

a) advising the Cabinet Secretary responsible for labour on matters related to work permits in relation with security issues; and
b) vetting the application for registration made by employment bureaus and agencies

A certificate of registration is issued by Director of Employment after successful vetting by the inter-ministerial committee and upon satisfaction that: -

a) The vetting process has been satisfied
b) There is capacity to own and manage an employment agency
c) There is suitability of the designated business premises and any other relevant consideration

Any refusal by the inter- ministerial Committee to grant an application must be supported by reasons for such decision. The committee may cancel the registration or vary the terms or conditions of any certificate of registration. Any person aggrieved by the decision of the Director under the enabling section may appeal against such decisions to the Employment and Labour Relations Court.

Specification of the certificate of registration

A certificate of registration shall specify—

(a) the name of the person to whom the certificate is issued;
(b) the premises at which the business is to be conducted;
(c) the period for which the certificate shall be in force;
(d) the area, including any foreign country, in respect of which the business may be conducted;
(e) the class or classes of person or employment in respect of which the business may be conducted; and
(f) any conditions subject to which the business may be conducted.

DUTIES OF PERSONS OPERATING EMPLOYMENT AGENCIES

Under Section 57, Every person who operates or is in charge of an employment agency is required to do the following;

a) Retain any record which is statutorily required for at least three years, subsequent to the occurrence of the event recorded and produce them for inspection upon demand by an employment officer made at any reasonable time
b) Furnish to the Director such statistical information at such times and such manner as may be prescribed

c) Not to **charge and receive** not more than the amount prescribed for any particular area and class of business.

POWERS OF EMPLOYMENT OFFICERS

Section 58 allows without notice and at reasonable time within the day, an employment officer to enter upon the premises of an employment agency for the purposes of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary to the prevention, investigation or detection of an offence in the Act.

In such instances an employment officer holds the power to:

a) Demand the production of books or document of employment
b) Examine and make extracts from copies of the books or documents
c) Demand explanations for the entries in those books or documents
d) Seize the books or documents which may constitute evidence of an offence committed

Additionally, Section 36 allows Employment officer, for the purposes of collecting labour market data, to exercise the powers conferred upon him as follows:-

(a) require the production of wage sheets or other employment records kept by an employer, and records of payments made to outworkers by persons giving out work, and any other such records as are required by any labour law or wages order to be kept by employers, and to inspect and examine those sheets or records and copy any material part thereof;
(b) inspect and copy any material part of any list of outworkers kept by an employer or other person giving out work to outworkers; and
(c) at all reasonable times, require an employer to produce an employee employed by him and a document relating to the employment of any employee, and may require an employee to produce any document relating to the employee's employment;
(d) examine and make copies of a register, record, book or other document relating or appearing to relate to employment, and seize any register, record, book or other document which he has reasonable ground to believe to be or to contain evidence of an offence under this Act or any other labour law

NB

Where an employment officer seizes a register, record, book or other document in the performance of the employment officers' duties, the employment officer shall give to the employer or his representative a receipt in respect of such register, record, book or other document in the prescribed form.

OFFENCES UNDER THE ACT

Section 58(5) to 59 provides for the acts that constitute to offences which include the following;

a) Making a false statement in representation or giving evidence to or before an employment officer investigating a case under this section which that person knows to be false is an offence
b) Refusing to answer any question put forward by an employment officer
c) Non-compliance with employment officer under this section; or
d) Hindering an employment officer in the exercise of his functions under this section
e) Non-compliance with any part of the Act
f) Non-compliance with the terms and conditions of any certificate of registration

GENERAL PENALTY

A person, who contravenes any provision of this Act for which no penalty is specifically provided shall be liable to a fine not exceeding fifty thousand shillings or, to imprisonment for a term not exceeding three months or to both.

REGULATIONS

Section 60 gives the Minister the power to make **regulations** necessary for the purpose of giving effect to, or for the better administration of the Act. Regulations made may provide for the form in which an application is to be made for:-

a) a certificate of registration;
b) the fee to be paid for a certificate of registration or copies thereof;
c) the fees which may be charged in respect of the business of an employment agency;
d) the surrender of certificates of registration where the conditions thereof are to be varied or where such certificates are to be cancelled;
e) the records to be kept in respect of an employment agency;
f) the qualification of the proprietor or persons running the employment agency;
g) and the nature and form of security to be given by the proprietor of the employment agency for any recruitment of employees under this Part.

LABOUR INSTITUTIONS (PRIVATE EMPLOYMENT AGENCIES) REGULATION, 2016

In further implementing the Labour Institutions Act, 2007 (Sections 55-60), the regulations on Private Recruitment Agencies were developed. These Regulations were cited as the Labour Institutions (Private Employment Agencies) Regulations, 2016.

REGISTRATION OF PRIVATE RECRUITMENT AGENCIES

It is a legal requirement for all Private Recruiting Agencies to be vetted and accredited by the Ministry of Labour and Social Protection and issued with a license from the National Employment Authority (NEA) before they can recruit Kenyans to work locally or abroad.

REQUIREMENTS FOR REGISTRATION OF PRIVATE RECRUITMENT AGENCIES

An applicant requiring registration to operate a private employment agency is required to submit an online application through www.neaims.go.ke

(A) **Application requirements**:

1. An application letter for registration as a private Employment Agency.
2. A certified copy of the certificate of Incorporation as a Limited Liability Company.
3. Company Articles and memorandum of association
4. Company CR12 for the current year
5. Must have a minimum share capital of Ksh. 5,000,000 (Five Million).
6. A copy of county Government License(s).
7. Company Tax compliance certificate for the current year.
8. Registered and fully equipped physical office covering not less than 225 square feet. NB: lease/Tenancy agreement must be valid and authenticated by a Commissioner for Oaths.
9. Company director(s) must submit the following documents:
    a) A copy (ies) of ID card(s);
    b) Two Passport Size Photos;
    c) Current Police Clearance Certificate from the Directorate Criminal Investigations;
    d) A valid work Permit in case of any Foreign Director(s); and

e) Certified academic certificates (Minimum 'O' level certificate) and must be certified by the Directorate of Quality Assurance, Ministry of Education.

10. Company's manager must submit the following documents:
    a) A degree certificate in business related field from a recognized university in Kenya, certified by the Directorate of Quality Assurance, Ministry of Education,
    b) An appointment letter signed by the employer with clear terms of employment and acceptance, and
    c) Copy of ID.
11. Be a member of a recognized association of private employment agencies; and
12. Make a commitment to observe the provision of the existing code of conduct for recruitment agencies.

Figure 1: Process for Licensing a Private Recruitment Agency

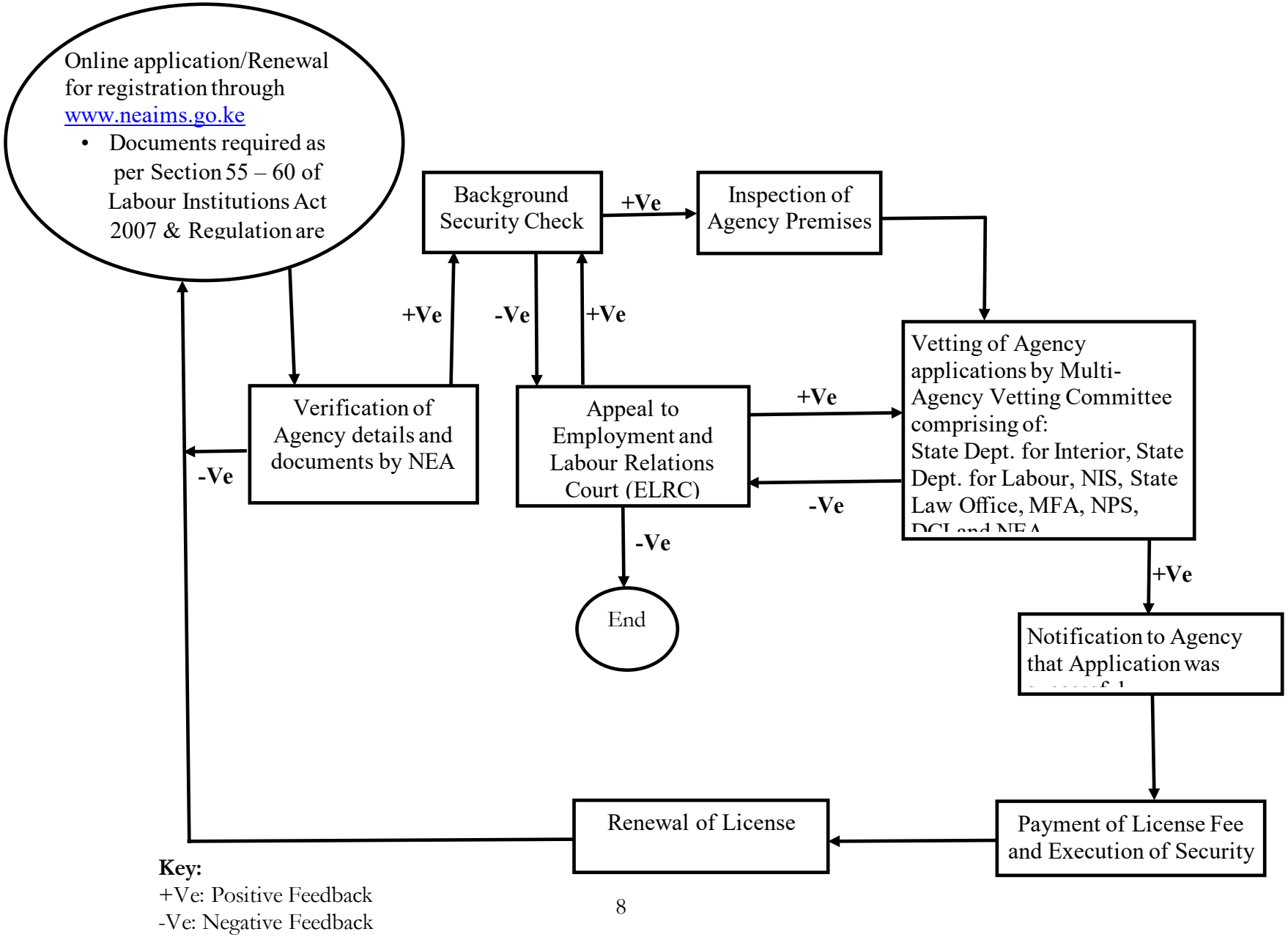
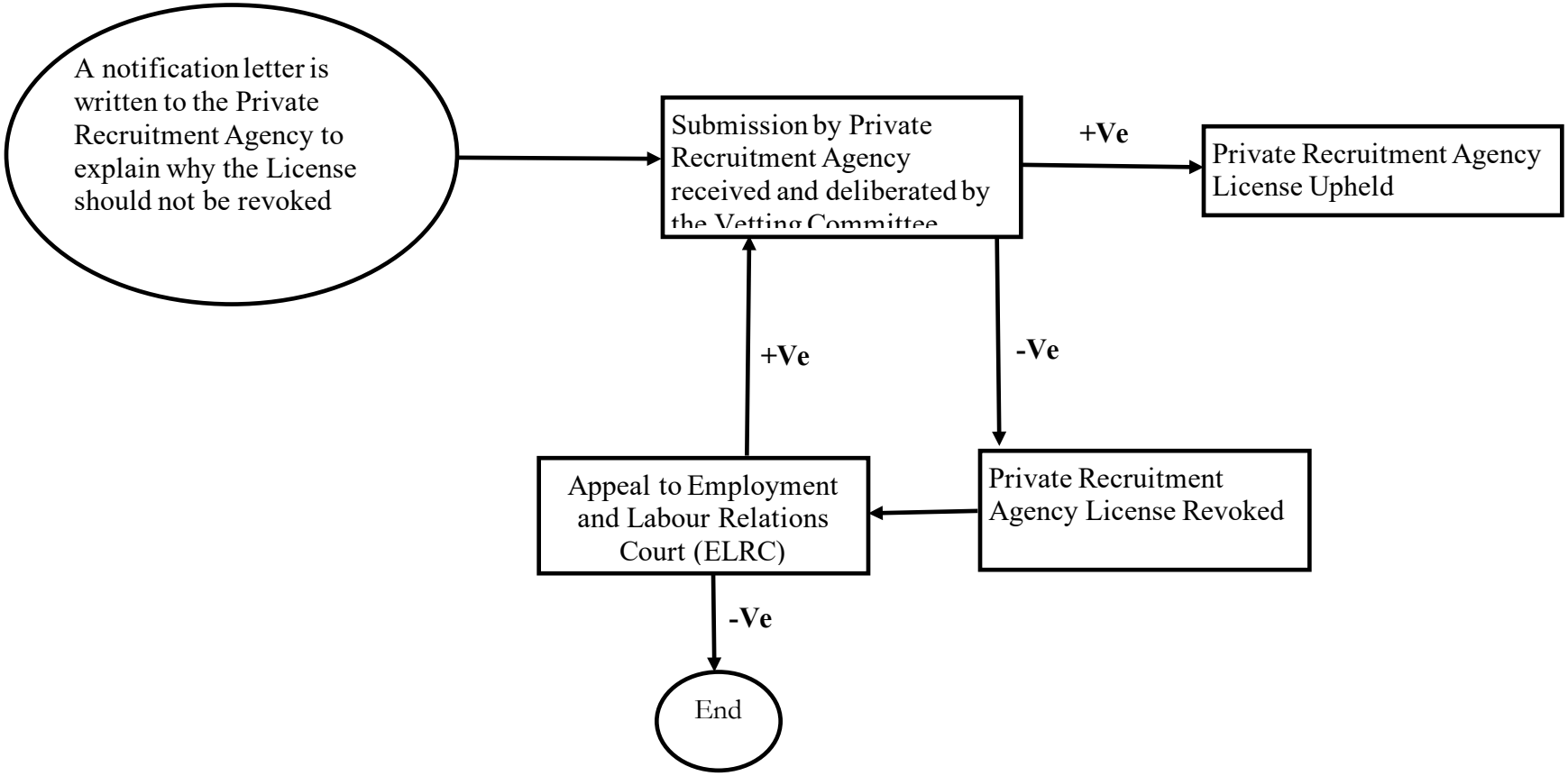


Figure 2: Process for Revoking a License of a Private Recruitment Agency



Key:
+Ve: Positive Feedback
-Ve: Negative Feedback

(B) Issuance of registration certificate

If the Director is satisfied that an applicant qualifies to be registered, the Director shall issue the certificate of registration upon: -

a) Payment of full registration fee as prescribed in the Second Schedule of Legal Notice No. 110.

Table 1: Fees and Charges (Second Schedule of Legal Notice No. 110)

S/n	Description of fee	Amount of fee (Ksh)
1	Fee for an initial application for the registration of an agency dealing with foreign recruitment	500,000
2	Fee for an initial application for the registration of an agency dealing with local recruitment/ for Kenyan markets	125,000
3	Fee for application for renewal of registration of an agency dealing with foreign recruitment	250,000
4	Fee for application for renewal of registration of an agency dealing with local/Kenyan labour market	75,000
5	Fees for replacement of a certificate of registration	10,000

b) Executed a guarantee of 1.5M with a reputable bank or insurance agency in Kenya, to be used for the purpose of repatriation, paying wages and other entitlements in the event of default by the agent or the employer;

Registration certificate issued under these regulations shall be valid for a period of one year from the day of issuance.

(C) Renewal of Licence

An application for the renewal of certificate of registration should be submitted at least one month before the expiry. The application for renewal or replacement of the license shall be accompanied by –

(a) proof that the agency has been submitting returns to the Director in the prescribed form;

(b) proof that the agency has renewed the security bond

(c) audited financial statements and accounts; and
(d) a copy of a valid lease agreement in case of change of office location.

C) Fees and Commissions

Agencies are allowed to charge the employer a service fee for the recruitment, documentation and placement of employees. In the case of recruitment for foreign employment, the costs of recruitment should be met by the recruitment agent or the employer, including visa fees, airfare, medical examination and a surety bond. A service fee could be charged to the worker to cover administrative fees or costs rendered during the recruitment, such as medical or occupational tests, provided that they do not exceed one quarter of the worker's first monthly salary.

D) Notification and advertisement for Jobs

Registered agencies are required to advertise for job vacancies within their premises, public offices, through media or through the NEA Integrated Management System www.neaims.go.ke provided that such advertisement is notified to the Director.

The advertisement should contain the following details; -
(a) the name and address of the agency, including its physical address;
(b) the place where the vacancy is available;
(c) the terms and conditions of employment;
(d) the job specification and description;
(e) the number of positions available; and
(f) the reference number of the registration certificate of the agency, registration certificates for the company and the county trading license.

EMPLOYMENT ACT, 2007 (EMPLOYMENT MANAGEMENT)

PART X **(Sections 76-81)** of Kenya's Employment Act of 2007 has provisions to guide the Employment Management among employers. These include; notification of vacancies, termination of employment as well as filling of annual employee returns by all employers who have above 25 staff in their establishments

NOTIFICATION OF VACANCIES

This part requires all employers who have twenty-five employees or more to notify the Director of every vacancy occurring in their establishments, businesses or work place in a prescribed form giving the following details—

a) the employer's name and full address;
b) details of the vacant post;
c) minimum qualification required of the person seeking to be employed;
d) the place of work; and
e) the type of work, whether casual, permanent or term contract; and
f) such other information as the Director may require.

A vacancy shall be deemed to occur on the date—

a) an employer creates a post to be filled by an employee or decides to engage one
b) an employee terminates or has his employment terminated by the employer and the employer abolishes the post

NOTIFICATION OF FILLING OR ABOLITION OF POST

When a post, which has been notified to the Director as vacant, has been filled or has been abolished before being filled, the employer shall notify the employment service office of this in writing within two weeks of the filling of the post or of its abolition, as the case may be.

NOTIFICATION OF TERMINATION OF EMPLOYMENT

An employer shall notify the termination of every employment and of each lay-off of a person in writing to the nearest employment service office within two weeks of the termination or lay-off.

FILLLING OF ANNUAL EMPLOYEE RETURNS

Section 79 states that, an employer shall keep a register in which the employer shall enter the full name, age, sex, occupation, date of employment, nationality and educational level of each of his employees and a return of employees for each calendar year, ending on 31st December containing such information shall be sent to the Director not later than 31st January of the following year.

REQUENTLY ASKED QUESTIONS

1. What do I require to Register an employment agency?

An agency may be registered by the Director of Employment to carry out the business of a private employment agency if:-

i. It is duly registered as a corporation under the Companies Act and fully owned by Kenyan citizens;
ii. The directors have attained at least o- level certificate or its equivalent;
iii. The manager is in possession of at least a degree in a business-related field from a university recognized in Kenya and relevant experience of at least three years;
iv. It has a minimum paid up share capital of Kenya Shillings five million;
v. It is licensed to carry out business within the county of intended operation;
vi. It has a registered fully equipped physical office covering not less than 225 square feet;
vii. It has a tax compliance certificate from the Kenya Revenue Authority;
viii. It has executed a guarantee of Kenya Shillings five hundred thousand with a reputable bank or insurance agency in Kenya which shall be used for the purpose of repatriation, paying wages and other entitlements in the event of default by the agent or the employer;
ix. All Directors have Police Clearance Certificates from the Directorate of Criminal Investigations which must be renewed after every twelve months from the date of issuance; and
x. Is a member of an association of private employment agencies recognized by the Director of Employment.
xi. Has executed a security bond of 1.5 million shillings with a reputable bank or insurance company
xii. It makes a commitment to observe the provisions of the existing code of conduct for Recruitment Agencies

2. What documents do I require for Registration of an employment agency?

You Require:

A written application for registration to operate a private employment agency together with-

i. The duly filled prescribed form;
ii. A certified copy of a certificate of incorporation;
iii. A certified copy of academic and professional certificates of the manages and directors;
iv. A copy of operating license from the relevant county authority;
v. A duly signed valid lease or tenancy agreement authenticated by a commissioner for oaths;
vi. Copies of identity cards or passports for all directors;
vii. Two recent passport size photographs of the directors;
viii. Valid police clearance certificates from the directorate of criminal investigations for the applicant or all directors.

3. Does the law limit the fees an employment agency may charge?

Yes

Employment agencies my charge a fee for services offered. The fee must however be approved by the director of employment and must be within the legal provisions.

In such a case, the applicants must be issued with an official receipt for the amount paid.

The receipt must be signed by the person who received the payment, and must show:-

i. The name of the applicant,
ii. The name and address of the employment agency,
iii. The date and amount of the fee
iv. The purpose of the fee or deposit.

5. Is an employment agency required to provide copies of contracts?

Yes. Employment agencies must provide applicants with a copy of any contract entered between the employment agency and the applicant.

6. **Which documents do a Job Seeker need before he/she travels and where do they get them from?**

The documents needed before travel have been listed in the table 1 below, including where and how to obtain them

Table 2: Documents Needed before leaving the country and where to get them

What do I require?	Where Do I get It?	How do I get It?
Valid Kenyan Passport	Director of Immigration Services • Nairobi – Nyayo House • Mombasa • Kisumu – Re-insurance Plaza	You require:- Original Birth Certificate National Identity Card Two passport size-colored photographs (Not photo me) Filled application form Police Clearance Certificate Passport processing fee To visit the office in person
Original Birth Certificate ‘	Civil Registration Department District Registrar of Births and Deaths	You require:- When a birth was registered when it occurred:- acknowledgement of Birth Notification (ABN) Certificate fee Record Amendment of fee if any amendments are required. When a birth was not registered when it occurred:- Filled birth registration forms Own original ID Card School-leaving certificate Baptismal card For minors, parents ID/Cards Clinic card, where available Those in permanent and pensionable employment, a letter from employer showing date of birth in personal file. Certificate fees is as follows: Born before district was declared compulsory registration – Kshs.50/= Born after district was declared compulsory

		registration – kshs.150/=
Police Clearance Certificate	Nairobi CID Headquarters along Kiambu Road	You require:- To present yourself in person Copy of Identity Card Kshs.1,000/=
Valid contract of service	Employment Agent	You require:- copy of Foreign Contract of Service Forms (LD21) from the Ministry of Labor.
Medical Certificate	Recognized medical institution A medical institution specified by the prospective employer or agent.	You require:- Copy of Foreign Contract of Service forms (LD 21) from Ministry of East African Community, Labour and Social Protection. Medical examination fees (depending on institutions)
Work Permit	Destination countries	You require to apply through respective embassies or agents.
Travel/Visa	Embassies of Destination countries	You require:- application Passport

CONCLUSION

When labor recruiters operate according to the law, their services provide enormous benefit to migrants, their communities, the employers in need of foreign workers, and to businesses in countries of destination by providing much needed human resources. All stakeholders should therefore adhere to the laid down laws, procedures and regulations in order to promote ethical recruitment practices as well as protect the welfare of Kenyan migrant workers.

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