JOINT CIRCULAR

SPECIFIC REGULATION ON BROKERAGE AND SERVICE FEE IN THE OPERATION OF SENDING VIETNAMESE LABOURERS TO WORK ABROAD UNDER CONTRACTS

Pursuant to Article 20 and Article 21 of the Vietnamese Alien Labor Law under contract dated November 29, 2006, the Ministry of Labour – War Invalids and Social Affairs - Ministry of Finance stipulate and make guidance on the brokerage and service fee in the operation of sending Vietnamese laborors to work abroad under contracts as follows:

I. GENERAL REGULATION

1. Scope of adjustment

This Circular stipulates and makes guidance on the ceiling brokerage, the management and use of brokerage; the ceiling service fee and the mode of collection and payment of the service fee in the operation of sending laborers to work abroad.

2. Subject of application

a) The enterprises operating the services of sending the laborers to work abroad as prescribed in the Vietnamese Alien Labor Law under contract (hereafter referred to as enterprises);

b) The laborers go to work abroad through the services of enterprises (hereafter referred to as laborers);

3. The enterprises are only permitted to collect the brokerage and service fee after signing contract on sending laborers to work abroad with the laborers and the laborers are admitted to work or granted visa by the foreign party.

II. THE BROKERAGE

1. The brokerage is the cost that the enterprise must pay the broker to sign and implement the contract of labor supply. The laborers shall refund the enterprise one part or the entire brokerage as prescribed of the Ministry of Labour, War Invalids and Social Affairs.

The brokerage does not apply to the case the laborers have completed the contract with the enterprises and are extended or renewed the contract by the employers.

The enterprises are not permitted to collect the brokerage of the laborers for the markets and contracts in which the foreign partners have no requirements on the brokerage.

2. The brokerage rate.

a) The ceiling brokerage rate for the markets does not exceed one month’s salary/laborer for one year contract. In case of the market demand for the higher brokerage rate than the prescribed ceiling rate, the enterprises shall make report to the Ministry of Labour, War Invalids and Social
Affairs in order to decide the appropriate specific brokerage rate after agreement with the Ministry of Finance;

b) The enterprises shall negotiate and decide on the brokerage rate appropriate with each contract but not exceeding the rate as prescribed at point (a) of this Clause;

c) The Ministry of Labour, War Invalids and Social Affairs stipulates the brokerage rate that the laborers refund to the enterprises suitable for each market;

d) The salary which (calculated by month) serves as a basis to determine the brokerage rate is the basic salary under the contract excluding: Overtime working, bonuses and other benefits. For the officers and crewmen of the sea carrier, the salary which, under the contract (calculated by month) to serve as a basis to determine the brokerage rate, is the salary including the basic salary and leave salary.

3. Type of money collected and paid and applicable exchange rate

The enterprises collect the brokerage refunded by the laborers in Vietnam dong.

The applicable exchange rate: If the brokerage is calculated on the basis of the U.S. dollar, the average exchange rate of the U.S. dollar against the Vietnam dong on the inter-bank foreign currency market shall apply as announced by the State Bank of Vietnam at the time of collection and payment. If the brokerage is calculated on the basis of other foreign currencies, the cross rate between the U.S. dollar against those foreign currencies shall apply as announced by the State Bank of Vietnam at the time of collection and payment.

4. Management and use of the brokerage

a) The brokerage must be indicated in the contract of labor supply or the private contract on the brokerage signed between the enterprises and the brokers;

b) The brokerage must be used for the proper purpose and with the right subject. If taking advantage of provisions on brokerage for wrong collection and expenditure for improper purposes, not with the right subjects and for profit making, the person making a decision on collection and expenditure shall take responsibility as prescribed by law;

c) The portion of brokerage that the laborers refund (if any) must be specified in the contracts on sending laborers to work abroad; the enterprises shall collect the laborers’ brokerage one time before they go abroad to work. Upon collection of the laborers’ brokerage, the enterprises must issue receipt to the laborers. The brokerage that the laborers refund is not included in the profit of the enterprises and they do not pay tax on it;

d) The brokerage that the enterprises pay out (if any) will be recorded into the rational cost upon calculating taxable income as prescribed by the Law on enterprise income tax.

5. Refunding the brokerage

In case the laborers must return home ahead of schedule due to force majeure (natural disaster, war, bankruptcy of enterprises) or not due to the laborers’s fault, the enterprises shall require the broker to refund to the laborers a portion of the brokerage that the laborers have paid on the following principles: If the laborers work less than 50% of the time under the contract, they shall receive back 50% of the brokerage paid. If the laborers work more than 50% of the time under the contract or more, they shall not receive back the brokerage.
Where the laborers can not recover the brokerage from the broker, the enterprises are responsible for making payment to the workers on the above principle and permitted to record into the rational cost upon calculating taxable income as prescribed by the Law on enterprise income tax.

III SERVICE FEE

1. The service fee is the expenditure that the laborers must pay the enterprises for the implementation of the contract on sending laborers to work abroad.

The service fee does not apply to the case the laborers have completed the contract signed with the enterprises (including the time of the contract extension) and are extended or renewed the contract by the employers.

2. Rate of service fee

a) The ceiling rate of service fee: The laborers make the payment of service fee to the enterprises with an amount not exceeding one month's salary (or refreshing allowance) under contract for one working year, and not exceeding one month and a half month's salary under a contract for one working year for officers and crewmen working on sea carrier; The total maximal rate of service fee shall not exceed three month’s salary under the contract / person / contract;

b) The rate of service fee must be indicated in the contract on sending laborers to work abroad signed between the enterprises and the laborers;

c) The salary which, under contract (calculated by month) serves as a basis to determine the rate of service fee is the basic salary excluding: Overtime working, bonuses and other benefits. For the officers and crewmen of the sea carrier, the salary which, under the contract (calculated by month) serves as a basis to determine the rate of service fee, is the salary including the basic salary and leave salary.

3. The mode of collection, payment and refund of the service fee

a) The enterprises shall agree with the laborers to collect the service fee one time before they go abroad to work or many times during the course of contract execution;

b) In case the laborers must return home ahead of schedule due to force majeure or not due to the laborers’ fault, the enterprises are permitted to collect the service fee by the actual time (number of months) the laborers work abroad.

c) In case the laborers violate the contract or the law of the country where they are working and must return home ahead of schedule or cancel the contract and illegally stay, the enterprises are permitted to collect the laborers’ service fee under the time limit signed in the contract.

4. Type of money collected and paid and applicable exchange rate

a) In case the enterprises agree with the laborers to collect the service fee one time before they go abroad to work, the collection shall be made in Vietnam dong.

The applicable exchange rate: If the service fee is calculated on the basis of the U.S. dollar, the average exchange rate of the U.S. dollar against the Vietnam dong shall apply on the inter-bank foreign currency market announced by the State Bank of Vietnam at the time of collection and payment. If the service fee is calculated on the basis of other foreign currencies, the cross rate between the U.S. dollar against those foreign currencies shall apply as announced by the State Bank of Vietnam at the time of collection and payment.
b) In case the enterprise agree with the laborers to collect the service fee many times during the course of contract execution, the enterprises shall collect the service fee in the currency the laborers are paid. If the collection of a partial service fee is made before the laborers go abroad to work, the service fee shall be collected by Vietnam dong at the exchange rate above mentioned.

IV. IMPLEMENTATION ORGANIZATION

1. This Circular shall take effect after 15 days from the date of its publication on the official Gazette. Annulling the Joint Circulars of the Ministry of Finance - the Ministry of Labour, War Invalids and Social Affairs No. 107/2003/TTLT-BTC-BLDTBXH dated November 07, 2003 guiding the implementation of the financial regulations for the laborers and the enterprises sending laborers to work abroad with term and the No. 59/2006/TTLT-BTC-BLDTBXH dated June 26, 2006 guiding the brokerage in labor export.

As for the contracts of labor supply registered at the Department of Overseas Labour (Ministry of Labour – War Invalids and Social Affairs) before the effective date of this Circular, the service fee shall comply with the provisions specified in the Joint Circular No. 107/TTLT-BTC-BLDTBXH dated November 07, 2003 and the brokerage shall comply with the provisions specified in joint Circular No. 59/2006/TTLT-BTC-BLDTBXH dated June 26, 2006.

2. The Ministries, sectors, localities and enterprise management agencies are responsible for inspection, supervision and urge of the implementation of the enterprises under their management.

3. Any problem arising in the course of implementation should be promptly reported to the Ministry of Labour, War Invalids and Social Affairs, Ministry of Finance for study and settlement.

PP. MINISTER OF FINANCE
DEPUTY MINISTER
Tran Xuan Ha

MINISTER OF LABOUR, WAR INVALIDS AND SOCIAL AFFAIRS
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