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Subject : Revised Rules and Regulations for the Issuance of Employment Permits to Foreign Nationals

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The following is a discussion on legal requirements on applying for an Alien Employment Permit (hereinafter referred to as the "AEP") based on the Department Order of 2021 (hereinafter referred to as the "Order") issued by the Department of Labor and Employment (hereinafter referred to as DOLE). The Order shall cover all foreign nationals who intend to engage in gainful employment in the Philippines. Gainful Employment shall refer to state or condition that creates an employer-employee relationship between the Philippine-based employer and the foreign national where the former has the power to hire or dismiss the foreign national from employment pays the salaries or wages thereof and has authority to control the performance or conduct of the tasks and duties.

### **A. Preface**

The update AEP Order now provide for additional and more stringent requirements prior to acceptance of any AEP application by DOLE, including the fact that the petitioning company, by itself, has published the job opening in a newspaper and that no applications were received or no Filipino applicant was considered for the position. While we understand the noble rationale by the DOLE to ensure that, with the increased unemployment rate in the country brought about the pandemic, effectively, this also makes it harder for Philippine companies to hire qualified expats under the new Order. Timing wise, petitioning companies should also take note of the minimum no. of days the opening was published before filing the actual AEP application with DOLE.

### **B. Requirements and Processing of Application for AEP**

#### **Documentary Requirements for AEP**

All applications for AEP shall be filed at the DOLE Regional Office (DOLE-RO) concerned, within ten (10) working days from date of signing of the contract or prior to the commencement of employment.

The following are the documents to be submitted for the application of an AEP (we have highlighted the new important requirements):



1. Duly accomplished application form;
2. The expiring AEP card in case of renewal;
3. Photocopy of Passport bio-page with valid visa, and appropriate visa in case of renewal;
4. Photocopy of BIR Form No. 1904 or 1902 duly received by the Bureau of Internal Revenue (BIR) revenue district office indicating the Taxpayer Identification Number (TIN) of the foreign national or a certification from the BIR with a list of foreign nationals opposite each with the TIN issued, or a copy of e-registration
5. Original copy of duly notarized appointment or contract of employment signed over printed name by the foreign national and the employer, indicating the duties and responsibilities, salary, and other benefits of the former;
6. Certified True Copy (CTC) of the following:
  - a. valid business/Mayor's permit of the Philippine-based company or enterprise; or
  - b. Certificate of Registration from the Economic Zone Authorities where the company is located and operating, unless otherwise provided in the charter;
7. Certified True Copy of the following:
  - a. In case of Sole Proprietorship, Business Name Registration together with the Application from duly received by the Department of Trade and Industry ("DTI");
  - b. In case of Corporations, Certificate of Registration, Articles of Incorporation, By-Laws, and updated General Information Sheet (GIS);
8. The Certified True Copies of the following shall also be submitted, if applicable:
  - a. In case of Construction Companies, License from the Philippine Construction Accreditation Board Certificate of Registration issued by DOLE for contracting and subcontracting arrangements, whichever is applicable;
  - b. In case of online gaming companies, license, accreditation, or appointment issued by Philippine Amusement and Gaming Corporation (PAGCOR), and any other authorized Freeport or economic zones established by a charter.
9. Proof of publication of the job vacancy/ies in a newspaper of general circulation, in accordance with provisions on Labor Market Tests under this Order, together with a duly notarized affidavit stating no applications were received or no Filipino applicant was considered for the position; and
10. Other required relevant permits or authorities as follows:
  - a. Special Temporary Permit (STP) issued, or proof of application received by the PRC in case of practice of a regulated profession;
  - b. Authority to Employer Alien (AEA) issued by the DOJ, or proof of application in case the employer is covered by the Anti-Dummy Law; and
  - c. Authority to Hire Foreign National (AHFN) issued by DENR, or proof of application in case of mining.

The DOLE-RO may conduct a verification to establish the company's existence and legitimacy of the application based on the documents submitted as deemed necessary.

**Labor Market Test ("LMT")**

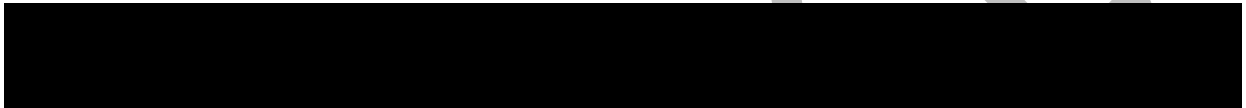


At least fifteen (15) calendar days *prior* to the application for AEP, the employer shall cause the publication of the job vacancy being applied for by the foreign national in a newspaper of general circulation.



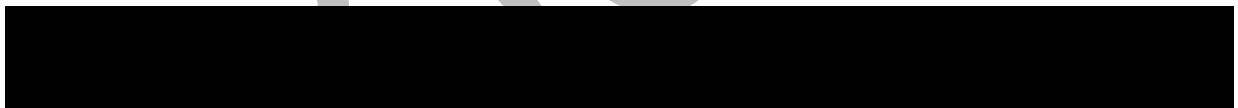
### C. Validity and Issuance of AEP; Effects of Transfer and Change of Position

At any given time during its validity, only one (1) AEP shall be issued to a foreign national, and in no case to exceed three (3) years.



### D. Renewal of AEP

An application for renewal of an AEP may be filed as early as sixty (60) days before its expiration. An earlier application may be filed in case the foreign national needs to leave the country or any other similar circumstances that will hinder the filling of renewal within the prescribed period. An application for renewal of an AEP where an election or appointment is required for the position, the procedure shall be as follows:



### E. EXEMPTION

The following categories of foreign nationals are exempted from securing an employment permit:



The following are the requirements for securing a Certificate of Exemption:

- a. Letter Request addressed to the DOLE Regional Director;
- b. Photocopy of the bio page of his/her valid Passport (except stateless persons);



- c. Photocopy of his/her valid visa and the corresponding Alien Certificate of Registration (ACR) I-Card, if applicable;
- d. For dependent spouses of members of the Diplomatic corps – Endorsement/authority to undertake employment issued by DFA;
- e. For foreign nationals who come to the Philippines to teach, present and/or conduct research studies in Universities and Colleges as visiting, exchange or adjunct professors – Copy of the formal agreement between the involved academic institution or governments;
- f. For refugees and stateless persons – Certificate of Recognition issued by DOJ; and
- g. All other exempted foreign nationals – Copy of the law granting exemption.

## F. EXCLUSION

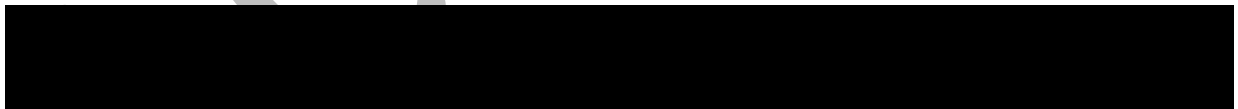
The following categories of foreign nationals providing or supplying services in the country but their employers are located abroad or those without employer-employee relationship with the Philippine-based entity, are excluded from securing an employment permit:



The following are the requirements for securing a Certificate of Exclusion:

- a. Letter request addressed to the DOLE Regional Director
- b. CTC of either the business/Mayor's permit of the Philippine-based company or enterprise or Certificate of Registration from PEZA or Ecozone Authority in case of locators in economic zones;
- c. Photocopy of the passport's bio page with valid visa;

In addition, the following categories of foreign national shall submit the corresponding documents:



- APPENDICES FOLLOWS ON NEXT PAGE-



## Appendix A – Definition of Terms

1. **Alien Certificate of Registration (ACR) I-Card** - a microchip based, credit card-sized, identification card issued by the Bureau of Immigration (BI) to all registered aliens whose stay in the Philippines has exceeded fifty-nine (59) days.
2. **Alien Employment Permit (AEP)** - a permit issued by the Department of Labor and Employment (DOLE) to foreign nationals pursuant to the employment arrangement with a Philippine-based company, after the conduct of the Labor Market Test (LMT).
3. **Applicant** - the foreign national or the Philippine-based employer applying for an AEP or certificate of exclusion or exemption.
4. **Authority to Employ Alien (AEA)** - a permit issued by the Department of Justice (DOJ) to a company/employer engaged in wholly or partially nationalized industry who intends to employ foreign nationals to occupy technical positions.
5. **Authority to Hire Foreign National (AHFN)** - a permit issued by the Department of Environment and Natural Resources (DENR) to the company/ employer engaged in mining operation to employ foreign nationals.
6. **Authorized Representative**
  - a. Appointed human resource personnel or a liaison officer covered by a duly notarized Special Power of Attorney (SPA) - in case of sole proprietorship;
  - b. Duly authorized officer/employee covered by a duly notarized Board Resolution/Secretary's Certificate in case of partnerships/corporation; or
  - c. Accredited agents, or duly authorized agents by the employer covered by a duly notarized Service Contract Agreement for sole proprietorship or by a duly notarized Board Resolution/Secretary's Certificate for partnerships and corporation or its equivalent subject to the institution of the dole's accreditation system.
7. **Certificate of Exclusion** - a document issued to a category of foreign nationals as enumerated under Section 20 of this rules.
8. **Certificate of Exemption** - a document issued to a category of foreign nationals as enumerated under Section 18 of this rules.
9. **Due Process** - opportunity of party/ies to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.
10. **Employer** - person acting in the interest of the company or an establishment, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.
11. **Employment Arrangement** - agreement or arrangement where one is permitted or suffered to work pursuant to an employer-employee relationship.
12. **Fraudulent Application** - an application which contains untruthful statement or false information that has negative effect on the evaluation of the AEP application.
13. **Grave Misconduct** - serious misconduct relating to the performance of the employee's duties, showing that the employee has become unfit to continue working for the employer, and must have been performed with wrongful intent.
14. **Labor Market Test (LMT)** - the mechanism to determine the non-availability of a Filipino citizen who is competent, able, and willing at the time of application to perform the services for which the foreign national is desired.



15. **Letter of Acknowledgement (LOA)** - letter acknowledging the authorized representative(s) of an accredited or registered foreign principal/employer who may from time to time come to the Philippines to participate in recruitment activities within the registered business address or acknowledged additional office(s) of an agency.
16. **Pre-Arranged Employment Visa or 9(G) visa** - a visa issued to foreign nationals who are proceeding to the Philippines to engage in any lawful occupation, whether for wages or other forms of compensation - also referred to as 9(G) visa or working visa.
17. **Quad Media** - four (4) identified platforms in which information could be disseminated, consisting of print (i.e. newspaper, magazine), broadcast (i.e. media broadcast, cell broadcast), support (i.e. conferences, formal and informal communications), and social media (i.e. websites, social networks) other than the mandatory forms of media for the conduct of LMT.
18. **Refugee** - a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him or herself of the protection of that country, or to return there, for fear of persecution.
19. **Related Company** - company distinct from the original employer or another company which is either (a) its holding company, (b) its subsidiary, or (c) a subsidiary of its holding company.
20. **Secondment Agreement** - a document specifying an arrangement for the temporary assignment of an employee to another part of their own organization, or a different employer within the same organization.
21. **Special Recruitment Authority (SRA)** - an authority granted by the Philippine Overseas Employment Administration (POEA) to an individual to conduct recruitment outside the principal's registered business address as approved by the POEA.
22. **Special Temporary Permit (STP)** - a permit issued by the Professional Regulation Commission (PRC) to a foreign national to engage in the practice of a regulated profession in the Philippines;
23. **Stateless Person** - a person who is not considered as a national by any state under the operation of its law.
24. **Temporary Visitor's Visa (TW) or 9(A) visa** - a visa issued to foreign nationals traveling to the Philippines for purposes of pleasure, short-term business, and/or health only and not valid for employment purposes – also referred to as 9(A) or tourist visa.



## Appendix B – Frequently Asked Questions

### 1. How long is the processing period for an AEP?

According to the Order, applications of AEP shall be processed, and issued within (5) working days after publication.

For renewals, of AEP, it shall be processed and issued within five (5) working days after receipt of complete documentary requirements and payment of required fees, and fines, if any.

### 2. Can a foreign national have more than one (1) AEP?

Only one (1) AEP shall be issued to a foreign national. The AEP shall be valid for the position and the company. The AEP shall be valid for the position and the company for which it was issued for a period of one (1) year unless granted a longer period, but in no case shall exceed three (3) years.

### 3. How can the employee claim his/her AEP?

[REDACTED]

### 4. What would be the effect to an AEP if the employee was transferred to another location or assigned to a related company?

[REDACTED]

### 5. What are the grounds for denial of an AEP?

Section 11 of the Order provides for the following grounds for the denial of an application for an AEP:

- a. Misrepresentation of facts;
- b. Submission of falsified, tampered, or fraudulent documents;
- c. Submission of a visa not in accordance with applicable rules and regulations;
- d. Meritorious objection filed by a Filipino citizen who is competent, able, and willing to do the job intended for or being performed by the foreign national;
- e. Grave misconduct in dealing with or ill treatment of workers; and
- f. Verified information against the employment of the foreign national.

### 6. Is it possible for an AEP to be cancelled?



7. Can DOLE revoke an AEP?

Yes. Section 13 of the Order provides that DOLE-RO may on its own, or upon petition/complaint, issue an Order revoking an AEP after due process and evaluation/assessment based on any of the following grounds:

- a. any act of misrepresentation for purposes of securing an AEP, including but not limited to fraudulent application off acts, falsification or tampering of documents, and similar circumstances;
- b. meritorious objection filed by a Filipino citizen who is competent, able and willing to do the job intended for or being performed by the foreign national;
- c. foreign national has been convicted or found guilty of a criminal offense, or is a fugitive from justice based on a verified information;
- d. verified information against the employment of the foreign national;
- e. verified information on grave misconduct in dealing with or ill treatment of workers filed with the DOLE-RO against the foreign national;
- f. violation and non-compliance of other pertinent provisions of this rules and regulations, the Labor Code, as amended and other relevant guidelines for issuance of AEP; and
- g. failure to claim the AEP card within ten (10) working days from date of notification of availability.

The petition or complaint, containing the grounds relied upon, shall be filed before the DOLE-RO which issued the AEP.

8. What will be the effect of the denial or revocation of an AEP?



9. How can the Certificate of Exclusion or Exemption be claimed?



10. How long is the validity of the Certificate of Exclusion or Exemption?

The Certificate of Exemption or Exclusion shall be valid from the date of issuance up to the end date of the deployment, while the Certificate of Exclusion shall be valid from the date of issuance up to the end date of the contract, appointment, or election.





11. What is the effect if the foreign national continued working in the Philippines with an expired AEP/ Fraudulent AEP/ Without a valid AEP?

Foreign nationals found to be working with expired AEP or had been working without the necessary AEP under the rules and employers found to be employing such, shall be barred from filing AEP application for five (5) years, plus payment of penalties.

Employers and/or foreign nationals, who are found to possess fraudulent AEP, shall likewise be barred indefinitely from applying for or being granted an AEP, plus payment of penalties.

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