



# Special Alert

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## New Regulations for Employment Service Enterprises

The Government has recently released Decree No. 23/2021/ND-CP dated 19 March 2021 providing detailed guidance for Articles 37.3 and 39 of the Employment Law No. 38/2013/QH13 dated 16 November 2013 in respect of employment service centers and enterprises ("**Decree 23**"), which took effect on 1 June 2021 and replaced Decree No. 52/2014/ND-CP dated 23 May 2014 (as amended in 2018) regulating conditions and procedures to issue employment service licenses ("**ESL**") for employment service enterprises ("**ESEs**") ("**Decree 52**"). Decree 23 provides new rules applicable to ESEs, as summarized below:

### The scope of the employment services

Employment services now include (a) counseling activities for various steps in the hiring process, (b) job introduction for employees, (c) supply and recruitment of workers at the request of employers, introduction of employees to enterprises licensed to send workers abroad under contracts, organizations and individuals investing in foreign countries or public service units and Governmental bodies, (d) collecting and providing information on the labour market, (e) analyzing and forecasting on the labour, (f) training for prospective employees on interview, job search and work skills, providing vocational education, and (g) implementing employment programs and projects.

### Conditions on issuance / re-issuance / renewal of ESL

In addition to the unchanged conditions on the issuance of ESL as stipulated under Decree 52 that have the owned premises or the rented premises with the lease term of three years (36 months) or more, and make a deposit of VND 300 million, Decree 23 sets out the new requirements that must be met by an ESE's legal representative in order for the authorities to issue / re-issue / renew an ESL. Specifically, the legal representative must:

1. Hold the ESE's manager position (as per Article 4.24 of the Enterprise Law No. 59/2020/QH14 dated 17 June 2020);
2. Not fall into the following restricted cases:
  - ✓ prosecuted for criminal liability;
  - ✓ being on remand;
  - ✓ serving imprisonment penalties, serving administrative penalties at compulsory detoxification establishments or compulsory education centers;
  - ✓ banned by courts from holding certain positions or practicing certain occupations or doing certain jobs relating to employment services, etc; and
3. Have a university degree or higher qualification, or experience directly in or managing employment services or supplying workers for 24 months or more within five consecutive years.

In addition to having a legal representative who is properly qualified, an ESE must fulfill the following requirements prior to renewing their ESL:

1. Not fall into the cases specified for revoking ESL as stipulated in Article 21 of Decree 23 and mentioned in paragraph Revocation of ESL below;
2. Fully comply with reporting regime as stipulated in Decree 23 (to submit bi-annual reports and annual reports before 20 June, and 20 December every year respectively); and
3. Submit the renewal dossier at least 20 working days before the expiry date of the existing ESL.

## Revocation of ESL

An ESL will be revoked in the following cases:

1. The operation of employment services is terminated under the ESEs' request;
2. The ESEs are dissolved or declared bankrupt under the Court's decision;
3. The ESEs have allowed other enterprises, organizations or individuals to use their ESL;
4. The ESEs have received administrative penalties at least three times within a maximum period of 36 months from the date of the first penalty, or deliberately fail to comply with the penalty decision;
5. The ESEs forge documents including in the application for issuance, renewal or re-issuance of their ESL, or erases or modifies the contents of an issued ESL; and
6. The legal representative is a foreigner who is not eligible to work in Vietnam as prescribed in Article 151 of the Labor Code No. 45/2019/QH14 dated 20 November 2019.

## Obligation on deposit

Formerly, ESEs were required to make a deposit at the commercial bank where they had opened their main transaction accounts. However, under Decree 23, ESEs are allowed to make the deposit at any Vietnamese commercial bank or a foreign bank branch established and operating legally in Vietnam and are allowed to withdraw the deposit to make the deposit at another bank. The procedure to withdraw deposits has also been clarified as including the procedure for obtaining the approval of

the provincial Department of Labor, War Invalids and Social Affairs (“**DOLISA**”) for the withdrawal of the deposit and the proper work procedure with the bank.

## New requirements during the ESEs’ s operation

During the term of their operations, the ESE must now comply with the following requirements:

1. Publicly post any decision on revocation of the ESL at their head offices.
2. Keep track of the employment status for introduced or provided employees for at least three months or during the period of performance of labour contracts (in case the contract is less than three months).
3. Design, update and manage data on employees registering for job consultancy and introduction; employers registering for recruitment of employees, and connecting with and sharing these data as required by competent authorities.
4. Provide employment service price quotations and publicly post the employment service prices for employees at the head offices.
5. Make bi-annual reports and annual reports before 20 June, and 20 December every year, respectively.
6. Make timely reports in case of emergencies related to employment services to the DOLISA or at the request of the competent authorities.

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