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Vietnam

JOINT CIRCULAR GUIDING BROKERAGE FEES FOR LABOR EXPORT

**THE MINISTRY OF FINANCE - THE
MINISTRY OF LABOR, WAR
INVALIDS AND SOCIAL AFFAIRS**

No: 59/2006/TTLT-BTC-BLDTBXH

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

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2006*

JOINT CIRCULAR

Guiding brokerage fees for labor export

Pursuant to the Government's Decree No. 81/2003/ND-CP of July 17, 2003, detailing and guiding the implementation of the Labor Code concerning Vietnamese working overseas;

The Ministry of Finance and the Ministry of Labor, War Invalids and Social Affairs hereby jointly guide brokerage fees for labor export as follows:

I. GENERAL PROVISIONS

1. Brokerage fees (consultancy fees for contract performance) are the sum which laborers, or labor export enterprises and laborers have to pay to brokerage parties to secure contracts to send laborers to work overseas.
2. Brokerage fees must be specified in labor supply contracts, or separate brokerage fee contracts signed between labor export enterprises and brokerage parties. Brokerage fees shall only be payable when brokerage parties have completed brokerage activities to send laborers to work overseas under contracts.
3. Brokerage parties mentioned in Clause 1 of this Section are Vietnamese or foreign organizations and individuals providing brokerage services.
4. Brokerage fees shall not apply to cases in which employers renew labor contracts after laborers have completed contracts signed with labor export enterprises.

II. SPECIFIC PROVISIONS

1. Brokerage fee level

a/ The brokerage fee level for all markets shall not exceed one month's salary specified in the labor contract per laborer per one working year.

b/ The contracted salary (on a monthly basis) used as the basis for calculating brokerage fees is basic salary which does not include overtime payment, bonus and other allowances. For officers and crew members of seagoing ships, the contracted salary (on a monthly basis) used as the basis for calculating brokerage fees shall include basic and leave salaries.

2. Specific brokerage fees

a/ On the basis of the brokerage fee level prescribed at Point a, Clause 1, Section II of this Circular, the Ministry of Labor, War Invalids and Social Affairs shall specify the maximum brokerage fee relevant to each market.

b/ In special cases where market conditions require brokerage fees higher than the stipulated level, labor export enterprises shall report to the Ministry of Labor, War Invalids and Social Affairs for a decision on specific brokerage fees after it consults the Ministry of Finance.

3. Currencies for brokerage fee collection

Labor export enterprises shall collect brokerage fees which laborers have to pay in Vietnam dong. In case brokerage fees are calculated in US dollar, the average inter-bank foreign exchange rate of US dollar against Vietnam dong announced by the State Bank of Vietnam shall be applied; if brokerage fees are calculated in other foreign currencies, the cross rates of Vietnam dong against other foreign currencies announced by the State Bank of Vietnam at the time of brokerage fee collection shall be applied.

For foreign currencies for which the State Bank of Vietnam does not announce the cross rate against Vietnam dong, labor export enterprises shall consult Reuters' coverage on the exchange rates of the above foreign currencies against US dollar. The conversion of US dollar into Vietnam dong shall apply the average inter-bank exchange rate of US dollar against Vietnam dong announced by the State Bank of Vietnam at the time of fee collection.

4. Responsibilities of labor export enterprises

a/ Labor export enterprises shall negotiate with brokerage parties on brokerage fees relevant to market requirements within the prescribed brokerage fee level.

b/ On the basis of the brokerage fee contracts signed with brokerage parties, labor export enterprises shall negotiate with laborers on brokerage fees which laborers have to pay to brokerage parties via labor export enterprises. The brokerage fees laborers have to pay shall be specified in the contracts between laborers and labor export enterprises. Collected brokerage fees shall neither be included in labor export enterprises' turnover nor taxed.

c/ In case laborers have to return home ahead of contract term for *force majeure* reasons (natural disasters, wars, employers' bankruptcy), or where laborers are not at fault, labor export enterprises shall have to request brokerage parties to refund laborers part of the brokerage fees laborers have paid under the principle: laborers having worked for less than 50% of the contract term shall get back 50% of the paid brokerage fees; laborers having worked for over 50% of the contract term shall not get back the paid brokerage fees.

In case labor export enterprises fail to get back the fees from brokerage parties, they shall have to deduct their incomes from labor export services or other business lines to refund brokerage fees to laborers under the above principle.

d/ Labor export enterprises shall be allowed to pay brokerage fees (if any) from their collected labor export service fees and account them as reasonable expenses when calculating the enterprises' income tax.

e/ Decisions on collection and payment of brokerage fees for brokerage parties shall be the responsibility of the enterprises. If they take advantage of brokerage fee regulations to collect or pay the fees for improper or self-seeking purposes, or from/to improper subjects, they shall take responsibility therefor according to legal provisions.

Brokerage fees shall be paid in Vietnam dong if brokerage parties are Vietnamese. Brokerage fees shall be paid in foreign currencies specified in labor supply contracts or brokerage contracts if brokerage parties are foreign organizations or individuals. Labor export enterprises shall account for arising exchange rate differences (if any) as reasonable expenses when calculating the enterprises' income tax.

f/ Labor export enterprises shall account and open accounting books to monitor the collection and payment of brokerage fees under current accounting regulations.

5. Vouchers

a/ When laborers pay brokerage fees via labor export enterprises, the enterprises shall have to issue them receipts.

b/ Vouchers for collection and payment of brokerage fees shall have to include signatures of the director, chief accountant, cashier, and payer or recipient according to accounting regulations.

III. ORGANIZATION OF IMPLEMENTATION

1. This Circular takes effect 15 days after its publication in "CONG BAO."
2. To annul Section VI, Part B of the Finance Ministry's and the Labor, War Invalids and Social Affairs Ministry's Joint Circular No. 107/2003/TTLT-BTC-BLDTBXH of November 7, 2003, guiding the application of the financial regime to laborers and enterprises sending Vietnamese laborers to work overseas for definite terms under the provisions of the Government's Decree No. 81/2003/CP of July 17, 2003, detailing and guiding the Labor Code concerning Vietnamese laborers working overseas.
3. Labor export enterprises and laborers working overseas shall have to implement the provisions of this Circular.
4. In the course of implementation, enterprises and individuals should report arising problems to the Ministry of Finance and the Ministry of Labor, War Invalids and Social Affairs for consideration and settlement.

**THE MINISTRY OF LABOR, WAR INVALIDS
AND SOCIAL AFFAIRS**

VICE MINISTER
(signed)

Vu Van Ninh

THE MINISTRY OF FINANCE

VICE MINISTER
(signed)

Nguyen Luong Trao

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