

**Guidelines on the issuance of Licence to Employ Non-Resident Employee
Under Section 119, Labour Ordinance (Sarawak, Cap. 76)**

1. Introduction

An employer who wishes to employ non-resident employee(s) is required to apply and obtain a licence from the Department of Labour Sarawak (JTK Sarawak). The Department of Labour Sarawak will only accept and process application from an employer to employ non-resident employee who comes under the definition of “employee” under section 2 of the Labour Ordinance (Sarawak Cap. 76). “Employee” is defined as follows:-

“Employee” means any person or class of persons –

- (a) included in any category in the Schedule to the extent specified therein; or
- (b) in respect of whom the Minister makes an order under subsection (7) of section 2A.

**SCHEDULE
[Subsection (2) of section 2]**

Employee

**Provision of the
Ordinance not
applicable**

1. Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed two thousand five hundred ringgit a month.*

2. Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which –

- (a) he is engaged in manual labour including such labour as an artisan or apprentice:

Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity, such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one half of the total time during which he is required to work in such wage period;

- (b) he is engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes;
- (c) he supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work;
- (d) he is engaged in recruiting employees;
- (e) he is engaged in any capacity in any vessel registered in Malaysia and who -
 - (i) is not an officer certificated under the Merchant Shipping Acts of the United Kingdom as amended from time to time;
 - (ii) is not a holder of a local certificate as defined in Part VII of the Merchant Shipping Ordinance 1952; or
 - (iii) has not entered into an agreement under Part III of the Merchant Shipping Ordinance 1952; or

Definition of
“ordinary rate of
pay” in section 2,
sections 104,
105, 105A, 105B,
105C, 105D,
105E and
subsection (2) of
section 106

(f) he is engaged as a domestic servant.* *

Definition of
“ordinary rate
of pay” in section
2, sections 11
and 12,
subsections (1)
and (2) of section
14, sections 58,
59, Chapter XIB,
sections 103,
104, 105, 105A,
105B, 105C,
105D, 105E,
105F, subsection
(2) of section 106
and Chapter
XIVA.

Note:

- * Employees performing non-manual duties earning RM2,500.00 and below per month are covered under this paragraph. As such employers who intend to employ such non-manual employees must also apply for a licence.
- ** Employers of domestic servants need not apply for a licence to employ non-resident employees from JTK Sarawak.

2 **Rational**

- 2.1 An application for a Licence to Employ Non-Resident Employee may be considered under the following criteria:
 - (a) there is a shortage of local workers to meet the employer's needs;
 - (b) the employment of non-resident employees will not jeopardise the employment opportunities of the local workers;
 - (c) the employment of non-resident employees will not result in negative social effect;
 - (d) local job-seekers are not available to fill the vacancies.
- 2.2 The sectors/industries listed in **Appendix 1** may apply for non-resident employees covered under paragraph 2 of the Schedule.

3 **An Application to Employ Non-Resident Employee in Sarawak**

- 3.1 All types of applications must be made via Monitoring System on the Employment of Non-Sarawakians (MSEN). The employers must get themselves registered in the first place. MSEN is accessible via hyperlink msen3.sarawak.gov.my.
- 3.2 Applicants are kindly advised to contact the nearest Labour Office as in **Appendix 2** to obtain the latest information before submitting application.

4. Actions to be taken by employer before making an application

- 4.1 The employer are advised to liaise with SOCSO before submitting the application for Letter of Approval in Principle (AP) and Renewal of License to employ Non-Resident Employees in the following matters:
- a. Draft of Vacancy Advertisement;
 - b. Advertising Through Local Newspapers;
 - c. Advertising Through RTM (Radio);
 - d. *MYFutureJobs* advertising portal;
 - e. Interview Process; and
 - f. Interview result.
- 4.2 An employer is required to advertise the vacancies in *MYFutureJobs* portal.
- 4.3 An employer is to ensure that the non-resident employees employed possessed the qualification and experience of equivalent or better than that are stated in the advertisement.

5. Types of applications:

5.1 Approval in Principle (AP)

- 5.1.1 A letter of Approval in Principle (AP) is a written permission to enable an employer to employ a specified number of non-resident employees. An employer must apply for AP before his application for licence can be considered. It is necessary to take note that **an AP is not a Licence to Employ Non-Resident Employee.**
- 5.1.1 After obtaining an AP, the employer is required to apply for a licence to employ specified number of the Non-Resident Employee within the period of validity of the AP.

5.2 Licence under AP

- 5.2.1 Application for Licence will only be entertained after an employer has been issued with an AP. The Licence will show the particulars regarding the names and personal details of the non-resident employee already identified.
- 5.2.2 A Licence that is not being collected by an employer within **three (3) months** after the date of issue, shall be cancelled and the number of employees in the licence shall be deducted from the total number of employees in the AP.
- 5.2.3 A Licence under AP may be replaced only **once**.

5.3 Renewal of Licence

- 5.3.1 Approaching the expiry of the validity of Licence and the employer still fail to obtain the required local employees, the employer may submit an application for the renewal of the licence concerned.
- 5.3.2 An application for renewal of licence has to be forwarded to reach the Labour Office sixty (60) days before the expiry date of the licence.

5.4 Replacement of Licence

- 5.4.1 A replacement of Licence under AP may be applied for if there are several non-resident employees who would not enter Sarawak to be engaged by the employer.
- 5.4.2 A replacement of Licence shall be issued only if: -

- a) The said employees have not entered Sarawak;
- b) The original Licence under AP has not been collected from the Labour Office; and
- c) An application for replacement of Licence received 3 months' after the date of the new Licence under AP will not be entertained.

6. Application for Letter of Approval In Principle (AP)

6.1 Completed application for a Letter of Approval in Principle (AP) should contain the following information and documents if applicable:

- (a) Confirmation of interview results by SOCSO;
- (b) A copy of the awarded contract (if the applicant is a contractor);
- (c) A copy of Registration Certificate with the Forest Department/Sarawak Timber Industry Development Corporation (in respect of wood-based industry);
- (d) A copy of the Aquaculture Project from the Department of Agriculture (in respect of agricultural and farming sectors);
- (e) A copy of Land Title from Department of Land & Survey (in respect of agriculture sectors);
- (f) A copy of Business Registration Certificate;
- (g) A copy of Business Licence;
- (h) A copy of a permit issued by the Royal Police Department of Malaysia (PDRM) for trading of metals/used items and recycle items;
- (i) A copy of a Permit on rearing of swiftlets issued by Forestry Department Sarawak/Department of Agriculture/Local Authority (whichever is relevant);
- (j) A copy of Licence for extracting of bauxite, sand or quarrying issued by Department of Land & Survey;
- (k) A copy of a factory Licence to process the mineral water issued by Ministry of Health of Malaysia
- (l) Form 49 – Return Giving Particulars in Register of Directors, Managers and Secretaries; / Form 24 – Return of Allotment of shares (Shares Holders) or an extract of company's Corporate Information from Companies Commission of Malaysia (SSM) in respect of a Private Limited and Limited Company.
- (m) A copy of Licence issued under The Local Authorities (Reflexology and Health Establishment) by Law, 2009 by The Local Authorities concerned;
- (n) A copy of Manufacturing Licence issued by Ministry of International Trade & Industry for manufacturing industry;
- (o) A copy of certification/Registration with CIDB;
- (p) A copy of application letter to hire foreign crew on board Local Fishing Vessel issued by Department of Fisheries, Sarawak.

- 6.2 The Letter of Approval in Principle (AP) will be issued with a specified number of workers (according to occupations) for a period of two (2) year and shall be sent direct to the employer via e-mail that can be generated by MSEN system;
- 6.3 Employers are required to check their e-mail from time to time to find out of the result of their application for AP has been made known or otherwise.

7. Application for Licence under AP

- 7.1 Employers are requested to put up their application and submitted (uploading)it via MSEN within the validity period of an AP by filling/feeding the information as required by the system.
- 7.2. The hardcopies of the following documents are to be submitted to the relevant Labour Office for verification of the application being made:
 - a) A copy of the passport of the of the would-be employee;
 - b) A copy of the academic qualification certificate of the would-be employee if it is specifically required as per the advertisement, and
 - c) A copy of the testimonial of the would-be employee if it is specifically required as per the advertisement.

8. Application for Renewal of Licence

- 8.1 The application for the renewal of a Licence can only be done within a period of 2 months before its expiry date.
- 8.2 The employer is required to update the particulars of the employee whose licence is To be renewed in Monitoring System on the Employment of Non-Sarawakians (MSEN).
- 8.3 If there is any employee whose licence is not to be renewed, an employer is required to update/explain what happen to such an employee.
- 8.4 An employer is required to put forth the update on the understudies if it involves a skilled employee.
- 8.5 In respect of a renewal of licence, the following documents are to be submitted to Relevant Labour Office for verification:
 - a) Confirmation of interview results by SOCSO with the exception of the agriculture sector including planting, livestock farming, aquaculture sectors and reflexology and health establishment.
 - b) A copy of the contract award (if the applicant is a contractor)
 - c) A copy of Licence issued under the Local Authorities (Reflexology and Health Establishment) by Law, 2009 by The Local Authorities concerned.
 - d) A copy of the licence to be renewed.
 - e) An application letter for Renewal of Licence.

9. Application for Replacement of Licence

- 9.1 An application for a Replacement of Licence can only be made within 3 months from the approval date of such a licence tied up with a condition that its original has not been collected from Labour Office.
- 9.2 An application for a Replacement of Licence can only be made once.
- 9.3 An employer is required to put up application for a Replacement of Licence and forward it via MSEN with the complete particulars as per requirements under the System.
- 9.4 The following documents are to be submitted personally to the relevant Labour Office for verifications:
- a) A copy of the passport of the would-be employee;
 - b) A copy of the academic qualification certificate of the would-be employee if the academic qualification is required as per the advertisement; and
 - c) A copy of a testimonial of the would-be employee if the experience is required as per the advertisement.
- 9.5 Action to be taken by the employer when a Replacement of Licence is approved: -
- a) An employer will be notifying via e-mail when the licence is approved.
 - b) An employer is required to collect the licence within 3 months from its date of approval

10. Action to be taken by an employer when approval is given for Licence under AP, Renewal of licence and Replacement of Licence

- a) An employer will be notifying via e-mail when the licence is approved.
- b) An employer is required to collect the licence within **3 months** from the date of its approval.

11. Responsibilities of employer who employs non-resident employees

- a) The employer is responsible for the cost of bringing the non-resident employees from the legal point of entry to the place of employment in Sarawak;
- b) The employer is responsible to repatriate the non-resident employee from the place of employment to their country of origin. He must also understand that this responsibility also applies to non-resident employees who have absconded from their place of employment. Such responsibility lies with the employer until such time the said workers leave the country, even though the period of validity of the licence has expired;
- c) The employer shall not impose any type of charges upon the employee in respect of his entry or his repatriation;
- d) Before the non-resident employee is repatriated, the employer must pay all his due salaries and any other legal payments to him;
- e) If there is any of the non-resident employee is found to be unfit medically, he must be repatriated immediately;
- f) An employer shall give priority to employ the qualified local employees who are willing to work at the said place of employment at similar terms and conditions of employment as that of the non-resident employee;

- f) When there is a need to reduce the size of the workforce, the service of the non-resident employee must be terminated first before that of local employees.
- g) It is an employer's responsibility to update the status of the non-resident employee(s), absconded case and the like.

12. The Responsibility of an Employer to comply with the proviso of Section 119A (Labour Ordinance (Sarawak Cap. 76))

An employer is strictly required to update on the date of employee commenced work within 14 days in MSN.

13. Prohibition to terminate the service of the local employee in favour of the Non-Resident Employee (Section 119C)

An employer is strictly prohibited to terminate the service of a resident employee for the purpose of employing a non-resident employee.

14. Other Conditions

- 14.1 Department of Labour Sarawak will only deal with employers or their workers whose duty is to handle matters pertaining to employment of non-resident employee. The Department will not deal with an application submitted by an employment agent.
- 14.2 A non-resident employee must be at least **18 years** of age. **The maximum age for a general worker is 45 years** in respect of an application for a new licence.
- 14.3 The maximum period of a non-resident employee is allowed **to work in Sarawak is 6 years except in respect of the oil palm plantation estate with an area of 100 acres (40.47 hectares) and above is 10 years**, after which the worker has to be repatriated.
- 14.4 The employer shall wait for the non-resident employee concerned at the legal point of entry to Sarawak and accompany him to the place of employment.
- 14.5 The employer or his worker must accompany the non-resident employee being repatriated up to the exit point.
- 14.6 Accommodation must be provided for the non-resident employee at the place of employment.
- 14.7 Whether his licence or Temporary Employment Pass (*PLKS*) is still valid or not, the employer is required to repatriate the non-resident employee concerned to his place of origin under the following circumstances: -
 - a) On the termination of the contract of service by expiry of the period for which it was made,
 - b) On the termination of the contract of service by reason of the inability of the employer to fulfil the contract of service,
 - c) On the termination of the contract of service by reason of inability of the employee to fulfil the contract of service owing to sickness or accident,
 - d) On the termination of the contract of service by notice or otherwise,
 - e) Upon cancellation by the Director or expiry of the Licence To Employ Non-Resident Employee,
 - f) On the termination of the contract of service by agreement between the parties; and

- g) When the female non-resident employee is pregnant;
- 14.8 An employer must ensure that his licence is valid and the non-resident employees employed possessed a valid passport and Visit Pass (Temporary Employment).
- 14.9 An employer who wishes to repatriate his employees has to contact the Immigration Department, Sarawak for the issue of “**Check Out Memo**”. Without the said memo, an employee who is sent back to his country of origin by his employer and later found to be in the country would be regarded as the responsibility of the employer.

These guidelines are subjected to amendments from time to time. Employers are advised to contact the nearest Labour Office to obtain the latest guidelines before submitting their applications.

Department of Labour Sarawak (Headquarters),
13th Floor, Bangunan Sultan Iskandar,
Jalan Simpang Tiga,
93532 KUCHING, SARAWAK.

Date: 3 November 2020

**List of Sectors/Industries Allowed to Apply For Licence
To Employ Non-resident employees under para. 2 of the Schedule**

- i) Manufacturing
- ii) Agriculture
- iii) Construction
- iv) Transport
- v) Services – Application for unskilled workers for this sector may be
considered in respect of restaurant, coffee shop and laundry services only.

NOTE

Employers are advised to contact the nearest Labour Office to obtain the latest information before submitting their applications.

Address of Divisional/District Labour Office

1. Pejabat Tenaga Kerja Kuching
Tingkat 7 dan 8, Bangunan KWSP,
Jalan Upland, Peti Surat 375
93706 Kuching
Tel: 082-247349/247401/247450
Faks: 082-247305
Emel: jtkbkuching@mohr.gov.my
2. Pejabat Tenaga Kerja Serian
Lot 1061-1062, Bangunan K C Inn,
Jalan Alamanda,
94700 Serian.
Tel: 082-874840/875114
Faks: 082-875299
Emel: jtkbserian@mohr.gov.my
3. Pejabat Tenaga Kerja Sri Aman
Tkt. Bawah, Bangunan Persekutuan Fasa II,
Jalan Kejatau, Peti Surat 83,
95007 Sri Aman.
Tel: 083-322527/325114
Faks: 323194
Emel: jtkbsriaman@mohr.gov.my
4. Pejabat Tenaga Kerja Sarikei
Tkt. 2, Wisma Persekutuan,
Jalan Bangunan Kerajaan, Peti Surat 509,
96108 Sarikei.
Tel: 084-651242/655114
Faks: 654011
Emel: jtkbsarikei@mohr.gov.my
5. Pejabat Tenaga Kerja Sibul
Tkt. 3, Wisma Persekutuan Blok 3,
Lot 462, Persiaran Brooke, Peti Surat 431,
96007 Sibul.
Tel: 084-324817/330700/335114
Faks: 084-317284
Emel: jtkbsibu@mohr.gov.my
6. Pejabat Tenaga Kerja Kapit
Tkt. 2, Wisma Persekutuan,
Jalan Kapit by-pass, Peti Surat 75,
96807 Kapit.
Tel: 084-796430/796114
Faks: 084-797637
Emel: jtkbkapit@mohr.gov.my
7. Pejabat Tenaga Kerja Bintulu
Tkt. 2, Bangunan Persekutuan,
Batu ½, Jalan Bintulu/Miri, Peti Surat 418,
97008 Bintulu.
Tel: 086-337625/331188/315114
Faks: 086-339457
Emel: jtkbbintulu@mohr.gov.my

8. Pejabat Tenaga Kerja Miri
Tkt. 3, Bangunan Persekutuan,
Jalan Gartak, Peti Surat 541,
98007 Miri.
Tel: 085-419949/420195/425114
Faks: 085-417181
Emel: jtkbmiri@mohr.gov.my
9. Pejabat Tenaga Kerja Marudi
Tkt. 2, Bangunan Persekutuan,
Jalan Kampung Cina, Peti Surat 224,
98508 Marudi.
Tel: 085-755963/755114
Faks: 085-756559
Emel: jtkbmarudi@mohr.gov.my
10. Pejabat Tenaga Kerja Limbang
Tkt. Bawah, Bangunan Persekutuan,
Jalan Fisher, Peti Surat 128,
98508 Limbang.
Tel: 085-211228/215114
Faks: 085-212461
Emel: jtkblimbang@mohr.gov.my
11. Pejabat Tenaga Kerja Bakun
No. 4 Sungai Asap Commercial Centre Belaga,
Peti Surat 418,
97008 Bintulu.
Tel: 019-8595286
Faks : 086-339457
Emel: jtkbbakun@mohr.gov.my
12. Pejabat Tenaga Kerja Kota Samarahan
Sub Lot 33, Lot 4681,
Tingkat Bawah, 1 dan 2,
Blok 1, Desa Ilmu, 94300 Kota Samarahan,
Tel : 082-616073
Faks : 082-606054
Emel: jtkbksamarahan@mohr.gov.my
13. Pejabat Tenaga Kerja Mukah
Lot 1215, Sub Lot 44,
Blok 68, Mukah Land District,
96400 Mukah
Tel: 084-874179
Faks: 084-874182
Emel: jtkbmukah@mohr.gov.my
14. Pejabat Tenaga Kerja Lawas
Lot 334, Jalan Trusan,
98850 Lawas
Tel: 085-285452
Faks : 085-285476
Emel: jtkblawas@mohr.gov.my

15 Pejabat Tenaga Kerja Saratok
Ground Floor, Lot 719 Saratok Bazaar,
95400 Saratok
Tel: 083-438603
Faks : 083-438609
Emel: jtkbsaratok@mohr.gov.my

16. Pejabat Tenaga Kerja Betong
Sublot 23, Lot No. 177,
Betong Town District,
95707 Betong
Tel : 083-471501
Faks : 083-472945
Email : jtkbbetong@mohr.gov.my