Provisions on the Administration of Labor Employment Service Enterprises

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — These Provisions are formulated for the purpose of consolidating and developing labor employment service enterprises, safeguarding their lawful rights and interests, strengthening administration, and promoting the development of urban labor employment work.

Article 2 — Labor employment service enterprises are collective-ownership economic organizations that undertake the task of placing urban persons awaiting employment, are supported by the state and society, and conduct production and business operations for self-help.

For the purposes of the preceding paragraph, “undertaking the task of placing urban persons awaiting employment” means:

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(1) at the time of establishment of a labor employment service enterprise, more than 60% (including 60%) of its employees are urban persons awaiting employment; or

(2) during the existence of a labor employment service enterprise, urban persons awaiting employment are placed in a certain proportion according to the local employment placement tasks and the enterprise's year-round production and business operations.

For the purposes of these Provisions, "urban persons awaiting employment" means persons among urban residents holding a certificate of awaiting employment who have never been employed and persons who have been employed and have again become unemployed.

Article 3 — The state implements support policies for labor employment service enterprises and encourages all sectors of society to support the establishment of labor employment service enterprises of various forms in accordance with law.

The people's governments at all levels and their industry competent departments shall attach importance to and strengthen leadership over labor employment service enterprises, regard consolidating and developing labor employment service enterprises as an important means of resolving the urban employment problem, incorporate them into the national economic and social development plans, and promote the development of urban labor employment work.

Article 4 — The state grants the following tax preferences to labor employment service enterprises:

(1) newly established labor employment service enterprises are exempted from income tax for two to three years;

(2) after the tax exemption period expires, those that continue to undertake the task of placing urban persons awaiting employment and reach a certain proportion enjoy corresponding tax reduction or exemption preferences; and

(3) the income tax rate of labor employment service enterprises is appropriately lowered.

The specific implementation measures for the above tax preferences shall be formulated by the State Taxation Administration in consultation with the Ministry of Labor and other relevant departments.

Article 5 — The state provides support and consideration to labor employment service enterprises in such respects as establishment conditions, supply of materials, and loans for fixed assets and working capital.

Article 6 — The state protects the lawful rights and interests of labor employment service enterprises. No organ or unit may illegally alter the collective-ownership nature of a labor employment service enterprise, interfere with the enterprise's autonomy, or make arbitrary transfers or apportion labor, materials or funds to the enterprise.

Article 7 — Labor employment service enterprises must implement the state's guidelines, policies, laws and regulations, adhere to the socialist direction, and adhere to the principle of giving priority to placing persons awaiting employment and of combining placement benefits with economic benefits.

Chapter II — Administration of Labor Employment Service Enterprises by the Government

Article 8 — The establishment of a labor employment service enterprise must be approved by the examination and approval organ, and only after being verified and registered by the administrative authority for industry and commerce at the same level and obtaining a Business License for Enterprise Legal Persons or a Business License may the enterprise commence operations.

"Approved by the examination and approval organ" as mentioned in the preceding paragraph means:

(1) for a labor employment service enterprise that has a sponsoring or supporting unit, the nature of the enterprise as a labor employment service enterprise shall be determined by the labor department at the same level after examination and consent by the competent department of the sponsoring or supporting unit; and

(2) for a labor employment service enterprise established with funds raised by persons awaiting employment themselves, approval shall be given by the labor department at or above the county (district) level in the locality.

Labor employment service enterprises shall conduct production and business activities within the approved and registered scope of business.

Article 9 — The duties of the labor departments of the people's governments at all levels with respect to labor employment service enterprises in their respective regions are:

(1) to guide and supervise labor employment service enterprises in implementing the state's relevant guidelines, policies, laws and regulations;

(2) to formulate regional development plans for labor employment service enterprises;

(3) in accordance with the relevant provisions of the state, to use employment funds and production support funds to promote the development of labor employment service enterprises and expand their capacity to place persons awaiting employment;

(4) to conduct technical training, open up channels for materials, organize technical consultation and information exchange, and provide services for labor employment service enterprises;

(5) to guide the management activities of labor employment service enterprises affiliated to the labor departments and the management and training of their cadres, and to carry out activities for selecting advanced collectives and individuals; and

(6) the labor departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government (including cities under separate state planning, the same hereinafter) shall organize labor employment service enterprises in their regions to carry out the work of evaluating quality products and upgrading enterprises.

The employment service agencies of the labor departments at all levels may, in accordance with the provisions of the State Council and the people's governments of provinces, autonomous regions and municipalities directly under the Central Government, undertake the specific work of the above items.

Article 10 — The duties of the industry competent departments with respect to labor employment service enterprises within their respective departments are:

(1) to guide and supervise labor employment service enterprises in implementing the state's relevant guidelines, policies, laws and regulations;

(2) to formulate departmental development plans for labor employment service enterprises and assist the enterprises in raising development funds;

(3) to coordinate the relations between labor employment service enterprises and the various relevant parties within the department;

(4) to conduct technical training, provide consultation for labor employment service enterprises, and organize the flow of information on materials, production and technology;

(5) to help labor employment service enterprises conduct appraisal of new products and appraisal of scientific research results; and

(6) to guide the management and training of cadres of labor employment service enterprises affiliated to the department, and to carry out activities for selecting advanced collectives and individuals.

Chapter III — Relationship Between Sponsoring or Supporting Units and Labor Employment Service Enterprises

Article 11 — The duties of sponsoring or supporting units such as enterprises, public institutions, organs, organizations and military units (referred to as “sponsoring or supporting units”, the same hereinafter) with respect to the labor employment service enterprises they sponsor or support are:

(1) to raise establishment funds for the enterprise and help the enterprise handle examination and approval and industrial and commercial registration procedures at the time of establishment;

(2) to provide certain production and business conditions for the labor employment service enterprise to place persons awaiting employment;

(3) to coordinate the relations between the labor employment service enterprise and all parties;

(4) in the initial period of establishment of the labor employment service enterprise, to guide the enterprise in formulating its management systems and to appoint, recruit or organize the democratic election of the factory director (manager) of the enterprise;

(5) to respect and safeguard the management autonomy of the labor employment service enterprise in respect of personnel, finance, materials, production, supply and marketing; and

(6) to carry out cooperative activities with the labor employment service enterprise in production, business operations and services on the basis of the principles of equality, mutual benefit and exchange of equal value.

Article 12 — Sponsoring or supporting units shall, in accordance with the relevant provisions of the state, actively support their own staff and workers in taking up management positions in production, business operations and technology in labor employment service enterprises.

The appointment of staff and workers of sponsoring or supporting units to positions in labor employment service enterprises shall gradually implement an appointment system, with an employment contract signed by the sponsoring or supporting unit, the appointed person and the labor employment service enterprise. The employment contract shall be established in writing, and its main contents shall include:

(1) the duties of the appointed person;

(2) the treatment of the appointed person;

(3) the term of appointment;

(4) liability for breach and the measures for handling it; and

(5) other contents that the three parties consider should be stipulated.

An employment contract is legally binding once lawfully concluded, and the three parties shall all conscientiously perform it and may not alter it without authorization.

The appointment may be renewed upon expiration of the appointment term.

The employment contract shall be reported to the competent department of the labor employment service enterprise and the labor department for filing.

Article 13 — Where a staff member or worker of a state-owned sponsoring or supporting unit is employed by a labor employment service enterprise, he or she shall retain his or her status and treatment as a state-owned-unit staff member or worker in the original unit.

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After retirement, the appointed person shall return to the original unit to receive retirement pension and enjoy all the treatment of retired persons.

Article 14 — Sponsoring or supporting units shall adhere to the principle of compensated use with respect to funds, equipment and the like provided in support of labor employment service enterprises:

(1) support funds (limited to the sponsoring or supporting unit's own funds) may be used as borrowings to be repaid by the labor employment service enterprise in installments as agreed by both parties, or may, in accordance with law, be treated as investment participating in the distribution of profits of the labor employment service enterprise; and

(2) means of production such as equipment and tools, and factory premises, may be paid for by the labor employment service enterprise in one lump sum or in installments on the basis of a reasonable valuation; the sponsoring or supporting unit may also adopt the form of leasing and collect rent equivalent to the depreciation charge.

Chapter IV — Internal Management of Labor Employment Service Enterprises

Article 15 — Labor employment service enterprises shall implement democratic management. Except in the following circumstances, the internal management of labor employment service enterprises shall be carried out in accordance with the provisions of the state's laws and regulations on urban collective-ownership enterprises:

(1) the circumstances specified in Item (4) of Article 11 of these Provisions; and

(2) for a labor employment service enterprise sponsored mainly by a state-owned enterprise, the candidate for factory director (manager) may be proposed by the sponsoring unit and determined jointly by the sponsoring unit and the labor employment service enterprise. The factory director (manager) shall implement a term system. During the term of the factory director (manager), without statutory grounds, neither the sponsoring unit nor the labor employment service enterprise may remove or transfer the factory director (manager) without authorization.

Article 16 — Labor employment service enterprises may implement various forms of production and business operation responsibility systems, but any such responsibility system shall include the placement of persons awaiting employment as an important element of the responsibility system.

Article 17 — Labor employment service enterprises shall independently select their forms of employment in accordance with the principles of flexibility and convenience, contract management, stability of the backbone staff, and rational mobility.

The working years of employees during their work in a labor employment service enterprise shall be counted as length of service.

Article 18 — Labor employment service enterprises may, according to their own circumstances and conditionally, appropriately arrange for surplus personnel of state-owned sponsoring units to be employed in the enterprise. The placement of surplus personnel shall be subject to a placement contract signed between the labor employment service enterprise and the state-owned sponsoring unit, the contents of which shall be agreed upon by both parties.

Article 19 — Labor employment service enterprises may, in accordance with the relevant provisions of the state and the economic benefits of the enterprise, independently determine the forms and methods of distributing wages and bonuses suited to the specific circumstances of the enterprise.

Article 20 — Labor employment service enterprises may implement methods of paying interest or distributing dividends on individual capital contributions of staff and workers. Where the enterprise makes a profit, interest or dividends shall be paid at a certain proportion; where the enterprise suffers a loss, no interest or

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dividends may be paid before the loss is made up. The proportion of interest or dividends paid may not exceed the maximum limit prescribed by the state.

Article 21 — For a labor employment service enterprise established with funds raised by persons awaiting employment themselves, when the enterprise has the ability to repay, the individual capital contributions may be repaid gradually.

Article 22 — Labor employment service enterprises shall establish an old-age insurance system and gradually establish an unemployment insurance system. The methods of drawing insurance funds and the insurance items shall be implemented in accordance with the relevant provisions of the state.

Article 23 — Labor employment service enterprises shall implement the state's relevant financial systems and financial discipline, improve financial management, and accept the guidance and supervision of the relevant competent departments of the state.

Chapter V — Legal Liability

Article 24 — Whoever, in violation of Article 8 of these Provisions, conducts activities in the name of a labor employment service enterprise shall be given an administrative penalty by the administrative authority for industry and commerce in accordance with the relevant provisions of the state.

Article 25 — Where any organ or unit, in violation of Article 6 of these Provisions, illegally alters the collective-ownership nature of a labor employment service enterprise or interferes with the enterprise's autonomy, its competent department at the next higher level shall order correction; where it makes arbitrary transfers or apportions labor, materials or funds to a labor employment service enterprise, it must make compensation. The competent personnel bearing direct responsibility and other directly responsible persons shall be given administrative sanctions by their competent departments according to the seriousness of the circumstances; where the circumstances constitute a crime, criminal responsibility shall be pursued in accordance with law.

Article 26 — Where a labor employment service enterprise violates the provisions of these Provisions concerning the procedures for the appointment and removal of enterprise leading personnel, its competent department shall order correction and pursue the administrative responsibility of the directly responsible persons.

Where the competent department of a labor employment service enterprise or a sponsoring or supporting unit violates the provisions of these Provisions concerning the procedures for the appointment and removal of leading personnel of a labor employment service enterprise, its competent department at the next higher level or the competent department of the sponsoring or supporting unit shall order correction and pursue the administrative responsibility of the directly responsible persons.

Chapter VI — Supplementary Provisions

Article 27 — Except where otherwise expressly provided in these Provisions, labor employment service enterprises shall implement the state's policies and regulations on urban collective-ownership enterprises.

Article 28 — The people's governments of provinces, autonomous regions and municipalities directly under the Central Government and the industry competent departments under the State Council may formulate implementation measures in accordance with these Provisions and in light of the specific circumstances of their respective regions or departments.

Article 29 — These Provisions shall be interpreted by the Ministry of Labor.

Article 30 — These Provisions shall take effect on the date of promulgation.

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