

## Department of Labor and Employment issues new Rules for the Issuance of Alien Employment Permits (2017 AEP Rules)

The Department of Labor and Employment ("DOLE") has recently issued Department Order No. 187, Series of 2017, otherwise known as the "Revised Rules for the Issuance of Employment Permit to Foreign Nationals" ("2017 AEP Rules").

To view the 2017 AEP Rules, please click [here](#).

The salient changes of the 2017 AEP Rules, as compared to Department Order No. 146, Series of 2015 or the "2015 AEP Rules", are as follows:

Topic	2015 AEP Rules	2017 AEP Rules
1. Exemption of Aliens from securing an AEP		Expressly exempted from AEP coverage: (1) foreign nationals under Section 3 of the Alien Social Integration Act of 1995 (at Section 2[e]); and (2) refugees and stateless persons recognized by the Department of Justice ("DOJ") pursuant to Article 17 of the UN Convention and Protocol Relating to status of Refugees and Stateless Persons (at Section 2[f]).
2. Exclusion of Aliens from securing an AEP	Corporate officers as provided under the Corporation Code of the Philippines, Articles of Incorporation, and By-Laws of the Corporation such as President, Secretary and Treasurer are excluded from securing an AEP (at Section 3[b]).  <i>(Note: From our experience, the DOLE only allows the exclusion for the positions of President, Secretary and Treasurer.)</i>	President and Treasurer, who are part-owner of the company are excluded from securing an AEP (at Section 3[b]).  <i>(Note: The Secretary and other corporate officers provided under the Corporation Code, Articles of Incorporation and By-Laws have been removed.)</i>  <i>Further, based on our preliminary consultations with the DOLE, it appears that a foreign national who holds the position of President or Treasurer is excluded from securing an AEP <u>whether or not these are working positions</u> (see also comment in item 3 below).</i>
3. Procedure for the processing and issuance of Certificate of Exclusion		The 2017 AEP Rules provided for the documentary requirements, and procedure for the issuance of the Certificate of Exclusion.  It also provides that for President, Treasurer and Members of Governing Boards (excluding those listed in the Foreign Investment Negative List), the following additional documents are required:  i. Certified true copy of the General Information Sheet (GIS) showing the name and position of the foreign national. ii. Certification that the requesting foreign national is a member of the governing board with voting rights only, will not in any manner intervene in the management and operation of enterprise and with no intention to obtain gainful employment. iii. Board Secretary's Certificate of Election.  <i>(Note: With respect to item (ii), we consulted with the DOLE on whether this requirement is applicable for the positions of President and Treasurer, since these positions are necessarily working positions. We were advised that this is not required and only applies to members of governing boards. The responsible officer of</i>

		<i>the DOLE also said that the DOLE will issue a supplemental advisory in connection with the 2017 AEP Rules to clarify/correct certain matters.)</i>
4. Procedure in the Processing of Applications for AEP		Specified that (i) if the position of the foreign national is included in the list of regulated professions, a Special Temporary Permit (STP) from Professional Regulations Commission (PRC) is required; (ii) if the employer is covered by the Anti-Dummy Law, an Authority to Employ from the DOJ or from the DENR (in case of mining) is required (at Section 5 [a][5] and [a][6]).
5. Fees		Provides for a government fee of PhP 500 for an application for a certificate of exclusion (at Section 6).
6. Processing period	Applications for new AEP shall be processed and an AEP shall be issued within 24 hours after publication and payment of required fees and fines, if there is any. Applications for renewal of AEP shall be processed within 24 hours after receipt (at Section 7).	Applications for new AEP shall be processed and an AEP shall be issued within 3 working days after publication and payment of required fees and fines, if there are any. Applications for renewal of AEP shall be processed within 1 day after receipt (at Section 8).
7. Renewal of AEP		Specifies that an expired AEP shall be processed as a new application, subject to the payment of required fees and penalties in relation to Section 17 (Penalty for Working without AEP) of the 2017 AEP Rules (at Section 11).
8. Denial of application for new or renewal of AEP		Adds the following grounds for denial: (i) worked without valid AEP for more than a year; or (ii) application for renewal with expired visa or with temporary visitor's visa.
9. Effect of denial / cancellation or revocation of AEP		Adds that a foreign national whose AEP has been denied or cancelled due to misrepresentation of facts or submission of falsified documents with the intent to deceive, conceal or omit to state material facts and, by reason of such omission or concealment, the DOLE was prompted to approve/issue the AEP that would not otherwise have been approved/issued, shall be disqualified to re-apply within a period of 5 years (at Section 14).
10. Effect of fraudulent application for AEP filed by employers, employer and foreign national's representatives and/or agents.		Employers or its representatives or the foreign national's representatives, found to have filed fraudulent AEP applications for 3 counts shall be barred, after due process, from filing applications for 5 years.
11. Penalty for working without AEP		Specifies that employers which failed to pay the penalty for employing foreign nationals without a valid AEP, shall not be allowed to employ any foreign national for any position in said company (At section 17).



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