



## Memorandum on provisions concerning Private Placement Services under the Federal Act on Employment Services and the Hiring of Services (AVG) of 6 October 1989

### 1. Who is deemed to be providing a placement service?

A person is deemed to be providing a placement service if he or she introduces job-seekers and hirers for the purpose of concluding a contract of employment.

Placement involving artistic or similar performances constitutes an exception. In this instance finding occasions to appear is deemed to be placement whatever the type of contract that binds the person concerned to appear. For example it is deemed to be finding an occasion to appear if a party organiser introduces an performer to a hirer, and the hirer engages the performer.

The term introduce is interpreted in a broad sense. It is understood to mean any final action by which information is conveyed to one party that one or more other parties are interested in the conclusion of a contract. Introduction includes not only the establishment of contacts in the office of the placement agency – placement can take place through the printed media, telephone, television, radio, teletext, the Internet or other appropriate media. It constitutes introduction just to offer a job-seeker the opportunity to advertise his or her personal details or a hirer the opportunity to advertise a position, by means of an Internet search engine, so that one becomes aware of the other.

Placement includes seeking out and selecting possible parties to a contract, or making available a medium through which one party to a contract can make public that he or she is seeking a position or has a position to fill, and is deemed in law to be complete if one party is informed that he or she could conclude a contract of employment with another. Accordingly any person who gives a hirer an indication that a contract might be concluded is deemed to be providing a placement service. Whether a contract is subsequently concluded is immaterial.

### 2. What placement services require a licence?

A licence is required for the provision of placement services that are regular and against payment, within Switzerland, and placement abroad.

#### a) Regular placement services

Regular placement services are characterised by a repeated readiness to find work (involving for example the offer of placement services in advertisements or on the Internet; readiness to find work may also be indicated by the corporate function recorded in the commercial register), or the provision of placement services on more than ten occasions within twelve months.

b) Placement against payment

The reimbursement of costs, expenses, etc., is deemed to constitute payment; payment does not mean profit.

c) Placement abroad

The following four cases are deemed to constitute placement abroad:

*Switzerland-abroad:*

A job-seeker in Switzerland is placed abroad.

*Abroad-Switzerland:*

A job-seeker abroad is placed in Switzerland. This also includes the placement of frontier workers taking up work in Switzerland for the first time.

*Abroad-abroad:*

A job-seeker abroad is placed abroad.

*Switzerland-Switzerland:*

A foreign job-seeker is placed who is already in Switzerland but not yet entitled to take up gainful employment (e.g., tourists, school children, students or asylum-seekers). This category also includes cabaret dancers already residing in Switzerland who are in possession of an L permit for ongoing engagements.

### **3. What legal requirements apply to those engaged in placement?**

- Placement agencies must give their name and exact address when advertising vacancies. Advertisements must correspond to reality. Advertising fictitious vacancies is not allowed unless their fictitious nature is made clear.
- Special rules apply regarding data protection: information concerning job-seekers and vacancies which would make it possible to deduce the identity of the job-seeker or the hirer may be passed on only with the agreement of those concerned. Similarly such information may be put on file at the end of the placement service only with the written agreement of those concerned, and this agreement can be withdrawn at any time.
- In the case of placement against payment, the law requires that there should be a written contract with the job-seeker, if he or she has given the agency instructions to look for a vacancy and must pay a commission for that service. The contract must indicate the services involved in the placement and the fee incurred. No written contract is required if the job-seeker is simply responding to the offer of a vacancy made by the placement service.
- The job-seeker may be asked to pay a registration fee and a commission for the placement services, but is obliged to pay the commission only if the placement services have led to the conclusion of a contract. The fees and commissions are fixed by federal law (in the Ordinance on Fees, Commissions and Sureties under the Act on the Employment Service and the Hiring of Services, (GV-AVG). The calculation of any commission must be based at most on the first gross annual salary.
- Any clause in a contract prohibiting a job-seeker from going to another placement agency is void.
- In case of litigation between the placement agency and the job-seeker arising in connection with placement, jurisdiction over any proceedings brought by the job-seeker lies with the courts at the location of the branch of the placement agency with which the contract was concluded (Article 24 paragraph 2, Act on Jurisdiction in Civil Matters, GestG), or with the courts where the head office of the placement agency is to be found (Article 24 paragraph 1, GestG). For proceedings brought by the placement agency jurisdiction lies with the courts at the job-seeker's place of domicile (Article 3, paragraph 1a, GestG).
- The rules applying to placement in the artistic field (of musicians, performers, models, DJs, etc.) differ to some extent, e.g. in respect to commissions and standard contracts.

#### **4. What additional regulations apply to persons providing a placement service which requires a licence?**

- To secure a trading licence a placement agency must be registered in the Swiss Commercial Registry, it must have suitable offices and may not engage in any commercial activity which could put at risk the interests of job-seekers or hirers.
- Those responsible for management must be Swiss citizens or foreigners with a residence permit (except EU/EFTA citizens due to the agreement between Switzerland and the EU on the free movement of persons and the corresponding amendment to the EFTA convention), must be qualified to provide professional placement services, and be of good reputation (having no previous convictions, no recovery proceedings against them, no bankruptcies and no outstanding tax liabilities). According to Article 9 AVV they are held to have the necessary professional skills if they have completed a professional apprenticeship or equivalent training, have been active professionally for several years and in particular
  - a. have received recognised training in placement or hiring of services; or
  - b. have several years (at least 3 years) professional experience in placement, the hiring of services, personnel, organisation or business consultancy, or in the field of personnel management.
- In the case of placement abroad the person responsible for management must further ensure that there is sufficient knowledge available in the agency concerning conditions in the relevant countries, in particular concerning entry, taking up gainful employment and placement. In the case of placement from abroad to Switzerland, knowledge of Swiss law on foreigners is required.
- The placement agency must furnish the licensing authority on request with all necessary information, and submit any documentation required. An annual report must be submitted to the licensing authority. The licensing authority must furthermore be immediately informed if changes occur to the information provided in the agency's application for a licence (e.g., change of address, change in the person responsible for management or change in the corporate status, adaptation of contracts, etc.).

#### **5. The licence**

- The licence is made out for an unlimited period in the name of the agency, the name of the person responsible for its management being also specified. A charge is made for issue and amendment of the licence; this lies between CHF 700 and CHF 1500 for issue and between CHF 200 and CHF 800 for any amendments.
- Branches always require a separate licence. If they are in a different canton to the main office, they must obtain the licence before commencing business. If they are in the same canton as the main office they may commence before the licence has been issued as long as they are registered with the licensing authority.
- Application for a licence should be submitted in writing to the competent cantonal licensing authority, which can provide the forms required. An application for a federal licence can be lodged with the same authority at the same time.
- Placement activities within Switzerland require a cantonal licence. Should placements also be conducted abroad, a federal licence is necessary as well. A cantonal licence is a precondition in every case. In the case of placement via the Internet, although the Internet is accessible world-wide only a cantonal licence is necessary, if the placement agency intends to appeal only to job-seekers and hirers in Switzerland. A special regulation applies for placement in the Principality of Liechtenstein (see special memorandum).
- The licence can be withdrawn if it was obtained by the use of incorrect or misleading information or by the concealment of material facts, in case of repeated or serious breaches of legal provisions, or if the conditions of issue are no longer met. As supervising authority the licensing authority can carry out inspections.

The full German texts of the Federal Act on Employment Services and the Hiring of Services (AVG/LSE), the Ordinance on Employment Services and the Hiring of Services (AVV/OSE) and the Ordinance on Fees, Commissions and Sureties under the Law on the Employment Service and the Hiring of Services (GV-AVG/TE-LSE) can be found at the following Internet addresses (Acrobat Reader is required):

**AVG** [www.admin.ch/ch/d/sr/8/823.11.de.pdf](http://www.admin.ch/ch/d/sr/8/823.11.de.pdf)  
**AVV** [www.admin.ch/ch/d/sr/8/823.111.de.pdf](http://www.admin.ch/ch/d/sr/8/823.111.de.pdf)  
**GV-AVG** [www.admin.ch/ch/d/sr/8/823.113.de.pdf](http://www.admin.ch/ch/d/sr/8/823.113.de.pdf)

French texts: [www.admin.ch/ch/f/rs/8/823.11.fr.pdf](http://www.admin.ch/ch/f/rs/8/823.11.fr.pdf), (...).111.fr.pdf, and (...).113.fr.pdf respectively  
Italian texts: [www.admin.ch/ch/i/rs/8/823.11.it.pdf](http://www.admin.ch/ch/i/rs/8/823.11.it.pdf), (...).111.it.pdf, and (...).113.it.pdf respectively

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