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The following Act was passed by Parliament on 11th September 2012 and assented to by the President on 12th October 2012:—
Employment of Foreign Manpower (Amendment) Act 2012

(No. 24 of 2012)

I assent.

TONY TAN KENG YAM,
President.

12th October 2012.

Date of Commencement: 9th November 2012

An Act to amend the Employment of Foreign Manpower Act (Chapter 91A of the 2009 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:
Short title and commencement

1. This Act may be cited as the Employment of Foreign Manpower (Amendment) Act 2012 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2 of the Employment of Foreign Manpower Act (referred to in this Act as the principal Act) is amended —

(a)

by inserting, immediately before the definition of “construction works”, the following definitions:

“ “Appeal Board” means the Appeal Board established by the Minister under section 25H;

“authorised officer”, in relation to any provision in this Act, means any public officer authorised in that behalf by the Minister for the purposes of that provision;

“body corporate” includes a limited liability partnership registered under the Limited Liability Partnerships Act (Cap. 163A);”;

(b)

by inserting, immediately after the definition of “Controller”, the following definition:

“ “debarred”, in relation to a person, means a person who is debarred under section 7(4)(d) from applying for, or being issued with, a work pass;”;

(c)

by deleting the definition of “employer” and substituting the following definition:

“ “employer” means any person employing a foreign employee, and includes —

(a)

for the purposes of an application for a work pass, any person who has the intention or purports to have the intention to employ a foreign employee; or

(b)

in a case where a foreign employee has or had a valid work pass, any person specified in the work pass as the employer of the foreign employee;”;

(d)

by inserting, immediately after the definition of “foreigner”, the following definition:

“ “in-principle approval” means the in-principle approval of an application for a work pass issued by the Controller under section 7(2A);”;

(e)

by deleting the definition of “self-employed foreigner” and substituting the following definitions:
“ “prescribed infringement” means —

(a)

any contravention of section 9(1), 25(1), (2), (3) or (4) or 25A(2);

(b)

any contravention of any provision in the regulations made under this Act that is prescribed as a prescribed infringement; or

(c)

the abetment, within the meaning of section 25F, of any contravention referred to in paragraph (a) or

(b);

“regulatory condition” means a condition of an in-principle approval or a work pass that —

(a)

is prescribed by the Minister as a regulatory condition; or

(b)

is imposed by the Controller under section 7 as a regulatory condition;

“self-employed foreigner” means any foreigner who, not being employed under a contract of service, seeks to engage in or engages in —

(a)

any trade, vocation or profession, whether for the purpose of gain or otherwise; or

(b)

any other activity in Singapore for the purpose of gain;” and

(f)

by inserting, immediately after the definition of “train”, the following definition:

“ “valid work pass” means a work pass that is valid in accordance with section 12;”.

Amendment of section 3

3. Section 3 of the principal Act is amended —

(a)

by inserting, immediately after the words “this Act” in subsection (1A), the words “(except the power of delegation conferred by subsection (3))”;

(b)

by inserting, immediately after subsection (2), the following subsections:

“(3) The Controller may delegate the exercise of all or any of the functions or powers conferred on him by this Act (except the power of delegation conferred by this subsection) to one or more authorised officers, subject to such conditions or limitations as set out in this Act or as the Controller may specify in writing; and any reference in this Act to the Controller shall include a reference to such an authorised officer.

(4) For the purposes of this Act, an authorised officer may be given such title as the Minister may, by notification in the *Gazette*, specify.”; and

(c)

by inserting, immediately after the words “employment inspectors” in the section heading, the word “, etc.”.

Amendment of section 5

4. Section 5 of the principal Act is amended —

(a)

by deleting subsection (6) and substituting the following subsection:

“(6) Any person who contravenes subsection (1) shall be guilty of an offence and shall —

(a)

be liable on conviction to a fine of not less than \$5,000 and not more than \$30,000 or to imprisonment for a term not exceeding 12 months or to both; and

(b)

on a second or subsequent conviction —

(i)

in the case of an individual, be punished with a fine of not less than \$10,000 and not more than \$30,000 and with imprisonment for a term of not less than one month and not more than 12 months;
or

(ii)

in any other case, be punished with a fine of not less than \$20,000 and not more than \$60,000.”;

(b)

by deleting subsection (6A);

(c)

by deleting the words “\$5,000 or to imprisonment for a term not exceeding 12 months” in subsection (7) and substituting the words “\$20,000 or to imprisonment for a term not exceeding 2 years”;

(d)

by deleting “\$5,000” in subsection (7A) and substituting “\$10,000”; and

(e)

by deleting paragraph (a) of subsection (8).

Amendment of section 7

5. Section 7 of the principal Act is amended —

(a)

by inserting, immediately after subsection (2), the following subsection:

“(2A) The Controller may, before issuing a work pass under subsection (2), issue an in-principle approval of the application for the work pass subject to such conditions as the Controller may think fit to impose.”;

(b)

by inserting, immediately before the word “vary” in subsection (4)(b), the words “cancel any in-principle approval, or”; and

(c)

by inserting, immediately after subsection (4), the following subsections:

“(4A) For the purposes of this section, the Controller may, in relation to a foreign employee —

(a)

impose conditions that the employer of the foreign employee shall comply with —

(i)

relating to the employment of the foreign employee; or

(ii)

relating to the foreign employee, after the in-principle approval or the work pass relating to that foreign employee is cancelled or revoked or expires; and

(b)

impose conditions that the foreign employee shall comply with relating to his employment as a foreign employee.

(4B) In the exercise of any power under subsection (4)(a) or (4A), the Controller shall not —

(a)

vary or revoke any existing condition of a work pass to become inconsistent with any condition prescribed by the Minister by regulations under section 29(2)(c); or

(b)

impose any new condition for a work pass that is inconsistent with any condition prescribed by the Minister by regulations under section 29(2)(c),

and any condition varied, revoked or imposed by the Controller which is so inconsistent shall, to the extent of the inconsistency, be void.

(4C) In determining whether a person should be debarred under subsection (4)(d) from applying for or being issued with a work pass, the Controller may have regard to such considerations as he deems appropriate, including but not limited to —

(a)

whether the person has acted, or is acting, in concert with or on the direction of a debarred person for or in connection with the employment of any foreign employee; or

(b)

whether the person, as an associate of a debarred person, is engaged in a trade or business which is substantially similar to any trade or business of the debarred person.

(4D) For the purposes of subsection (4C)(b) —

(a)

a person is an associate of an individual —

(i)

if that person is the individual's spouse, or if that person is a relative, or the spouse of a relative of the individual or his spouse;

(ii)

if that person is in partnership with the individual, or the individual is the spouse or a relative of any other person with whom the first-mentioned person is in partnership;

(iii)

if that person employs the individual or the individual employs that person, and for this purpose, any director or other officer of a person that is a company shall be treated as employed by that company;

(b)

a person in his capacity as trustee of a trust is an associate of an individual if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that individual or an associate of that individual;

(c)

a company is an associate of an individual if that individual has control of it or if that individual and persons who are his associates together have control of it;

(d)

for the purposes of paragraph (a), a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant;

(e)

any reference in this subsection to a spouse shall include a former spouse;

(f)

for the purposes of paragraph (c), an individual shall be taken to have control of a company if —

(i)

the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions; or

(ii)

he is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of the company or of another company which has control of it, and where 2 or more persons together satisfy sub-paragraph (i) or (ii), they shall be taken to have control of the company; and

(g)

in this subsection, "company" includes any body corporate (whether incorporated in Singapore or elsewhere), and references to directors and other officers of a company and to voting power at any general meeting of a company shall have effect with any necessary modifications."

Amendment of section 9

6. Section 9 of the principal Act is amended by deleting subsection (3) and substituting the following subsections:

"(3) Where any employer contravenes subsection (1), the Controller may impose on him a financial penalty of such amount, not exceeding \$10,000, as the Controller may determine.

(3A) Any employer who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000."

Amendment of section 10

7. Section 10 of the principal Act is amended —

(a)

by deleting subsections (1), (2) and (3) and substituting the following subsections:

"(1) No foreigner shall be a self-employed foreigner unless he has a valid work pass.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall —

(a)

be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both; and

(b)

on a second or subsequent conviction, be punished with imprisonment for a term of not less than one month and not more than 2 years and also be liable to a fine not exceeding \$20,000.”;

(b)

by deleting paragraph (a) of subsection (4); and

(c)

by inserting, immediately after the words “1st July 2007” in subsection (4)(b), the words “or section 10(1) of this Act in force immediately before the date of commencement of section 7(a) of the Employment of Foreign Manpower (Amendment) Act 2012”.

Amendment of section 11

8. Section 11 of the principal Act is amended —

(a)

by deleting the words “or on self-employed foreigners who have, pursuant to section 10(1), obtained a work pass to engage in any trade, vocation, profession or other activity in Singapore for the purpose of gain” in subsection (1) and substituting the words “, or on self-employed foreigners or any class thereof, who have been issued with a work pass”; and

(b)

by deleting subsections (5) and (6) and substituting the following subsections:

“(5) The penalty under subsection (4) shall be of an amount determined in accordance with such rate or formula as the Minister may specify by order published in the *Gazette*, but the total penalty shall not exceed 30% of the amount of levy outstanding.

(6) The Controller may, in any case in which he thinks fit, waive, remit or refund in whole or in part —

(a) any levy imposed under subsection (1); or

(b) any penalty due under subsection (4).”.

Amendment of section 12

9. Section 12 of the principal Act is amended by deleting subsections (1) and (2) and substituting the following subsections:

“(1) A work pass for a foreign employee shall be valid only in respect of the employer and the foreign employee specified therein, and —

(a)

the trade, sector, occupation or type of employment —

(i)

that is specified in the work pass; or

(ii)

in any other case, that was submitted to the Controller in, or in connection with, the application for the work pass; and

(b)

any trade, sector, occupation or type of employment not specified in the work pass, for which he has the approval of the Controller to engage in.

(2) A work pass for a self-employed foreigner shall be valid only in respect of the self-employed foreigner specified therein, and —

(a)

the trade, sector, vocation, profession or activity —

(i)

that is specified in the work pass; or

(ii)

in any other case, that was submitted to the Controller in, or in connection with, the application for the work pass; and

(b)

any trade, sector, vocation, profession or activity not specified in the work pass, for which he has the approval of the Controller to engage in.”.

Amendment of section 13

10. Section 13(4) of the principal Act is amended by deleting the words “employment inspector” and substituting the words “authorised officer or employment inspector”.

Repeal and re-enactment of section 15

11. Section 15 of the principal Act is repealed and the following section substituted therefor:

“Burden of proof, etc.

15.

—(1) For the purposes of section 7, and any proceedings in respect of any prescribed infringement or any offence under this Act —

(a)

a person who makes an application for a work pass shall be presumed, until the contrary is proved, to have knowledge of the information provided in the application; and

(b)

subject to subsection (2), the burden of proving the truth of the contents of an application for a work pass shall be on the person who makes the application.

(2) Where any application for a work pass is made by more than one person, then for the purposes specified in subsection (1), each applicant shall bear the burden of proving the truth of the contents of the application that relate to him.”.

Amendment of section 16

12. Section 16 of the principal Act is amended —

(a)

by deleting the words “An employment inspector” in subsection (1) and substituting the words “An authorised officer or employment inspector”;

(b)

by deleting paragraph (a) of subsection (1) and substituting the following paragraphs:

“(a)

to enter and inspect, at any reasonable time —

(i)

any premises or part thereof when he has reasonable cause to believe that any foreign employee or self-employed foreigner is employed or engaged therein or accommodated thereat; or

(ii)

where an application for a work pass has been made, the business premises of the employer who made the application;

(aa)

to enter and search, by day or by night, any premises or part thereof when he has reasonable cause to believe that evidence of a prescribed infringement or the commission of an offence under this Act, as the case may be, can be found therein;”;

(c)

by deleting the words “employment inspector” in subsection (1)(b) and substituting the words “authorised officer or employment inspector”;

(d)

by inserting, immediately after the word “photographs” in subsection (1)(f), the words “, or audio or video recording,”;

(e)

by deleting the words “under this Act” in subsection (1)(g) and substituting the words “into a prescribed infringement or an offence under this Act, as the case may be,”;

(f)

by deleting the full-stop at the end of paragraph (g) of subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

“(h)

to require an employer to produce all or any of his employees for the purposes of any investigation into a prescribed infringement or an offence under this Act when required by the authorised officer or employment inspector, as the case may be.”;

(g)

by deleting subsections (2) and (3) and substituting the following subsections:

“(2) An authorised officer or employment inspector may require the occupier of any premises and the occupier’s agents and any person found in the premises to furnish such means required by the authorised officer or employment inspector, as the case may be, as necessary for any entry, inspection, search, examination or investigation, the taking of photographs or audio or video recordings, the taking of articles into custody or otherwise for the exercise of his powers under this Act.

(3) An authorised officer or employment inspector may, after concluding his inspection or investigation, hand over to an immigration officer any travel document which he has taken into custody or which has been produced to him.

(3A) If entry to any premises cannot be obtained, an employment inspector may, when he has reasonable cause to believe that any foreign employee or self-employed foreigner is employed or engaged therein or accommodated thereat or that evidence of the commission of an offence under this Act can be found therein, state his authority and purpose and demand entry to the premises, and —

(a)

break open any outer or inner door or window leading to the premises;

(b)

forcibly enter such premises and every part thereof; or

(c)

remove by force any obstruction to such entry or search.”;

(h)

by deleting the words “employment inspector” in subsection (4)(a), (b) and (e) and substituting in each case the words “authorised officer or employment inspector”;

(i)

by deleting the words “to obstruct an employment inspector” in subsection (4) and substituting the words “to obstruct an authorised officer or employment inspector, as the case may be,”;

(j)

by deleting the words “or any regulations made thereunder” in subsection (5); and

(k)

by deleting the words “employment inspector” in the section heading and substituting the words “authorised officers and employment inspectors”.

Amendment of section 18

13. Section 18 of the principal Act is amended —

(a)

by deleting the words “or any regulations made thereunder” in subsection (1);

(b)

by inserting, immediately after the word “family” in subsection (1)(a), the words “or his household”; and

(c)

by deleting subsections (4) and (5) and substituting the following subsections:

“(4) Every notice, order or document to be given by the Controller or an employment inspector under this Act shall be signed by the Controller or employment inspector, or by some person or persons from time to time authorised by the Controller or employment inspector, as the case may be, in that behalf, and every such notice, order or document shall be valid if the signature or an official facsimile thereof of the Controller, employment inspector or such person or persons is duly printed or written thereon.

(5) Any notice or order under this Act requiring the attendance of any person or witness before the Controller or an employment inspector shall be signed by the Controller or the employment inspector, as the case may be, or by a person duly authorised by the Controller.”.

Repeal and re-enactment of section 19

14. Section 19 of the principal Act is repealed and the following section substituted therefor:

“Protection from personal liability

19. No liability shall be incurred by —

(a)

the Controller;

(b)

any authorised officer or employment inspector, or any person acting under the direction of the Controller; or

(c)

any member of the Appeal Board,
for anything which is done or intended to be done in good faith and with reasonable care, in the exercise or purported exercise of any power, or the performance or purported performance of any function or duty, under this Act.”.

Repeal and re-enactment of section 20

15. Section 20 of the principal Act is repealed and the following section substituted therefor:

“Offences by bodies corporate, etc.

20.

—(1) Where an offence under this Act committed by a body corporate is proved —

(a)

to have been committed with the consent or connivance of an officer of the body corporate; or

(b)

to be attributable to any neglect on his part,
the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved —

(a)

to have been committed with the consent or connivance of a partner; or

(b)

to be attributable to any neglect on his part,
the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved —

(a)

to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

(b)

to be attributable to any neglect on the part of such an officer or member,
the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) For the purposes of this section, where an offence under this Act has been committed by a body corporate, an unincorporated association (other than a partnership) or a partnership, it shall be presumed, until the contrary is proved, that the offence is attributable to the neglect of an officer or a member of the body corporate or unincorporated association or a partner of the partnership, as the case may be, who —

(a)

is primarily responsible for the act or omission which constitutes the offence; and

(b)

has failed to exercise reasonable supervision or oversight as such officer, member or partner.

(6) In this section —

“officer” —

(a)

in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

(b)

in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a

position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner.

(7) The Minister may make regulations to provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.”

Amendment of section 21

16. Section 21 of the principal Act is amended by deleting subsection (1) and substituting the following subsections:

“(1) Any police officer or employment inspector may arrest without warrant any person whom he reasonably suspects —

(a)

is committing or has committed an offence under section 5(6), (7) or (7A), 10(2), 22(1)(a), (c), (d), (e) or (f), (2), (3) or (4), 22A(2) or 22B(1); or

(b)

has abetted the commission of any offence referred to in paragraph (a).

(1A) For the purposes of this section, an officer or a member of a body corporate or an unincorporated association or a partner of a partnership who is liable for an offence referred to in subsection (1)(a) by virtue of section 20 shall be treated as having committed that offence.”

Repeal and re-enactment of section 22 and new sections 22A and 22B

17. Section 22 of the principal Act is repealed and the following sections substituted therefor:

“General offences

22.

—(1) Any person who —

(a)

being an employer, a foreign employee or a self-employed foreigner to whom a work pass applies or had applied, contravenes any condition (other than a regulatory condition) of the work pass or in-principle approval of the application for the work pass;

(b)

contravenes section 13(4);

(c)

wilfully obstructs an authorised officer or employment inspector in the exercise of his powers under section 16, 21, 21A, 21B, 21C, 21E or 21F (as applicable);

(d)

in connection with any application for or to renew a work pass or for any other purpose under this Act, makes any statement or furnishes any information to the Controller or an authorised officer or employment inspector which he knows, or ought reasonably to know, is false in any material particular or is misleading by reason of the omission of any material particular;

(e)

sells, forges, unlawfully alters or, without lawful authority, transfers or allows another person to use any in-principle approval or work pass;

(f)

uses or, without lawful authority, has in his possession any in-principle approval or work pass that is forged or unlawfully altered, or which is issued to another person; or

(g)

contravenes section 13(1), (2) or (3), 14 or 17(1) or (3),

shall be guilty of an offence and shall be liable on conviction —

(i)

in the case of an offence under paragraph (a), (b) or (c), to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both;

(ii)

in the case of an offence under paragraph (d), (e) or (f), to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both; and

(iii)

in the case of an offence under paragraph (g), to a fine not exceeding \$10,000.

(2) Any employer, foreign employee, self-employed foreigner, or any agent involved in the employment of the foreign employee or the engagement of the self-employed foreigner, who —

(a) knows, or has reason to believe, that an offence has been committed under subsection (1)(d); and

(b) intentionally omits to furnish any information to the Controller in respect of that offence, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) Any foreign employee or self-employed foreigner who makes any statement or submits any document to the Controller under this Act relating to his qualifications which he knows or ought reasonably to know is false in any material particular, or is misleading by reason of the omission of any material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Any employer of a foreign employee or any agent involved in the employment of the foreign employee, or any agent involved in the engagement of a self-employed foreigner, who —

(a) knows, or has reason to believe, that an offence has been committed by the foreign employee or self-employed foreigner, as the case may be, under subsection (3); and

(b) intentionally omits to furnish any information to the Controller in respect of that offence, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

Restrictions on receipt, etc., of moneys in connection with employment of foreign employee

22A.

—(1) No person shall deduct from any salary payable to a foreign employee, or demand or receive, directly or indirectly and whether in Singapore or elsewhere, from a foreign employee any sum or other benefit —

(a) as consideration or as a condition for the employment of the foreign employee, whether by that person or any other person;

(b) as consideration or as a condition for the continued employment of the foreign employee, whether by that person or any other person; or

(c) as a financial guarantee related, in any way, to the employment of the foreign employee, whether by that person or any other person.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) Any person who deducts from any salary payable to a foreign employee, or demands or receives, directly or indirectly and whether in Singapore or elsewhere, from a foreign employee any sum or other benefit, not being —

(a) the whole or part of any fee, cost, levy, penalty, charge or amount that the employer of the foreign employee shall bear and be liable to pay under section 25(6);

(b) the whole or part of any fee or deduction prescribed as recoverable from the foreign employee under section 25(6)(a);

(c) where sections 26 to 32 of the Employment Act (Cap. 91) apply to the foreign employee, the whole or part of any deduction from the salary of the foreign employee authorised to be made under those sections;

(d)

where sections 26 to 32 of the Employment Act do not apply to the foreign employee, the whole or part of any deduction from the salary of the foreign employee made in accordance with the terms of the employment of the foreign employee; or

(e)

the whole or part of any fee, remuneration, profit or compensation that a licensee under the Employment Agencies Act (Cap. 92) may lawfully charge the foreign employee and receive under that Act,

shall be presumed, until the contrary is proved, to have done so as consideration for the employment of the foreign employee.

Proscribed manpower-related practices

22B.

—(1) Any person who —

(a)

obtains a work pass for a foreign employee for a trade or business that does not exist, that is not in operation or that does not require the employment of such a foreign employee; and

(b)

fails to employ the foreign employee,

shall be guilty of an offence and shall on conviction be punished with imprisonment for a term of not less than 6 months and not more than 2 years and shall also be liable to a fine not exceeding \$6,000.

(2) Where any person is —

(a)

charged with more than 5 offences under subsection (1); and

(b)

convicted of at least 6 of those offences at the same trial,

the person shall be punished, subject to sections 325(1) and 330(1) of the Criminal Procedure Code (Cap. 68), with caning in addition to the punishment prescribed for those offences.

(3) Where, by virtue of sections 325(1) and 330(1) of the Criminal Procedure Code, the person referred to in subsection (2) is not punishable with caning, he shall, in lieu of caning, be punished with a fine not exceeding \$10,000.”.

Amendment of section 23

18. Section 23 of the principal Act is amended by inserting, immediately after the word “Abetment” in the section heading, the words “of offences”.

New section 23A

19. The principal Act is amended by inserting, immediately after section 23, the following section: “Orders for payment of proceeds of crime

23A.

—(1) When any person is convicted of an offence under section 22A(2) or 22B(1), the court shall, in addition to imposing on that person any other punishment, order him to pay, within such time as may be specified in the order —

(a)

in the case of an offence under section 22A(2), a sum which is equal to the amount of the sum or other benefit (where such benefit is a sum of money, or the value of such benefit can be assessed) he deducted or received in contravention of that section; or

(b)

in the case of an offence under section 22B(1), a sum which is equal to the amount of the sum or other benefit (where such benefit is a sum of money, or the value of such benefit can be assessed) he obtained or received for obtaining the work pass referred to in that section.

(2) In determining the sum of money to be recovered under subsection (1), the court shall, if it thinks fit, take into account —

(a)

any relevant evidence admitted in the proceedings against the defendant for the offence concerned; and

(b)

any order for the payment of compensation by the defendant in respect of any injury arising from the offence concerned to the person injured, or his representative, under section 359 of the Criminal Procedure Code (Cap. 68).

(3) Where a court orders the defendant to pay any sum of money under subsection (1), section 319 of the Criminal Procedure Code shall have effect as if that sum were a fine imposed on him by the court.

(4) Where —

(a)

a warrant to commit the defendant to prison is issued for a default in payment of a sum of money ordered to be paid under subsection (1) in respect of an offence or offences; and

(b)

at the time the warrant is issued, the defendant is liable to serve any term of imprisonment in respect of the offence or offences,

the term of imprisonment to be served in default of payment of that sum shall not begin to run until after the term mentioned in paragraph (b).

(5) A Magistrate's Court or a District Court may, notwithstanding the provisions of any other written law, impose the maximum term of imprisonment on the defendant in default of the payment of any sum of money ordered to be paid under subsection (1).".

New sections 25 to 25H

20. The principal Act is amended by inserting, immediately after section 24, the following sections:
"General prescribed infringements

25.

—(1) Where any employer —

(a)

makes or causes to be made, to the Controller, an application for a work pass on the basis of his foreign employee entitlement; and

(b)

commits, or causes or permits to be committed, any act or omission which facilitates, or which results in, the inflation of his foreign employee entitlement,

the Controller may impose on the employer a financial penalty of such amount, not exceeding \$20,000, as the Controller may determine.

(2) Where any person fails to comply with —

(a)

any regulatory condition subject to which an in-principle approval is or had been issued to him by the Controller; or

(b)

being an employer, a foreign employee or a self-employed foreigner to whom a work pass applies or had applied, any regulatory condition of the work pass,

the Controller may impose on the person a financial penalty of such amount, not exceeding \$10,000, as the Controller may determine.

(3) Where any employer inadvertently, or without intent to mislead or defraud, makes any statement or furnishes any information to the Controller which is inaccurate or erroneous, the Controller may impose on the employer a financial penalty of such amount, not exceeding \$20,000, as the Controller may determine.

(4) Where any employer —

(a)

deducts from any salary payable to a foreign employee, or demands or receives, directly or indirectly and whether in Singapore or elsewhere, from the foreign employee any fee, cost, levy, penalty, charge or amount that the employer shall bear and be liable for under subsection (6), or any part thereof; or

(b)

causes any foreign employee to bear any fee, cost, levy, penalty, charge or amount that the employer shall bear and be liable for under subsection (6), or any part thereof,

the Controller may impose on the employer a financial penalty of such amount, not exceeding \$20,000, as the Controller may determine.

(5) In subsection (1), unless the context otherwise requires —

“act or omission”, in relation to a person who is an employer, includes but is not limited to the employer failing to ensure that his Central Provident Fund contribution record of payments as employer required under the Central Provident Fund Act (Cap. 36) only reflects every citizen or permanent resident of Singapore who is employed by him and at the appropriate contribution rate prescribed by law;

“foreign employee entitlement” means the number of foreign employees which a person may employ, according to such criteria and conditions as the Minister or the Controller may determine.

(6) For the purposes of subsection (4), the employer of a foreign employee shall, except where the Controller permits otherwise, bear and be liable to pay the following:

(a)

fees associated with the application, issuance, renewal or reinstatement of a work pass, other than the fees or deductions prescribed as recoverable from the foreign employee;

(b)

costs associated with furnishing security as required by the Controller;

(c)

costs associated with purchasing and maintaining medical insurance coverage for the foreign employee, as required by the Controller;

(d)

costs associated with medical examinations for the foreign employee, as required by the Controller;

(e)

the levy imposed under section 11(1) in respect of the foreign employee and any penalty due thereon;

(f)

costs associated with training the foreign employee, where the training is required by the employer or the Controller;

(g)

costs associated with repatriating the foreign employee at any time; and

(h)

such fee, charge or amount as may be prescribed.

Compliance with prescribed duties

25A.

—(1) Where an in-principle approval of an application for a work pass has been issued by the Controller, the employer, foreign employee or self-employed foreigner concerned shall comply with such duties for or in relation to the employment of such foreign employee or the engagement of such self-employed foreigner as may be prescribed.

(2) Where any employer, foreign employee or self-employed foreigner fails to comply with any duty prescribed under subsection (1) that he is required to comply with, the Controller may impose on him a financial penalty of such amount, not exceeding \$10,000, as the Controller may determine.

(3) For the purposes of this section —

(a)

duties may be prescribed for or in relation to any foreign employee or self-employed foreigner, or any class thereof, to be complied with following the cancellation, revocation or expiry of the work pass of the foreign employee or self-employed foreigner, as the case may be; and

(b)

different duties may be prescribed in relation to different classes of employers, foreign employees or self-employed foreigners, or different categories of work passes.

Directions

25B.

—(1) Notwithstanding anything in this Act, where the Controller is satisfied that any person is committing or has committed a prescribed infringement, the Controller may, in addition to or in lieu of the imposition of a financial penalty, give such directions to the person as the Controller thinks appropriate to bring the prescribed infringement to an end and, where necessary, require that person to take such action as is specified in the direction to remedy, mitigate or eliminate any effects of such prescribed infringement and to prevent the recurrence of such prescribed infringement.

(2) Any person who fails, without reasonable excuse, to comply with any direction given under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

Proceedings for prescribed infringements

25C.

—(1) The Controller may inquire into and determine whether any person has committed a prescribed infringement in accordance with this Act.

(2) For the purposes of subsection (1), the Controller shall have the following powers:

(a)

to summon and examine witnesses;

(b)

to administer oaths or affirmations; and

(c)

to compel the production of documents and articles.

(3) All proceedings before the Controller under this section shall be held in private.

(4) In any proceedings before the Controller under this section —

(a)

the Controller shall not be bound to act in a formal manner or in accordance with the Evidence Act (Cap. 97) but may inform himself on any matter in such manner as he thinks just;

(b)

any question of fact to be decided by the Controller shall be decided on the balance of probabilities; and

(c)

no party may be represented by an advocate or solicitor or a paid agent.

(5) If any person who has been duly summoned by the Controller to attend at any proceedings under this section makes default in so doing, the Controller may make his determination in the absence of that person notwithstanding that the interest of that person may be prejudicially affected by his determination.

(6) Where the Controller has made a determination that any person has committed a prescribed infringement, the Controller may in his determination —

(a)

state, if any, the amount of financial penalty, not exceeding the maximum financial penalty prescribed for the prescribed infringement, that is payable by the person and the date by which the financial penalty is to be paid; and

(b)

include such directions to the person under section 25B as the Controller thinks appropriate.

(7) The Controller may, on the application of any person referred to in subsection (6) who is aggrieved by a determination or direction of the Controller, vary or set aside the determination or direction or make such other determination or direction as he thinks just.

(8) Any person referred to in subsection (6) who is aggrieved by a determination or direction of the Controller, or any variation thereof, may appeal to the Appeal Board, whose decision shall be final.

Recovery of financial penalties

25D.

—(1) Any person who has been determined to have committed a prescribed infringement and fails to pay the financial penalty imposed by the Controller by the date specified under section 25C(6)(a) shall be liable to pay to the Controller interest on the amount unpaid at the same rate as for a judgment debt.

(2) Any financial penalty payable in respect of a prescribed infringement and any interest thereon shall be recoverable by the Controller, or any person duly authorised by the Controller to act on his behalf, as a debt due to the Government.

(3) The Controller may, in any case in which he thinks fit, waive, remit or refund in whole or in part any financial penalty imposed or any interest due thereon.

(4) In any proceedings for the recovery of any financial penalty or interest due thereon which any person is liable to pay, a certificate purporting to be under the hand of the Controller certifying the

amount of the financial penalty or interest due thereon that is payable by the person shall be prima facie evidence of the facts stated therein.

Prescribed infringements by bodies corporate, etc.

25E.

—(1) Where a prescribed infringement committed by a body corporate is proved —

(a)

to have been committed with the consent or connivance of an officer of the body corporate; or

(b)

to be attributable to any neglect on his part,

the officer as well as the body corporate shall be treated as having committed the prescribed infringement and dealt with accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a prescribed infringement committed by a partnership is proved —

(a)

to have been committed with the consent or connivance of a partner; or

(b)

to be attributable to any neglect on his part,

the partner as well as the partnership shall be treated as having committed the prescribed infringement and dealt with accordingly.

(4) Where a prescribed infringement committed by an unincorporated association (other than a partnership) is proved —

(a)

to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

(b)

to be attributable to any neglect on the part of such officer or member,

the officer or member as well as the unincorporated association shall be treated as having committed the prescribed infringement and dealt with accordingly.

(5) For the purposes of this section, where a prescribed infringement has been committed by a body corporate, an unincorporated association (other than a partnership) or a partnership, it shall be presumed, until the contrary is proved, that the prescribed infringement is attributable to the neglect of an officer or a member of the body corporate or unincorporated association or a partner of the partnership, as the case may be, who —

(a)

is primarily responsible for the act or omission which constitutes the prescribed infringement; and

(b)

has failed to exercise reasonable supervision or oversight as such officer, member or partner.

(6) In this section —

“officer” —

(a)

in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

(b)

in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner.

(7) The Minister may make regulations to provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

Abetment of prescribed infringements

25F.

—(1) Where any person abets a prescribed infringement, the Controller may impose on the person a financial penalty of such amount, not exceeding the maximum financial penalty prescribed for the prescribed infringement, as the Controller may determine.

(2) For the purposes of this section —

(a)

a person abets a prescribed infringement who abets either the commission of the prescribed infringement, or the commission of an act which would be a prescribed infringement, if committed by a person capable by law of committing a prescribed infringement with the same intention or knowledge as that of the abettor; and

(b)

a person abets the doing of a thing who —

(i)

instigates any person to do that thing;

(ii)

engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(iii)

intentionally aids, by any act or omission, the doing of that thing.

Appeals to Appeal Board

25G.

—(1) An appeal to the Appeal Board under section 25C(8) shall be lodged within 14 days after the receipt of the determination or direction of the Controller by the person aggrieved by the determination or direction, as the case may be.

(2) Any person who has lodged an appeal to the Appeal Board under section 25C(8) shall provide such information as may be required by the Appeal Board, in such manner and within such period as may be specified by the Appeal Board.

(3) An appeal under section 25C(8) shall not suspend the effect of the determination or direction to which the appeal relates unless the appeal is against the imposition, or the amount, of a financial penalty.

(4) The Appeal Board shall determine an appeal under section 25C(8) as soon as reasonably practicable, having regard to the nature and complexity of the appeal.

(5) The Appeal Board shall notify the person making an appeal under section 25C(8) of its decision in respect of his appeal and the reasons for its decision.

(6) Without prejudice to the generality of subsection (5), the Appeal Board may —

(a)

confirm, vary or reverse the determination or direction of the Controller appealed against; or

(b)

direct the Controller to reconsider the determination or direction appealed against.

Composition and procedure of Appeal Board

25H.

—(1) For the purposes of section 25G, the Minister may establish an Appeal Board which shall consist of at least 3 persons, one of whom shall be appointed by the Minister to be the chairman of the Appeal Board.

(2) The chairman of the Appeal Board must be a person qualified to be a Judge of the Supreme Court.

(3) The Minister may, in establishing the Appeal Board, determine —

(a)

the terms and conditions of the appointment of the members of the Appeal Board; and

(b)

such matters as the Minister considers incidental or expedient for the proper and efficient conduct of any appeal by the Appeal Board.

(4) The remuneration and allowances, if any, of a member of the Appeal Board shall be determined by the Minister.

(5) The Appeal Board shall determine the procedure to be adopted by it in considering an appeal under section 25C(8), and shall be independent in the performance of its functions.”.

Amendment of section 26

21. Section 26 of the principal Act is amended by deleting the words “or any regulations made thereunder”.

Repeal and re-enactment of section 27

22. Section 27 of the principal Act is repealed and the following section substituted therefor: “Composition of offences

27.

—(1) The Controller may compound any offence under this Act by collecting from a person reasonably suspected of having committed the offence, or having abetted the commission of the offence, a sum not exceeding the lower of the following sums:

(a)

one half of the amount of the maximum fine that is prescribed for the offence;

(b)

a sum of \$5,000.

(2) For the purposes of this section, an officer or a member of a body corporate or an unincorporated association or a partner of a partnership who is liable for an offence that is compoundable under this section by virtue of section 20 shall be treated as having committed that offence.

(3) On payment of such sum of money, no further proceedings shall be taken against that person in respect of the offence.”.

Amendment of section 29

23. Section 29 of the principal Act is amended —

(a)

by deleting subsection (1) and substituting the following subsection:

“(1) The Minister may make regulations for any purpose for which regulations may be made under this Act, for prescribing anything which may be prescribed and generally for carrying out the provisions of this Act.”;

(b)

by deleting paragraph (a) of subsection (2) and substituting the following paragraph:

“(a)

prescribe the penalties for any contravention of any provision of any regulation, except that —

(i)

in the case of an offence, no such penalty shall exceed a fine of \$15,000 or imprisonment for a term of 12 months or both; or

(ii)

in the case of a prescribed infringement, no such penalty shall exceed a financial penalty of \$15,000;”;

(c)

by inserting, immediately after the words “this Act” in subsection (2)(b), the words “, including the fees to be paid in respect of any appeal lodged under this Act”;

(d)

by deleting paragraph (c) of subsection (2) and substituting the following paragraph:

“(c)

prescribe —

(i)

the categories of work passes;

(ii)

the period for which any work pass may be issued, renewed or reinstated;

(iii)

the criteria for the issuance, renewal or reinstatement of any work pass; and

(iv)

any condition (including any regulatory condition) subject to which an in-principle approval may be issued, or a work pass may be issued, renewed or reinstated;”;

(e)

by deleting paragraph (h) of subsection (2) and substituting the following paragraphs:

“(h)

provide for any matter relating to the security to be furnished by or in respect of any foreigner issued with a work pass or any group or class of such foreigners, including the circumstances and the conditions under which the amount of the security may be varied or the security may be forfeited;

(i)

prescribe the procedure in respect of any proceedings or any matter or thing to be done under this Act.”.

Division of Act into Parts

24. The principal Act is amended —

(a)

by inserting, immediately above section 1, the following Part heading:

“PART I
PRELIMINARY”;

(b)

by inserting, immediately above section 5, the following Part heading:

“PART II
WORK PASSES”;

(c)

by inserting, immediately above section 16, the following Part heading:

“PART III
ADMINISTRATION OF ACT”;

(d)

by inserting, immediately above section 20, the following Part heading:

“PART IV
OFFENCES”;

(e)

by inserting, immediately above section 25, the following Part heading:

“PART V
PRESCRIBED INFRINGEMENTS”;

(f)

by inserting, immediately above section 26, the following Part heading:

“PART VI
MISCELLANEOUS”.

Savings and transitional provisions

25.

—(1) Notwithstanding section 4(b), section 5(6A) of the principal Act in force immediately before the date of commencement of section 4(b) shall continue to apply in relation to any person who contravenes section 5(1) of the principal Act before that date as if this Act had not been enacted.

(2) Notwithstanding section 7(a), section 10(3) of the principal Act in force immediately before the date of commencement of section 7(a) shall continue to apply in relation to any person who contravenes section 10(1) of the principal Act before that date as if this Act had not been enacted.

(3) For a period of 2 years after the date of commencement of this section, the Minister may, by regulations, prescribe such additional provisions of a savings or transitional nature consequent on the enactment of any provision of this Act as he may consider necessary or expedient.