

# Proposals For the Amendment of the Employment of Foreign Manpower Act (EFMA)

EFMA governs the employment of foreign personnel in Singapore. The great majority of non-Singaporean employees are low-salaried migrant workers.

TWC2 brought together a legal team to work on proposals for the amendment of EFMA and the regulations issued under it – specifically, the different types of work pass. TWC2 is grateful to those who contributed time and thought to putting together the proposals.

In this document, the proposals are interspersed within the pre-existing text of EFMA and highlighted in colour, with the text of each proposed amendment followed by an explanatory note. The text of the recommendations on the regulations is contained in a separate document in the same format.

*4<sup>th</sup> June 2012*

**Transient Workers Count Too**

# EMPLOYMENT OF FOREIGN MANPOWER ACT

## (CHAPTER 91A)

### Short title

1. This Act may be cited as the Employment of Foreign Manpower Act.

[30/2007]

### Interpretation

2. In this Act, unless the context otherwise requires —

"construction works" means the construction, extension, installation, carrying out, repair, maintenance, renewal, removal, alteration, dismantling or demolition of —

(a) any building, erection, edifice, structure, wall, fence or chimney, whether constructed wholly or partly above or below ground level;

(b) any road, motorway, harbour works, railway, cableway, canal or aerodrome;

(c) any drainage, irrigation or river control work;

(d) any electrical, water, gas or telecommunication works; or

(e) any bridge, viaduct, dam, reservoir, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation,

and includes any works which form an integral part of, or are preparatory to the works described in paragraphs (a) to (e), including site clearance, earth-moving, excavation, laying of foundation, site restoration and landscaping, and such other works or activities as the Minister may, by notification in the *Gazette*, specify to be construction works;

"Controller" means the Controller of Work Passes appointed under section 3;

"employ" means to engage or use the service of any person for the purpose —

(a) of any work; or

(b) of providing any training for that person,

whether under a contract of service or otherwise, and with or without salary;

"employer" means any person employing a foreign employee and, for the purposes of an application for a work pass, any person who intends to employ a foreign employee;

"employment inspector" means the Controller and any person appointed as an employment inspector under section 3;

"foreign employee" means —

(a) any foreigner, other than a self-employed foreigner, who seeks or is offered employment in Singapore; or

(b) such other person or class of persons as the Minister may, by notification in the *Gazette*, specify;

"foreigner" means any person who is not a citizen or permanent resident of Singapore;

"levy" means the levy imposed under section 11;

"occupier", in relation to any premises, includes —

(a) the person having the charge, management or control of either the whole or part of the premises either on his own account or as an agent; and

(b) any person who is carrying out construction or other works at the premises on behalf of some other person;

"premises" includes —

(a) any building or structure, whether permanent or temporary;

(b) any land, whether or not built on;

(c) any place, whether or not enclosed, including any place situated underground or underwater;

(d) any vehicle, vessel or aircraft; and

(e) any part of any premises;

"self-employed foreigner" means any foreigner who, not being employed under a contract of service, engages in any trade, vocation, profession or other activity in Singapore for the purpose of gain;

"train" , in relation to a foreign employee, means to teach, instruct or educate the foreign employee in relation to the work in which the foreign employee is employed or to be employed;

"work pass" means a work pass belonging to any prescribed category of work passes which is issued by the Controller under section 7.

[37/95; 26/2001; 30/2007]

### **Meaning of “personal identifier”**

**2A.** —(1) In this Act, “personal identifier” means any of the identifiers specified in the Schedule (including any in digital form).

(2) The Minister may, by order published in the *Gazette*, amend the Schedule, except that any other personal identifier so prescribed in the order must —

(a) be an image of, or a measurement or recording of, an external part of the human body; and

(b) not be an identifier the obtaining of which would involve the taking of an intimate sample within the meaning of section 13A of the Registration of Criminals Act (Cap. 268).

[30/2007]

### **Appointment of Controller of Work Passes and employment inspectors**

**3.** —(1) The Minister may appoint a Controller of Work Passes who shall have such functions and powers as are conferred on him by this Act and such number of Deputy Controllers of Work Passes and Assistant Controllers of Work Passes as the Minister may think necessary to assist the Controller in the proper discharge of his functions.

[39/98; 30/2007]

(1A) The Deputy Controllers of Work Passes and the Assistant Controllers of Work Passes shall have and may exercise and perform all the powers, duties and functions of the Controller conferred by this Act, subject to such limitations as the Controller may think fit to impose.

[39/98; 30/2007]

(2) The Minister may appoint such number of employment inspectors as he may think fit for carrying out the purposes of this Act.

### **Controller and employment inspectors to be public servants**

**3A.** The Controller and every Deputy Controller of Work Passes, Assistant Controller of Work Passes and employment inspector appointed under section 3 shall be deemed to be public servants within the meaning of the Penal Code (Cap. 224).

[30/2007]

### **Exemption**

**4.** The Minister may, by notification in the *Gazette*, exempt any person or class of persons from all or any of the provisions of this Act.

### **Prohibition of employment of foreign employee without work pass**

**5.** —(1) No person shall employ a foreign employee unless the foreign employee has a valid work pass.

[30/2007]

(2) No foreign employee shall be in the employment of an employer without a valid work pass.

[30/2007]  
(3) No person shall employ a foreign employee otherwise than in accordance with the conditions of the foreign employee's work pass.

[30/2007]  
(4) In any proceedings for an offence under subsection (1), it shall not be a defence for a defendant to prove that he did not know that the employee was a foreigner unless the defendant further proves that he had exercised due diligence to ascertain the nationality of the employee.

[37/95; 30/2007]  
(5) For the purpose of subsection (4), a defendant shall not be deemed to have exercised due diligence unless he had checked the passport, document of identity or other travel document of the employee.

[37/95; 30/2007]  
(6) Any person who contravenes subsection (1) shall be guilty of an offence and shall —  
(a) be liable on conviction to a fine not exceeding \$15,000 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 imprisonment for a term of not less than one month and not more than 12 months and also be liable to a fine not exceeding \$15,000; and  
(ii) in the case of a body corporate, be punished with a fine not exceeding \$30,000.

[30/2007]  
(6A) Where a court has convicted a person for the contravention of subsection (1), the court shall, in addition to imposing on that person any other punishment, order the payment by him of a sum which is equal to the levy which would have been payable if any work pass had been issued for the period during which any foreign employee was employed by the person in contravention of subsection (1), and any such payment ordered shall be recoverable as a fine.

[30/2007]  
(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(7A) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

[30/2007]  
(8) For the purposes of this section —  
(a) the levy payable shall be determined using the lowest applicable monthly rate of levy as specified in an order made by the Minister under section 11 in respect of the trade or type of occupation of the foreign employee at the date when he was first employed by the defendant without a valid work pass, and a certificate issued by the Controller and tendered in court shall be prima facie evidence of such rate;  
(b) for the avoidance of doubt, where a person has been convicted of an offence under subsection (6), and he has on a previous occasion been convicted for contravening section 5(1) of the Employment of Foreign Workers Act (Cap. 91A, 1997 Ed.) in force immediately before 1st July 2007, the first-mentioned conviction shall be considered a second or subsequent conviction under subsection (6); and  
(c) all convictions against the same person for the contravention of subsection (1) at one and the same trial shall be deemed to be one conviction.

[30/2007]

### **Presumption of employment**

**6.** Where a foreigner is found at any premises, the occupier of the premises shall be presumed, until the contrary is proved, to have employed the foreigner.

[37/95]

### **Prohibition of foreigner without work pass entering or remaining at work place**

**6A.** —(1) No occupier of a work place who has control of access to the work place shall permit any foreigner without a valid work pass to enter or remain at the work place.

[37/95; 30/2007]

(2) Where a foreigner without a valid work pass is found at any work place, it shall be presumed, until the contrary is proved, that the occupier of the work place —

- (a) had control of access to the work place;
- (b) had permitted the foreigner to enter or remain at the work place; and
- (c) had knowledge that the foreigner did not possess a valid work pass.

[37/95; 30/2007]

(3) The presumptions provided for in subsection (2) shall not be rebutted by proof that a defendant did not know that the person was a foreigner unless the defendant further proves that he had exercised due diligence —

- (a) to prevent the foreigner from entering or remaining at the work place;
- (b) to ascertain that the person was a citizen or permanent resident of Singapore by checking his passport, document of identity or other travel documents; or
- (c) to ascertain that the foreigner had at the material time in his possession a valid work pass by checking his original work pass.

[37/95; 30/2007]

(4) For the purposes of subsection (3)(a), a defendant shall not be deemed to have exercised due diligence unless he had taken all reasonable measures to prevent any foreigner without a valid work pass from entering or remaining at the work place, including all the measures prescribed under subsection (5) in respect of the work place.

[37/95; 30/2007]

(5) For the purposes of subsection (4), the Minister may, by notification in the *Gazette*, prescribe the measures that are required to be taken by the occupier of the work place.

[37/95]

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

- (a) on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 12 months or to both; and
- (b) on a second or subsequent conviction, to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 2 years or to both.

[30/2007]

(7) In this section —

"occupier", in relation to a work place, means the principal contractor who undertakes any construction works at the work place and includes such other person as the Minister may, by notification in the *Gazette*, specify to be the occupier of the work place;

"principal contractor" means a person who has entered into a contract with an owner, a developer or a lessee of a property or his agent for the purpose of carrying out any construction works, or such other works or activities as the Minister may, by notification in the *Gazette*, specify;

"work place" means any place or premises where works are being carried out and includes any premises within the vicinity of the work place to which the occupier has control of access.

[37/95; 30/2007]

(7A) For the avoidance of doubt, where a person has been convicted of an offence under subsection (6), and he has on a previous occasion been convicted for contravening section 6A(1) of the Employment of Foreign Workers Act (Cap. 91A, 1997 Ed.) in force immediately

before 1st July 2007, the first-mentioned conviction shall be considered a second or subsequent conviction under subsection (6).

[30/2007]

(7B) All convictions against the same person for the contravention of subsection (1) at one and the same trial shall be deemed to be one conviction.

[30/2007]

(8) Nothing in this section shall prevent any person from being prosecuted under any other provision of this Act for any act or omission which constitutes an offence under that other provision, but no person shall be punished twice for the same offence.

[37/95]

### **Application for work pass**

7. —(1) Every application for a work pass shall —

- (a) where the work pass belongs to any category of work passes prescribed by the Minister, be made by a person prescribed for that category of work passes;
- (b) be in such form as the Controller may determine;
- (c) be accompanied by the prescribed fee, if any; and
- (d) be accompanied by such information, statements and documents as the Controller may require.

[30/2007]

(2) On receipt of an application under subsection (1), the Controller may —

- (a) issue a work pass, with or without conditions —
  - (i) if the prescribed fee has been paid; and
  - (ii) if the Controller is satisfied that the foreign employee or self-employed foreigner to whom the work pass is to be issued is not a prohibited immigrant under section 8 of the Immigration Act (Cap. 133); or
- (b) refuse to issue any work pass.

[30/2007]

(3) A work pass may, on payment of the prescribed renewal fee, be renewed by the Controller for such period as the Controller may determine, starting from the day immediately following the day on which the work pass would have expired but for that renewal.

[30/2007]

(4) The Controller may at any time —

- (a) vary or revoke any of the existing conditions of a work pass or impose new conditions;
- (b) vary, suspend or revoke a work pass;
- (c) reinstate a work pass which has been suspended or revoked, if the prescribed fee has been paid; or
- (d) debar any person from applying for or being issued with a work pass for such fixed period of time as may be determined by the Controller.

[30/2007]

(5) Any person who is aggrieved by a decision of the Controller under subsection (2), (3) or (4) may appeal to the Minister, whose decision shall be final.

[30/2007]

(6) There shall be no judicial review in any court of any decision or act of the Minister or the Controller under this section, except in regard to any question relating to compliance with any procedural requirement of this Act governing such decision.

[30/2007]

(7) In subsection (6), “judicial review” includes proceedings instituted by way of —

- (a) an application for a Mandatory Order, a Prohibiting Order or a Quashing Order;
- (b) an application for a declaration or an injunction;
- (c) an Order for Review of Detention; and

(d) any other suit or action relating to or arising out of any decision made or act done in pursuance of any power conferred upon the Minister or the Controller by this section.

[30/2007]

### **Register of foreign employees to be kept by employer**

**8.** —(1) An employer shall keep, in accordance with section 95 of the Employment Act (Cap. 91), a register of foreign employees to whom work passes have been issued under section 7.

[30/2007]

(2) The register shall be in such form and shall contain such particulars as the Controller may determine.

(3) The register shall, at all reasonable times, be open to inspection by an employment inspector.

### **Termination of employment of foreign employees**

**9.** —(1) Where the Controller has decided to suspend or revoke the work pass of a foreign employee under section 7(4), the Controller shall notify the employer of the foreign employee of his decision and the employer of the foreign employee shall, within 7 days of receiving the notification, terminate the employment of the foreign employee.

[30/2007]

(2) Every employer of a foreign employee who intends to have the work pass of the foreign employee cancelled shall —

(a) Give the foreign employee 21 days notice of the proposed cancellation. If there is a reasonable suspicion that the foreign employee has committed a criminal offence, and a police report has been filed in respect of the suspected offence, the employer does not need to provide accommodation or pay salary to the foreign employee during those 21 days; during this time the employee shall stay at designated accommodation on a special pass provided for this purpose by the Ministry of Manpower during the 21 days notice period or until the foreign employee is charged with a criminal offence, whichever comes first.

(b) apply to the Controller to cancel the work pass; and

(c) if so required, return the work pass to the Controller within 7 days of such cancellation.

[30/2007]

9 (2A)—The foreign employee shall have the right to accept an offer of employment from a third party after the date of the notice given under subsection (2)(a) without any necessity for the agreement of the employer on this.

### **Reasons**

Our research shows that some employers unreasonably cancel the work passes of and repatriate foreign workers at the slightest excuse whom they feel they have issues with, whether fairly or not (eg. workers who protest over: (i) non, late, or under-payment of salary, or (ii) mistreatment—abuse, unsafe work conditions, unacceptable accommodation). We would strongly suggest that measures be put in place to reduce the incidence of employers using cancellation of work passes as an unreasonable threat or hold over their foreign workers.

The employer's power to unreasonably cancel (or threaten to cancel) the work pass of their foreign workers can potentially be balanced by more a reasonable notice period of 21 days. The foreign worker will then have a reasonable window of time to find alternative employment. The consequences of immediate termination of employment can be mitigated by this notice period. Further in this regard, the benefits that the notice period provides to foreign workers can be undermined if the employer refuses to let the foreign worker transfer to a new employer. A foreign worker bound to an employer can be easily exploited by that employer. Therefore, we further propose that the foreign worker does not require the consent of the employer to transfer to another employer once notice has been served on the foreign worker.

9(2B)—No employer shall cancel the work pass of the foreign employee under subsection (2) if,

(i) any amount that the employer owes to the foreign employee remains unpaid;

(ii) any outstanding medical fees that the employer owes for any medical treatment to any medical service provider associated with the upkeep and maintenance of the foreign employee remains unpaid; and/or

(iii) the employer will be liable in the next three months to pay for any medical treatment to any medical service provider associated with the upkeep and maintenance of the foreign employee, in excess of S\$300.

### Reasons

Our research reveals that certain employers unreasonably terminate and cancel the work passes of their foreign workers if they either owe the foreign worker outstanding monies (eg. unpaid wages) or if the foreign worker falls ill and the employer foresees having to pay out medical expenses on behalf of the foreign worker.

Our proposal is therefore that the employer should not be allowed to cancel the work pass of the foreign worker if (i) the employer owes unpaid wages or monies; (ii) the employer is liable to pay for any significant medical treatment for the foreign worker (i.e. in excess of S\$300).

(3) An employer who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

[30/2007]

(4) The termination of the employment of a foreign employee under subsection (1) shall not be

(a) capable of negotiation with a trade union representing the foreign employee;

(b) a matter in respect of which any form of industrial action may be taken by any such trade union;

(c) the subject-matter of a trade dispute or of conciliation proceedings or any method of redress whether or not under any written law; and

(d) any industrial matter within the meaning of the Industrial Relations Act (Cap. 136).

[30/2007]

(5) Where in respect of the employment of any person there has been any contravention of subsection (1), that person shall not, by reason only of such contravention, be deemed to be employed under an illegal contract of employment.

### Self-employed foreigners to apply for work passes



**10.** —(1) No self-employed foreigner shall engage in any trade, vocation, profession or other activity for the purpose of gain in Singapore unless he has obtained a valid work pass which allows him to work in Singapore.

[30/2007]

(2) Any self-employed foreigner who contravenes subsection (1) shall be guilty of an offence and shall —

(a) be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 12 months 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 12 months and also be liable to a fine not exceeding \$15,000.

[30/2007]

(3) Where a court has convicted a person for the contravention of subsection (1), the court shall, in addition to imposing on that person any other punishment, order the payment by him of a sum which is equal to the levy which would have been payable if a valid work pass had been issued for the period during which the person was engaged in a trade, vocation, profession or other activity for the purpose of gain in Singapore, and any such payment ordered shall be recoverable as a fine.

[30/2007]

(4) For the purposes of this section —

(a) the levy payable shall be determined using the lowest applicable monthly rate of levy as specified in an order made by the Minister under section 11 in respect of the trade, vocation, profession or other activity engaged in by the self-employed foreigner at the date when he was first so engaged, and a certificate issued by the Controller and tendered in court shall be prima facie evidence of such rate;

(b) for the avoidance of doubt, where a person has been convicted of an offence under subsection (2), and he has on a previous occasion been convicted for contravening section 10(1) of the Employment of Foreign Workers Act (Cap. 91A, 1997 Ed.) in force immediately before 1st July 2007, the first-mentioned conviction shall be considered a second or subsequent conviction under subsection (2); and

(c) all convictions against the same person for the contravention of subsection (1) at one and the same trial shall be deemed to be one conviction.

[30/2007]

#### **Levy in respect of foreign employee or self-employed foreigner**

**11.** —(1) The Minister may, by order published in the *Gazette*, provide for the imposition of a levy of such amount as may be specified in the order on employers in respect of any foreign employee or class of foreign employees 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.

[30/2007]

(2) The levy shall continue to be payable unless the work pass —

(a) has expired;

(b) has been suspended or revoked by the Controller; or

(c) has been cancelled by the Controller on application by the employer.

[30/2007]

(3) Any order made under subsection (1) may provide for the recovery of the levy in such manner and through such channels as may be specified in the order.

(4) Where the amount of the levy payable by any employer or self-employed foreigner in respect of any month is not paid within such period as may be specified in the order, the employer or

self-employed foreigner shall be liable to pay a penalty on the amount for every day the amount remains unpaid commencing from the first day of the month succeeding the month in respect of which the amount is payable.

[30/2007]

(5) The penalty under subsection (4) shall be calculated at the rate specified by the Minister, by notification published in the *Gazette*, or the sum of \$5, whichever is the greater, but, subject to that, the total penalty shall not exceed 30% of the amount of levy outstanding.

[30/2007]

(6) The Controller may, in any case in which he thinks fit, waive, remit or refund in whole or in part any penalty due under subsection (4).

[37/95; 30/2007]

(7) Any levy and penalty due from and payable by any employer or self-employed foreigner 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.

[30/2007]

(8) For the purposes of reimbursing any person authorised by the Controller to act on his behalf for the expenses incurred by him in the collection and recovery of the levy, the Minister may authorise the person to be paid such amount as the Minister may determine.

(9) In any proceedings for the recovery of any levy and penalty due thereon which any employer or self-employed foreigner is liable to pay, a certificate purporting to be under the hand of the Controller certifying the amount of the levy and penalty due thereon payable by the employer or self-employed foreigner shall be prima facie evidence of the facts stated therein.

[30/2007]

#### **Extent of validity of work pass**

**12.** —(1) A work pass for a foreign employee shall be valid only in respect of the trade or occupation, the type of employment, the employer and the foreign employee that may be specified therein.

[30/2007]

(2) A work pass for a self-employed foreigner shall be valid only in respect of the trade, vocation, profession or activity and the self-employed foreigner that may be specified therein.

[30/2007]

(3) A work pass shall be valid for the period specified in the work pass unless it is earlier suspended or revoked by the Controller, or earlier cancelled by the Controller on the application by the employer or self-employed foreigner, as the case may be.

[30/2007]

#### **Custody of work pass, etc.**

**13.** —(1) A work pass holder shall not allow any other person to have possession of his work pass.

[30/2007]

(2) If required by the Controller, a foreign employee shall hand over the work pass to his employer on the last day of his employment with that employer.

[30/2007]

(3) An employer who is handed a work pass under subsection (2) shall return the work pass to the Controller within 7 days of the date he receives the work pass.

[30/2007]

(4) Upon demand by an employment inspector, a work pass holder shall produce his work pass for inspection.

[30/2007]

#### **Loss, etc., of work pass**

**14.** —(1) When a work pass has been lost, destroyed or defaced, the foreign employee or the employer or the self-employed foreigner, as the case may be, shall report to the Controller within 7 days of such loss, destruction or defacement, and the Controller may issue a duplicate work pass on payment of the prescribed fee.

[39/98; 30/2007]

(2) Where the foreign employee or the employer or the self-employed foreigner recovers possession of the work pass after notifying the loss of the work pass, the foreign employee or the employer or the self-employed foreigner, as the case may be —

(a) may retain the work pass if no duplicate work pass has been issued by the Controller under subsection (1); or

(b) shall immediately return the work pass so recovered to the Controller for revocation if a duplicate work pass has been issued by the Controller under subsection (1).

[30/2007]

(3) A person who finds or comes into possession of a work pass other than his own shall immediately deliver it to the Controller.

[30/2007]

### **Burden of proof**

**15.** The burden of proving the truth of the contents of a written application for a work pass under section 7 shall be on the person who makes the application.

[30/2007]

### **Powers of employment inspector**

**16.** —(1) An employment inspector shall, for the purposes of this Act, have power to do all or any of the following things:

(a) to enter and search, by day or by night, any premises or part thereof when he has reasonable cause to believe that any person is employed therein or accommodated thereat or that evidence of the commission of an offence under this Act can be found therein;

(b) to require any person who the employment inspector has reason to believe has any document, including documents of identity and travel documents, or information relevant to the carrying out of the provisions of this Act, to produce any such document or give such information;

(c) to retain any document relevant to the carrying out of the provisions of this Act;

(d) to examine orally any person supposed to be acquainted with the facts and circumstances relevant to the carrying out of the provisions of this Act, and to reduce into writing the answer given or statement made by that person who shall be bound to state truly the facts and circumstances with which he is acquainted; and the statement made by that person shall be read over to him and shall, after correction, be signed by him;

(e) to require by order in writing the attendance before him of any person who, from information given or otherwise, appears to be acquainted with the facts and circumstances relevant to the carrying out of the provisions of this Act, and that person shall so attend as required and if he fails to attend as so required, to report such failure to a Magistrate who may thereupon issue a warrant to secure the attendance of that person as required by the order;

(f) to take such photographs as he thinks necessary of the premises and persons reasonably believed to be acquainted with the facts and circumstances relevant to the carrying out of the provisions of this Act;

(g) to require any person to produce any article which is relevant to any investigation under this Act and, if necessary, to take into custody any such article.

[37/95; 30/2007]

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

[37/95]

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

(4) If any person —

(a) intentionally offers any resistance to or wilfully delays an employment inspector in the exercise of any power under this section;

(b) fails to comply with the requisition of an employment inspector under this section;

(c) fails to produce any document which he is required by or under this section to produce;

(d) wilfully withholds any information as to who is the occupier of the premises or who is the principal contractor or who is his employer; or

(e) conceals or prevents or attempts to conceal or prevent a person from appearing before or being examined by an employment inspector,

that person shall be deemed to obstruct an employment inspector in the execution of his duties under this Act.

[37/95]

(5) Every employment inspector shall have authority to appear in court and may, with the authorisation of the Public Prosecutor, conduct any prosecution in respect of any offence under this Act or any regulations made thereunder.

### **Change of address**

**17.** —(1) If required by the Controller, any employer shall inform the Controller of any change in his address within 14 days of such change —

(a) where the employer is an individual registered under the National Registration Act (Cap. 201), by reporting the change of his place of residence under section 8 of that Act;

(b) where the employer is a body corporate incorporated under the Companies Act (Cap. 50), a sole proprietorship or a firm registered under the Business Registration Act (Cap. 32) or a limited liability partnership registered under the Limited Liability Partnerships Act (Cap. 163A), by reporting the change of the address of the registered office or place of business under section 143 of the Companies Act, section 14 of the Business Registration Act (Cap. 32) or section 26 of the Limited Liability Partnerships Act (Cap. 163A), as the case may be; or

(c) where paragraphs (a) and (b) are not applicable, in writing.

[30/2007]

(2) The address as reported in subsection (1) shall be deemed to be the last known address of the employer for the purposes of section 18.

[30/2007]

(3) If required by the Controller, any foreign employee or self-employed foreigner shall inform the Controller in writing of any change in his address within 14 days of such change.

[30/2007]

(4) The address as reported in subsection (3) shall be deemed to be the last known address of the foreign employee or self-employed foreigner for the purposes of section 18.

[30/2007]

### **Service of notices**

**18.** —(1) Every notice, order or document required or authorised by this Act or any regulations made thereunder to be served on any person may be served —

- (a) by delivering it to the person or to some adult member or employee of his family at his last known place of residence;
- (b) by leaving it at his usual or last known place of residence or business in an envelope addressed to him; or
- (c) by sending it by ordinary or registered post addressed to the person at his usual or last known place of residence or business.

[37/95]

(2) Where any notice, order or document is served by ordinary or registered post, it shall be deemed to have been duly served at the time it would have been received in the ordinary course of post if the notice, order or document is addressed —

- (a) in the case of a company incorporated in Singapore, to the registered office of the company;
- (b) in the case of a company incorporated outside Singapore, either to the individual authorised to accept service of process under the Companies Act (Cap. 50) at the address filed with the Registrar of Companies, or to the registered office of the company wherever it may be situated;
- (c) in the case of an individual, a partnership (including a limited liability partnership as defined in section 4(1) of the Limited Liability Partnerships Act (Cap. 163A)) or a body of persons, to the last known business or private address of such individual, partnership or body of persons.

[37/95; 30/2007]

(3) Where any notice, order or document is served by registered post in accordance with subsection (2), in proving service of the notice, order or document, it shall be sufficient to prove that the envelope containing the same was properly addressed, stamped and posted by registered post.

[37/95]

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

[37/95]

(5) Any notice or order under this Act requiring the attendance of any person or witness before the Controller shall be signed by the Controller or by a person duly authorised by the Controller.

[37/95]

### **Protection from personal liability**

**19.** No suit or other legal proceedings shall lie against the Controller or any employment inspector or other person acting under the direction of the Controller for anything which is in good faith done or intended to be done in the execution or purported execution of this Act.

[37/95]

### **Offence by body corporate**

**20.** Where an offence under this Act or any regulations made thereunder is committed by a body corporate, and it is proved to have been committed with the consent or connivance of, or to be attributable to any act or default on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[37/95]

### **Power to arrest without warrant**

**21.** —(1) Any police officer or employment inspector may arrest without warrant any person whom he reasonably believes —

- (a) is employing a foreigner —
  - (i) without a valid work pass; or
  - (ii) otherwise than in accordance with the conditions of a work pass;
- (b) is a foreign employee or self-employed foreigner who is working without a valid work pass;
- (c) has obstructed an employment inspector who is discharging his duties under this Act;

(d) has made any statement or furnished any information to the Controller or an employment inspector under this Act which is false in any material particular or is misleading by reason of the omission of any material particular; or who compels, or intentionally causes, another person to make any statement or furnish any information to the Controller which is false in any material particular or is misleading by reason of the omission of any material particular.

### **Reasons**

Our research shows that many foreign workers without informed knowledge are enticed, misled or forced by unscrupulous agents / employers into signing false declarations to allow the application papers to be falsified in order for the agents / employers to circumvent quotas and levy requirements. We are not saying that the foreign workers should necessarily be protected, but at least both the foreign worker and the agent / employer who causes the falsification should be equally and expressly culpable.

- (e) has given, sold, forged or unlawfully altered a work pass;
- (f) has used or, without lawful authority, has possession of a forged or an unlawfully altered work pass, or a work pass which is issued to another person; or
- (g) has abetted any other person in any act referred to in paragraphs (a) to (f).

[30/2007]

(2) An employment inspector making an arrest without warrant shall, without unnecessary delay and subject to subsection (4), take or send the person arrested before a Magistrate's Court.

[30/2007]

(3) No employment inspector shall detain in custody a person arrested without warrant for longer than is reasonable in the circumstances, and such period shall not exceed 48 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

[30/2007]

(4) Any person who has been arrested by an employment inspector may be released on bail, or on his own bond, by an employment inspector.

[30/2007]

### **Arrest how made**

**21A.** —(1) In making an arrest, an employment inspector making the arrest shall touch or confine the body of the person to be arrested unless the person submits to arrest by word or action.

[30/2007]

(2) If the person forcibly resists or tries to evade arrest, the employment inspector may use all means necessary to effect the arrest.

[30/2007]

### **No unnecessary restraint**

**21B.** —(1) The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

[30/2007]

(2) An employment inspector may use handcuffs or any similar means of restraint on a person arrested to prevent him from —

- (a) inflicting any bodily injury to himself or others;
- (b) damaging any property;
- (c) creating any disturbance; or
- (d) escaping from custody.

[30/2007]

(3) The handcuffs or means of restraint shall not be used for the purpose of punishment.

[30/2007]

### **Search of persons arrested**

**21C.** —(1) When a person is arrested, the employment inspector making the arrest may search the person and take possession of all articles (other than necessary wearing apparel) found upon the person that the employment inspector has reason to believe were connected with the offence for which the person was being arrested.

[30/2007]

(2) Whenever it is necessary to cause a person to be searched, the search shall be made by an employment inspector of the same sex as the person, with strict regard to decency.

[30/2007]

### **Employment inspector to be armed**

**21D.** Every employment inspector shall be provided with such batons and accoutrements as may be necessary for the effective discharge of his duties.

[30/2007]

### **Power to seize offensive weapons**

**21E.** An employment inspector making any arrest may take from the person arrested any offensive weapons which he has about his person.

[30/2007]

### **Power on escape to pursue and arrest**

**21F.** If a person in lawful custody escapes or is rescued, the employment inspector from whose custody he escaped or was rescued may immediately pursue and arrest him in any place within Singapore and deal with that person as he might have done on the original arrest.

[30/2007]

### **Disposal of documents or articles**

**21G.** —(1) Any document or article produced, retained or requisitioned under section 16(1)(b), (c) or (g) or 21E shall —

- (a) where the document or article is produced in any criminal trial, be dealt with in accordance with section 364(1) of the Criminal Procedure Code 2010; or
- (b) in any other case —
  - (i) be returned to the owner; or
  - (ii) if the owner is not known, be reported to a Magistrate's Court.

[30/2007]

(2) Where the report of any document or article produced, retained or requisitioned under section 16(1)(b), (c) or (g) or 21E is made to a Magistrate's Court under subsection (1)(b)(ii), the Magistrate's Court may order the document or article —

(a) to be forfeited; or

(b) to be disposed of in such manner as the Magistrate's Court thinks fit.

[30/2007]

(3) Nothing in this section shall be taken to prejudice any right to retain or dispose of property which may exist in law apart from this section.

[30/2007]

## Offences

22. —(1) Any person who —

(a) being an employer, a foreign employee or a self-employed foreigner to whom a work pass applies, contravenes any of the conditions of the work pass;

(b) contravenes section 13(4);

(c) willfully obstructs an employment inspector in the exercise of his powers under section 16, 21, 21A, 21B, 21C, 21E or 21F;

(d) makes any statement or furnishes any information to the Controller or an employment inspector under this Act 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; or who compels, or intentionally causes, another person to make any statement or furnish any information to the Controller which is false in any material particular or is misleading by reason of the omission of any material particular.

(e) gives, sells, forges or unlawfully alters a work pass;

(f) uses or, without lawful authority, has in his possession any forged or unlawfully altered work pass, or a work pass 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 —

(i) in the case of an offence under paragraph (a), (b) or (c): where the person is an employer (or employment agent), on conviction to a fine not exceeding \$30,000 or imprisonment for a term not exceeding 6 months or to both and shall not be permitted to employ or make any further applications for work passes for foreign employees; where the person is a foreign domestic worker or construction worker, or anyone else who is (or should be) on an R-Pass or S-pass work pass, on conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 6 months or to both, and shall not be permitted to work in Singapore under a work pass or permit.

(ii) in the case of an offence under paragraph (d), (e) or (f), where the person is an employer (or employment agent), on conviction to a fine not exceeding \$45,000 or imprisonment for a term not exceeding 6 months or to both, and shall not be permitted to employ or make any further applications for work passes for foreign employees; where the person is a foreign domestic worker or construction worker, or anyone else who is (or should be) on an R-Pass or S-pass work pass on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not



exceeding 12 months or to both , and shall not be permitted to work in Singapore under a work pass or permit.and

(iii) in the case of an offence under paragraph (g), on conviction to a fine not exceeding \$3,000.

[30/2007]

### **Reasons**

Our proposal is that the law should take a nuanced approach to the contravention of the work permit conditions. Allowance should be made for employers who mistreat their foreign workers or seek to profit from contraventions of the work permit conditions to potentially be dealt with more harshly. Our proposal is therefore that the maximum penalties for employer offences be increased to provide commensurate sentencing. The Courts will still have a discretion to give light sentences, but will have the latitude to deal with more serious cases proportionately.

As foreign domestic and construction workers are generally low-income earners, we would also suggest slightly lessening the present maximum sentencing levels for these foreign workers so as to avoid situations where the worker has to go to jail as a result of being unable to pay the fine.

(2) Any employer, foreign employee or 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 \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

[30/2007]

### **Abetment**

**23.** —(1) Any person who abets the commission of an offence under this Act shall be guilty of the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

[37/95]

(2) Where an occupier is charged for abetting another person who has employed a foreign employee in contravention of section 5(1), it shall not be sufficient for the occupier to prove in his defence that he had instructed the other person not to, or obtained from the other person an undertaking that he would not, so employ a foreign employee.

[37/95; 30/2007]

### **Complaint by employment inspector**

**24.** For the purpose of section 151 of the Criminal Procedure Code 2010, on receiving the complaint in writing and signed by any employment inspector, the Magistrate must proceed to issue a summons or warrant in accordance with section 153 of the Criminal Procedure Code 2010.

### **Person primarily liable may exempt himself from liability**

**25.** [ Repealed by Act 30 of 2007 ]

## **Jurisdiction of Courts**

**26.** Notwithstanding the provisions of any written law to the contrary, a Magistrate's Court or a District Court shall have jurisdiction to try any offence under this Act or any regulations made thereunder and shall have power to impose the full punishment for any such offence.

## **Composition of offences**

**27.** The Controller may compound any offence under this Act or any regulations made thereunder by accepting from the person reasonably suspected of committing the offence a sum not exceeding \$2,000.

[30/2007]

## **Forms**

**28.** For the purposes of this Act, the Controller may devise and use such forms as he may consider necessary.

## **Regulations**

**29.** —(1) The Minister may make regulations generally for carrying out the provisions of this Act.

(2) Regulations made under subsection (1) may —

(a) prescribe that any act or omission in contravention of the provisions of any regulation shall be an offence and shall be punishable with a fine not exceeding \$5,000 or with imprisonment for a term not exceeding 12 months or with both;

(b) prescribe such fees or charges as may be necessary for the purposes of this Act;

(c) prescribe the categories of work passes, the period for which any work pass may be issued, renewed or reinstated, the criteria for the issuance, renewal or reinstatement of any work pass and any condition subject to which a work pass may be issued, renewed or reinstated;

(d) provide for the taking and recording of any personal identifier of any person —

(i) who applies for or has been issued with a work pass; or

(ii) who is suspected of committing an offence under this Act;

(e) provide for the use of any mechanical, electrical or other form of device or system for the taking or recording of all or any of the personal identifiers;

(f) provide for the collation of any personal identifier taken or recorded pursuant to regulations made under paragraph (d) and the dissemination thereof to the police and to any other law enforcement agency authorised by the Controller to receive it;

(g) provide for any matter relating to the release of any arrested person on any bail or bond under section 21(4);

(h) provide for any matter relating to the security to be given by or in respect of any foreigner issued with a work pass, including any condition subject to which the security may be forfeited.

[39/98; 30/2007]

(3) All such regulations shall be presented to Parliament as soon as possible after publication in the *Gazette*.

## **Transitional provisions**

**30.** —(1) Any permit, appointment, application, appeal, decision, ruling, order, direction or notice issued, made or given under the repealed Regulation of Employment Act (Cap. 272, 1985 Ed.) shall be treated as a permit, appointment, application, appeal, decision, ruling, order, direction or notice issued, made or given under this Act and shall have the same force and effect as a

permit, appointment, application, appeal, decision, ruling, order, direction or notice issued, made or given under this Act.

(2) Any form used for the purposes of the repealed Regulation of Employment Act which was in force or had effect immediately before 1st January 1991 shall continue in force and have effect as though prescribed under this Act until new forms are prescribed.