

Singapore's Employment Agencies Act and Rules

Proposals for Amendment

The Employment Agencies Act is to be reviewed and amended this year. A TWC2 legal group began work in 2009 on proposals for how the act and rules issued under it might be amended to ensure improved protection of the rights and wellbeing of the migrant workers who agencies place in employment. The proposals were finished this year and submitted to the Ministry of Manpower.

They may not necessarily present an established TWC2 position: in particular, the question of fees and how much of the costs of placement should be borne by workers is still under discussion.

TWC2's thanks go out to all who worked on the proposals.

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Transient Workers Count Too

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TWC2 – Policy Paper

Singapore’s Employment Agencies Act and Rules

Part 1 – Introduction

This paper deals with the regulatory system established by Singapore’s Employment Agencies Act (“the Act”) and the various Rules, licence conditions and other subsidiary documents implemented pursuant to the Act (“the Rules”).

This paper has been prepared by TWC2 to highlight key areas in which we feel that the current regulatory regime established by the Act and the Rules fails to adequately regulate employment agencies in Singapore to the extent that such agencies are involved in the placement of unskilled or semi-skilled workers, such as foreign domestic workers (“FDWs”) and other foreign workers who carry work permits or S-passes. We do not make any comment in relation to the regulation of employment agencies in connection with their placement of other job-seekers such as Singaporean citizens, or permanent residents, expatriate professionals or entrepreneurs.

For clarity, we refer to foreign workers holding work permits or S-passes as “Foreign Workers” throughout this document.

Most of the observations and recommendations contained in this paper share a number of common themes. Namely that:

- Foreign Workers (as defined above) are a particularly vulnerable and often disadvantaged group when compared with other job-seekers in Singapore and should be given additional protection by the regulatory regime established by the Act and the Rules. This is because Foreign Workers are typically:
 - unskilled or semi-skilled workers from impoverished backgrounds with little in the way of formal education, though a minority are more highly educated but induced to seek work abroad through lack of opportunities in their places of origin;
 - unlikely to have the language skills to communicate effectively with Singaporean employment agents and employers and to fully understand and assert their rights and obligations in relation to dealing with Singaporean counterparts, and
 - have little access to information to help them make informed decisions about their dealings with Singapore employment agents and employers prior to entering into an employment contract in Singapore as they are usually ‘recruited’ to seek work abroad by recruiters or labour suppliers in their countries of origin.
- The Act does not effectively protect Foreign Workers from being charged excessive fees and other financial penalties, nor is it currently administered in a way that divides such fees between employers and employees in an appropriate manner.
- The Act does not currently protect Foreign Workers from being placed in unsuitable or exploitative positions.

- The Act does not place enough responsibility upon employment agents to safeguard the interests of Foreign Workers in relation to the nature of their job placement or related terms and conditions.
- The Act and Rules are not currently administered in a manner that effectively deters and punishes illegal behaviour by employment agents in their dealings with Foreign Workers.

There are issues relevant to the operation of employment agencies that are covered by other legislation. These include the system for issuing In Principle Approvals for the hire of workers and for issuing work permits, which are the subjects of services offered by Employment Agents. Since they do not fall under the provisions of the Act, they are not considered in this paper, but are mentioned to indicate that a comprehensive reform of the system by which Foreign Workers are recruited and placed would necessarily have a rather wider scope than the revision of the Act.

Part 2 – Current Challenges and Possible Solutions

The following is a summary of the key areas of the regulatory regime that in our opinion fail to adequately regulate employment agencies in Singapore in their dealings with Foreign Workers, along with our suggestions as to how these perceived inadequacies might be addressed. Where we are aware of other countries confronting similar issues and trying to tackle them, we have tried to point to choices they made for reference,

1) Licence Categories

Problem: Singapore’s current system for licensing employment agencies applies to all employment agencies in Singapore whether they are dealing with job-seekers who are Singaporean citizens, expatriate professionals or unskilled foreign workers. This makes it difficult for the regulatory framework to adequately regulate agencies dealing with employees who are in a very poor bargaining position (eg Foreign Workers) and who therefore require closer regulatory supervision, without imposing unnecessary or inappropriate requirements on agencies which do not operate in this area.

Proposed Solution: In order to create a regulatory system that adequately regulates employment agencies that deal with Foreign Workers without creating unnecessary regulations for other employment agencies, we submit that the Act and supporting Rules and conditions be revised to create two categories of licence for employment agents, namely:

- a) An “Employment Agencies (Citizens, Permanent Residents and Professionals) Licence” which would be required by agencies which are involved in the recruitment and placement of Singaporean citizens, permanent residents, employment pass holders and Entrepass holders.
- b) An “Employment Agencies (Foreign Workers) Licence” which would be required by agencies which are involved in the recruitment and placement of work permit and S-pass holders.

In relation to the agencies referred to in paragraph (b), we recognise that in some cases it may not be appropriate to regulate agencies in their dealings with foreign domestic workers, other work permit holders and S-pass holders in exactly the same manner. However, the conditions for this category of licence could be drafted to contain, where necessary, different individual requirements in respect of these different sub-categories of workers.

In the event that there are employment agencies who deal with job seekers from both of the categories referred to in (a) and (b) above, the agency would require two licences. However, most agencies who deal with Foreign Workers tend to specialise in this area, so such a situation would be very atypical.

The remaining recommendations in this paper are intended to apply principally to the regulation of agencies involved in the recruitment and placement of Foreign Workers (ie those mentioned in paragraph (b) above), though some of the recommendations may have broader relevance to all employment agencies.

2) Encourage the formation of professionally operated and well-resourced employment agencies

Problem: Many of the employment agencies who place Foreign Workers are small, poorly-resourced operations often owned and run by individuals with little financial backing or educational qualifications¹. Such agencies are unlikely to have the resources to achieve high standards of service and comply with rigorous regulatory requirements, leading to a greater likelihood of regulatory breaches and sub-standard treatment of job-seekers. Their position is exacerbated by the heavy costs they have to bear, notably that of renting business premises, and the cost of the security bond that a new business is required to furnish. These factors intensify the pressure upon employment agencies to maximise earnings and cut costs, with adverse consequences for employers and Foreign Workers.

Proposed Solution: In our opinion, the industry would function more effectively if the regulatory system required employment agencies to be better resourced and more professionally run. This could be achieved by a number of means including:

- a) Raising the barriers to entry by:
 - i) Raising the licence application fee from the current amount of \$350.
 - ii) Establishing a sufficiently high minimum capitalisation requirement for those seeking a new licence or to renew a licence (“licence applicants”)².
 - iii) Enhance the security deposit requirement (eg raise the amount from the current level of \$20,000 and/or require the deposit to be paid into a regulated account rather than through a bankers guarantee).
 - iv) Requiring licence applicants to deposit a significant sum of money into an escrow account, against which claims can be made by Foreign Workers and employers who have valid claims against the employment agency³.

¹ According to the website of the Singapore Ministry of Manpower (“MOM”), in mid 2009 there were over 2000 licensed Employment Agencies in Singapore.

² The Philippines requires a minimum paid up capital of two million pesos (roughly SGD 60,000).

- v) Requiring that licence applicants have a certain minimum number of professional staff with appropriate minimum qualifications This should include successfully undertaking an enhanced Certificate of Employment Agencies MOM course, which would go beyond the current focus on learning what the Act and Rules are, to ensuring they are well understood and their modes of implementation on a day to day basis are grasped⁴.
 - vi) Requiring licence applicants to submit a credible business plan demonstrating suitable resources (including physical, human and financial resources) and operating systems.
 - vii) Requiring that all licensed employment agencies obtain accreditation under a suitable industry or government course (currently only agencies placing foreign domestic workers require accreditation).
- b) Requiring that agencies must place a minimum number of Foreign Workers per year in positions in order to be eligible for renewal of their licence.⁵ This minimum number may only be composed of successful placements, lasting at least one full year, not filled by placements of very limited duration.

We recognise that such requirements could pose difficulties for a number of smaller agencies. However, by phasing such requirements in over a period of time (say 12 to 18 months), agencies would have time to adapt and to engage in mergers and sales/acquisitions of business if necessary.

3) Definition of “employment agency”

Problem: Currently, the Act defines an employment agency as “any agency or registry carried on or represented as being or intended to be carried on (whether for the purpose of gain or reward or not) for or in connection with the employment of persons in any capacity, but does not include any registry set up by an employer for the sole purpose of recruiting persons for employment on his own behalf.” In summary, it can be understood as any third party, whether a person or a business, who does matching between workers and employers. It seems clear that the Act is intended to exclude from its operation agencies and registries set up by an employer for that employer’s own recruitment purposes. We feel that in the event that an employer performs the functions of an employment agent and derives revenue or seeks to derive revenue in connection with performing that function, the employer should be treated as an employment agent.

Solution: In our opinion, the definition of “employment agency” should be amended to include a registry or business operated by an employer for the employer’s own recruitment purposes where the employer charges any fees or derives any revenue from any applicant for employment, other than third party costs such as transport to Singapore, the cost of medical examinations and similar fixed costs.

³ Agencies in the Philippines are required to deposit one million pesos (roughly SGD 30,000) into an escrow account and post a surety bond of 100,000 pesos, against which claims can be made.

⁴ China requires applicants to have at least five professionals engaged in the business including at least one legal professional, one accounting professional and one ‘foreign languages’ professional. Applicants also require a professional teaching qualification certificate.

⁵ This sort of requirement is not uncommon in the region (eg the Philippines and Bangladesh).

We also suggest that the definition of employment agency be reviewed more generally to ensure that it is as accurate and specific as possible. At present, the definition is not particularly precise and could be rendered in more readily comprehensible language.

4) Expand the categories of persons who are not permitted to obtain a licence

Problem: Currently, the Rules only disqualify from obtaining a licence undischarged bankrupts and persons convicted under certain offences under the Women’s Charter, Children and Young Persons Act and the Penal Code. The Rules would not, however, prevent someone from obtaining a licence who had, for example, been bankrupt in the recent past or a person who had committed offences under the Employment Act, Employment of Foreign Manpower Act, Employment Agencies Act or Immigration Act.

In addition, there is no overriding discretion for the Commissioner for Labour⁶ to refuse licences to people who are otherwise deemed unfit. Accordingly, it is not clear that the Commissioner may refuse a licence on grounds other than those set out above (although there are additional grounds in the Act for revoking a licence).⁷

The Rules also do not appear to apply to the shareholders or directors of a licence applicant, but only to the actual applicant. This means that a person who was precluded from applying for a licence could simply form a company or other business entity and apply for a licence through that vehicle.

Finally, the Rules do not disqualify from being granted a licence applicants who operate other businesses which may give rise to a conflict of interest in relation to the employment agency business. The International Labour Organisation (“ILO”)’s Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement (“ILO Guide”) recommends that licences should be refused, cancelled or revoked in cases where the agency or prospective agency also operates specific sideline businesses that could disadvantage the job seeker.⁸ The example cited was that of a travel agency which might be more interested in selling travel services than in providing proper and existing job opportunities.

Solution(s): The Rules should firstly be amended to make it clear that no licence shall be granted in the event that the applicant, or any person who owns or controls or is a director of the applicant, is disqualified.

Secondly, the list of offences/circumstances which would disqualify a person should be expanded to include any person who is convicted of an offence under the Employment Act, Employment of Foreign Manpower Act, Employment Agencies Act or Immigration Act as well as any person who has been bankrupt/insolvent etc within the last 5 years. In addition, to provide the Commissioner with greater discretion in relation to the issuance of licences, it would be

⁶ Appointed under the Employment Act, the Commissioner for Labour is responsible for the general administration of the Employment Agencies Act under the Act’s provisions.

⁷ Employment Agency Act (Cap. 92, 1985 Rev Ed), s 11.

⁸ Geneva: International Labour Organisation, 2007, p 19.

useful to adopt a catch-all provision, similar to that found in the Hong Kong Employment Ordinance, empowering the Commissioner for Labour to refuse a licence if the applicant is not considered, for any other reason, a fit and proper person to operate an employment agency.

To support these provisions, the Rules should require:

- That an applicant for an Employment Agent’s Licence disclose the names of all persons who have any controlling interest (which should be defined broadly) in relation to the applicant, with corresponding penalties for making false or misleading statements or omissions in the application form; and
- That the Commissioner undertake formal police and bankruptcy checks in relation to the shareholders and directors of an applicant, along with any other person who is identified as having any control over the applicant.

In relation to potentially ‘conflicting’ sideline businesses, the Rules should require an applicant to disclose any other businesses that it or its shareholders or office-holders operate and prohibit a licence from being granted to an applicant who operates another business which might, in the opinion of the Commissioner, give rise to a conflict of interest in relation to the conduct of an employment agency. Furthermore, the licence conditions should be amended to include a prohibition on such conflicting businesses being commenced by the licence holder or its officers or major shareholders after a licence has been issued.

5) Provide greater protection to workers in relation to fees

Problem: The Act does not currently adequately regulate the fees charged by employment agencies (and their overseas counterparts) to Foreign Workers seeking jobs in Singapore. This can result in Foreign Workers being charged inappropriate and excessive fees and may result in a worker being held under conditions of debt bondage.⁹

Currently, the Rules prohibit agencies from charging “fees” to applicants other than a registration fee of up to \$5 to each applicant for employment, along with a commission of up to 10% on the first month’s earnings of the applicant¹⁰. No distinction is made between an applicant from overseas and one who is in Singapore already, who is seeking a transfer and may well have used the services of the same agency previously. These Rules do not distinguish between fees charged to Foreign Workers and local job-seekers and we suspect that they may have been drafted with local job-seekers in mind. The Rules also do not define the term “fees” leaving it unclear, for example, whether costs such as air tickets, accommodation, training etc are intended to be regulated by this requirement.

Most Singapore employment agencies regularly charge Foreign Workers fees well in excess of the amounts stipulated in the Rules. Our understanding, from discussions with employment

⁹ The ILO Guide, p 25.

¹⁰ The Rules allow the agency to charge employers a registration fee of up to \$5 to an applicant for workers along with a commission of up to 80% of the first month’s total salary paid to each worker placed in employment.

agencies, is that these Rules are simply disregarded as irrelevant and can be safely ignored, in that failure to comply with them is unlikely to result in any action being taken by MOM.

Solutions: The Rules need to be amended to address the current practice whereby Foreign Workers are being charged amounts greatly in excess of what is currently permitted under the Rules¹¹. In our opinion, it would be desirable from a number of perspectives to limit the extent to which employment agents' fees are charged to Foreign Workers, and instead force employment agents to derive more of their revenue from employers. We propose the adoption of one of the following measures to address this:

- a) Enact and actively enforce provisions establishing that an agent may not charge or receive from a Foreign Worker fees, commissions, reimbursements or other payments (whether directly, or indirectly through the establishment of loans or the making of advances) totalling an amount greater than 3 times the Foreign Worker's average monthly salary, (inclusive of actual overtime allowances, contractually promised, if any) for the first 6 months of the Foreign Worker's employment or
- b) Enact provisions establishing that when an employment agent places a Foreign Worker in a position, not more than 30% of all of the agent's fees, costs and other charges in respect of the recruitment and placement of the Foreign Worker may be borne by the Foreign Worker. The employer should also be prohibited from recovering from the Foreign Worker any fees, costs or made to the employer.

The effect of these measures would be to transfer the majority of the burden of agents' fees onto employers rather than Foreign Workers while at the same time keeping the worker invested in the success of the placement by keeping open the possibility of the worker bearing some of the costs involved. Requiring employers to bear some responsibility for fees would create a dynamic whereby market forces in Singapore would keep agencies from charging excessive fees.

For reference, in Japan, employment agents are not permitted to charge employees a fee (with some very limited exceptions). Similarly, on-hire companies in Australia who are involved in placing migrant workers in manual labour positions in Australia are prohibited from seeking reimbursement from the worker for the cost of recruitment, services related to the nomination, final return travel to their home country, public hospital services, etc. We also note that Article 7 of the ILO's *Private Employment Agencies Convention, 1997*, prohibits the direct and indirect charging of fees to employees unless such fees come within the Member State's authorized exceptions.

In addition to the above measures, to the extent that agencies are permitted to charge fees to job seekers, agencies should be required to provide all job-seekers with written statements as to

¹¹ Foreign domestic workers are generally charged \$1,500 to \$2,500 by employment agencies to secure a position in Singapore. Other foreign workers (such as construction and shipyard workers) typically pay \$8,000 to \$10,000 (which we believe is usually split between the agent in the worker's country of origin and a Singapore agency).

what fees the job-seeker may be charged and how these are calculated, in order to promote greater transparency between agencies and job-seekers. Agencies should also be required to show the actual deductions in written statements and to seek the worker's written consent in relation to each cost to be incurred before making such deductions.¹² The worker's right to withhold such consent in the event of a dispute without being subjected to coercive pressures, such as threats of deportation, should be affirmed under the Act and Rules. It should be required that agencies issue receipts for all payments received from Foreign Workers and employers.

In the long term, the government may also wish to consider the creation of a not-for-profit public employment service to replace fee-charging employment agencies.¹³ This would be a far-reaching step, but should not thereby be ruled out of consideration.

6) Regulate Transfer Fees

Problem: It is common practice for employment agencies to charge a worker a 'transfer fee' in the event that a worker's position with a particular employer is terminated and the worker is placed in another position. It is not clear whether employment agencies are permitted to charge such fees under the Act. The level of fees is a frequent topic of complaint by domestic workers.

A worker may seek a transfer for a variety of reasons. Typically, in the case of domestic workers, either the employer is dissatisfied with the worker for some reason and decides to 'return' the worker to the agency, or the worker is unhappy with her conditions of employment and seeks a transfer. To qualify for transfer, the worker requires a letter of release from the existing employer, which some employers withhold when the parting involves ill-feeling, thus forcing the worker to be repatriated. Those able to stay on and seek employment generally return to the agency that arranged their previous placement, whether by choice or because they feel they have little option, given the practical difficulties of finding a new placement.

Agencies then usually charge a fee for arranging a new placement. This can range from the equivalent of one to four months' salary, with charges of one to two months being the current norm. Workers expect to pay a fee for the agencies' services, but find charges of over a month excessive, bearing little relationship to work undertaken.

In instances where a worker's return to the agency is the result of unreasonable behaviour by the employer or is determined by the employer without a fair reason, some agencies waive transfer fees to workers.

¹² In fact, this forms part of the Recommended Guidelines for Migrant Recruitment Policy and Practice in the Greater Mekong Sub-Region (2008) <<http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/guidelines-recruitment.pdf> (last accessed on 8 September 2009)>, paragraphs 4.5 and 4.6.

¹³ See ILO's *Fee-Charging Employment Agencies Convention (Revised)*, 1949, Article 3 <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C096>> (last accessed on 31 August 2009).

Section 14 of the Act prohibits the charging of any form of fees, remuneration, profit or compensation otherwise than as provided in the Act or in any rules made thereunder. Since transfer fees are not so provided, they are arguably prohibited.

If such fees are considered permissible by MOM, they should be regulated to prevent unscrupulous agencies from abusing vulnerable Foreign Workers.

Solution(s): The Act and/or Rules should specifically address circumstances in which agencies may charge transfer fees (if at all) and regulate the quantum of the fees that may be charged.

When a worker's request for a transfer has been occasioned by the employer's actions (dismissal for no adequate reason or unreasonable behaviour towards the worker), the worker should not be charged any additional fee. Likewise, if the employer becomes unable to pay the worker's salary and no longer requires the worker's services.

If a fee is deemed appropriate, it should only be for worker-initiated transfers and transfers for workers with whom the initial employer had good reason to be dissatisfied (eg repeated failure to perform duties adequately and after multiple warnings, criminal behaviour etc).

7) Prevent agencies from dealing with unlicensed or disreputable overseas agencies

Problem: We recognise that in some cases, the problem of excessive fees arises primarily as a result of agencies in sending countries charging workers excessive fees rather than at the direct initiative of Singapore-based employment agencies. While most countries whose citizens become migrant workers in Singapore have some system for regulating employment agencies who deal with out-bound migrant workers, often these countries do not have the resources to closely monitor and enforce these laws.

Solution: While this issue is principally the concern of the governments of the sending countries, Singapore can do its part to protect vulnerable workers who end up working in Singapore by requiring that Singapore licensed employment agencies:

- a. only do business with registered/licensed counterparts in sending countries (where the sending country has a system for licensing employment agents who deal with out-bound workers);
- b. make formal enquiries of the overseas agencies whom the Singapore agency is proposing to do business with in relation to their business practices and fees and not enter into any business relationship with any agency that is known to charge excessive fees or engage in other illegal, exploitative or unethical conduct in relation to migrant workers; and
- c. The possibility of imposing a limit on what a local agency might collect from a Foreign Worker or deduct from a Foreign Worker's salary on behalf of an overseas employment agency (or any other person, for that matter) might be considered. This might give an incentive to local employment agents to associate with overseas agencies that keep their charges to workers low. How this might be administered in

practice needs more thought.

It is not unusual for the domestic laws of a country to seek contain provisions which seek to reinforce the laws of another country in this manner. For example, in the Philippines it is an offence for an employment agency to charge or collect a placement fee for deploying a worker to countries where the prevailing system does not allow the charging or collection of placement and recruitment fees.

Singapore could also consider entering into arrangements with governments of sending countries which regulate the recruitment agencies that send workers overseas. For example, Australia and China have a memorandum of understanding that establishes an ethical framework for Chinese recruitment agents to supply Australian employers with skilled overseas workers.¹⁴ The framework prohibits Chinese recruitment agencies from charging a skilled worker any fee for their services, and requires that all recruitment fees must be contained within the costs charged to the employer. Chinese recruitment agents who agree to abide by the ethical framework and are subsequently registered as 'Identified Recruitment Agents' by the Chinese Ministry of Commerce ("MOFCOM") will have their agency listed both on the Australian immigration authority's website and on the MOFCOM website. Any recruitment agent who is found to have breached the ethical framework will be removed from the websites and may be subject to further penalties under Chinese law. While there is no requirement for a recruitment agency in Australia to deal only with an Identified Recruitment Agent, this is something Singapore could consider doing. Such a practice would be consistent with Article 8(2) of the ILO Private Employment Agencies Convention, 1997, which requires sending and receiving countries to consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.¹⁵

8) Employer Credit Checks and Disclosure of Track Record

Problem: In our field work with migrant workers, we have come across many instances where workers have been employed by companies with very dubious track records in relation to the payment of worker's salaries, occupational health and safety and employment law compliance. It appears that not enough is being done to ensure that employers who have not complied with the law are prevented from employing Foreign Workers in the future. We understand that MOM currently has in place a process whereby certain employers are debarred from employing Foreign Workers. However, our practical experience suggests that these measures may not be working as effectively as they could be.

Solution: In addition to ensuring that MOM has in place and actively uses an effective method for blacklisting non-compliant employers from employing migrant workers in the future, we suggest that employment agencies be required to undertake basic checks in relation to the prospective employer's credit worthiness and track record in relation to employment of migrant

¹⁴ See Australian Government of Immigration and Multicultural and Indigenous Affairs, "Identified Recruitment Agents for Chinese Skilled Workers" <<http://www.immi.gov.au/skilled/chinese-recruitment.htm>> (last accessed on 24 July 2009).

¹⁵ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C181> (last accessed on 30 August 2009).

workers. This method is currently in use in China, where an employment agent must check and confirm the creditworthiness of an employer before placing a worker with that employer.

In addition, agencies should be required to disclose to a Foreign Worker who is considering accepting a position with an employer, the employer's track record with that agency (eg How many people have been employed by that employer through the agency in the previous 2 years; how many work permits have been cancelled before their expiry by that employer; how many 'replacement workers' have been provided to that employer in the previous 2 years.). The agency should also be required to disclose any information known to it regarding prior offences committed by that employer, having sought such information from the employer. This would assist a worker to make an informed choice about whether to accept employment with that employer. Fewer workers would find themselves placed with employers whose attitudes and requirements they found unacceptable. Currently, employment agencies are only required to supply background information on a workers' past employment record to employers; there is no comparable and balancing responsibility towards workers.

9) Regulate agencies when they are directly recruiting in foreign countries

Problem: It is not clear how many Singaporean employment agencies have offices or branches in other countries that are used to assist in the process of recruiting Foreign Workers to Singapore. Anecdotal evidence suggests that some do. It would be undesirable for such offices or branches to be used in any way to evade the application of the basic standards required in Singapore.

Solution: We suggest that MOM examines how widespread this practice is and, if necessary, take measures to ensure that such agencies are conducting themselves in a fair and non-exploitative way in their overseas operations. We suggest that, at a minimum, an applicant for an employment agent's licence be required under the Act to disclose the existence and role of any overseas offices, branches, and affiliates and that the Commissioner be given a broad power to add additional license conditions to ensure that they do not contribute to the evasion of Singapore's regulatory mechanisms and that they adhere to the minimum standards required in Singapore.

10) Strengthen provisions regarding custody of passport

Problem: Currently the Rules require an employment agency to return the passport and work permit of a foreign employee to that employee "as soon as practicable" upon obtaining employment for the foreign employee, unless the employment agency has a 'reasonable excuse not to do so'. In our experience, it is very common for passports to be held by the agency or passed directly to the employer rather than the Foreign Worker. In each case, the motivation appears to be a desire to exercise control over the worker's movements. We believe that allowing an agency to withhold the passport/work permit from an employee if it has a 'reasonable excuse' creates an unduly vague defence for such actions. This qualification is open to very broad interpretation and significantly dilutes the intent of the legislation (ie to ensure that workers retain custody of their important documentation).

Solution(s): This provision should require that the agency deliver a worker's passport and work permit to the worker in person within 24 hours of the work permit being issued, unless the worker has instructed the agency in writing to retain the passport to allow the agency to perform another service in relation to the worker. When delivering the passport to the worker, the agency should be required to inform the worker, in a language that the worker can understand, that he or she has a legal right to retain custody of his/her passport and work permit and that it is the policy of the Singapore government that workers should retain these documents.

There are certainly problems in document retention by workers, such as the frequent absence of safe places to keep them and concerns about the illegal sale of passports, but those must be considered elsewhere. The key point here is to assert the right of individuals to the retention of their personal documents.

11) Create consequences where employment is terminated through no fault of the worker (ie, redundancy or unjust dismissal)

Problem: Foreign Workers agree to employment in Singapore in expectation of receiving a certain basic salary and, in the case of male workers in sectors such as construction, of augmenting that basic salary through a certain level of overtime work. This will not happen if the worker is placed with an employer whose business is in a fragile state and who soon dismisses the worker, or with an employer who makes unreasonable demands upon the worker and terminates the employment of any who object or fail to comply, to give two examples.

In addition, some domestic workers allege that employment agencies have knowingly placed them with an employer who will act in an unreasonable way, in the expectation that the worker will be returned to the agency. This way, the agency may make money from the initial placement, from supplying a replacement worker and from subsequently transferring the original worker. Practices currently vary considerably from agency to agency. It is not clear how many handle replacement of workers and transfer without making additional charges to employer or worker and how many do ask for more money.

Solution: Where employment is terminated through no fault of the worker before the expiration of the contracted term, fees paid to an employment agency should be repaid to the worker in whole or in part, depending on the extent of the employers' fulfilment of the original terms of remuneration. The worker would then be reimbursed for a service that had either not been rendered or rendered only in part. This provision would discourage placement of workers with those employers who agencies had cause to believe would terminate workers' employment prematurely or cause workers to seek to leave their employ through excessive demands or unreasonable behaviour.

It may be noted that in Australia, under a new pilot scheme relating to the use of foreign labour, a labour company has to guarantee to each worker a minimum of 30 hours of paid work per week (on average) over a six month period.

12) Create consequences in the event of under-employment

Problem: This is related in nature to the problem raised in (11) above and is a problem in particular in the shipyard and construction sectors, where workers are generally paid according to the number of hours that they work per week. Workers may be formally employed but not earn the salaries they were told they would receive due to lack of available work. This issue can arise when a company hires workers in anticipation of undertaking work with them which is then not available because of a project starting late or being interrupted, or because the company overestimated the number of workers it would require. Since it is at present legal for companies to make charges to workers towards their maintenance, this can mean that workers dependent on earning according to an hourly or daily rate may find themselves paying out money as quickly as they earn it.

Solution: The chief remedy for this abuse needs to be found outside the context of the Act, but if employment agencies were obliged to re-imburse fees accepted for the placement of workers in anticipation that they would receive a certain specified level of earnings which are not then received, this would be an incentive to ensure as far as possible that they are placed with employers who will honour their obligations.

13) Introduce rules governing advertising by agencies

Problem: Currently, the manner in which employment agencies advertise their services is completely unregulated. This means that some agencies will effectively advertise that 'their workers' are prepared to accept certain exploitative terms and conditions. For example, they may advertise the '\$0 Maid' (meaning that the employer will not have to pay the agency any money, on the basis that the Foreign Worker will bear all of her own initial costs as well as the agency fee) and 'unlimited free replacements' (meaning that if the employment of the worker is terminated, the employer will be provided with a new employee 'for free', on the basis that the original Foreign Worker will pay the agency's fee to be transferred into a new job). These practices are very exploitative of foreign workers, making the worker responsible for generating the agency's revenue, and significantly erode a worker's bargaining power in the job market.

Solution: Agencies should be required to abide by a new set of rules governing advertising that will set basic standards for the respect of workers' rights and personal dignity. As a general principle, they should not be permitted to advertise terms and conditions that would be considered demeaning or to invite exploitation, such as would be considered unacceptable in the case of local workers; this would include 'No day off maids', workers ready to accept very low pay, and any publicity that plays upon national stereotypes. Public advertising should be limited to statements about the quality of service offered by the agency and the skill sets of the job seekers they represent. To the extent that placement fees are advertised, agencies should be required to advertise their fees in their entirety and show what proportion is to be borne by the employer compared to that borne by the employee, so that both of these parties can judge the economic factors at play in their dealings with the agency and perhaps later, with each other.

14) Introduce rules concerning how agencies support Foreign Workers in achieving reasonable terms and conditions

Problem: Employment agencies are employed by both employers and job-seeking workers and thereby have responsibilities towards both. It is commonly the case that they attach much greater importance to fulfilling the requirements of employers than those of workers. Domestic workers frequently complain about being put under pressure to accept terms of employment to which they object. Among their complaints are that agents threaten to send them home if they do not accept such terms. It is quite common for agents to actively encourage employers not to give a day off to domestic workers, especially at the beginning of their employment. Workers are induced to agree to this condition by the threat that they will not find work and will be sent home, or by being told that they will be paid less if they try to insist on a day off. Agents who do this say that if the worker is allowed out and then runs away from her employer, the employer will stop paying for her and they will lose money. They want to ensure that their entire payment is received before the worker has time off, but the growth of the charges made for placement of domestic workers has extended the period of anxiety for agencies to eight months or more, compared to around three in 1997.

Agencies should be instrumental in helping Foreign Workers attain good terms and conditions, especially in the current situation where it is in fact the Foreign Worker, and not the employer, who usually pays the agency for its services. We cannot think of any other industry in which a 'broker' can generate revenue from one party, while acting in the interests of the other.

Solution: The Act should require that an agency takes a balanced position and does not show favour to either employer or potential employee when involved in negotiations between them. It should be prohibited from making threats, including the threat of repatriation, against workers in order to induce them to accept unfavourable terms and conditions under any circumstances. Such terms and conditions are to be understood as those to which the worker personally objects and any that she would be best advised not to accept as being prejudicial to her wellbeing. The Act should prohibit agencies from confiscating or obstructing the access of domestic workers to informational literature provided by Singapore government bodies for their protection, wellbeing and understanding of conditions in Singapore.

In our view, this may only go some way towards dealing with the conflict of interest issue, and further consideration of ways this problem might be overcome is needed.

Employment agents should be required to provide assistance to job seekers to make informed choices in deciding upon offers of employment. This goes beyond matters referred to in (8), to include advice on possible health hazards and risks, and the likelihood of encountering abusive or discriminatory treatment of any kind. They should be required to advise their worker clients on the nature of the position they are being offered and the terms and conditions attached to it, in a language that the FW can understand.¹⁶

¹⁶ See paragraph 5 and 8 of ILO R188 [Private Employment Agencies Recommendation, 1997](http://www.ilo.org/ilolex/cgi-lex/convde.pl?R188) <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?R188>> last accessed on 07/09/09); and paragraph 13.4 of ILO Multilateral Framework on Labour Migration, 2006 <http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf> (last accessed on 7 September 2009)

15) Require use of standard employment contract

Problem: Foreign Workers can rarely turn to employment contracts in affirming their rights and entitlements. Some male workers from certain countries have been required to sign contracts that contain terms that violate Singapore's laws and seek to enforce oppressive and inhumane conditions that are inconsistent with the standards that Singapore wishes to see upheld. Such contracts should have no validity under Singapore's jurisdiction. Standard contracts consistent with Singapore's legislation and standards ought to be an effective instrument for securing better employer/employee relations and assisting the two parties to assert their rights when need be.

The current standard employment contract for domestic workers, while an advance on the earlier conditions when various contracts were in use, has various deficiencies in the area of ensuring the rights and protection of workers, but its most basic flaw perhaps lies in the difficulty than any worker would have in enforcing its terms. As it is a contract established by the employment agency industry, rather than a contract established under statute, a worker would need the capability to pay for the hire of a lawyer to institute legal proceedings.¹⁷ It is wrong in principle that lack of financial resources should effectively debar an entire category of workers from pursuing the enforcement of contract terms.

Solution: The Guide cited paragraph 5 of *ILO Recommendation No. 188* which recommends that all contracts concluded between the employment agency and job seekers be in writing.¹⁸ The Guide also suggested the use of model employment contracts which should at a minimum contain a description of the job, site, and duration of contract; basic and overtime remuneration; regular working hours, rest days and holidays; provisions for transportation to country/place of work, and return; employment injury and sickness compensations, emergency and medical care; contract termination grounds; dispute settlement clause; non-cash benefits and work-related benefits.

Going one step further, some jurisdictions require copies of forms of employment contracts adopted through employment agencies be presented to or made available to the competent authority for approval or inspection.¹⁹

In Hong Kong, employers must enter only into prescribed employment contracts with foreign domestic helpers and workers²⁰ under the Supplementary Labour Scheme.²¹ In Australia, the

¹⁷ The problem might be tackled by making it possible for workers to pursue the enforcement of their contracts through low cost tribunals, such as a small claims tribunal or MOM mediation, but the difficulty then would be that these fora may leave Foreign Workers disadvantaged through lacking any form of on the spot support while facing more highly educated, English-speaking employers.

¹⁸ p 26. This recommendation is also consistent with paragraph 10.3 of the ILO Multilateral Framework on Labour Migration, 2006
<http://www.ilo.org/public/english/protection/migrant/download/multilat_fwk_en.pdf> (last accessed on 5 September 2009), which recommends the promotion of the establishment of written employment contracts "to serve as the basis for determining obligations and responsibilities".

¹⁹ pp 29 and 34, and Annex III Table 14 of the Guide.

terms and conditions of employment of the nominated worker must be in accordance with the Labour Agreement regulating an on-hire firm. This practice is consistent with paragraph 10.3 of the ILO Multilateral Framework on Labour Migration which recommends the establishment of “a mechanism for the registration of employment contracts where this is necessary for the protection of migrant workers”.²²

For all Foreign Workers, it would be advantageous to have contracts prescribed under statute (possibly the Employment of Foreign Manpower Act). The prescribed contracts would contain terms particular to each employment sector, to reflect the varying conditions within them. A prescribed contract such as this would mean placing an onus for enforcement upon an appropriate government body (probably the Ministry of Manpower) and offer a much improved chance of enforcing agreed terms.

Employment agencies should be required by law to use this contract, and be strictly forbidden from substituting another one for it, asking any party to sign an additional contract, or inserting extra clauses without the approval of the regulatory authority.

Employer and employee should both sign this document; copies should be retained by the agency, employer and worker and one should be lodged with the Ministry of Manpower.

16) Clarify role of agency following placement and in relation to disputes between employer and employee

Problem: As businesses, agencies might find it preferable to be able to cease to have any responsibilities towards employers or Foreign Workers once workers are placed in employment. Further work appears as an uncompensated encumbrance, and some agencies take it on with much reluctance. Workers often say that when they take complaints to agents, they are told to put up with their employers’ behaviour. We are aware of cases of mistreated domestic workers running away from their employers to their agents, only to be told that they must go back to them.

Under condition #7 of the current employment agency licence conditions, it is stipulated that “the licensee shall report to the MOM all breaches of WP conditions by employers of non-citizens placed by the licensee within his knowledge or the knowledge of his staff, employees, agents, directors and partners”. It is unclear if there is any time limit on this obligation – perhaps the duration of the work permit is intended? A more basic problem is that while this condition requires activity if knowledge of a work permit breach comes to the attention of the agent, it does not require active ongoing monitoring for breaches.

²⁰ See Government Hong Kong Special Administrative Region Immigration Department, “Employment Contract for a Domestic Helper Recruited from Outside Hong Kong - English version” <<http://www.immd.gov.hk/ehtml/id407form.htm>> (last accessed on 24 July 2009).

²¹ The scheme relates to the importation of labour at technician level or below. See Government Hong Kong Special Administrative Region Immigration Department, *Guidebook for Entry for Employment as Imported Worker in Hong Kong*, para 10 <[http://www.immd.gov.hk/pdfforms/ID\(E\)1002.pdf](http://www.immd.gov.hk/pdfforms/ID(E)1002.pdf)> (last accessed on 24 July 2009).

²² <http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf> (last accessed on 5 September 2009).

Solution: Agencies in Singapore should be required to perform spot checks on the workers they place and their employers. Such spot checks should be made with minimum notice, consist of in-person visits to the employers' premises, and include speaking with workers in the absence of the employer: it is not enough to make a 'phone call to the employer's house and ask if all is well. Agents should record details of their observations and notify any breaches of work permit conditions to the MOM. Three visits within a year of placement may be adequate.

In the event of agents being called upon to mediate between employers and Foreign Workers, they should be required to do so in a balanced and unbiased manner.

Formalising the role of the agent post-placement is not unprecedented in the industry. In Australia, for example, 'on-hire' firms that recruit overseas skilled workers to hire out to unrelated businesses are required to complete and submit a monitoring form within 12 months from their sponsorship of a temporary overseas employee being approved. The form requires the firms to provide certain information, including evidence of the salary being paid.²³

17) Enhance agency's responsibilities in relation to repatriation

Problem: There are times when Foreign Workers may be left stranded by an employer disappearing, going bankrupt or obstinately raising obstacles to the fulfillment of the legal obligation to repatriate a worker at the expiry of the worker's employment or work permit.

Solution: It should at least be considered whether the employment agent's responsibility towards the worker should include repatriating the worker. It can be argued in favour of this that the agency's responsibility towards a Foreign Worker extends to the worker's whole placement; further, that such a provision would give an added incentive to agents to do their best to assess the reliability and trustworthiness of the employer.

This is already being practiced or considered elsewhere. In Australia, for example, it is the officials from the Department of Immigration and Multicultural and Indigenous Affairs who supervise the deportation when a worker's work permit expires or is cancelled.²⁴ On hire companies must pay for the cost of final return to a skilled overseas worker's home country, and are not permitted to seek reimbursement of these costs from the worker.²⁵

The alternative would be for the government to take on the responsibility for repatriation, which would have the advantage of minimising delays for the Foreign Workers that could equally well occur in the case of agents as well as employers.

²³ See Australian Government of Immigration and Citizenship, *Sponsoring a Temporary Employee to Australia*, at p 8 <<http://www.immi.gov.au/allforms/booklets/1154.pdf>> (last accessed on 24 July 2009).

²⁴ See Australian Government of Immigration and Multicultural and Indigenous Affairs, *Managing the Border: Immigration Compliance* (2004-05 Edition), at p 81 <<http://www.immi.gov.au/media/publications/compliance/managing-the-border/pdf/mtb-complete.pdf>> (last accessed on 24 July 2009).

²⁵ See Craddock Murray Neumann Lawyers, "New Requirements for On-Hire Industry: Labour Agreements Now Compulsory" <<http://www.craddock.com.au/Document/New+Requirements+for+On-e2-80-93Hire+Industry-3a+Labour+Agreements+Now+Compulsory.aspx>> (last accessed on 24 July 2009).

Paragraph 3.9 of the Recommended Guidelines for Migrant Recruitment Policy and Practice in the Greater Mekong Sub-Region (2008),²⁶ recommends that governments should “establish a contingency fund or surety fund to be used for repatriation, insurance, medical care, return and reintegration activities and pensions for migrant workers as necessary”.

18) Enhance agencies’ reporting obligations

Problem: Currently, there is little publicly available information in relation to what happens to Foreign Workers in Singapore following their placement with an employer. For example, information does not appear to be collected in relation to worker dismissals and redundancies. This sort of information would help policy makers and support providers (such as government agencies and NGOs) a great deal in knowing what trends are emerging in the foreign labour market and addressing challenges arising from these. In addition, this data might help MOM to identify situations in which agencies are placing foreign workers in inappropriate jobs, leading to high levels of dismissals, redundancies etc.

Solution(s): The Rules should be amended to require that the monthly returns lodged by employment agencies contain information on: (i) the number of workers whose positions were terminated that month (including reason eg redundancy, poor worker performance, worker-initiated termination) (ii) number of workers transferred by the agency that month; (iii) the number of workers repatriated that month. This sort of information should be made publicly available. In addition, agencies that have disproportionately high numbers of workers being dismissed, made redundant, repatriated in any particular period etc should be investigated by MOM for regulatory compliance and if necessary, have their licences revoked or suspended.

19) Introduce additional offences

Problem: The currently regulatory regime does not contain sufficient deterrents to protect Foreign Workers from being exploited and cheated by employment agencies.

Solution(s): The Act should contain additional offences (with appropriately harsh penalties) in relation to the following:

- a) Engaging in acts of misrepresentation in connection with recruitment and placement of workers.
- b) Allowing persons who are disqualified from obtaining an employment agencies licence from participating in the operation, ownership or control of a licensed employment agency.
- c) Inducing or attempting to influence any person to enter into employment with an employer who is known to the agency to have abused or mistreated foreign workers in the past, or who is known to the agency to have breached any law pertaining to the employment of Foreign Workers or known to have materially breached the terms of employment contracts entered into with Foreign Workers in the past.

²⁶ See <<http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/guidelines-recruitment.pdf> (last accessed on 7 September 2009)>.

- d) Inducing or attempting to influence any person to enter into employment with an employer who is offering a salary or other terms and conditions which do not comply with Singapore law or are clearly below that usually expected in the Singapore market.

20) Introduce harsher penalties for certain offences

Problem: Some of the offences currently contained in the Act do not carry sufficiently harsh sentences. For example, carrying on an employment agency without a licence is only subject to a fine of up to \$5000 for the first offence. Our research suggests that in most countries in the region, operating an unlicensed employment agency carries a penalty of a fine and/or imprisonment.

Solution(s): In our opinion, the Act and the Rules should be thoroughly reviewed to ensure that the penalties associated with serious offences are commensurate with the nature of the offence.

21) Review effectiveness of demerit point system

Problem: The demerit point system does not appear to be operating so as to ensure that employment agencies are being regularly sanctioned for regulatory breaches. We note that the list of licensed employment agencies on MOM's website in mid-2009 showed that less than 10 of Singapore's 2000 or so agencies appear to have lost any demerit points during the previous 6 month period. Given our experience, which suggests that grievances involving employment agencies are very common among Foreign Workers, this system does not appear to be functioning efficiently. It is not clear whether this is because few complaints are reported to MOM, or because complaints that are made are not resulting in regulatory consequences.

In addition, we submit that the 6 month cycle for demerit points is too short for the system to have a strong deterrent effect. If points are generally lost 3 at a time, an agency would have to have 4 complaints filed, investigated and decided adversely in a single 6 month period before risking that any real consequence (ie licence revocation) would be considered. Consequently only the most deliberately and recklessly non-compliant agencies would ever lose their licences.

Finally, it is not clear from the Act and the Rules, what infringements will lead to the issuance of demerit points, compared with other consequences (eg revocation of licence, prosecution for commission of an offence).

Solution: The demerit point system should be comprehensively reviewed and either amended and re-launched (for example, with a 2 year demerit point cycle) or abandoned. If the system is retained and overhauled (which we think would be the better outcome), foreign workers need to be provided with much more information about the system and how they can lodge complaints against agents. Rules should be released concerning the circumstances in which the demerit point system will and will not apply and how it will apply. MOM would also need to ensure that sufficient resources and internal support are allocated to those charged with the task of investigating complaints and issuing demerit points against agencies to enable this function to be carried out efficiently and effectively.

Conversely, a system of incentives for meeting recognised criteria and good performance could be established alongside a system of disincentives for breaches.²⁷ The power of positive examples that would attract public attention and mobilise market forces to drive the dissemination of good practices could be considerable. If this does not fall within the intended scope of the Act, it might be pursued through other channels.

22) Compounding of Offences

Currently the Employment Agencies (Composition of Offences) Rules allow the Commissioner to compound certain offences under the Employment Agencies Act. This means that rather than criminal proceedings being initiated, the offender is issued a fine and may avoid criminal prosecution (and a criminal record) if the fine is paid.

While this provides the Commissioner with an efficient way of dealing with regulatory breaches, this process should not be used in relation to serious offences and ones which should result in the offender having a criminal record. In particular, failure to criminalise an offence means that a police check would not allow regulators in the future to identify a person as a prior offender. For example, it is inappropriate that a person who operates an employment agency without a licence have such an offence 'compounded'.

Solution(s): The Employment Agencies (Composition of Offences) Rules should be reviewed and amended so that only very minor or technical offences such as failures to meet regulatory deadlines and other technical breaches can be compounded. In our opinion, for example, it is inappropriate that offences under section 6, 22 or 23 of the Act and offences under rule 18 or 19(2) of the Employment Agency Rules be capable of being compounded, as is currently permitted.

²⁷ See paragraph 13.8 of ILO Multilateral Framework on Labour Migration, 2006
<http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf> (last accessed on 6 September 2009).