

# Employment of Foreign Manpower (Amendment) Bill

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**Bill No. 22/2012.**

*Read the first time on 13th August 2012.*

A BILL

*intituled*

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

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

## Short title and commencement

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

### 5 Amendment of section 2

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

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

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

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

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

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

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

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

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

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

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

(d) by inserting, immediately after the definition of “foreigner”, 5  
the following definition:

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

(e) by deleting the definition of “self-employed foreigner” and 10  
substituting the following definitions:

“ “prescribed infringement” means —

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

(b) any contravention of any provision in the 15  
regulations made under this Act that is prescribed as a prescribed infringement; or

(c) the abetment, within the meaning of section 25F, of any contravention referred to in paragraph (a) or (b); 20

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

(a) is prescribed by the Minister as a regulatory condition; or

(b) is imposed by the Controller under 25  
section 7 as a regulatory condition;

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

(a) any trade, vocation or profession, whether 30  
for the purpose of gain or otherwise; or

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

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

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

5 **Amendment of section 3**

3. Section 3 of the principal Act is amended —

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

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

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

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

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

25 **Amendment of section 5**

4. Section 5 of the principal Act is amended —

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

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

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(a) be liable on conviction to a fine of not less than \$5,000 and not more than \$30,000 or to

imprisonment for a term not exceeding 12 months or to both; and

(b) on a second or subsequent conviction —

- (i) in the case of an individual, be punished with a fine of not less than \$10,000 and not more than \$30,000 and with imprisonment for a term of not less than one month and not more than 12 months; or
- (ii) in any other case, be punished with a fine of not less than \$20,000 and not more than \$60,000.”;

(b) by deleting subsection (6A);

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

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

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

### **Amendment of section 7**

**5.** Section 7 of the principal Act is amended —

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

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

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

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

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

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

(i) relating to the employment of the foreign employee; or

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

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

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

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

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

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

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

- (a) whether the person has acted, or is acting, in concert with or on the direction of a debarred person for or in connection with the employment of any foreign employee; or
  - (b) whether the person, as an associate of a debarred person, is engaged in a trade or business which is substantially similar to any trade or business of the debarred person. 5
- (4D) For the purposes of subsection (4C)(b) —
- (a) a person is an associate of an individual — 10
    - (i) if that person is the individual's spouse, or if that person is a relative, or the spouse of a relative of the individual or his spouse;
    - (ii) if that person is in partnership with the individual, or the individual is the spouse or a relative of any other person with whom the first-mentioned person is in partnership; 15
    - (iii) if that person employs the individual or the individual employs that person, and for this purpose, any director or other officer of a person that is a company shall be treated as employed by that company; 20
  - (b) a person in his capacity as trustee of a trust is an associate of an individual if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that individual or an associate of that individual; 25
  - (c) a company is an associate of an individual if that individual has control of it or if that individual and persons who are his associates together have control of it; 30

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

5 (e) any reference in this subsection to a spouse shall include a former spouse;

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

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

15 (ii) he is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of the company or of another company which has control of it,

20 and where 2 or more persons together satisfy sub-paragraph (i) or (ii), they shall be taken to have control of the company; and

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

### **Amendment of section 9**

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

“(3) Where any employer contravenes subsection (1), the Controller may impose on him a financial penalty of such



amount, not exceeding \$10,000, as the Controller may determine.

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

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### **Amendment of section 10**

7. Section 10 of the principal Act is amended —

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

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

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

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

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

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

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

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### **Amendment of section 11**

8. Section 11 of the principal Act is amended —

(a) by deleting the words “or on self-employed foreigners who have, pursuant to section 10(1), obtained a work pass to engage in any trade, vocation, profession or other activity in

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Singapore for the purpose of gain” in subsection (1) and substituting the words “, or on self-employed foreigners or any class thereof, who have been issued with a work pass”; and

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

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

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

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

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

### **Amendment of section 12**

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

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

(a) the trade, sector, occupation or type of employment —

(i) that is specified in the work pass; or

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

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

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

- (a) the trade, sector, vocation, profession or activity —
- (i) that is specified in the work pass; or
  - (ii) in any other case, that was submitted to the Controller in, or in connection with, the application for the work pass; and
- (b) any trade, sector, vocation, profession or activity not specified in the work pass, for which he has the approval of the Controller to engage in.”

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### **Amendment of section 13**

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

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### **Repeal and re-enactment of section 15**

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

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#### **“Burden of proof, etc.**

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

- (a) a person who makes an application for a work pass shall be presumed, until the contrary is proved, to have knowledge of the information provided in the application; and
- (b) subject to subsection (2), the burden of proving the truth of the contents of an application for a work pass shall be on the person who makes the application.

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

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## Amendment of section 16

12. Section 16 of the principal Act is amended —

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

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

“(a) to enter and inspect, at any reasonable time —

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

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

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

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

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

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

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

“(h) to require an employer to produce all or any of his employees for the purposes of any investigation into a prescribed infringement or an offence under this Act when required by the authorised officer or employment inspector, as the case may be.”; 5

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

“(2) An authorised officer or employment inspector may require the occupier of any premises and the occupier’s agents and any person found in the premises to furnish such means required by the authorised officer or employment inspector, as the case may be, as necessary for any entry, inspection, search, examination or investigation, the taking of photographs or audio or video recordings, the taking of articles into custody or otherwise for the exercise of his powers under this Act. 10 15

(3) An authorised officer or employment inspector may, after concluding his inspection or investigation, hand over to an immigration officer any travel document which he has taken into custody or which has been produced to him. 20

(3A) If entry to any premises cannot be obtained, an employment inspector may, when he has reasonable cause to believe that any foreign employee or self-employed foreigner is employed or engaged therein or accommodated thereat or that evidence of the commission of an offence under this Act can be found therein, state his authority and purpose and demand entry to the premises, and — 25 30

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

(b) forcibly enter such premises and every part thereof; or 35

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

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

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

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

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

15 **Amendment of section 18**

**13.** Section 18 of the principal Act is amended —

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

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

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

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

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

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### **Repeal and re-enactment of section 19**

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

#### **“Protection from personal liability**

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**19.** No liability shall be incurred by —

- (a) the Controller;
- (b) any authorised officer or employment inspector, or any person acting under the direction of the Controller; or
- (c) any member of the Appeal Board,

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

### **Repeal and re-enactment of section 20**

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

#### **“Offences by bodies corporate, etc.**

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

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- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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

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

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

(b) to be attributable to any neglect on his part,

10 the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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

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

20 (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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

30 partnership, as the case may be, who —

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

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



(6) In this section —

“officer” —

- (a) in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or 5
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity; 10

“partner” includes a person purporting to act as a partner. 15

(7) The Minister may make regulations to provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.”. 20

### **Amendment of section 21**

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

“(1) Any police officer or employment inspector may arrest without warrant any person whom he reasonably suspects — 25

- (a) is committing or has committed an offence under section 5(6), (7) or (7A), 10(2), 22(1)(a), (c), (d), (e) or (f), (2), (3) or (4), 22A(2) or 22B(1); or
- (b) has abetted the commission of any offence referred to in paragraph (a). 30

(1A) For the purposes of this section, an officer or a member of a body corporate or an unincorporated association or a partner of a partnership who is liable for an offence referred to in

subsection (1)(a) by virtue of section 20 shall be treated as having committed that offence.”.

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

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

**“General offences**

**22.—(1)** Any person who —

- 10     (a) being an employer, a foreign employee or a self-employed foreigner to whom a work pass applies or had applied, contravenes any condition (other than a regulatory condition) of the work pass or in-principle approval of the application for the work pass;
- 15     (b) contravenes section 13(4);
- 20     (c) wilfully obstructs an authorised officer or employment inspector in the exercise of his powers under section 16, 21, 21A, 21B, 21C, 21E or 21F (as applicable);
- 25     (d) in connection with any application for or to renew a work pass or for any other purpose under this Act, makes any statement or furnishes any information to the Controller or an authorised officer or employment inspector which he knows, or ought reasonably to know, is false in any material particular or is misleading by reason of the omission of any material particular;
- 30     (e) sells, forges, unlawfully alters or, without lawful authority, transfers or allows another person to use any in-principle approval or work pass;
- (f) uses or, without lawful authority, has in his possession any in-principle approval or work pass that is forged or unlawfully altered, or which is issued to another person; or
- (g) contravenes section 13(1), (2) or (3), 14 or 17(1) or (3),

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

- (i) in the case of an offence under paragraph (a), (b) or (c), to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both;
- (ii) in the case of an offence under paragraph (d), (e) or (f), to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both; and
- (iii) in the case of an offence under paragraph (g), to a fine not exceeding \$10,000.

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

- (a) knows, or has reason to believe, that an offence has been committed under subsection (1)(d); and
- (b) intentionally omits to furnish any information to the Controller in respect of that offence,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

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

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

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

(b) intentionally omits to furnish any information to the Controller in respect of that offence,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

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

**22A.**—(1) No person shall deduct from any salary payable to a foreign employee, or demand or receive, directly or indirectly and whether in Singapore or elsewhere, from a foreign employee any sum or other benefit —

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

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

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

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

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

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

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

- (c) where sections 26 to 32 of the Employment Act (Cap. 91) apply to the foreign employee, the whole or part of any deduction from the salary of the foreign employee authorised to be made under those sections;
- (d) where sections 26 to 32 of the Employment Act do not apply to the foreign employee, the whole or part of any deduction from the salary of the foreign employee made in accordance with the terms of the employment of the foreign employee; or
- (e) the whole or part of any fee, remuneration, profit or compensation that a licensee under the Employment Agencies Act (Cap. 92) may lawfully charge the foreign employee and receive under that Act,

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

### **Proscribed manpower-related practices**

**22B.**—(1) Any person who —

- (a) obtains a work pass for a foreign employee for a trade or business that does not exist, that is not in operation or that does not require the employment of such a foreign employee; and
- (b) fails to employ the foreign employee,

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

(2) Where any person is —

- (a) charged with more than 5 offences under subsection (1); and
- (b) convicted of at least 6 of those offences at the same trial,

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

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

5 **Amendment of section 23**

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

**New section 23A**

10 **19.** The principal Act is amended by inserting, immediately after section 23, the following section:

**“Orders for payment of proceeds of crime**

15 **23A.—**(1) When any person is convicted of an offence under section 22A(2) or 22B(1), the court shall, in addition to imposing on that person any other punishment, order him to pay, within such time as may be specified in the order —

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

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

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

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

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(b) any order for the payment of compensation by the defendant in respect of any injury arising from the offence concerned to the person injured, or his

representative, under section 359 of the Criminal Procedure Code (Cap. 68).

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

(4) Where —

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

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

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

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

## **New sections 25 to 25H**

**20.** The principal Act is amended by inserting, immediately after section 24, the following sections:

### **“General prescribed infringements**

**25.—**(1) Where any employer —

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

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

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

(2) Where any person fails to comply with —

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

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

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

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

20           (4) Where any employer —

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

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

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



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

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

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

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

- (a) fees associated with the application, issuance, renewal or reinstatement of a work pass, other than the fees or deductions prescribed as recoverable from the foreign employee;
- (b) costs associated with furnishing security as required by the Controller;
- (c) costs associated with purchasing and maintaining medical insurance coverage for the foreign employee, as required by the Controller;
- (d) costs associated with medical examinations for the foreign employee, as required by the Controller;
- (e) the levy imposed under section 11(1) in respect of the foreign employee and any penalty due thereon;
- (f) costs associated with training the foreign employee, where the training is required by the employer or the Controller;
- (g) costs associated with repatriating the foreign employee at any time; and

(h) such fee, charge or amount as may be prescribed.

### **Compliance with prescribed duties**

5     **25A.**—(1) Where an in-principle approval of an application for a work pass has been issued by the Controller, the employer, foreign employee or self-employed foreigner concerned shall comply with such duties for or in relation to the employment of such foreign employee or the engagement of such self-employed foreigner as may be prescribed.

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

15     (3) For the purposes of this section —

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

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

### **Directions**

30     **25B.**—(1) Notwithstanding anything in this Act, where the Controller is satisfied that any person is committing or has committed a prescribed infringement, the Controller may, in addition to or in lieu of the imposition of a financial penalty, give such directions to the person as the Controller thinks appropriate to bring the prescribed infringement to an end and, where necessary, require that person to take such action as is specified in the direction to remedy, mitigate or eliminate any effects of

such prescribed infringement and to prevent the recurrence of such prescribed infringement.

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

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### **Proceedings for prescribed infringements**

**25C.**—(1) The Controller may inquire into and determine whether any person has committed a prescribed infringement in accordance with this Act.

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

(a) to summon and examine witnesses;

(b) to administer oaths or affirmations; and

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(c) to compel the production of documents and articles.

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

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

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

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

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

(5) If any person who has been duly summoned by the Controller to attend at any proceedings under this section makes default in so doing, the Controller may make his determination in

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the absence of that person notwithstanding that the interest of that person may be prejudicially affected by his determination.

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

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

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

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

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

### **Recovery of financial penalties**

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

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

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

(4) In any proceedings for the recovery of any financial penalty or interest due thereon which any person is liable to pay, a certificate purporting to be under the hand of the Controller certifying the amount of the financial penalty or interest due thereon that is payable by the person shall be prima facie evidence of the facts stated therein.

**Prescribed infringements by bodies corporate, etc.**

**25E.**—(1) Where a prescribed infringement committed by a body corporate is proved —

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

(b) to be attributable to any neglect on his part,

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

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

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

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

(b) to be attributable to any neglect on his part,

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

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

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

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

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

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

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

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

(6) In this section —

“officer” —

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

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

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

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

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### **Abetment of prescribed infringements**

**25F.**—(1) Where any person abets a prescribed infringement, the Controller may impose on the person a financial penalty of such amount, not exceeding the maximum financial penalty prescribed for the prescribed infringement, as the Controller may determine.

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(2) For the purposes of this section —

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

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(b) a person abets the doing of a thing who —

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(i) instigates any person to do that thing;

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

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

### **Appeals to Appeal Board**

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

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

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

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

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

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

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

20 (b) direct the Controller to reconsider the determination or direction appealed against.

### **Composition and procedure of Appeal Board**

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

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

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

30 (a) the terms and conditions of the appointment of the members of the Appeal Board; and



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

(4) The remuneration and allowances, if any, of a member of the Appeal Board shall be determined by the Minister. 5

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

### **Amendment of section 26**

**21.** Section 26 of the principal Act is amended by deleting the words “or any regulations made thereunder”. 10

### **Repeal and re-enactment of section 27**

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

#### **“Composition of offences” 15**

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

(a) one half of the amount of the maximum fine that is prescribed for the offence; 20

(b) a sum of \$5,000.

(2) For the purposes of this section, an officer or a member of a body corporate or an unincorporated association or a partner of a partnership who is liable for an offence that is compoundable under this section by virtue of section 20 shall be treated as having committed that offence. 25

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

**Amendment of section 29**

**23.** Section 29 of the principal Act is amended —

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

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

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

                  “(a) prescribe the penalties for any contravention of any provision of any regulation, except that —

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

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

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

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

                  “(c) prescribe —

                  (i) the categories of work passes;

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

30           (iii) the criteria for the issuance, renewal or reinstatement of any work pass; and

- (iv) any condition (including any regulatory condition) subject to which an in-principle approval may be issued, or a work pass may be issued, renewed or reinstated;” and 5
- (e) by deleting paragraph (h) of subsection (2) and substituting the following paragraphs:
- “(h) provide for any matter relating to the security to be furnished by or in respect of any foreigner issued with a work pass or any group or class of such foreigners, including the circumstances and the conditions under which the amount of the security may be varied or the security may be forfeited; 10
- (i) prescribe the procedure in respect of any proceedings or any matter or thing to be done under this Act.”. 15

### **Division of Act into Parts**

#### **24. The principal Act is amended —**

- (a) by inserting, immediately above section 1, the following Part heading: 20

“PART I  
PRELIMINARY”;

- (b) by inserting, immediately above section 5, the following Part heading: 25

“PART II  
WORK PASSES”;

- (c) by inserting, immediately above section 16, the following Part heading:

“PART III  
ADMINISTRATION OF ACT”;

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

“PART IV  
OFFENCES”;

5 (e) by inserting, immediately above section 25, the following Part heading:

“PART V  
PRESCRIBED INFRINGEMENTS”;

10 (f) by inserting, immediately above section 26, the following Part heading:

“PART VI  
MISCELLANEOUS”.

### **Savings and transitional provisions**

15 **25.**—(1) Notwithstanding section 4(b), section 5(6A) of the principal Act in force immediately before the date of commencement of section 4(b) shall continue to apply in relation to any person who contravenes section 5(1) of the principal Act before that date as if this Act had not been enacted.

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

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

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## EXPLANATORY STATEMENT

This Bill seeks to amend the Employment of Foreign Manpower Act (Cap. 91A) to make provision for the better administration of the Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends the definitions of “employer” and “self-employed foreigner” in section 2, and inserts new definitions of the terms “Appeal Board”, “authorised officer”, “body corporate”, “debarred”, “in-principle approval”, “prescribed infringement”, “regulatory condition” and “valid work pass” in the section.

Clause 3 amends section 3 to empower the Controller of Work Passes (the Controller) to delegate the exercise of certain functions or powers conferred on him by the Act (except the power of delegation) to one or more authorised officers.

Clause 4 amends section 5 to enhance the maximum penalties for the offences relating to the employment of any foreign employee without a valid work pass or otherwise than in accordance with the conditions of the work pass. The clause also deletes subsections (6A) and (8)(a) (relating to the power of the court to order levy restitution by a person convicted of the offence of employing a foreign employee without a valid work pass) which are no longer necessary.

Clause 5 amends section 7 to empower the Controller to issue an in-principle approval of an application for a work pass subject to conditions before he issues the work pass, and to cancel an in-principle approval at any time. The conditions of an in-principle approval or a work pass for a foreign employee can relate to the employment of the foreign employee, and to the foreign employee even after the in-principle approval or work pass is cancelled or revoked or expires. The contravention of any condition of the in-principle approval or work pass, other than a regulatory condition, will amount to an offence under section 22 (as amended by clause 17), while the failure to comply with a regulatory condition will amount to a prescribed infringement under section 25(2) (inserted by clause 20). The Controller’s power to alter or vary conditions or to impose new conditions under section 7 cannot be exercised in a manner inconsistent with what the Minister has prescribed to be conditions of work passes and in-principle approvals by regulations. The clause also sets out some considerations which the Controller may have regard to in determining whether a person should be debarred from applying for or being issued with a work pass.

Clause 6 makes any contravention of section 9(1) (relating to certain obligations of an employer of a foreign employee whose work pass will be suspended or revoked by the Controller) a prescribed infringement for which a financial penalty is payable. The clause also increases the maximum fine for the offence of contravening section 9(2) (relating to certain obligations of an employer of a foreign employee who intends to have the work pass of the foreign employee cancelled).

Clause 7 streamlines section 10(1) (requiring a self-employed foreigner to have a valid work pass) in the light of the definition of self-employed foreigner (as amended by clause 2), makes a consequential amendment to subsection (4)(b) and enhances the maximum penalties for the offence of contravening section 10(1). The clause also deletes subsections (3) and (4)(a) (relating to the power of the court to order levy restitution by a person convicted of that offence) which are no longer necessary.

Clause 8 amends section 11(1) as a consequence of the definition of self-employed foreigner (as amended by clause 2). The clause also amends section 11(5) to allow the penalty that may be imposed for late payment of levies under the section to be determined in accordance with such rate or formula as the Minister may specify by order published in the *Gazette*, but the maximum penalty of 30% of the outstanding levy is retained. In addition, the clause inserts a new power for the Controller to waive, remit or refund, in whole or in part, any levy imposed under the section.

Clause 9 amends section 12(1) and (2) to clarify what is meant by a valid work pass.

Clause 10 amends section 13(4) to extend the power of an employment inspector to require the production of work passes by work pass holders for inspection to authorised officers.

Clause 11 repeals and re-enacts section 15 to clarify that the burden of proof provided in the section applies for the purposes of section 7 and any proceedings in respect of any prescribed infringement or offence under the Act. For these purposes, the new section 15 also provides that in relation to joint applications for a work pass, each joint-applicant will bear the burden of providing the truth of the contents of the application relating to him. In addition, the new section 15 contains a presumption that a person who makes an application for a work pass has knowledge of the information provided in the application.

Clause 12 amends section 16 —

- (a) to enhance the powers of employment inspectors to include powers, such as, taking audio or video recordings and requiring an employer to produce his employees (who may be local employees or foreign employees), and extend these powers to authorised officers;
- (b) to clarify that authorised officers and employment inspectors have the general power to enter and inspect any premises or part thereof when they have reasonable cause to believe any foreign employee or self-employed foreigner is employed or engaged or accommodated in the premises;
- (c) to provide employment inspectors with the power of forced entry onto premises under certain conditions; and

- (d) to delete the reference to regulations made under the Act in section 16(5) by virtue of section 26A of the Interpretation Act (Cap. 1).

Clause 13 makes technical amendments to section 18 (relating to service of notices), and amends the section to include notices, orders or documents which may be given by an employment inspector under the Act.

Clause 14 repeals and re-enacts section 19 (relating to protection from personal liability) to update the section, and extend it to authorised officers and members of the Appeal Board established under the new section 25H (inserted by clause 20).

Clause 15 repeals and re-enacts section 20 (relating to offences by bodies corporate, etc.) to update it, and to insert a presumption that an offence under the Act committed by a body corporate or an unincorporated association (including a partnership) is attributable to the neglect of an officer, a member or a partner of the body corporate or unincorporated association if he is primarily responsible for the act or omission resulting in the commission of the offence and he has failed to exercise reasonable supervision or oversight in the matter.

Clause 16 amends section 21 to specify the offences that are arrestable offences, and includes the new offences under sections 22(3) and (4), 22A(2) and 22B(1) (inserted by clause 17).

Clause 17 repeals and re-enacts section 22 to expand on certain offences under the section and to enhance the penalties prescribed for those offences.

In addition, the clause inserts 2 new offences, namely —

- (a) the offence of making any statement or submitting any document to the Controller by a foreign employee or self-employed foreigner relating to his qualifications which he knows or ought reasonably to know is false or misleading; and
- (b) the offence by the employer of such a foreign employee or any agent involved in the employment of the foreign employee or engagement of such a self-employed foreigner of intentionally omitting to furnish any information in respect of the foreign employee's or self-employed foreigner's offence to the Controller.

The clause also inserts new sections 22A and 22B. The new section 22A makes it an offence for any person to deduct from any salary payable to a foreign employee, or to demand or receive, directly or indirectly and whether in Singapore or elsewhere, from the foreign employee any sum or other benefit as consideration, or as a condition or financial guarantee, related to the employment of the foreign employee. The new section 22A contains a rebuttable presumption that any person who makes any deduction from the salary of a foreign employee or demands or receives any sum or other benefit from the foreign employee which is not permitted under the section, has done so as consideration for the employment of the foreign employee. The new section 22B proscribes certain practices related to the

employment of foreign manpower, and imposes caning in addition to the punishment prescribed for the offence if the defendant is convicted of at least 6 such offences at the same sitting of the court.

Clause 18 amends the section heading of section 23 to make it clear that the section deals only with the abetment of offences under the Act.

Clause 19 inserts a new section 23A to empower a court which has convicted any person of an offence under the new section 22A(2) or 22B(1) (inserted by clause 17) to order the person to pay a sum corresponding to the amount of the sum or other benefit (where quantifiable) he has deducted, obtained or received from committing the offence. The new section 23A also provides that any such sum may be recovered in the same manner as if it were a fine imposed by the court.

Clause 20 inserts new sections 25 to 25H, which contain provisions relating to prescribed infringements.

The new section 25 sets out certain general prescribed infringements which, if committed, will attract a financial penalty. These general prescribed infringements are as follows:

- (a) to commit, or cause or permit to be committed, by any employer in relation to an application for a work pass, any act or omission which inflates or facilitates the inflation of his foreign employee entitlement;
- (b) to fail to comply with a regulatory condition subject to which an in-principle approval or a work pass is or had been issued;
- (c) to inadvertently, or without intent to mislead or defraud, make any statement or furnish any information to the Controller, by an employer, which is inaccurate or erroneous; and
- (d) to deduct from any salary payable to a foreign employee, or to demand or receive, directly or indirectly and whether in Singapore or elsewhere, from the foreign employee by his employer any fee, cost, levy, penalty, charge or amount, or any part thereof, that the employer must bear and be liable to pay under the new section 25.

The new section 25A makes it a prescribed infringement for an employer of a foreign employee (including a person who intends to employ the foreign employee), a foreign employee or a self-employed foreigner (including a person who seeks to be a self-employed foreigner) to fail to comply with any duty prescribed under the section. The section allows pre-employment or pre-engagement duties, and post-employment or post-engagement duties, to be prescribed. In addition, different duties may be prescribed for different classes of employers, foreign employees or self-employed foreigners, or different categories of work passes.



The new section 25B empowers the Controller to give directions, either in addition to or in lieu of the imposition of a financial penalty for any prescribed infringement, to the infringer as the Controller thinks appropriate. The failure to comply with any such direction amounts to an offence.

The new section 25C sets out the provisions that apply when the Controller inquires into and determines whether any person has committed a prescribed infringement. The Controller will have the power to vary or set aside any determination or direction made, or make such other determination or direction as he thinks just. Any person who is aggrieved by a determination or direction of the Controller, or any variation of such a determination or direction, may appeal to the Appeal Board. All proceedings before the Controller under the section will be held in private.

The new section 25D sets out the provisions for the recovery of the financial penalty imposed on any person who has committed a prescribed infringement, and the interest payable in the event of any failure to pay the financial penalty by the date specified by the Controller.

The new section 25E contains provisions relating to prescribed infringements committed by bodies corporate and unincorporated associations (including partnerships). The new section 25E contains a presumption that a prescribed infringement committed by a body corporate or an unincorporated association is attributable to the neglect of an officer, a member or a partner of the body corporate or unincorporated association if he is primarily responsible for the act or omission resulting in the commission of the prescribed infringement and he has failed to exercise reasonable supervision or oversight in the matter.

The new section 25F provides that the Controller may impose a financial penalty on any person who abets a prescribed infringement of an amount not exceeding the maximum financial penalty prescribed for the prescribed infringement.

The new section 25G sets out the process of an appeal to the Appeal Board against the determination or direction of the Controller in respect of any prescribed infringement and the powers of the Appeal Board.

The new section 25H provides for the Minister to establish the Appeal Board, which will determine its own procedure for considering any appeal under section 25C(8). The chairman of the Appeal Board must be a person qualified to be a Judge of the Supreme Court. The Appeal Board will be independent in the performance of its functions.

Clause 21 deletes the reference to regulations made under the Act in section 26 by virtue of section 26A of the Interpretation Act.

Clause 22 repeals and re-enacts section 27 (relating to composition of offences) to update it, and to amend the maximum composition sum to \$5,000 or one half of the maximum fine prescribed for an offence under the Act, whichever is the lower.

Clause 23 amends section 29 to expand and update the regulation-making power of the Minister under the section as a consequence of the Bill. In particular, the Minister may make regulations prescribing the conditions, including regulatory conditions, subject to which an in-principle approval is issued, or subject to which a work pass is issued, renewed or reinstated. The Minister may also make regulations on the procedure to be adopted for any proceedings or other matter or thing to be done under the Act. The clause enhances the penalties that may be prescribed for offences under the regulations, and amends the section to empower the making of regulations on prescribed infringements and penalties for such prescribed infringements. The clause also clarifies the scope of the regulation-making power in relation to the security to be furnished by or in respect of any foreigner issued with a work pass or any group or class of such foreigners.

Clause 24 organises the Act, as amended by the Bill, by dividing the Act into 6 Parts.

Clause 25 clarifies that sections 5(6A) and 10(3) will, notwithstanding their repeal by clauses 4(b) and 7(a), respectively, apply to any person who contravenes section 5(1) or 10(1), as the case may be, before the date of commencement of those clauses. The clause also reserves to the Minister the power to make regulations to prescribe additional savings or transitional provisions as a consequence of the Bill within a period of 2 years after the date of commencement of the clause.

## EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.

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