

SUMMARY OF RESPONSES TO KEY FEEDBACK FROM PUBLIC CONSULTATION ON PROPOSED AMENDMENTS TO EMPLOYMENT OF FOREIGN MANPOWER ACT

1. In May 2012, the Ministry of Manpower (MOM) invited members of public to provide feedback on the proposed amendments to the Employment of Foreign Manpower Act (EFMA), via the REACH website. The proposed amendments seek to ensure the integrity of the work pass framework in three ways:

a. First, as contraventions range widely from administrative infringements to criminal offences, MOM will establish an administrative penalty regime to more expeditiously and effectively enforce administrative infringements, to complement our prosecution efforts. Strict administrative penalties such as debarment and administrative financial penalties will be imposed to discourage employers from exploiting the work pass framework for financial gain.

b. Second, for more effective deterrence, MOM will include provisions for key EFMA contraventions and increase penalties to ensure that they are commensurate with potential profits.

c. Third, to facilitate enforcement of increasingly complex syndicate operations, we will include new presumption clauses and expand our investigatory powers.

2. The launch of the public consultation exercise was followed by extensive discussions with key stakeholders in June and July 2012, including employers from the Singapore National Employers Federation (SNEF) and migrant worker non-government organizations (NGOs). This paper provides a summary of MOM's responses to the key feedback received from the consultation exercise.

MOM'S RESPONSES TO KEY FEEDBACK

3. Respondents were generally supportive of MOM's proposals and suggested further refinements to the proposed amendments. MOM has considered and incorporated some of these suggestions into the final legislative amendments. Our responses to frequently-raised queries and suggestions are outlined below.

(I) Establish Administrative Penalty Regime to Complement Criminal Prosecution

4. *Classification of failure to return work passes and update business addresses offences.* NGOs highlighted the disparity between the proposal to classify employers' failure to return work passes and update business addresses as administrative infringements while retaining similar breaches committed by foreign workers as criminal offences. MOM has decided to retain employers' failure to return work passes and update business addresses as criminal offences. Retaining these offences as criminal offences is aligned with the principle that contraventions classified as administrative infringements should not be considered criminal outside the work pass framework. Similar activities involving the failure to return visit passes issued by the Controller of Immigration and to update residential and business addresses are criminalised under the Immigration Regulations, National Registration Act and the Companies Act.

5. *Classification of recovery of employment costs offence.* NGOs felt that the recovery of employment costs (e.g. levies, medical insurance premiums, etc) was as serious an offence as the receipt of employment kickbacks and should be subject to the same custodial penalties. Further, NGOs felt that apart from prosecuting employers or employment agencies for receiving kickbacks, foreign workers

should also be compensated for the kickbacks they paid to secure their jobs. Employers, on the other hand, were of the view that the recovery of employment costs should be classified as an administrative infringement while the collection of employment kickbacks should be prosecuted as a criminal offence as it could involve much larger sums of profit, and consequently subject foreign workers to significant debt and severely disadvantage Singaporeans in favour of foreign workers. On balance, MOM has decided to go ahead with the proposal to classify the recovery of employment costs as an administrative infringement, subject to the heftiest administrative financial penalty of up to \$20,000 per infringement. The imposition of the administrative financial penalty will enable the Government to disgorge the illegal gains from errant employers. In addition, the Commissioners for Foreign Manpower will be able to impose directions on errant employers and order for compensation to be made directly to the affected workers. An infringer's failure to comply with the directions issued by the Commissioner for Foreign Manpower will be subject to criminal prosecution, subject to a maximum fine of \$10,000 and/or 12 months' jail.

(II) Increase Deterrence against EFMA Contraventions

6. Imposition of custodial penalties for illegal labour importation offence. Some NGOs objected to the proposal to benchmark the penalties for the illegal foreign labour importation offence with the penalties for employment of illegal immigrants of the Immigration Act.¹ They noted that the fine should be increased to be commensurate with the potential profits from the offence and had concerns about corporal punishment. However, it should be noted that syndicates often make use of "fall guys" to set up shell companies and import foreign workers illegally. The inclusion of caning within the penalty will achieve greater deterrence since fines and jail terms have limited deterrence on "fall guys". To ensure the adequate disgorgement of illegal profits, MOM will amend the EFMA to impose a confiscation order on the profits gained from such syndicate operations.

7. Imposition of post-employment conditions to require upkeep and maintenance of workers awaiting resolution of statutory claims in Singapore. Although employers are responsible for the upkeep and maintenance of workers during their stay in Singapore, various parties highlighted that some employers fail to provide upkeep for workers awaiting resolution of statutory claims, including claims under the Employment Act and Work Injury Compensation Act. Thus MOM will be including a new post-employment work pass condition to explicitly require employers to maintain upkeep and maintenance of workers awaiting resolution of statutory claims. The failure to comply with the work pass condition will be subject to a maximum fine of \$10,000 and/or 12 months' jail.

8. Imposition of regulatory condition to ensure compliance with salary thresholds for S Pass and Employment Pass. To ensure employers' continued compliance with entry criteria throughout the validity of their work passes, MOM earlier proposed to require employers to pay S Pass and EP holders fixed monthly salaries no less than the minimum salary threshold amounts for the respective work passes,² unless granted specific approvals by the Controller. In addition, MOM proposed to disallow employers of S Pass and Q1 holders from reducing the fixed monthly salaries declared in their work pass applications by more than \$100, unless granted specific approvals by the Controller.

¹ The penalty under S57(1)(e) of the Immigration Act is \$6,000 fine and minimum 6 months' jail, up to 2 years' jail. In addition, employers of more than 5 foreign workers shall also be punished with caning.

² Employment Passes consist of the Q1, P2 and P1 passes. The public headline minimum salary threshold amounts are \$2,000 for S Pass, \$3,000 for Q1 EP, \$4,500 for P2 EP and \$8,000 for P1 EP. Internal salary thresholds for individual S Pass and EP holders may be higher than the public thresholds as they differ according to the age and educational qualifications of each employee.

9. Following feedback from employers, members of the public and parliamentarians, MOM has decided to replace the two proposals with a clearer regime – to require all employers wishing to reduce the salaries of S Pass and EP holders to submit a request for re-assessment of their work pass eligibility. In ensuring that employers comply with the salary thresholds for S Pass and EP holders throughout the validity of their work passes, employers will pay for the true costs of hiring foreign workers and level the playing field for Singaporeans. The failure to comply with the work pass regulatory condition will be subject to a maximum administrative financial penalty of \$10,000. In the event of a general economic downturn, MOM recognises that salary reductions may have to be made as part of cost reductions to ensure businesses stay afloat; the Controller of Work Passes may consider issuing a waiver on such requirements.

10. Expansion of scope of sale and forgery offences to include In-Principle Approval letters. It is currently an EFMA offence to give, sell, forge or unlawfully alter a work pass. It is also an offence to use, or without lawful authority, possess a work pass that is forged or unlawfully altered. MOM will expand the scope of the two EFMA offences to include “In-Principle Approval letters”, as MOM has encountered cases where in-principle approval letters were forged and subsequently sold to workers seeking employment in Singapore. The commission of the above offences would be subject to a maximum fine of \$20,000 and/or 2 years’ jail. These amendments will enable MOM to take enforcement action against these circumventions of the work pass framework and better enhance deterrence.

(III) Facilitate Enforcement of EFMA Contraventions

11. Inclusion of presumption clause to tackle submission of forged qualifications to bypass S Pass and Employment Pass criteria. Respondents were generally supportive of the proposed inclusion of presumption clauses to facilitate enforcement of increasingly complex syndicate operations. However various respondents sought assurances that these presumptions would not result in unintended consequences.

12. NGOs highlighted that errant employers and employment agencies may submit forged qualifications on the workers’ behalf. They were concerned that a presumption clause placing the burden of proof on S Pass and EP holders to prove that they did not have knowledge of the forged educational qualifications submitted in their work pass applications, might inadvertently result in the prosecution of innocent workers. MOM would like to reassure stakeholders that we have strict procedures to identify foreign workers who are not culpable so that we take enforcement only on culpable parties. Additionally, we would like to clarify that presumption clauses are rebuttable and workers simply need to prove on a balance of probabilities that the submission of forged qualifications was made without their knowledge.

13. Separately, employers raised concerns on the extent of their responsibility in ensuring the authenticity of the qualifications submitted by their S Pass and EP workers, especially if the recruitment process was mainly overseen by their employment agencies. Employers sought clarifications on the ways which employers could verify the authenticity of qualifications. Similarly, MOM would like to reassure employers that enforcement action will only be taken against culpable parties, including the culpable worker or employment agency. Employers should ensure that they only work with licensed employment agencies, and ensure oversight over the recruitment process. For workers possessing qualifications from the People’s Republic of China, for example, employers can verify the qualifications via the China Higher Education Student Information Job Portal at <http://job.chsi.com.cn>.

14. Enhancement of investigatory powers. Employers and other stakeholders submitted feedback requesting MOM to minimise disruptions caused to businesses during investigations, as well as to ensure proper training of Commissioners for Foreign Manpower and employment inspectors. MOM would like

to reassure stakeholders that MOM's Commissioners for Foreign Manpower and employment inspectors will exercise their expanded investigatory powers judiciously and not cause unnecessary disruption to businesses. All Commissioners for Foreign Manpower and employment inspectors will be properly trained and inspection operations will require prior authorisation.

UPCOMING REVIEW OF WORK PASS CONDITIONS

15. This round of proposed amendments to the EFMA does not involve changes to key employer responsibilities but instead focuses on enabling MOM to step up enforcement against errant employers more expeditiously and effectively. Some respondents submitted suggestions relating to the scope of employers' and workers' responsibilities, e.g. defining reasonable notice of repatriation of workers. MOM will be further reviewing the EFMA to ensure a balance of rights and responsibilities between employers and workers, and we will consult stakeholders in due course.

CONCLUSION

16. We would like to thank all stakeholders and members of the public who participated in the consultation exercise. The feedback received has helped to refine the proposed changes to the Employment of Foreign Manpower Act and will enable MOM to step up enforcement, ensure that employers pay for the true costs of hiring foreign workers, level the playing field for Singaporeans and law-abiding employers and deter some of the most serious abuses against foreign workers.