

## EXECUTIVE SUMMARY OF THE AMENDMENTS TO THE EMPLOYMENT OF FOREIGN MANPOWER ACT (EFMA)

The amendments to the EFMA will bolster our efforts to:

- a. **Create sustainable and inclusive growth and ensure Singaporeans remain at the core of our workforce**
- b. Ensure employers pay for true costs of hiring foreign workers
- c. Create level playing field for law-abiding employers
- d. Stem the worst abuses against foreign workers

### INTRODUCTION

Following the recommendations of the Economic Strategies Committee (ESC) in 2010, the Ministry of Manpower (MOM) has taken graduated steps to moderate the inflow and raise the quality of foreign manpower in Singapore. The aim is to shift from labour-driven to productivity-driven growth, and ensure that Singaporeans remain at the core of our workforce.<sup>1</sup>

2. While employers are by and large responsible, there are those who seek to profit by **circumventing the work pass framework**. As we further tighten the policies on the hiring and retention of foreign manpower, we can expect errant employers to try harder to get round our rules. For example, we have found errant employers declaring higher salaries than they are actually paying their foreign workers, asking foreign workers to foot their own levies and insurance premiums, contributing CPF to locals that they do not actively employ in order to meet the required ratio of locals to foreigners, and submitting forged certificates to qualify for skilled work passes.

3. When employers fail to pay the true costs of hiring foreign manpower or hire foreign manpower that they are not entitled to, local workers lose out in employment opportunities, and law-abiding employers are disadvantaged. Besides errant employers, syndicates also profit from setting up sham businesses to illegally import and supply foreign workers who otherwise should not be here. **Syndicates have devised increasingly complex schemes to get around our enforcement approaches.**

4. The proposed amendments to the Employment of Foreign Manpower Act (EFMA) will enhance the government's ability to ensure the integrity of our work pass framework. Given that EFMA contraventions range widely from administrative infringements to criminal offences, these amendments will introduce a calibrated and appropriate response to different types of contraventions. In totality, the changes will **allow enforcement action to be taken against errant employers, errant foreign workers and syndicates more expeditiously and effectively, thereby enhancing deterrence against EFMA contraventions.**

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<sup>1</sup> These steps include raising foreign worker levies for Work Permit (WP) and S pass holders, tightening levy tiers, imposing stricter criteria for higher educational qualifications and increasing the qualifying salaries for S Pass and Employment Pass (EP) holders.

## KEY AMENDMENTS TO THE EFMA BILL

### *Establish administrative penalty regime to complement criminal prosecution*

5. First, MOM will establish an **administrative penalty regime** to enforce administrative infringements to complement our prosecution efforts. The purpose is to discourage employers from exploiting the work pass framework for financial gain. We will differentiate EFMA administrative infringements from criminal offences. The administrative infringements will be enforced under the new administrative penalty regime, through administrative financial penalties and other administrative action, such as debarring employers from applying for new work passes. This will allow swifter action to be taken against administrative infringements, and allow the courts to focus on more serious criminal offences where jail terms are appropriate.

6. **Commissioners for Foreign Manpower** will be appointed and authorised to administer the new administrative penalty regime. Those who disagree with the findings, administrative financial penalties or directions meted out by the Commissioners will be able to submit appeals to an independent Appeal Board. The Appeal Board will be chaired by a person who is qualified to be a Judge of the Supreme Court.

### *Enhance deterrence against EFMA contraventions*

7. To raise the signature of the offences and increase deterrence, **five key stand-alone EFMA contraventions** will be created to address circumvention of key levers of the work pass framework. These contraventions include illegally importing and supplying foreign labour, collecting employment kickbacks from foreign workers, contributing to phantom local workers' CPF that result in an inflation of foreign worker quota, submitting forged educational qualifications and illegally recovering employment costs from foreign workers.

8. **Penalties will be increased** for the new contraventions to ensure that they are commensurate with the potential profits from the contraventions.

9. **Work Pass conditions within the EFM Regulations** will also be updated with more explicit requirements. One such condition will require that all employers who wish to reduce the salaries of his S Pass and Employment Pass holders must submit a request for re-assessment of their work pass eligibility. This requirement will make it harder for errant employers to abuse the work pass framework by declaring salaries that meet the salary criteria for S Pass and Employment Pass holders only to reduce them after the pass has been issued.

10. MOM will acquire powers to impose **new Pre and Post-Employment conditions**. We envisage that these will include requirements for employers to send the In-Principle Approval letters to Work Permit holders in their native languages before they depart for Singapore. Post-employment, employers will also need to provide upkeep for workers awaiting resolution of statutory claims prior to repatriation.

### *Facilitate enforcement of EFMA contraventions*

11. To facilitate enforcement of complex syndicate operations, we will include **presumption clauses for certain offences**. One such clause will facilitate the enforcement against employment kickbacks, to presume that any monies collected from foreign workers are collected as consideration for employment, i.e. employment kickbacks. The employer will be able to rebut the presumption if he can show that there were legal purposes for deducting or collecting monies from his workers.

12. Another is to step up MOM's enforcement of forged educational certificates submitted by S Pass and EP holders. The amended EFMA will include a clause to presume that a person who makes an application for a work pass has knowledge of the information provided in the application that relates to him. Hence, an S Pass or EP Holder would be presumed to have knowledge of the forged educational qualifications submitted in his work pass applications. The worker will be able to rebut the presumption, by proving that he had no knowledge of the submission of the forged qualifications, e.g. that the employment agency or employer submitted it on his behalf, without his knowledge.

13. A third clause has been introduced to step up enforcement against offences which are usually committed within the purview of corporate officers, but where errant corporate officers often deny knowledge of, e.g. where an officer that oversees salary payments claims ignorance of non-payment of salaries to workers. The amended EFMA will include a clause that presumes that a corporate officer who is primarily responsible and fails to exercise reasonable supervision has knowledge of the contravention. The corporate officer will be able to rebut the presumption, by proving that he has exercised reasonable supervision to avoid commission of the EFMA contravention, e.g. by putting in place the necessary procedures to ensure prompt salary payment.

14. There will be an **expansion of the range of MOM's investigatory powers**, which include the power to enter and inspect a premise for the purposes of conducting audits, as well as when there is reasonable belief of the presence of EFMA breaches. Further, MOM will have the power to take video and voice recordings during investigations and use the recordings as evidence in Court. Finally, employers may also be asked to produce all employees, both local and foreign, to the best of their ability to assist in investigations.

### PUBLIC CONSULTATION

15. MOM conducted **public consultations on these EFMA changes in May and June 2012**. Following the launch of public consultations via the REACH website, MOM met foreign worker NGOs on the proposed changes and discussed the changes in detail. In addition, MOM conducted several consultations with over 500 employers.

16. **Feedback from these public consultation sessions have been taken into consideration in the final EFMA (Amendment) Bill.**

MINISTRY OF MANPOWER