

Employment Agencies (Amendment) Bill

Bill No. 37/2010.

Read the first time on 22nd November 2010.

A BILL

intituled

An Act to amend the Employment Agencies Act (Chapter 92 of the 1985 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 Agencies (Amendment) Act 2010 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 Agencies Act (referred to in this Act as the principal Act) is amended —

(a) by inserting, immediately before the definition of “employment agency”, the following definition:

10 ““Commissioner” means the Commissioner for Employment Agencies appointed under section 3(1);”;

(b) by inserting, immediately after the definition of “employment agency”, the following definitions:

15 ““employment agency personnel” means any person who performs any work for an employment agency (including work which is not specified employment agency work) for or in connection with the employment of persons in any capacity, and includes —

20 (a) any key appointment holder of the employment agency; and

(b) any person who is engaged, whether on a permanent, temporary or contractual basis, by the employment agency to perform such work;

25 ““key appointment holder”, in relation to an employment agency, means —

(a) any director, chief executive officer, chief financial officer, chief operating officer, partner or sole-proprietor of the employment agency; or

30 (b) any person, by whatever name called, who has general control and management of the administration of any specified employment agency work of the employment agency;”;

(c) by inserting, immediately after the definition of “licensee”, the following definitions:

“partner” includes a partner of a limited liability partnership, a general partner of a limited partnership and a limited partner of a limited partnership;

“premises” includes —

- 5 (a) any building or structure, whether permanent or temporary;
- (b) any land, whether or not built on;
- (c) any place, whether or not enclosed, and whether or not situated underground or underwater;
- 10 (d) any vessel, aircraft, train or vehicle (whether mechanically propelled or otherwise) or any other means of transport; and
- (e) any part of any premises referred to in paragraphs (a) to (d);”;

- 15 (d) by deleting the full-stop at the end of the definition of “public officer” and substituting a semi-colon, and by inserting immediately thereafter the following definition:

“specified employment agency work” means any of the following work:

- 20 (a) communication with any applicant for employment for the purpose of processing any application by such applicant for employment;
- (b) collation of the biodata or resume of any applicant for employment for the purpose of helping the applicant establish an employer-employee relationship;
- 25 (c) submission of any application on behalf of any employer or applicant for employment to the Controller of Work Passes appointed under section 3 of the Employment of Foreign Manpower Act (Cap. 91A), which application is required under that Act;
- 30 (d) facilitation of the placement of any applicant for employment with an employer.”.

Repeal and re-enactment of section 3

3. Section 3 of the principal Act is repealed and the following section substituted therefor:

“Appointment of officers

5 **3.—**(1) The Minister may appoint a Commissioner for Employment Agencies who shall have such functions and powers as are conferred on him by this Act.

10 (2) The Minister may appoint such number of Deputy Commissioners for Employment Agencies and Assistant Commissioners for Employment Agencies as the Minister may think necessary to assist the Commissioner in the proper discharge of his functions.

15 (3) The Deputy Commissioners for Employment Agencies and Assistant Commissioners for Employment Agencies shall have and may exercise and perform all the powers, duties and functions of the Commissioner conferred by this Act, subject to such limitations as the Commissioner may think fit to impose.

20 (4) The Minister may appoint such number of employment agency inspectors and employment agency licensing officers as he may think fit for carrying out the purposes of this Act.

25 (5) The Commissioner, Deputy Commissioners for Employment Agencies and Assistant Commissioners for Employment Agencies shall have and may exercise and perform all the powers, duties and functions of an employment agency inspector or an employment agency licensing officer conferred by this Act.”.

Amendment of section 4

4. Section 4 of the principal Act is amended by deleting subsections (2) and (3) and substituting the following subsections:

30 “(2) The Minister may, by order, exempt any person or employment agency, or any class thereof, when performing any type of work or activity as may be stated in the order, from all or any of the provisions of this Act, either absolutely or subject to such conditions as he may think fit to impose.

(3) The Minister may, at any time, in his discretion, revoke any exemption order made under subsection (2), or cancel, alter or add to any condition in the exemption order.

(4) Without limiting the conditions that may be imposed under subsection (2), the Minister may, when exempting any person or employment agency, or any class thereof, from the requirement for a licence, impose a condition requiring the person or employment agency, or any class thereof, to obtain the approval of the Commissioner to be registered, in such form and manner as the Commissioner may determine, as an exempt person or exempt employment agency, as the case may be.”.

Amendment of section 6

5. Section 6 of the principal Act is amended —

(a) by deleting the words “he is the holder of a licence from the Commissioner authorising him” in subsection (1) and substituting the words “the person is the holder of a licence from the Commissioner authorising the person”;

(b) by deleting subsection (2) and substituting the following subsections:

“(2) Subject to subsection (3), no person shall perform any work or activity in Singapore —

(a) for or in connection with the employment of one or more persons in any capacity, whether or not those persons are to be employed within or outside Singapore; and

(b) on his own behalf or on behalf of an employment agency which is carried on outside Singapore,

unless he is the holder of a licence from the Commissioner authorising him to perform such work or activity.

(3) Subsection (2) shall not apply in relation to —

(a) any person who is the holder of a licence referred to in subsection (1);

(b) any person who performs such work or activity referred to in subsection (2) in his capacity as an

employment agency personnel and who is registered under section 12A; or

(c) any person who performs such work or activity referred to in subsection (2) for the sole purpose of recruiting persons for employment on his own behalf.

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction —

(a) to a fine not exceeding \$80,000 or to imprisonment for a term not exceeding 2 years or to both; and

(b) in the case of a second or subsequent conviction, to a fine not exceeding \$160,000 or to imprisonment for a term not exceeding 4 years or to both.”; and

(c) by deleting the marginal note and inserting the following section heading:

“Requirement for licence”.

Amendment of section 7

6. Section 7 of the principal Act is amended —

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

“(1) Any person who desires to obtain or to renew a licence shall make an application to the Commissioner in such form as the Commissioner may require, which shall be accompanied by the prescribed application fee.”;

(b) by deleting the words “grant a licence with or without conditions or refuse to grant a licence” in subsection (2) and substituting the words “grant or renew a licence with or without conditions or refuse to grant or renew a licence, as the case may be”;

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

“(2A) If the Commissioner decides to grant or renew a licence under subsection (2), he may do so upon the payment of the prescribed fee.”; and

(d) by inserting, immediately after subsection (3), the following subsection:

“(4) The Commissioner may, if he so deems fit, debar any person from applying for or being granted a licence for such period of time as may be determined by the Commissioner.”.

Amendment of section 8

7. Section 8(2) of the principal Act is amended by inserting, immediately after the words “section 11”, the words “, or if the Commissioner is satisfied that the licensee has failed to comply with any condition as may be specified by the Commissioner in respect of any security given under subsection (1)”.

Repeal of section 9

8. Section 9 of the principal Act is repealed.

Repeal and re-enactment of section 10

9. Section 10 of the principal Act is repealed and the following section substituted therefor:

“Period of validity of licence

10.—(1) A licence shall continue to be in force for the period specified in the licence unless it is earlier suspended or revoked by the Commissioner, as the case may be.

(2) The holder of a licence who carries on an employment agency, or performs any work or activity referred to in section 6(2), for which the licence is granted, after the validity period specified in the licence shall be guilty of an offence and shall be liable on conviction —

(a) to a fine not exceeding \$80,000 or to imprisonment for a term not exceeding 2 years or to both; and

(b) in the case of a second or subsequent conviction, to a fine not exceeding \$160,000 or to imprisonment for a term not exceeding 4 years or to both.

(3) Notwithstanding subsection (2), where the Commissioner has received an application for the renewal of a licence within the prescribed period after the expiry of the licence, he may, in his

discretion, renew the licence upon the payment of the prescribed late renewal fee.

(4) Where the Commissioner has renewed a licence under subsection (3), the renewal shall take effect from the date immediately after the date on which the licence would have expired had it not been renewed.”.

Amendment of section 11

10. Section 11 of the principal Act is amended —

(a) by inserting, immediately after the words “The Commissioner may” in subsection (1), the words “suspend or”;

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

(c) by deleting the words “his licence” in subsection (1)(b) and substituting the words “the licence”;

(d) by deleting paragraph (c) of subsection (1) and substituting the following paragraph:

“(c) has carried on or is carrying on an employment agency, or has performed or is performing any work or activity referred to in section 6(2), in a manner likely to be detrimental to the interests of the clients of the licensee;”;

(e) by deleting the words “for which he” in subsection (1)(d) and substituting the words “or ceased to perform any work or activity referred to in section 6(2) for which the licensee”;

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

“(e) has not carried on an employment agency or performed any work or activity referred to in section 6(2), for which the licence is granted, for a continuous period of 6 months;

(f) has acted in a manner detrimental to public interest;

(g) has committed a criminal offence; or

(*h*) is no longer a fit and proper person to continue to hold the licence.”;

(*g*) by deleting subsection (2) and substituting the following subsection:

5 “(2) The Commissioner may, in his discretion, revoke a licence upon the application for revocation of the licence by the licensee.”;

(*h*) by inserting, immediately after the words “When the Commissioner has” in subsection (3), the words “suspended or”;

10 (*i*) by deleting the word “revocation” in paragraphs (3), (4) and (5) and substituting in each case the words “suspension or revocation”;

(*j*) by inserting, immediately after subsection (5), the following subsection:

15 “(6) The Commissioner may at any time reinstate a licence which has been suspended.”; and

(*k*) by deleting the marginal note and inserting the following section heading:

“Suspension or revocation of licence”.

20 **Repeal and re-enactment of section 12**

11. Section 12 of the principal Act is repealed and the following section substituted therefor:

“Effect of suspension or revocation of licence

25 **12.**—(1) Where an order of suspension becomes effective under section 11, the licensee concerned may continue to carry on the employment agency or perform any work or activity referred to in section 6(2), as the case may be, except that he shall not enter into new recruitment or placement agreements.

30 (2) Where an order of revocation becomes effective under section 11, the licensee concerned shall immediately cease to carry on the employment agency, or perform all work or activity referred to in section 6(2), as the case may be.

(3) Subject to any directions which the Commissioner may give under subsection (4), subsections (1) and (2) shall not prejudice the enforcement by any person of any right or claim against the licensee concerned or by the licensee concerned of any right or claim against any person arising out of or concerning any matter or thing done prior to the suspension or revocation of the licence.

(4) Where an order of suspension or revocation is served on a licensee or where such order becomes effective under section 11, notwithstanding any rule of law or agreement to the contrary or any other provision in this section, the licensee concerned shall comply with such directions as the Commissioner thinks fit to give which directions may include, but are not limited to, all or any of the following:

- (a) to inform, in writing, every applicant for employment and every applicant for workers who uses any service of the licensee of the fact that the licensee has been given the order;
- (b) not to collect any deposit or fee from any applicant referred to in paragraph (a) or any class thereof;
- (c) to refund any applicant referred to in paragraph (a) or any class thereof, within such time as may be specified in the direction, the whole or such part of any deposit or fee received from the applicant as the Commissioner deems equitable;
- (d) to make arrangements so that any applicant referred to in paragraph (a) or any class thereof will continue to receive the services to be provided by the licensee from another licensee and to notify the applicant or class of applicants, as the case may be, accordingly;
- (e) not to make any application to the Controller of Work Passes appointed under section 3 of the Employment of Foreign Manpower Act (Cap. 91A);
- (f) to return the passports or other documents of identity in the possession of the licensee to the persons to whom they belong.

(5) Any person who, without reasonable excuse, contravenes subsection (1) or (2), or any direction given by the Commissioner under subsection (4), shall be guilty of an offence and shall be liable on conviction —

- 5 (a) to a fine not exceeding \$80,000 or to imprisonment for a term not exceeding 2 years or to both; and
- (b) in the case of a second or subsequent conviction, to a fine not exceeding \$160,000 or to imprisonment for a term not exceeding 4 years or to both.”

10 **New sections 12A and 12B**

12. The principal Act is amended by inserting, immediately after section 12, the following sections:

“Registration of employment agency personnel

15 **12A.**—(1) Any licensee shall, before permitting or authorising any employment agency personnel to perform any specified employment agency work, apply to the Commissioner for the employment agency personnel to be registered as such.

20 (2) Any application under subsection (1) shall be in such form as the Commissioner may require, and be accompanied by the prescribed registration fee.

(3) Upon receiving an application under subsection (1), the Commissioner shall consider the application and may grant the application or refuse to grant the application.

25 (4) The Commissioner may, before or after granting the application, require the employment agency personnel to be certified as having attended or successfully completed, to the satisfaction of the Commissioner, such courses as the Commissioner may determine.

30 (5) The Commissioner may, in any particular case if he thinks fit, grant the application notwithstanding that the employment agency personnel has not satisfied such requirements of the Commissioner under subsection (4).

(6) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

\$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(7) Any person who performs any specified employment agency work when he knows or ought reasonably to have known that he is not registered in accordance with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(8) Where any employment agency personnel of a licensee —

(a) has ceased to be engaged by the licensee; or

(b) has ceased to perform all specified employment agency work upon the request of the employment agency personnel or the instruction of the licensee, notwithstanding that the employment agency personnel concerned is still engaged by the licensee,

the licensee concerned shall, within such time as may be prescribed, apply to the Commissioner, using such form as the Commissioner may require, to de-register the employment agency personnel.

(9) Upon receiving an application under subsection (8) —

(a) in a case where the application is accompanied by the written consent of the employment agency personnel referred to in that subsection stating that he wishes to be de-registered, the Commissioner shall grant the application for de-registration; or

(b) in any other case, the Commissioner may grant or refuse to grant the application for de-registration.

(10) The Commissioner may, in any particular case if he thinks fit, de-register any employment agency personnel.

(11) Any licensee who contravenes subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(12) A licensee shall remain liable for any act, omission, neglect or default of a person in relation to any specified employment agency work performed by that person who —

(a) has ceased to be engaged by the licensee to perform such work; and

(b) continues to be registered as an employment agency personnel of the licensee,

5 unless the licensee has applied to de-register the person in accordance with subsection (8).

Registration cards

10 **12B.**—(1) Upon the registration of an employment agency personnel under section 12A, the licensee concerned shall issue a registration card to the employment agency personnel in such form as may be prescribed.

(2) Any person who —

(a) forges or unlawfully alters a registration card;

15 (b) uses or has in his possession any forged or unlawfully altered registration card;

(c) uses a registration card which is not issued to him; or

(d) without reasonable excuse, gives or sells any registration card,

20 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) Any licensee who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

(a) to a fine not exceeding \$1,000; and

25 (b) in respect of a second or subsequent offence, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.”.

Repeal and re-enactment of section 13

30 **13.** Section 13 of the principal Act is repealed and the following section substituted therefor:

“Appeals

13.—(1) Any person who is aggrieved by a decision of the Commissioner to —

- (a) refuse to grant or renew a licence under section 7(2);
- 5 (b) debar that person from applying or being granted a licence under section 7(4);
- (c) suspend or revoke a licence under section 11(1);
- (d) refuse to register an employment agency personnel under section 12A(3); or
- 10 (e) de-register an employment agency personnel under section 12A(10),

may, within 14 days of the date of receipt of the notice of such decision, appeal in writing to the Minister whose decision shall be final.

15 (2) The Minister may, by writing under his hand, delegate all or any of his powers under this section (except this power of delegation) to any public officer.

(3) A delegation under subsection (2) is revocable at will and no delegation shall prevent the exercise of any power under this section by the Minister.

(4) A power so delegated, when exercised by the delegate, shall for the purposes of this section be deemed to have been exercised by the Minister.”.

Amendment of section 14

25 **14.** Section 14(2) of the principal Act is amended by deleting the words “or in any rules made thereunder”.

Repeal and re-enactment of section 15

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

“Offer of fees, etc., prohibited

15.—(1) No licensee or employment agency personnel shall give or offer to give (whether directly or indirectly) to an employer or prospective employer, any sum or other benefit —

- 5 (a) as consideration or as inducement for employing a person as the employee of the employer or prospective employer;
- (b) as consideration or as inducement for continuing to employ a person as the employee of the employer or prospective employer; or
- 10 (c) as a financial guarantee related, whether directly or indirectly, to the employment of a person as the employee of the employer or prospective employer.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.”.

Repeal of sections 16 and 17

16. Sections 16 and 17 of the principal Act are repealed.

Repeal and re-enactment of section 18

20 **17.** Section 18 of the principal Act is repealed and the following section substituted therefor:

“Powers of employment agency inspector

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

- 25 (a) to enter and search, by day or by night, any premises or part thereof when he has reasonable cause to believe that evidence of the commission of an offence under this Act can be found therein;
- 30 (b) to require any person, who the employment agency inspector has reason to believe has any document or information relevant to any investigation carried out by him under this Act, to produce any such document or give such information;

- (c) to retain any document relevant to any investigation carried out by him under this Act;
- 5 (d) to examine orally any person supposed to be acquainted with the facts and circumstances relevant to any investigation carried out by him under this Act, and to reduce into writing the answer given or statement made by that person who shall be bound to state truly the facts and circumstances with which he is acquainted; and the statement made by that person shall be read over to him and shall, after correction, be signed by him;
- 10 (e) to require by order in writing the attendance before him of any person who, from information given or otherwise, appears to be acquainted with the facts and circumstances relevant to any investigation carried out by him under this Act, and that person shall so attend as required and if he fails to attend as so required, to report such failure to a Magistrate who may thereupon issue a warrant to secure the attendance of that person as required by the order;
- 15 (f) to take such photographs, or audio or video recording, as he thinks necessary of the premises and persons reasonably believed to be acquainted with the facts and circumstances relevant to any investigation carried out by him under this Act;
- 20 (g) to require any person to produce any article which is relevant to any investigation carried out by him under this Act and, if necessary, to take into custody any such article.
- 25

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

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- (3) If any person —
- 35 (a) intentionally offers any resistance to or wilfully delays an employment agency inspector in the exercise of any power under this section;

- (b) fails to comply with the requisition of an employment agency inspector under this section;
- (c) fails to produce any document which he is required by or under this section to produce; or
- 5 (d) conceals or prevents or attempts to conceal or prevent a person from appearing before or being examined by an employment agency inspector,

that person shall be deemed, for the purposes of section 23(4), to obstruct an employment agency inspector in the exercise of his powers.

(4) Every employment agency inspector shall have authority to appear in court and may, with the authorisation of the Public Prosecutor, conduct any prosecution in respect of any offence under this Act.”.

15 **Repeal and re-enactment of section 19 and new sections 19A to 19H**

18. Section 19 of the principal Act is repealed and the following sections substituted therefor:

“Power to arrest without warrant

20 **19.**—(1) Any police officer or employment agency inspector may arrest without warrant any person whom he reasonably believes to be carrying on an employment agency or performing any work or activity referred to in section 6(2) without a licence.

25 (2) An employment agency inspector making an arrest without warrant shall, without unnecessary delay and subject to subsection (3), take or send the person arrested before a Magistrate’s Court.

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

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

Arrest how made

19A.—(1) In making an arrest, an employment agency inspector making the arrest shall touch or confine the body of the person to be arrested unless the person submits to arrest by word or action.

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

No unnecessary restraint

10 **19B.**—(1) The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

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

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

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

Search of persons arrested

20 **19C.**—(1) When a person is arrested, the employment agency inspector making the arrest may search the person and take possession of all articles (other than necessary wearing apparel) found upon the person that the employment agency inspector has reason to believe were connected with the offence for which the person was being arrested.

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

Employment agency inspector to be armed

30 **19D.** Every employment agency inspector shall be provided with such batons and accoutrements as may be necessary for the effective discharge of his duties.

Power to seize offensive weapons

19E. An employment agency inspector making any arrest may take from the person arrested any offensive weapons which he has about his person.

Power on escape to pursue and arrest

19F. If a person in lawful custody escapes or is rescued, the employment agency inspector from whose custody he escaped or was rescued may immediately pursue and arrest him in any place within Singapore and deal with that person as he might have done on the original arrest.

Disposal of documents or articles

19G.—(1) Any document or article produced, retained or requisitioned under section 18(1)(*b*), (*c*) or (*g*), 19C or 19E shall —

- (*a*) where the document or article is produced in any criminal trial, be dealt with in accordance with section 364 of the Criminal Procedure Code 2010 (Act 15 of 2010); or
- (*b*) in any other case —
 - (*i*) be returned to the owner; or
 - (*ii*) if the owner is not known, be reported to a Magistrate's Court.

(2) Where the report of any document or article produced, retained or requisitioned under section 18(1)(*b*), (*c*) or (*g*), 19C or 19E is made to a Magistrate's Court under subsection (1)(*b*)(*ii*), the Magistrate's Court may order the document or article —

- (*a*) to be forfeited; or
- (*b*) to be disposed of in such manner as the Magistrate's Court thinks fit.

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

Complaint by employment agency inspector

5 **19H.** For the purpose of section 151 of the Criminal Procedure Code 2010 (Act 15 of 2010) on receiving the complaint in writing and signed by any employment agency inspector, the Magistrate must proceed to issue a summons or warrant in accordance with section 153 of that Code.”.

Amendment of section 20

10 **19.** Section 20 of the principal Act is amended by deleting the words “officer duly authorised in writing in that behalf by the Commissioner” and substituting the words “employment agency inspector”.

Repeal and re-enactment of section 21

20. Section 21 of the principal Act is repealed and the following section substituted therefor:

“Liability of licensee for act of servant and partner

15 **21.** Whenever any licensee would be liable under the provisions of this Act to any pecuniary penalty or forfeiture for any act, omission, neglect or default, the licensee shall be liable to the same pecuniary penalty or forfeiture for every similar act, omission, neglect or default, of —

- 20 (a) any agent or servant employed by the licensee in the course of the operation of an employment agency in respect of which the licensee holds a licence; or
- (b) any of the partners, where the employment agency is a partnership, limited liability partnership or limited
- 25 partnership.”.

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

21. Section 22 of the principal Act is repealed and the following sections substituted therefor:

“Furnishing false information

30 **22.** Any person who makes any statement or furnishes any information to the Commissioner or any officer authorised under this

Act which he knows or ought reasonably to know is false in any material particular or is misleading by reason of the omission of any material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 12 months or to both.

Offence for persons to engage unlicensed persons

22A.—(1) Any person who, directly or indirectly, engages or uses the services of a person who has not obtained a licence as required under section 6 in connection with the employment of any person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 for each employee engaged through that person who has not so obtained a licence.

(2) In any proceedings for an offence under subsection (1), it shall not be a defence for a defendant to prove that he did not know that the person has not obtained a licence as required under section 6 unless the defendant further proves that he had exercised due diligence to ascertain the status of such person.

(3) For the purpose of subsection (2), a defendant shall not be deemed to have exercised due diligence unless he had verified, in such manner as may be prescribed, that the person referred to in that subsection has obtained a licence as required under section 6.

Offence for licensed employment agencies to make certain applications

22B.—(1) If any employment agency personnel of a licensee makes any application to the Controller of Work Passes appointed under section 3 of the Employment of Foreign Manpower Act (Cap. 91A), which application is required under that Act, on behalf of —

(a) any person who has not obtained a licence as required under section 6; or

(b) any person whom the employment agency personnel knows or ought reasonably to know has been directed by the Commissioner under section 12(4) not to make any such application,

the licensee and the employment agency personnel shall each be guilty of an offence.

(2) Any person guilty of an offence under subsection (1) shall be liable on conviction —

(a) to a fine not exceeding \$80,000 or to imprisonment for a term not exceeding 2 years or to both; and

5 (b) in respect of a second or subsequent offence, to a fine not exceeding \$160,000 or to imprisonment for a term not exceeding 4 years or to both.

10 (3) In any proceedings for an offence under subsection (1), it shall not be a defence for a defendant to prove that he did not know that the person has not obtained a licence as required under section 6 unless the defendant further proves that he had exercised due diligence to ascertain the status of such person.

15 (4) For the purpose of subsection (3), a defendant shall not be deemed to have exercised due diligence unless he had verified, in such manner as may be prescribed, that the person referred to in that subsection has obtained a licence as required under section 6.

Disqualification of key appointment holders or employment agency personnel

20 **22C.**—(1) Notwithstanding the provisions of any other written law, any person who —

(a) is an undischarged bankrupt;

(b) has been convicted, whether in Singapore or elsewhere, of an offence involving dishonesty or the conviction for which involved a finding that he had acted dishonestly;

25 (c) has been convicted, whether in Singapore or elsewhere, of an offence involving human trafficking; or

30 (d) has been a director of, or directly concerned in the management of, an employment agency for which a licence is obtained under this Act and which licence has been revoked,

shall not, without the consent in writing of the Commissioner, act or continue to act as a key appointment holder of any employment agency in Singapore.

(2) Notwithstanding the provisions of any other written law, any employment agency personnel (not being a key appointment holder) who —

(a) has been convicted, whether in Singapore or elsewhere, of an offence involving human trafficking; or

(b) has been a director of, or directly concerned in the management of, an employment agency for which a licence is obtained under this Act and which licence has been revoked,

shall not, without the consent in writing of the Commissioner, act or continue to act as an employment agency personnel of any employment agency in Singapore.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.”.

Repeal and re-enactment of section 23

22. Section 23 of the principal Act is repealed and the following section substituted therefor:

“Miscellaneous offences

23.—(1) Where any employment agency personnel of a licensee, directly or indirectly, charges or receives for his services any sum greater than the prescribed fee, the licensee and the employment agency personnel shall each be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and, in respect of a second or subsequent offence, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(2) Where any employment agency personnel of a licensee gives any information to any person which is relevant to the employment of any applicant for employment, which the employment agency personnel knows or ought reasonably to know is false in any material particular or is misleading by reason of the omission of any material particular, the licensee and the employment agency personnel shall each be guilty of an offence and shall be liable on conviction to a fine

not exceeding \$15,000 or to imprisonment for a term not exceeding 12 months or to both.

5 (3) Where any employment agency personnel of a licensee instigates or induces any person not to employ or engage the services of another person who did not apply for employment or work through the licensee, the licensee and the employment agency personnel shall each be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and, in respect of a second or subsequent offence, to a fine not exceeding \$5,000 or to imprisonment for a term
10 not exceeding 6 months or to both.

(4) Any person who, without reasonable excuse, obstructs an employment agency inspector in the exercise of any of his powers under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a
15 term not exceeding 6 months or to both.

(5) Any licensee who contravenes any of the conditions of the licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.”.

20 **Repeal and re-enactment of section 24**

23. Section 24 of the principal Act is repealed and the following section substituted therefor:

“Certain offences deemed to be arrestable offences

25 **24.** Every offence under section 6(4) shall be deemed to be an arrestable offence within the meaning of the Criminal Procedure Code 2010 (Act 15 of 2010).”.

Repeal and re-enactment of section 26

24. Section 26 of the principal Act is repealed and the following section substituted therefor:

30 **“Employment agency deemed to be public place**

26. For the purposes of section 18 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap. 184), the premises of every employment agency shall be deemed to be a public place.”.

New sections 28A to 28F

25. The principal Act is amended by inserting, immediately after section 28, the following sections:

“Offences by bodies corporate, etc.

5 **28A.**—(1) Where an offence under this Act committed by a body corporate is proved —

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

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

10 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.

 (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.

15 (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

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

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

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

25 (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 an officer or a member,

30 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.

(5) In this section —

“body corporate” includes a limited liability partnership;

“officer” —

5 (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

10 (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;

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

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

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Abetment

25 **28B.** Any person who abets the commission of an offence under this Act shall be guilty of the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

Composition of offences

30 **28C.—**(1) The Commissioner or any officer authorised in writing by the Commissioner may, in his discretion, compound any offence under this Act by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of either of the following amounts:

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

(b) \$5,000.

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

Protection from personal liability

5 **28D.** No suit or other legal proceedings shall lie against the Commissioner or any public officer acting under the direction of the Commissioner for anything which is done with reasonable care and in good faith in the execution or purported execution of this Act.

Jurisdiction of court

10 **28E.** Notwithstanding any provision to the contrary in the Criminal Procedure Code 2010 (Act 15 of 2010), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

Registers

15 **28F.**—(1) The Commissioner may establish, maintain and cause to be published in such manner as he may determine, one or more registers in respect of —

- (a) any person or employment agency, or any class thereof, exempted under section 4(2);
- 20 (b) the holder of any licence granted under section 6, or any class thereof;
- (c) the employment agency personnel registered under section 12A(3), or any class thereof; or
- 25 (d) such other information relating to employment agencies generally, or to any class of employment agencies, as the Commissioner may determine.

(2) Rules may be made under section 29 to prescribe the manner in which the registers are established or maintained under subsection (1), including the details or particulars required to be entered in the registers.

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(3) Any person may, upon payment of a prescribed fee, inspect and take an extract from any register established under subsection (1).

(4) Any extract taken under subsection (3), if certified by the Commissioner to be a true copy, shall be admissible as evidence in any legal proceedings.”.

Amendment of section 29

5 **26.** Section 29(1) of the principal Act is amended —

- (a) by inserting, immediately after the words “employment agencies” in paragraph (b), the words “or for performing any work or activity referred to in section 6(2)”;
- (b) by inserting, immediately after the words “the fees payable for the” in paragraph (d), the word “application,”;
- 10 (c) by inserting, immediately after paragraph (d), the following paragraph:
 - “*(da)* the fee payable for the registration of employment agency personnel;”;
- 15 (d) by inserting, immediately after the words “employment agencies” in paragraph (f), the words “or persons”;
- (e) by inserting, immediately after the words “as the case may be” in paragraph (g), the words “, and the circumstances and conditions under which such fees shall, whether in whole or in part, be refunded”;
- 20 (f) by deleting the words “\$1,000 in the case of a first offence or \$2,000 or 6 months’ imprisonment or both in the case of a second or subsequent offence” in paragraph (h) and substituting the words “\$10,000 or 12 months’ imprisonment or both”; and
- 25 (g) by deleting paragraph (i) and substituting the following paragraphs:
 - “*(i)* the kind and amount of security required to be given under this Act, and the circumstances and conditions under which the amount of security may be varied;
 - 30 *(j)* the form of the registration card to be issued by a licensee;
 - (k)* the imposition of any requirement, restriction or prohibition on licensees or employment agency personnel in relation to the carrying on of any

employment agency, or the performance of any work or activity referred to in section 6(2);

(*l*) any matter relating to the release of any arrested person on any bail or bond under this Act; and

5 (*m*) anything that is required or permitted to be prescribed under this Act.”.

Savings and transitional provisions

27.—(1) Any licence issued under section 7 of the principal Act in force immediately before the date of commencement of section 6 of this Act —

10 (*a*) shall continue to be in force on or after that date and shall expire on the date it would have expired as if this Act had not been enacted; and

 (*b*) may be renewed in accordance with the principal Act as amended by this Act.

15 (2) For a period of 3 months after the date of commencement of section 21 of this Act —

 (*a*) any key appointment holder who falls within the description under section 22C(1)(*a*), (*b*), (*c*) or (*d*) of the principal Act (inserted by section 21 of this Act) may continue to act as a key
20 appointment holder of any employment agency for which a licence is obtained without the consent of the Commissioner; and

 (*b*) any employment agency personnel (not being a key appointment holder) who falls within the description under section 22C(2)(*a*) or (*b*) of the principal Act (inserted by section 21 of this Act)
25 may continue to act as an employment agency personnel of any employment agency for which a licence is obtained without the consent of the Commissioner.

 (3) This Act shall not affect any application for a licence to the Commissioner and which has not been dealt with by him under section 7
30 of the principal Act before the date of commencement of section 6 of this Act, and every such application may be dealt with and everything in relation thereto may be done in all respects after that date as if this Act had not been enacted.

(4) Any licence issued pursuant to an application referred to in subsection (3) shall be treated as a licence issued under the principal Act as amended by this Act.

5 (5) This Act shall not affect any appeal which is received by the Minister and which has not been dealt with by him under section 13 of the principal Act before the date of commencement of section 13 of this Act, and every such appeal may be dealt with and everything in relation thereto may be done in all respects after that date as if this Act had not been enacted.

10 (6) This Act shall not affect any proceedings instituted under section 19 of the principal Act and which is pending before the date of commencement of section 18 of this Act, and every such proceedings may be continued and everything in relation thereto may be done in all respects after that date as if this Act had not been enacted.

15 (7) Any investigation carried out by the Commissioner or an officer duly authorised in writing in that behalf by the Commissioner under the principal Act before the date of commencement of section 19 of this Act and which is not completed may continue to be carried out by the Commissioner for Employment Agencies or an employment agency
20 inspector, respectively, and everything in relation thereto may be done in all respects after that date in accordance with the provisions of the principal Act as amended by this Act.

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

EXPLANATORY STATEMENT

This Bill seeks to amend the Employment Agencies Act (Cap. 92) for the following main purposes:

- (a) to create a new office of the Commissioner for Employment Agencies, who will be assisted by one or more Deputy Commissioners for Employment Agencies, Assistant Commissioners for Employment Agencies, employment agency inspectors and employment agency licensing officers in the administration of the Act;

- (b) to enhance the penalties for offences in the Act and to introduce new offences relating to the operations of employment agencies, especially unlicensed employment agencies;
- (c) to make provision for the registration of the personnel of employment agencies who perform specified employment agency work;
- (d) to impose stricter requirements in relation to key appointment holders of employment agencies;
- (e) to enhance the investigative powers of employment agency inspectors for better enforcement against errant employment agencies and persons involved in the employment of persons; and
- (f) generally to update the Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 by inserting new definitions of the terms “Commissioner”, “employment agency personnel”, “key appointment holder”, “partner”, “premises” and “specified employment agency work”, to be used in the Act as amended by the Bill.

Clause 3 repeals and re-enacts section 3 to empower the Minister to appoint a Commissioner for Employment Agencies (the Commissioner), Deputy Commissioners and Assistant Commissioners for Employment Agencies, employment agency inspectors and employment agency licensing officers for the purposes of the Act.

Clause 4 amends section 4 to widen the power of the Minister to exempt any person or employment agency, or any class of persons or employment agencies, from all or any of the provisions of the Act, and subject to such conditions as the Minister may think fit to impose. The Minister may impose a condition requiring any person or employment agency, or any class thereof, to obtain the approval of the Commissioner to be registered as an exempt person or exempt employment agency, as the case may be, in such form and manner as the Commissioner may determine.

Clause 5 amends section 6 by requiring a licence to be applied for by any person who performs any work or activity in Singapore for or in connection with the employment of one or more persons in any capacity, whether those persons are to be employed within or outside Singapore. For the licence requirement to apply to such a person, that person must perform that work or activity on his own behalf or on behalf of an employment agency which is carried on outside Singapore. A registered employment agency personnel who carries out any employment-related work for an employment agency will not be required to apply for a licence. A person who performs any employment-related work for an employment agency which is carried on outside Singapore need not be licensed if that employment agency is licensed. A person also does not need to be licensed if he performs any employment-related work for the sole purpose of recruiting persons for employment on his own behalf. The clause also increases the penalties for the offence of carrying on an employment agency without a licence.

Clause 6 amends section 7 to empower the Commissioner to renew licences, and to debar a person from applying for or being granted a licence for a period of time. The clause also makes provision for the payment of prescribed application fees and prescribed fees on the grant or renewal of licences by the Commissioner.

Clause 7 amends section 8(2) to allow the forfeiture of security given for the grant of any licence where the licensee has failed to comply with any condition specified in respect of such security.

Clause 8 repeals section 9 which is no longer required as a consequence of the insertion of new section 7(2A) (by clause 6).

Clause 9 repeals and re-enacts section 10 to provide that licences will be valid for such period as may be specified in the licence. The clause makes it an offence for a person to carry on an employment agency or perform any work or activity in respect of which a licence is granted, after the validity period specified in the licence. However, the clause allows the Commissioner to renew a licence that has already expired within a prescribed time and upon the payment of the prescribed late renewal fee.

Clause 10 amends section 11 to empower the Commissioner to suspend licences on the same grounds as for the revocation of licences under the section, and to reinstate any suspended licence. The clause also inserts additional grounds on which the Commissioner may suspend or revoke a licence.

Clause 11 repeals and re-enacts section 12. The new section 12 sets out the effects of the revocation or suspension of a licence. Where a licensee has been served an order of the suspension or revocation of his licence or where such order becomes effective, the licensee must comply with such directions as the Commissioner thinks fit to give, failing which, he commits an offence.

Clause 12 inserts new sections 12A and 12B.

The new section 12A imposes the requirement of the registration of employment agency personnel who are to perform any specified employment agency work. Any licensee who fails to do so, and any person who performs any specified employment agency work when he knows or ought reasonably to know he is not registered, commit an offence.

The new section 12B requires licensees to issue registration cards to their employment agency personnel after their registration under the new section 12A. The new section also prescribes, as an offence, various acts of misuse of such registration cards, such as, the forgery or unauthorised alteration of such registration cards.

Clause 13 repeals and re-enacts section 13 to set out the various decisions which the Commissioner may make under the Act (as amended by the Bill) against which an aggrieved person may appeal to the Minister. The Minister is empowered to delegate his powers under the section to any public officer.

Clause 14 makes a technical amendment to section 14(2).

Clause 15 repeals and re-enacts section 15 to make it an offence for a licensee or an employment agency personnel to give or offer to give any sum or other benefit to an employer or prospective employer in certain circumstances.

Clause 16 repeals sections 16 and 17, which are no longer required.

Clause 17 repeals and re-enacts section 18 to set out the enhanced powers of investigation of employment agency inspectors. The new section also provides that every employment agency inspector has the authority to appear in court and may, with the authorisation of the Public Prosecutor, conduct any prosecution in respect of any offence under the Act.

Clause 18 repeals and re-enacts section 19 and inserts new sections 19A to 19H. These new sections relate to the power of an employment agency inspector to arrest without warrant. The clause further provides for the mode of arrest, search and seizure, the mode of disposal of documents and articles, as well as complaints made by employment agency inspectors.

Clause 19 amends section 20 to make it clear that employment agency inspectors may enter and inspect the premises of any employment agency or premises reasonably suspected of being used for the purposes of an employment agency.

Clause 20 repeals and re-enacts section 21 to make it clear that a licensee is also liable for any act, omission, neglect or default of a partner, where the employment agency is a partnership, limited liability partnership or limited partnership.

Clause 21 repeals and re-enacts section 22 and inserts new sections 22A, 22B and 22C.

The new section 22 makes it an offence for any person to make a statement or furnish any information to the Commissioner or any officer authorised under the Act which he knows or ought reasonably to know is false or misleading in a material particular.

The new section 22A makes it an offence for any person to engage or use the services of an unlicensed person in connection with the employment of any person.

The new section 22B introduces a new offence for an employment agency personnel and the licensee he performs work for to make employment-related applications on behalf of an unlicensed person or a person who has been directed by the Commissioner not to make any such applications.

The new section 22C disqualifies a person from acting, or continuing to act, as a key appointment holder or an employment agency personnel in any employment agency in certain specified circumstances without the written consent of the Commissioner. Any breach of this restriction will be an offence.

Clause 22 repeals and re-enacts section 23 to set out certain miscellaneous offences, such as, the contravention of licence conditions by a licensee.

Clause 23 repeals section 24, which is no longer required. In its place is a new section 24 to provide that an offence under section 6(4) will be deemed to be an arrestable offence within the meaning of the Criminal Procedure Code 2010 (Act 15 of 2010).

Clause 24 repeals and re-enacts 26 to update it.

Clause 25 inserts new sections 28A to 28F.

The new section 28A relates to the liability of officers, partners or members where an offence under the Act is committed by a body corporate or an unincorporated association.

The new section 28B makes the abetment of an offence, an offence under the Act.

The new section 28C empowers the Commissioner or any officer authorised in writing by the Commissioner to compound any offence under the Act.

The new section 28D confers immunity from suit on the Commissioner or any public officer acting under the direction of the Commissioner for anything which is done with reasonable care and in good faith under the Act.

The new section 28E provides for a District Court to have jurisdiction to try offences under the Act and to impose the full penalty or punishment in respect of the offence notwithstanding the provisions of the Criminal Procedure Code 2010.

The new section 28F empowers the Commissioner to establish, maintain and publish in such manner as he may determine, one or more registers under the Act.

Clause 26 amends section 29 to add to the type of rules that may be made as a consequence of the Bill, including —

- (a) to extend the rule-making power on the circumstances and conditions under which fees may be collected from applicants for employment and applicants for workers to provide for the refund of such fees, in whole or in part;
- (b) to increase the maximum penalties that may be prescribed for any contravention of the rules made under the section; and
- (c) to provide that rules may be made on any matter relating to the release of arrested persons on bail or bond under the Act.

Clause 27 contains certain savings and transitional provisions.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
