

FACTSHEET ON NEW EMPLOYMENT AGENCY REGULATORY FRAMEWORK

The Ministry of Manpower (MOM) will be amending the Employment Agencies Act (EAA) as part of efforts to enhance the regulatory framework for employment agencies (EAs). The First Reading of the Employment Agencies (Amendment) Bill was held on 22 Nov 2010. The Second Reading was held on 11 Jan 2011.

BACKGROUND TO REVIEW OF REGULATORY FRAMEWORK

2. EAs play a crucial role in ensuring the smooth functioning of the labour market, linking up job seekers with employers. They are currently regulated under the EAA, which requires agencies to be licensed and subject to a set of licensing conditions. In addition, agencies seeking to place foreign domestic workers are required to be accredited by either of the two accreditation bodies – the Association of Employment Agencies (Singapore) or CaseTrust – before their licenses can be renewed.

3. The EA industry and the labour market have changed significantly since 1984, when the EAA was last amended. Where there were only about 300 EAs in 1984, there are currently over 2,500 licensed EAs placing foreign as well as local workers. While we have seen more professional and responsible EAs, the growth of the industry and foreign worker population have also led to larger number of malpractices, mostly related to the placement of foreign workers. If not checked, these malpractices would threaten the efficiency of our labour market and the well-being of foreign workers working here.

4. MOM has therefore reviewed the EA Act to strengthen the EA regulatory framework. The updated Act will benefit all stakeholders:

- (i) Legitimate EAs, by building more confidence in the standards and professionalism of the EA industry;
- (ii) Employers, by providing them with greater certainty and transparency in the recruitment process; and
- (iii) Employees, by protecting them from the practices of unlicensed and errant players.

5. While the EA (Amendment) Bill covers the key changes to the EA regulatory framework, some important changes will be established in the subsidiary legislation to the EA Act. For instance, changes to the subsidiary legislation would affect the requirement for accreditation by EAs that place foreign domestic workers, the caps and refunds on agency fees paid by workers, the licensing framework for EAs, and the security deposit framework.

AMENDMENTS TO THE EAA

The key amendments to the EAA are summarised as follows:

(a) Stiffer Penalties for Unlicensed and Errant EAs

6. The fines and imprisonment terms under the Act will be raised to ensure that they have an adequate deterrent effect. Most significantly, the maximum penalties for EAs operating **without** a licence will be increased. The first offence will be liable for a fine of up to \$80,000 and/or up to 2 years' imprisonment, and subsequent offences will be liable for a fine of up to \$160,000 and/or up to 4 years' imprisonment.¹

7. Unlicensed EAs undermine the regulatory framework by competing against licensed, law-abiding EAs. Unlicensed EAs have also been found to offer employers kickbacks and exploit workers by charging them exorbitant fees. Therefore the penalties have been set high in proportion to the potential profits unlicensed EAs could derive from malpractices.

8. To curb demand for unlicensed EAs, we will also make it an offence for employers and persons to knowingly engage an unlicensed EA, and for licensed EAs to make employment-related applications on behalf of unlicensed EAs.² Going forward, we will also hold all EAs (whether licensed or not) equally liable for offences under the EAA and its regulations. This will ensure unlicensed EAs will be penalised, not only for operating without a licence, but also for offences such as offering kickbacks to employers or giving any person false information relevant to the employment of any job seeker.

¹ The current penalty for operating without a licence is a maximum fine of \$5,000. Subsequent offences would warrant a fine of up to \$10,000 and/or up to 6 months' imprisonment.

² The maximum penalty for knowingly engaging an unlicensed EA is \$5,000 per employee engaged through the unlicensed EA, while the maximum penalties for making employment-related applications on behalf of unlicensed EAs are similar to those for operating an unlicensed EA.

9. The amendments to the EAA will also expand the range of penalty options. Currently, infringements of licensing conditions are only punishable by licence revocations and forfeitures of security deposits. With the amendment, MOM will have the discretion to fine, compound all offences or prosecute errant players.

10. Additionally, the newly-created Commissioner for EAs will also be given the power to suspend and reinstate EA licences. Suspension of licences is now introduced as a possible penalty tool instead of license revocation or prosecution as warranted in some instances.

Refer to Annex A for the proposed offences and penalties in the EA Act.

(b) Increased Professionalism and Accountability of Key Industry Stakeholders

11. The revised EAA will put in place stricter requirements for EAs to be licensed and for EA personnel. Licensed EAs will need higher security deposits.

12. The existing mandatory Certificate of Employment Agency course for individual EA licensees will be revised and expanded. All key appointment holders in EAs (e.g. managers, CEO) must attend and pass the new certification course before they are allowed to operate the EA. All other EA personnel (this includes only those involved in placement work, and not other staff such as drivers or cleaners) must attend and pass a simplified version of the course before being allowed to conduct EA-related work.

13. In addition, all key appointment holders and other EA personnel must now be registered with MOM and each carry a valid registration card. The template of the registration card will be specified by MOM. Employers and workers will be able to verify online that they are dealing with registered personnel of a *bona fide* EA. To ensure that EAs have full accountability and oversight over the actions of their staff, an individual can only be registered under one EA at any time.

14. There will be more stringent requirements for EA licensees and personnel in terms of track record and character. The Commissioner will be allowed to debar any person or company deemed unsuitable from obtaining an EA licence. In addition, certain classes of persons (e.g. those with criminal records or those who are undischarged bankrupts) will be prohibited from conducting EA-related work.

15. To raise the professional standards of the industry, MOM will impose minimum service standards across all EAs, governing relations between the EA and the employer. With this extension, EAs placing foreign workers (FWs) and FDWs will abide

by a common set of service standards pertaining to the terms of engagement and mutual obligations of EAs and employers, and the EAs' dispute resolution mechanism. Since the minimum service standards reflect many of today's accreditation conditions, MOM will remove the requirement for agencies placing FDWs to be accredited with any of the two accreditation bodies.

16. Beyond minimum standards, MOM encourages progressive EAs to evolve and adopt higher standards and best practices. Towards this end, MOM will be working with the industry to develop a new voluntary trustmark scheme for EAs pursuing higher levels of service excellence.

(c) Update Provisions and Processes

17. MOM will introduce a new office of Commissioner for EAs. Assisted by Deputy and Assistant Commissioners, the Commissioner will oversee the general administration of this Act.

18. MOM will remove the caps on EA fees charged to employers. Given that there are as many as 2,000 licensed Singapore EAs to choose from, employers will be in a position to make informed choices to engage EAs based on fees determined by the market. MOM will also update the caps on the fees an EA can charge FWs. In deciding the fee cap, MOM has considered what would be fair to EAs for the services rendered, and to the workers with respect to their income. A worker can be charged a fee not exceeding one month of his salary, for each year of the duration of the approved Work Pass or employment contract, whichever is shorter, subject to a maximum of 2 months' salary. This includes all local agency fees, whether collected directly from the worker via the overseas EA.

19. MOM will also specify fee items that will not be covered within the fee cap. Some examples include fees incurred overseas for costs of training, medical check-ups overseas, and airfare to Singapore. We will also reiterate costs that are **not recoverable** from the workers since there are clear regulations requiring employers and EAs to bear these costs. Examples include costs incurred in Singapore for training, medical check-ups and upkeep and maintenance.

20. In order to encourage better matching of workers to employers, MOM will amend the subsidiary legislation to require EAs to refund 50% of the agency fees to workers (including FDWs) whose contracts are terminated by their employers within 6 months of commencement. To keep the system simple, the refund will be payable as long as the employer terminates the contract within the first 6 months of work (i.e., it will not apply if the worker absconds or prematurely terminates the contract). This will provide some security for workers and increases the incentive for EAs to match employers with more suitable workers.

21. To facilitate enforcement of the updated fee cap and fee refund system, MOM will introduce measures to make all charges transparent. EAs will be required to issue receipts to workers for all monetary transactions.

(d) Introduce Flexibility

22. As we recognise the diversity in operating models in the EA industry, MOM will adopt a lighter regulatory touch where appropriate. These changes will be effected through the subsidiary legislation. While SDs will be raised from \$20,000 today to \$60,000 for most EAs, we will introduce a new tiered security deposit (SD) framework based on the risk profile of the EAs. Existing EAs with lower placement volume will enjoy a \$20,000 reduction in the SD requirement. EAs with a better track record get another \$20,000 reduction. New EAs who wish to enjoy the reductions will be assessed after their first year of operations. (See Annex B for the new security deposit framework)

23. We will also introduce a new type of EA licence for EAs that wish to place only workers, both locals and Employment Pass holders, earning monthly salaries of more than \$7,000 (typically headhunters and executive search firms). They will be exempt from certain licensing requirements, such as the requirement for their EA personnel to be certified. Such EAs will be required to furnish MOM with an SD of \$20,000.

TIMELINE

24. After the amendments are passed in Parliament, MOM plans to implement the new EA regulatory framework by Apr 2011, and allow existing licensed EAs to transit to the new licensing terms as and when their one-year licences expire. EA personnel performing EA-related work will be given up to three years to be certified and registered. (See Annex C for transition plan)

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PENALTY STRUCTURE FOR ENHANCED PENALTIES AND NEW OFFENCES

S/N	Offences within EAA	Max penalty	
		1 st Offence (subsequent offence)	
		Current	Proposed
1.	Unlicensed EA	\$5,000 (\$10,000 and/or 6 months)	Maximum fine of \$80,000 and/or up to 2 years' imprisonment Maximum fine of \$160,000 and/or up to 4 years' imprisonment)
2.	Non compliance with notice of intent to revoke or suspend EA licence	\$1,000 (-)	Maximum fine of \$80,000 and/or up to 2 years' imprisonment (Maximum fine of \$160,000 and/or up to 4 years' imprisonment)
3.	Providing false information to the Commissioner of Employment Agencies or officers authorised under the EAA, or to members of public in the provision of EA services	\$2,000 (\$5,000 and/or 6 months)	\$15,000 and/or 12 months (-)
4.	Failure to comply with summons	\$2,000 and/or 3 months (-)	\$5,000 and/or 6 months (-)
5.	Breach of fee caps	\$2,000 (\$5,000 and/or 6 months)	\$5,000 (\$5,000 and/or 6 months)

S/N	Offences within EAA	Max penalty	
		1 st Offence (subsequent offence)	
		Current	Proposed
6.	Offering kickbacks to employers	-	\$5,000 and/or 6 months
7.	Making employment-related applications on behalf of unlicensed EAs without conducting due-diligence [new]	-	Maximum fine of \$80,000 and/or up to 2 years' imprisonment (Maximum fine of \$160,000 and/or up to 4 years' imprisonment)
8.	Misrepresentation by presenting a forged or invalid registration card [new]	-	\$15,000 and/or 12 months
9.	Failing to issue a registration card in accordance with the template prescribed in the EA Rules [new]	-	\$1,000 (\$2,000 and/or 6 months)
10.	Obstruction of officers [new]	-	\$5,000 and/or 6 months
11.	Breach of licensing conditions [new]	-	\$5,000 and/or 6 months

S/N	Offences within EAA	Max penalty	
		1 st Offence (subsequent offence)	
		Current	Proposed
12.	Failure to register with MOM as an EA personnel before performing EA-related work, or deregister upon leaving the EA industry or cessation of EA-related work [new]	-	\$5,000 and/or 6 months
13.	Failure to attain the Commissioner's approval before being a key appointment holder in an executive position or an EA employee of performing EA-related work when prohibited from doing so [new]	-	\$5,000 and/or 6 months
14.	Engaging an unlicensed EA knowingly or without exercising due diligence in verifying whether the EA is bona-fide [new]	-	\$5,000 per worker recruited from unlicensed EA (-)

S/N	Offences within EAA	Max penalty 1 st Offence (subsequent offence)	
		Current	Proposed
15.	Abetment of other offences [new]	-	Similar to the principal offences

NEW SECURITY DEPOSIT FRAMEWORK

	Attribute of EA	Security Deposit Requirement
1	All employment agencies, unless they meet (2),(3) or (4)	\$60,000
2	Employment agencies that placed 200 or less Work Permit and S Pass holders in past 12 months	\$40,000
3	Employment agencies that accumulated 3 or less demerit points in the past 12 months	\$40,000
4	Employment agencies that meet both (2) and (3)	\$20,000

TIMELINE

