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The following Act was passed by Parliament on 4th October 1990 and assented to by the President on 1st November 1990:—

EMPLOYMENT OF FOREIGN WORKERS ACT 1990

(No. 21 of 1990)

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REPUBLIC OF SINGAPORE

No. 21 of 1990.

I assent.



WEE KIM WEE
President.
1st November 1990.

An Act to repeal and re-enact with amendments the Regulation of Employment Act (Chapter 272 of the 1985 Revised Edition) and to provide for matters connected therewith.

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

Short title and commencement

1. This Act may be cited as the Employment of Foreign Workers Act 1990 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“contractor” means a person who carries out work for another person under a contract for services or who supplies workers to other persons to carry out work for them;

“Controller” means the Controller of Work Permits appointed under section 3;

“employer” means any person, including a contractor, employing a foreign worker and, for the purposes of an application for work permit, a person who intends to employ a foreign worker;

“employment inspector” means the Controller and any person appointed as an employment inspector under section 3;

“foreign worker” means —

(a) any person who is not a citizen of Singapore who seeks employment with, or is offered employment by, or is, at the date of commencement of this Act, in the employment of an employer at a salary of not more than \$1,500 a month or such other sum as may, from time to time, be fixed by the Minister by notification in the *Gazette*; or

(b) such other person or class of persons as the Minister may, by notification in the *Gazette*, specify.

“levy” means the levy imposed under section 11;

“occupier”, in relation to any premises, includes —

(a) the person having the charge, management or control of either the whole or part of the premises either on his own account or as an agent; and

- (b) a contractor who is carrying out building operations or construction works at the premises on behalf of some other person;

“premises” includes any land, whether built on or not, building, structure and any vessel and vehicle;

“salary” means all monetary remuneration payable to a foreign worker but does not include the following:

- (a) additional payment by way of overtime, bonus or commission;
- (b) travelling, food or housing allowances;
- (c) any sum paid to a foreign worker to defray special expenses incurred by him owing to the special, unusual or hazardous nature of his employment;
- (d) any contribution paid by the employer or contractor to any pension fund or provident fund; or
- (e) any gratuity payable on discharge or retirement;

“work permit” means a work permit issued under section 7.

Appointment of Controller of Work Permits and employment inspectors

3.—(1) The Minister may appoint a Controller of Work Permits who shall have such functions and powers as are conferred on him by this Act.

(2) The Minister may appoint such number of employment inspectors as he may think fit for carrying out the purposes of this Act.

Exemption

4. The Minister may, by notification in the *Gazette*, exempt any person or class of persons from all or any of the provisions of this Act.

Prohibition of employment of foreign worker without work permit

5.—(1) No person shall employ a foreign worker unless he has obtained in respect of the foreign worker a valid work permit which allows the foreign worker to work for him.

(2) No foreign worker shall be in the employment of an employer without a valid work permit.

(3) No person shall employ a foreign worker otherwise than in accordance with the conditions of the work permit.

(4) Any person who fails to comply with or contravenes subsection (1) shall be guilty of an offence and shall —

(a) be liable on conviction to a fine of an amount of not less than 24 months' levy and not more than 48 months' levy or to imprisonment for a term not exceeding one year or to both; and

(b) on a second or subsequent conviction, be punished with imprisonment for a term of not less than one month and not more than one year and shall also be liable to a fine of an amount of not less than 24 months' levy and not more than 48 months' levy.

(5) For the purpose of subsection (4) —

(a)

(a) “levy” means the monthly rate of levy applicable to the foreign worker at the date when he was found to be working without a valid work permit, and a certificate issued by the Controller and tendered in court shall be prima facie evidence of such rate;

(b) a conviction of an employer for an offence under section 8(1) of the repealed Regulation of Employment Act (Cap. 272) shall not be considered a previous conviction.

(6) When any offence under subsection (1) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body

corporate or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) Any person who contravenes subsection (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 one year or to both.

(8) For the purpose of this section, all convictions for the contravention of subsection (1) entered against an employer at one and the same trial shall be deemed to be one conviction.

Presumption of employment

6. A person found working in any premises or found in possession of any tool or implement or engaged in any activity which may give rise to the inference that he is doing any work shall be presumed, until the contrary is proved, to have been employed by the occupier of the premises.

Application for work permit

7.—(1) Any person who wishes to employ a foreign worker shall apply to the Controller for a work permit for the foreign worker.

(2) Upon receiving an application under subsection (1), the Controller shall consider the application and may issue a work permit in the name of the foreign worker with or without conditions or refuse to issue a work permit.

(3) The Controller may at any time —

(a) vary or revoke any of the existing conditions of a work permit or impose new conditions; or

(b) vary, suspend or cancel a work permit.

(4) Any person who is aggrieved by a decision of the Controller under subsection (2) or (3) may appeal to the Minister whose decision shall be final and shall not be called in question in any court.

Register

8.—(1) An employer shall keep a register of foreign workers to whom work permits have been issued under section 7.

(2) The register shall be in such form and shall contain such particulars as the Controller may determine.

(3) The register shall at all reasonable times be open to inspection by an employment inspector.

Termination of employment of foreign workers

9.—(1) Where the Controller has decided to suspend or cancel the work permit of a foreign worker pursuant to section 7(3), he shall notify the employer of the foreign worker of his decision and the employer of the foreign worker shall, within 7 days of receiving the notification, terminate the service of the foreign worker.

(2) Every employer who terminates the services of a foreign worker under subsection (1) shall return the work permit to the Controller within 7 days of such termination.

(3) An employer who fails to comply with subsection (1) or (2) shall be guilty of an offence.

(4) The termination of the services of a foreign worker under subsection (1) shall not be —

- (a) capable of negotiation with a trade union representing the foreign worker;
- (b) a matter in respect of which any form of industrial action may be taken by any such trade union;
- (c) the subject-matter of a trade dispute or of conciliation proceedings or any method of redress whether or not under any written law; and
- (d) any industrial matter within the meaning of the Industrial Relations Act (Cap. 136).

Self-employed persons carrying on certain occupations to apply for work permits

10.—(1) The Minister may, from time to time by notification in the *Gazette*, prohibit any person, not being a citizen of Singapore and not being employed under a contract of service, from engaging in any trade, calling, occupation or other activity for the purposes of gain that is specified in the notification unless he has obtained a work permit for that purpose.

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

- (a) be liable on conviction to a fine of an amount of not less than 24 months' levy and not more than 48 months' levy or to imprisonment for a term not exceeding one year or to both; and
- (b) on a second or subsequent conviction, be punished with imprisonment for a term of not less than one month and not more than one year and shall also be liable to a fine of an amount of not less than 24 months' levy and not more than 48 months' levy.

(3) For the purpose of subsection (2), “levy” means the monthly rate of levy applicable to the person engaged in the trade, calling, occupation or other activity in contravention of subsection (1) at the date when he was found to be so engaged, and a certificate issued by the Controller and tendered in court shall be prima facie evidence of such rate.

Levy in respect of employment of certain classes of foreign workers or other persons

11.—(1) The Minister may, by order published in the *Gazette*, provide for the imposition of a levy of such amount as may be specified in the order on employers in respect of any foreign worker or class of foreign workers or on persons who have, pursuant to section 10(1), obtained a work permit to engage in any trade, calling, occupation or other activity for the purposes of gain.

(2) The levy shall continue to be payable unless the work permit has been suspended or cancelled.

(3) Any order made under subsection (1) may provide for the recovery of the levy in such manner and through such channels as may be specified in the order.

(4) Where the amount of the levy payable by any employer or person in respect of any month is not paid within such period as may be specified in the order, the employer or person shall be liable to pay a penalty on the amount for every day the amount remains unpaid commencing from the first day of the month succeeding the month in respect of which the amount is payable and the penalty shall be calculated at the rate of 2% per month or the sum of \$5 whichever is the greater, but, subject to that, the total penalty shall not exceed 30% of the amount of levy outstanding.

(5) The Controller may, in any case in which he thinks fit, remit in whole or in part any penalty due under subsection (4).

(6) Any levy and penalty due from and payable by any employer or person shall be recoverable by the Controller, or any person duly authorised by the Controller to act on his behalf, as a debt due to the Government.

(7) For the purposes of reimbursing any person authorised by the Controller to act on his behalf for the expenses incurred by him in the collection and recovery of the levy, the Minister may authorise the person to be paid such amount as the Minister may determine.

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

Extent of validity of work permit

12.—(1) A work permit shall be valid only in respect of the trade or occupation and the employer and foreign worker specified therein.

(2) A work permit shall be valid for the period specified in the work permit unless it is suspended or cancelled by the Controller.

Custody of work permit, etc

13.—(1) A work permit shall not be transferable.

(2) A foreign worker who is in possession of his work permit shall hand over the work permit to his employer on the last day of his employment with that employer and such employer shall return the work permit to the Controller within 7 days of the date thereof.

(3) Upon demand by an employment inspector, the work permit of a foreign worker shall be produced for inspection.

Loss of work permit

14.—(1) When a work permit has been lost, destroyed or defaced, the foreign worker or the employer or the self-employed person, as the case may be, shall report to the Controller within 14 days of such loss, destruction or defacement, and the Controller shall issue a duplicate work permit on payment of the prescribed fee.

(2) Where the foreign worker or the employer or the self-employed person, as the case may be, recovers possession of the work permit after notifying the loss of the work permit, the foreign worker or the employer or the self-employed person, as the case may be —

(a) may retain the work permit if no duplicate work permit has been issued by the Controller under subsection (1); or

(b) shall forthwith return the work permit so recovered for cancellation if a duplicate work permit has been issued by the Controller under subsection (1).

(3) A person who finds or comes into possession of a work permit other than his own shall forthwith deliver it to the Controller.

Onus of proof

15. The onus of proving the truth of the contents of a written application for a work permit under sections 7 and 10 shall be on the person who makes the application.

Powers of employment inspector

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

- (a) to enter and search, by day or by night, any premises or every part thereof when he has reasonable cause to believe that any person is employed therein;
- (b) to require any person who the employment inspector has reason to believe has any document, including documents of identity and travel documents, or information relevant to the carrying out of the provisions of this Act, to produce any such document or give such information;
- (c) to retain any document relevant to the carrying out of the provisions of this Act;
- (d) to examine orally any person supposed to be acquainted with the facts and circumstances of the employment of any person, and to reduce into writing the answer given or statement made by that person; and such person shall be bound to state truly the facts and circumstances with which he is acquainted concerning the employment; and the statement made by that person shall be read over to him and shall, after correction, be signed by him;
- (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 of the employment of any person, and that person shall so attend as required and if such person 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 such order;
- (f) to take such photographs as he thinks necessary of the premises and persons within; and
- (g) to take in custody any article which is required for the purpose of an investigation under this Act.

(2) When an employment inspector has reasonable cause to believe that any foreign worker is employed in any premises, the occupier of the premises and his agents and any contractor, employee or person found in the premises shall furnish the means required by the employment inspector as necessary for an entry, search, examination

and investigation, and the taking of photographs or the taking of articles into custody or otherwise for the exercise of his powers under this Act.

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

(4) If any person intentionally offers any resistance to or wilfully delays an employment inspector in the exercise of any power under this section, or fails to comply with the requisition of an employment inspector in pursuance of this section or to produce any document which he is required by or in pursuance of this section to produce, or wilfully withholds any information as to who is the occupier of the premises or who is his employer, or conceals or prevents or attempts to conceal or prevent a person from appearing before or being examined by an employment inspector, that person shall be deemed to obstruct an employment inspector in the execution of his duties under this Act.

(5) Every employment inspector shall have authority to appear in court and conduct any prosecution in respect of any offence under this Act or any regulations made thereunder.

Power to arrest without warrant

17.—(1) Any police officer or employment inspector may arrest without warrant any person who he reasonably believes is employed in Singapore whilst not in possession of a valid work permit.

(2) Where any person is arrested by an employment inspector under this section, the employment inspector shall comply with sections 35 and 36 of the Criminal Procedure Code (Cap. 68) as if he were a police officer.

Penalties

18.—(1) Any person who —

- (a) fails to comply with any of the conditions of the work permit;
- (b) fails to comply with section 13(3);

- (c) wilfully obstructs an employment inspector in the exercise of his powers under section 16; or
- (d) makes any statement or furnishes any information to the Controller or an employment inspector pursuant to this Act which 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 \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(2) Any person who is guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$5,000.

Abetments

19.—(1) 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.

(2) Where an occupier is charged for abetting his contractor who has employed a foreign worker in contravention of section 5(1), it shall not be sufficient for him to prove in his defence that he had instructed the contractor not to, or obtained from the contractor an undertaking that he would not, so employ a foreign worker.

Jurisdiction of Magistrate's Court and District Court

20. Notwithstanding the provisions of any written law to the contrary, a Magistrate's Court or a District Court shall have jurisdiction to try any offence under this Act or any regulations made thereunder and to award the full punishment for any such offence.

Complaint by employment inspector

21. For the purpose of section 133 of the Criminal Procedure Code (Cap. 68) and notwithstanding subsections (1) and (2) thereof, a Magistrate may take cognizance of an offence under this Act upon receiving a complaint in writing and signed by an employment inspector.

Power of person primarily liable to exempt himself from liability

22.—(1) Where a person is charged with an offence under this Act, he shall be entitled, upon a charge duly made by him and on giving to the prosecution not less than 3 days' notice in writing of his intention, to have any other person whom he charges as the actual offender (whether or not that person is his agent or employee) brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the first-mentioned person proves to the satisfaction of the court —

- (a) that he has used all due diligence to enforce the execution of this Act and any relevant regulations or orders made thereunder; and
- (b) that the second-mentioned person had committed the offence in question without his consent, connivance or wilful default,

the first-mentioned person shall not be guilty of the offence and the second-mentioned person shall be convicted of the offence and shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(2) The prosecution shall have the right in any such case to cross-examine the first-mentioned person if he gives evidence and any witnesses called by him in support of his charge, and to call rebutting evidence.

(3) Where the second-mentioned person brought before the court under subsection (1) by the first-mentioned person is found by the court to have committed the offence with the consent, connivance or wilful default of the first-mentioned person, the court may, after convicting the second-mentioned person, convict the first-mentioned person on a substituted charge of abetment of the offence.

(4) When it is made to appear to the satisfaction of an employment inspector at the time of discovering an offence —

- (a) that the person who would be proceeded against apart from this subsection has used all due diligence to enforce the execution of this Act and any relevant regulations or orders made thereunder;

- (b) by which person the offence has been committed; and
- (c) that it has been committed without the consent, connivance or wilful default of the first-mentioned person and in contravention of his orders,

the employment inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the first-mentioned person.

Compounding of offences

23. The Controller may compound any offence under this Act or any regulations made thereunder by accepting from the person reasonably suspected of committing the offence a sum not exceeding \$1,000.

Effect of contravention of section 9 (1)

24. Where in respect of the employment of any person there has been any contravention of section 9(1), that person shall not, by reason only of such contravention, be deemed to be employed under an illegal contract of employment.

Regulations

25.—(1) The Minister may make regulations generally for carrying out the provisions of this Act.

(2) Such regulations may —

- (a) prescribe that any act or omission in contravention of the provisions of any regulation shall be an offence;
- (b) prescribe such fees or charges as may be necessary for the purposes of this Act.

(3) All such regulations shall be presented to Parliament as soon as possible after publication in the *Gazette*.

Forms

26. For the purposes of this Act, the Controller may devise and use such forms as he may consider necessary.

Repeal and transitional provisions

27.—(1) The Regulation of Employment Act (Cap. 272) is repealed.

(2) Any permit, appointment, application, appeal, decision, ruling, order, discretion or notice issued, made or given under the repealed Regulation of Employment Act shall be treated as a permit, appointment, application, appeal, decision, ruling, order, direction or notice issued, made or given under this Act and shall have the same force and effect as a permit, appointment, application, appeal, decision, ruling, order, direction or notice issued, made or given under this Act.

(3) Any form used for the purposes of the repealed Regulation of Employment Act which was in force or effect immediately before the commencement of this Act shall continue in force and have effect as though prescribed under this Act until new forms are so prescribed.
