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No. S 563

EMPLOYMENT OF FOREIGN MANPOWER ACT (CHAPTER 91A)

EMPLOYMENT OF FOREIGN MANPOWER (WORK PASSES) (AMENDMENT NO. 2) REGULATIONS 2013

In exercise of the powers conferred by section 29 of the Employment of Foreign Manpower Act, Mr Tan Chuan-Jin, Senior Minister of State, charged with the responsibility of the Minister for Manpower, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Employment of Foreign Manpower (Work Passes) (Amendment No. 2) Regulations 2013 and shall come into operation on 3rd September 2013.

Amendment of regulation 4

2. Regulation 4(5) of the Employment of Foreign Manpower (Work Passes) Regulations 2012 (G.N. No. S 569/2012) (referred to in these Regulations as the principal Regulations) is amended by deleting the words “, being conditions” and substituting the words “and the regulatory conditions set out in Part VII of the Fourth Schedule, being conditions and regulatory conditions”.

Amendment of regulation 5

3. Regulation 5(3) of the principal Regulations is amended by deleting the words “, being conditions” in sub-paragraph (b) and substituting the words “and the regulatory conditions set out in Part IV of the Fifth Schedule, being conditions and regulatory conditions”.

New regulation 20A

4. The principal Regulations are amended by inserting, immediately after regulation 20, the following regulation:

“Matters that can be considered by Controller in determining debarment

20A. In determining whether a person should be debarred under section 7(4)(d) of the Act from applying for or being issued with a work pass, the Controller may have regard (but is not limited) to —

- (a) whether the person has contravened any provision in the Act, the Employment Act (Cap. 91), the Employment Agencies Act (Cap. 92), the Work Injury Compensation Act (Cap. 354) or the Workplace Safety and Health Act (Cap. 354A) which in the opinion of the Controller affects the suitability of the person as an employer; and
- (b) whether the person has made reasonable efforts to provide fair employment opportunities to citizens of Singapore, including efforts to attract and consider such citizens for employment or to train them and develop their careers and potential in the workforce.”.

Amendment of First Schedule

- 5.** The First Schedule to the principal Regulations is amended —
- (a) by deleting the word “regulation,” in paragraph 2 of Part I and paragraph 4 of Part III; and
 - (b) by deleting the words “the Government” in paragraph 2 of Part I and paragraph 4 of Part III and substituting in each case the words “any competent authority”.

Amendment of Fourth Schedule

- 6.** The Fourth Schedule to the principal Regulations is amended —
- (a) by deleting the word “regulation,” in paragraph 4 of Part I and paragraph 2 of Part III;
 - (b) by deleting the words “the Government” in paragraph 4 of Part I and paragraph 2 of Part III and substituting in each case the words “any competent authority”;

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- (c) by deleting the words “the salary (including allowances)” in paragraph 6 of Part I and paragraph 3 of Part III and substituting in each case the words “not less than the fixed monthly salary”;
- (d) by deleting paragraph 7 of Part I and substituting the following paragraph:

“7. Except where the foreign employee is on no-pay leave outside Singapore, the employer shall, regardless of whether there is actual work for the foreign employee but subject to any other written law, pay the foreign employee not less than —

- (a) the amount declared as the fixed monthly salary in the work pass application submitted to the Controller in relation to the foreign employee; or
- (b) if the amount of fixed monthly salary is at any time subsequently revised in accordance with paragraph 5A of Part II, the last revised amount.

Such payment must be made not later than 7 days after the end of each salary period, which shall be agreed between the employer and the employee and which in no case shall exceed one month.”;

- (e) by inserting, immediately after paragraph 7 of Part I, the following paragraphs:

“7A. In paragraphs 6, 7 and 7B, “fixed monthly salary” means the sum of basic monthly salary and fixed monthly allowances.

7B. In paragraph 7, “revised amount” means the fixed monthly salary that is revised in accordance with paragraph 5A of Part II.

7C. “Basic monthly salary” means all remuneration payable monthly to a foreign employee that does not vary from month to month on any basis in respect of work done under his contract of service. However, basic monthly salary does not include —

- (a) any allowances however described;
- (b) any form of overtime payment, bonus, commission or annual wage supplements;
- (c) any in-kind payments;
- (d) any form of reimbursements, including for expenses incurred by the foreign employee in the course of his employment;

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- (e) any productivity incentive payments;
 - (f) any contributions payable by the employer to any pension or provident fund, including any contributions made on the foreign employee's behalf; or
 - (g) any gratuity payable on the discharge, retrenchment or retirement of the foreign employee.

7D. "Fixed monthly allowances" means all allowances payable monthly to a foreign employee that do not vary from month to month on any basis. However, fixed monthly allowances shall not include any payments listed in paragraph 7C(b) to (g).";

- (f) by inserting, immediately after paragraph 20 of Part I, the following paragraphs:

"20A. The employer shall be responsible for and bear the costs of the upkeep and maintenance of the foreign employee in Singapore. This includes the provision of adequate food as well as medical treatment.

20B. The employer shall ensure that the foreign employee has acceptable accommodation in Singapore. Such accommodation must be in accordance with the requirements in any written law, directive, guideline, circular or other similar instrument issued by any competent authority.";

- (g) by inserting, immediately after paragraph 5 of Part II, the following paragraphs:

"5A.—(1) The employer shall not —

- (a) reduce the foreign employee's basic monthly salary or fixed monthly allowances to an amount less than that declared as such in the work pass application submitted to the Controller in relation to the foreign employee; or
- (b) increase the amount of fixed monthly deductions to more than that declared as such in the work pass application submitted to the Controller in relation to the foreign employee,

except with the foreign employee's prior written agreement.

(2) Before implementing such reduction or increase, as the case may be, the employer shall inform the Controller in writing of the proposed reduction or increase, as the case may be.

5B. In paragraph 5A —

“basic monthly salary” means all remuneration payable monthly to a foreign employee that does not vary from month to month on any basis in respect of work done under his contract of service. However, basic monthly salary does not include —

- (a) any allowances however described;
- (b) any form of overtime payment, bonus, commission or annual wage supplements;
- (c) any in-kind payments;
- (d) any form of reimbursements, including for expenses incurred by the foreign employee in the course of his employment;
- (e) any productivity incentive payments;
- (f) any contributions payable by the employer to any pension or provident fund, including any contributions made on the foreign employee’s behalf; or
- (g) any gratuity payable on the discharge, retrenchment or retirement of the foreign employee;

“fixed monthly allowances” means all allowances payable monthly to a foreign employee that do not vary from month to month on any basis. However, fixed monthly allowances shall not include any payments listed in paragraphs (b) to (g) of the definition of “basic monthly salary”.”;

(h) by deleting paragraph 1 of Part III and substituting the following paragraphs:

“1. The employer shall be responsible for and bear the costs of the foreign employee’s upkeep (excluding the provision of food) and maintenance in Singapore. This includes the provision of medical treatment, except that and subject to paragraphs 1A and 1B, the foreign employee may be made to bear part of any medical costs in excess of the minimum mandatory coverage if —

- (a) the part of the medical costs to be paid by the foreign employee forms not more than 10% of the employee’s fixed monthly salary per month;
- (b) the period for which the foreign employee has to pay part of any medical costs must not exceed an aggregate of

6 months of his period of employment with the same employer; and

- (c) the foreign employee's agreement to pay part of any medical costs is stated explicitly in the foreign employee's employment contract or collective agreement.

1A. In the case where a foreign employee has, prior to 3rd September 2013, been made to bear part of any medical costs in excess of the minimum mandatory coverage in accordance with paragraph 1(a) and (c) for an aggregate period of less than 6 months (referred to as the first period) during his employment with an employer, the foreign employee may continue to be made to bear part of such medical costs in accordance with paragraph 1(a) and (c) on or after 3rd September 2013 for an aggregate period not exceeding the difference between 6 months and the first period if the foreign employee continues in the employment of the same employer.

1B. In the case where a foreign employee has, prior to 3rd September 2013, been made to bear part of any medical costs in excess of the minimum mandatory coverage in accordance with paragraph 1(a) and (c) for an aggregate period of 6 months or more during his employment with an employer, the foreign employee shall not be made to bear any more medical costs with effect from 3rd September 2013 while he remains in the employment of the same employer.”;

- (i) by deleting paragraph 4 of Part III and substituting the following paragraphs:

“4. Except where the foreign employee is on no-pay leave outside Singapore, the employer shall, regardless of whether there is actual work for the foreign employee but subject to any other written law, pay the foreign employee not less than —

- (a) the amount declared as the fixed monthly salary in the work pass application submitted to the Controller in relation to the foreign employee; or
- (b) if the amount of fixed monthly salary is at any time subsequently revised in accordance with paragraph 6A of Part IV, the last revised amount.

Such payment must be made not later than 7 days after the end of each salary period, which shall be agreed between the employer and the employee and which in no case shall exceed one month.

4A. In paragraphs 1, 3, 4 and 4B, “fixed monthly salary” means the sum of basic monthly salary and fixed monthly allowances.

4B. In paragraph 4, “revised amount” means the fixed monthly salary that is revised in accordance with paragraph 6A of Part IV.

4C. “Basic monthly salary” means all remuneration payable monthly to a foreign employee that does not vary from month to month on any basis in respect of work done under his contract of service. However, basic monthly salary does not include —

- (a) any allowances however described;
- (b) any form of overtime payment, bonus, commission or annual wage supplements;
- (c) any in-kind payments;
- (d) any form of reimbursements, including for expenses incurred by the foreign employee in the course of his employment;
- (e) any productivity incentive payments;
- (f) any contributions payable by the employer to any pension or provident fund, including any contributions made on the foreign employee’s behalf; or
- (g) any gratuity payable on the discharge, retrenchment or retirement of the foreign employee.

4D. “Fixed monthly allowances” means all allowances payable monthly to a foreign employee that do not vary from month to month on any basis. However, fixed monthly allowances shall not include any payments listed in paragraph 4C(b) to (g).”;

(j) by inserting, immediately after paragraph 11 of Part III, the following paragraphs:

“11A. The employer shall be responsible for and bear the costs of the upkeep (including the provision of food and medical treatment) and maintenance of the foreign employee in Singapore.

11B. The employer shall ensure that the foreign employee has acceptable accommodation in Singapore. Such accommodation must be in accordance with the requirements in any written law, directive, guideline, circular or other similar instrument issued by any competent authority.”;

(k) by deleting the words “The responsibility” in paragraph 16 of Part III and substituting the words “The employer shall ensure

that the foreign employee has acceptable accommodation in Singapore. Such accommodation must be in accordance with the requirements in any written law, directive, guideline, circular or other similar instrument issued by any competent authority. These responsibilities”;

(l) by inserting, immediately after paragraph 6 of Part IV, the following paragraphs:

“6A.—(1) The employer shall not —

- (a) reduce the foreign employee’s basic monthly salary or fixed monthly allowances to an amount less than that declared as such in the work pass application submitted to the Controller in relation to the foreign employee; or
- (b) increase the amount of fixed monthly deductions to more than that declared as such in the work pass application submitted to the Controller in relation to the foreign employee,

except with the foreign employee’s prior written agreement.

(2) Before implementing such reduction or increase, as the case may be, the employer shall inform the Controller in writing of the proposed reduction or increase, as the case may be.

6B. In paragraph 6A —

“basic monthly salary” means all remuneration payable monthly to a foreign employee that does not vary from month to month on any basis in respect of work done under his contract of service. However, basic monthly salary does not include —

- (a) any allowances however described;
- (b) any form of overtime payment, bonus, commission or annual wage supplements;
- (c) any in-kind payments;
- (d) any form of reimbursements, including for expenses incurred by the foreign employee in the course of his employment;
- (e) any productivity incentive payments;
- (f) any contributions payable by the employer to any pension or provident fund, including any

contributions made on the foreign employee's behalf;
or

- (g) any gratuity payable on the discharge, retrenchment or retirement of the foreign employee;

“fixed monthly allowances” means all allowances payable monthly to a foreign employee that do not vary from month to month on any basis. However, fixed monthly allowances shall not include any payments listed in paragraphs (b) to (g) of the definition of “basic monthly salary.”; and

(m) by inserting, immediately after Part VI, the following Part:

“PART VII

REGULATORY CONDITIONS TO BE COMPLIED WITH
BY FOREIGN EMPLOYEE ISSUED WITH WORK PERMIT

1. The foreign employee shall not do any of the following without the prior written approval of the Controller:

- (a) apply for registration under the Business Registration Act (Cap. 32) to carry on any business in Singapore;
- (b) carry on or manage any business in Singapore;
- (c) be or purport to be a director, manager or secretary of any company that is incorporated under the Companies Act (Cap. 50);
- (d) be or purport to be a partner of any partnership that is formed in Singapore;
- (e) be or purport to be a partner or manager of any limited liability partnership that is registered under the Limited Liability Partnerships Act (Cap. 163A);
- (f) be or purport to be a general partner or limited partner of any limited partnership that is formed in accordance with the Limited Partnerships Act (Cap. 163B).”.

Amendment of Fifth Schedule

7. The Fifth Schedule to the principal Regulations is amended —

- (a) by deleting paragraphs 1 and 2 of Part I and substituting the following paragraphs:

“1. The employer shall pay not less than the fixed monthly salary due to the foreign employee for the month. The payment shall be

made not later than 7 days after the end of the salary period. Any salary period agreed between the employer and the foreign employee shall not exceed one month.

2. The employer shall be responsible for and bear the costs of the foreign employee's medical treatment, except that and subject to paragraphs 2A and 2B, the foreign employee may be made to bear part of any medical costs in excess of the minimum mandatory coverage if —

- (a) the part of the medical costs to be paid by the foreign employee forms not more than 10% of the employee's fixed monthly salary per month;
- (b) the period for which the foreign employee has to pay part of any medical costs must not exceed an aggregate of 6 months of his period of employment with the same employer; and
- (c) the foreign employee's agreement to pay part of any medical costs is stated explicitly in the foreign employee's employment contract or collective agreement.

2A. In the case where a foreign employee has, prior to 3rd September 2013, been made to bear part of any medical costs in excess of the minimum mandatory coverage in accordance with paragraph 2(a) and (c) for an aggregate period of less than 6 months (referred to as the first period) during his employment with an employer, the foreign employee may continue to be made to bear part of such medical costs in accordance with paragraph 2(a) and (c) on or after 3rd September 2013 for an aggregate period not exceeding the difference between 6 months and the first period if the foreign employee continues in the employment of the same employer.

2B. In the case where a foreign employee has, prior to 3rd September 2013, been made to bear part of any medical costs in excess of the minimum mandatory coverage in accordance with paragraph 2(a) and (c) for an aggregate period of 6 months or more during his employment with an employer, the foreign employee shall not be made to bear any more medical costs with effect from 3rd September 2013 while he remains in the employment of the same employer.

2C. In paragraphs 1 and 2, "fixed monthly salary" means the sum of basic monthly salary and fixed monthly allowances.

2D. “Basic monthly salary” means all remuneration payable monthly to a foreign employee that does not vary from month to month on any basis in respect of work done under his contract of service. However, basic monthly salary does not include —

- (a) any allowances however described;
- (b) any form of overtime payment, bonus, commission or annual wage supplements;
- (c) any in-kind payments;
- (d) any form of reimbursements, including for expenses incurred by the foreign employee in the course of his employment;
- (e) any productivity incentive payments;
- (f) any contributions payable by the employer to any pension or provident fund, including any contributions made on the foreign employee’s behalf; or
- (g) any gratuity payable on the discharge, retrenchment or retirement of the foreign employee.

2E. “Fixed monthly allowances” means all allowances payable monthly to a foreign employee that do not vary from month to month on any basis. However, fixed monthly allowances shall not include any payments listed in paragraph 2D(b) to (g).”;

(b) by deleting paragraph 13 of Part II and substituting the following paragraphs:

“13. If upon reassessment, the Controller is of the opinion that the foreign employee referred to in paragraph 12 will not be eligible for the S pass the foreign employee is currently holding with the reduced fixed monthly salary proposed by the employer to the Controller, the employer shall not implement such reduced fixed monthly salary unless the employer applies for and is issued with a valid work pass for that foreign employee that the Controller determines to be appropriate for the reduced fixed monthly salary so proposed.

13A. If upon reassessment, the Controller is of the opinion that the foreign employee referred to in paragraph 12 will continue to be eligible for the S pass the foreign employee is currently holding with the reduced fixed monthly salary proposed by the employer to the Controller, the employer may reduce the fixed monthly salary to not less than the reduced fixed monthly salary so proposed.”;

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- (c) by deleting the words “In paragraphs 12 and 13” in paragraph 14 of Part II and substituting the words “In paragraphs 12, 13 and 13A”;
- (d) by deleting paragraph 15 of Part II and substituting the following paragraph:
- “15. “Basic monthly salary” means all remuneration payable monthly to a foreign employee that does not vary from month to month on any basis in respect of work done under his contract of service. However, basic monthly salary does not include —
- (a) any allowances however described;
 - (b) any form of overtime payment, bonus, commission or annual wage supplements;
 - (c) any in-kind payments;
 - (d) any form of reimbursements, including for expenses incurred by the foreign employee in the course of his employment;
 - (e) any productivity incentive payments;
 - (f) any contributions payable by the employer to any pension or provident fund, including any contributions made on the foreign employee’s behalf; or
 - (g) any gratuity payable on the discharge, retrenchment or retirement of the foreign employee.”;
- (e) by deleting the words “an employee” in paragraph 16 of Part II and substituting the words “a foreign employee”; and
- (f) by inserting, immediately after Part III, the following Part:

“PART IV

REGULATORY CONDITIONS TO BE COMPLIED WITH
BY FOREIGN EMPLOYEE ISSUED WITH S PASS

1. The foreign employee shall not do any of the following without the prior written approval of the Controller:
 - (a) apply for registration under the Business Registration Act to carry on any business in Singapore;
 - (b) carry on or manage any business in Singapore;
 - (c) be or purport to be a director, manager or secretary of any company that is incorporated under the Companies Act;

- (d) be or purport to be a partner of any partnership that is formed in Singapore;
- (e) be or purport to be a partner or manager of any limited liability partnership that is registered under the Limited Liability Partnerships Act;
- (f) be or purport to be a general partner or limited partner of any limited partnership that is formed in accordance with the Limited Partnerships Act.”.

Amendment of Sixth Schedule

8. The Sixth Schedule to the principal Regulations is amended —

(a) by deleting paragraph 2 of Part I and substituting the following paragraphs:

“2. The employer shall pay not less than the fixed monthly salary due to the foreign employee for the month. The payment shall be made not later than 7 days after the end of the salary period. Any salary period agreed between the employer and the foreign employee shall not exceed one month.

3. In paragraph 2, “fixed monthly salary” means the sum of basic monthly salary and fixed monthly allowances.

4. “Basic monthly salary” means all remuneration payable monthly to a foreign employee that does not vary from month to month on any basis in respect of work done under his contract of service. However, basic monthly salary does not include —

- (a) any allowances however described;
- (b) any form of overtime payment, bonus, commission or annual wage supplement;
- (c) any in-kind payments;
- (d) any form of reimbursements, including for expenses incurred by the foreign employee in the course of his employment;
- (e) any productivity incentive payments;
- (f) any contributions payable by the employer to any pension or provident fund, including any contributions made on the foreign employee’s behalf; or
- (g) any gratuity payable on the discharge, retrenchment or retirement of the foreign employee.

5. “Fixed monthly allowances” means all allowances payable monthly to a foreign employee that do not vary from month to month on any basis. However, fixed monthly allowances shall not include any payments listed in paragraph 4(b) to (g).”;

- (b) by deleting paragraph 3 of Part II and substituting the following paragraphs:

“3. If upon reassessment, the Controller is of the opinion that the foreign employee referred to in paragraph 2 will not be eligible for the employment pass the foreign employee is currently holding with the reduced fixed monthly salary proposed by the employer to the Controller, the employer shall not implement such reduced fixed monthly salary unless the employer applies for and is issued with a valid work pass for that foreign employee that the Controller determines to be appropriate for the reduced fixed monthly salary so proposed.

3A. If upon reassessment, the Controller is of the opinion that the foreign employee referred to in paragraph 2 will continue to be eligible for the employment pass the foreign employee is currently holding with the reduced fixed monthly salary proposed by the employer to the Controller, the employer may reduce the fixed monthly salary to not less than the reduced fixed monthly salary so proposed.”;

- (c) by deleting the words “In paragraphs 2 and 3” in paragraph 4 of Part II and substituting the words “In paragraphs 2, 3 and 3A”;

- (d) by deleting paragraph 5 of Part II and substituting the following paragraph:

“5. “Basic monthly salary” means all remuneration payable monthly to a foreign employee that does not vary from month to month on any basis in respect of work done under his contract of service. However, basic monthly salary does not include —

- (a) any allowances however described;
- (b) any form of overtime payment, bonus, commission or annual wage supplements;
- (c) any in-kind payments;
- (d) any form of reimbursements, including for expenses incurred by the foreign employee in the course of his employment;

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- (e) any productivity incentive payments;
 - (f) any contributions payable by the employer to any pension or provident fund, including any contributions made on the foreign employee's behalf; or
 - (g) any gratuity payable on the discharge, retrenchment or retirement of the foreign employee.”; and
- (e) by deleting the words “an employee” in paragraph 6 of Part II and substituting the words “a foreign employee”.

[G.N. No. S 177/2013]

Made this 2nd day of September 2013.

LOH KHUM YEAN
*Permanent Secretary,
Ministry of Manpower,
Singapore.*

[HQ/Legis/EFMA/EFMR; AG/LLRD/SL/91A/2010/1 Vol. 5]

(To be presented to Parliament under section 29(3) of the Employment of Foreign Manpower Act).