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EMPLOYMENT OF FOREIGN MANPOWER ACT
(CHAPTER 91A)

EMPLOYMENT OF FOREIGN MANPOWER
(INFRINGEMENT AND APPEAL BOARD PROCEEDINGS)
REGULATIONS 2013

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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:

PART I
PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Employment of Foreign Manpower (Infringement and Appeal Board Proceedings) Regulations 2013 and shall come into operation on 6th December 2013.

Definitions**2. In these Regulations —**

“Appellant” means the person who is appealing against a determination or direction of the Commissioner;

“Chairman” means the chairman of the Appeal Board appointed under section 25H(1) of the Act;

“Commissioner” —

(a) means the Commissioner for Foreign Manpower referred to in regulation 3(a); and

(b) includes a Deputy Commissioner for Foreign Manpower and an Assistant Commissioner for Foreign Manpower referred to in regulation 3(b) and (c), respectively;

“inquiry” means an inquiry by the Commissioner into an alleged prescribed infringement under section 25C of the Act;

“Respondent” means a person who is alleged to have committed a prescribed infringement under the Act;

“secretary to the Appeal Board” means the secretary to the Appeal Board appointed under regulation 4.

PART II**COMMISSIONER FOR FOREIGN MANPOWER
AND OTHER OFFICERS****Commissioner, Deputy and Assistant Commissioners**

3. The authorised officers to whom the Controller of Work Passes has delegated the functions and powers conferred on the Controller under Part V of the Act are —

(a) the Commissioner for Foreign Manpower;

(b) any Deputy Commissioner for Foreign Manpower; and

(c) any Assistant Commissioner for Foreign Manpower.

Secretary to Appeal Board

4. The Minister may appoint an authorised officer as secretary to the Appeal Board to provide administrative support to the Appeal Board.

PART III**PROCEDURES FOR DETERMINATION OF PRESCRIBED
INFRINGEMENTS****Pre-inquiry conferences**

5.—(1) For the purpose of any inquiry into an alleged prescribed infringement, the Commissioner may hold a pre-inquiry conference to settle any administrative matter in relation to the inquiry where the Commissioner considers it appropriate to do so.

(2) The Commissioner may —

- (a) fix the pre-inquiry conference at such date, time and place as the Commissioner may determine; and
- (b) cause a notice of the pre-inquiry conference to be served on the Respondent and in the notice call upon the Respondent to produce all evidence and witnesses which the Respondent wishes to tender at the pre-inquiry conference.

(3) At a pre-inquiry conference, the Commissioner may do all or any of the following:

- (a) direct the Respondent to provide any evidence at the inquiry in such form and manner as the Commissioner may require;
- (b) give all such orders as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the inquiry.

Representative of Respondent

6. Any appearance, application or act required to be made or done by the Respondent before or to the Commissioner may be made or done by the Respondent himself or by any of the following persons on behalf of the Respondent:

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- (a) where the Respondent is a body corporate, by an authorised employee or officer of the body corporate in his permanent and exclusive employment;
 - (b) where the Respondent is a society or an unincorporated association, by an authorised employee or officer of the society or unincorporated association, as the case may be.

Discovery

7.—(1) Pursuant to section 25C(2)(c) of the Act, the Commissioner may at any time order the Respondent to give discovery of the documents or articles which are or have been in the Respondent's possession, custody or power.

(2) Where an order for discovery is made, the Respondent remains under a duty to give discovery of all documents or articles falling within the scope of the order until the proceedings for the prescribed infringement are concluded.

(3) If the Respondent fails to comply with an order for discovery under paragraph (1), the Commissioner may do all or any of the following:

- (a) adjourn the inquiry to a later date;
- (b) draw such adverse inferences against the Respondent as may be appropriate;
- (c) make such determination or order as the Commissioner thinks appropriate.

Fixing of inquiry

8.—(1) If an inquiry is to be conducted by the Commissioner into an alleged prescribed infringement, it shall be held on such date, time and place as the Commissioner may determine.

(2) The Commissioner shall cause a notice of the inquiry to be served on the Respondent and in the notice call upon the Respondent to produce all evidence and witnesses which the Respondent wishes to tender at the inquiry.

(3) Notwithstanding the Commissioner's power to make his determination in the absence of any person who has failed to attend any inquiry when duly summoned by the Commissioner, the Commissioner may adjourn the inquiry to a later date if the Commissioner is satisfied that the person had a reasonable excuse for being absent.

Failure to attend inquiry

9.—(1) If on the day and at the time fixed for an inquiry (including any continuation of an inquiry following an adjournment), any of the Respondent's witnesses fails to appear, the Commissioner may proceed with the inquiry and make a determination in the absence of the witness.

(2) Notwithstanding paragraph (1), or the Commissioner's power under section 25C(5) of the Act to make a determination in the absence of a person summoned to attend at an inquiry, the Commissioner may adjourn the inquiry to a later date if the Commissioner is satisfied that the Respondent's witness or any person summoned by the Commissioner had a reasonable excuse for being absent.

Taking of evidence at inquiry

10.—(1) The Commissioner has the sole power to examine any witness, including the Respondent, at an inquiry.

(2) The Commissioner may, in his discretion, allow the Respondent to cross-examine any witness and —

- (a) allow any line of inquiry from the Respondent;
- (b) disallow any line of inquiry from the Respondent, including but not limited to lines of inquiry that are vexatious, frivolous or abusive; or
- (c) rephrase any line of inquiry from the Respondent.

(3) The Respondent is allowed to adduce evidence of any attempt to rectify a prescribed infringement, which the Commissioner may take into account in arriving at his determination.

(4) The Commissioner may admit as evidence any statement of the Respondent or any witness, in part or in whole, after confirming with the Respondent or witness that the statement was voluntarily made.

(5) A party may not offer further evidence after closing that party's case, except that the Commissioner may, before making a determination under section 25C of the Act, admit further evidence and consider further argument on that evidence if in the Commissioner's opinion —

- (a) the evidence could not have been obtained with reasonable diligence for use in the inquiry earlier;
- (b) the evidence, in all likelihood, would materially affect the outcome of the case; and
- (c) the evidence is such as is presumably to be believed or apparently credible.

Power to recall witnesses

11. The Commissioner may in all cases permit a witness to be recalled for further examination in an inquiry.

Determination

12.—(1) Where the Commissioner has made a determination after the conclusion of an inquiry, the Commissioner shall give the respondent a written notice of the determination.

(2) The Commissioner may rectify a clerical error, or any other error, in a determination (including an error as to the amount of any financial penalty or an error in a direction under section 25B of the Act that is included in the determination) by the next working day after the Respondent has been informed of the determination.

Duplicate applications and concurrent applications and appeals

13.—(1) If the Commissioner has informed an aggrieved person of his decision on a review application, the Commissioner may refuse to consider any further review application in respect of the same matter if the Commissioner considers that the further review application contains no new ground of appeal or raises no new issue.

(2) If, in respect of the same determination or decision of the Commissioner —

- (a) the aggrieved person makes a review application; and
- (b) before the Commissioner has informed the aggrieved person of his decision on the review application, the aggrieved person makes an appeal to the Appeal Board under section 25C(8) of the Act,

the review application is to be treated as having been withdrawn.

(3) If, in respect of the same determination or decision of the Commissioner, an aggrieved person —

- (a) makes an appeal to the Appeal Board under section 25C(8) of the Act; and
- (b) subsequently or at the same time makes a review application,

the Commissioner shall refuse to consider the review application unless the appeal to the Appeal Board is first withdrawn.

(4) In this regulation —

“aggrieved person” means a person aggrieved by a determination or a direction of the Commissioner under Part V of the Act;

“review application” means an application by an aggrieved person to the Commissioner under section 25C(7) of the Act to vary or set aside a determination or direction of the Commissioner under Part V of the Act.

Procedure in connected cases

14. Two or more inquiries may be dealt with, and heard together, by the Commissioner if —

- (a) a common issue or question of fact arises in each inquiry; or
- (b) the inquiries relate to, or arise from, the same event or series of events.

PART IV
APPEAL BOARD

Service address for Appeal Board

15. Any appeal against a determination or direction of the Commissioner, or any other document to be lodged with, sent to or served on, the Appeal Board, shall be addressed to the “Secretary to the Appeal Board” and sent to the following address:

- (a) 18 Havelock Road, #04-01, Singapore 059764; or
- (b) such other address as may be notified, from time to time, on the Ministry of Manpower’s Internet website at <http://www.mom.gov.sg>.

Notice of appeal

16.—(1) A notice of appeal lodged by an Appellant under section 25G(1) of the Act must be accompanied by the fee specified in the Schedule.

(2) A copy of the notice of appeal referred to in paragraph (1) must be served on the Commissioner within the time limited for lodging an appeal under section 25G(1) of the Act.

Commissioner’s record of proceedings

17.—(1) Where an appeal has been lodged against a determination or direction of the Commissioner, the Commissioner who made the determination or gave the direction appealed against shall certify in writing —

- (a) the grounds for the determination or the direction; and
- (b) the transcript of the official record of the inquiry,

(referred to in this Part as the “record of proceedings”).

(2) The Commissioner shall file a copy of the record of proceedings with the secretary to the Appeal Board.

(3) The secretary to the Appeal Board shall —

- (a) inform the Appellant when the copy of the record of proceedings has been filed by the Commissioner; and

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- (b) upon payment of the fee specified in the Schedule, provide a copy of the record of proceedings to the Appellant.

Submissions of appeal

18. Upon receiving a copy of the record of proceedings from the secretary to the Appeal Board under regulation 17(3)(b), an Appellant shall, if he wishes to proceed with the appeal —

- (a) submit his submissions of appeal, containing the full grounds of appeal, together with such other documents as the Appeal Board may require, in the form and within the period specified by the Appeal Board pursuant to section 25G(2) of the Act;
- (b) serve a copy of his submissions of appeal on the Commissioner within the same period that the submissions of appeal are required to be submitted to the Appeal Board; and
- (c) pay the fees in respect of the hearing of the appeal by the Appeal Board specified in the Schedule.

Discontinuance

19.—(1) Subject to paragraph (2), an Appellant's appeal to the Appeal Board shall be treated as discontinued if —

- (a) the Appellant fails to comply with the requirements under regulation 18(a) or (b); or
- (b) the Appellant fails to pay any of the fees which the Appellant is required to pay under regulations 16(1), 17(3)(b) and 18(c).

(2) The Appellant's appeal shall not be treated as discontinued if the Appeal Board is satisfied that the Appellant had a reasonable excuse for the failure to comply or failure to pay.

Withdrawal of appeal

20. The Appellant may, at any time before the Appeal Board determines an appeal against the determination or direction of the Commissioner, withdraw his appeal by serving on the secretary to the Appeal Board a written notice to that effect.

Representative of Appellant

21. Any appearance, application or act required to be made or done by an Appellant before or to the Appeal Board may be made or done by the Appellant himself or by any of the following persons on behalf of the Appellant:

- (a) an advocate or solicitor;
- (b) where the Appellant is a body corporate, by an authorised employee or officer of the body corporate in his permanent and exclusive employment;
- (c) where the Appellant is a society or an unincorporated association, by an authorised employee or officer of the society or unincorporated association, as the case may be.

Quorum

22. The quorum for all meetings of the Appeal Board to carry out its functions under section 25G of the Act in respect of an appeal shall be 3 (including the Chairman).

Consideration of appeal outside meetings

23.—(1) Whether or not the Appeal Board has met during the course of an appeal, the Appeal Board may, if it thinks fit, consider and determine an appeal by circulation of papers amongst the members of the Appeal Board.

(2) A determination of the Appeal Board in writing made by the Chairman and not less than 2 other members of the Appeal Board under paragraph (1) —

- (a) shall be taken to be a determination of the Appeal Board; and
- (b) shall be valid and effectual as if it has been made by the Appeal Board at a meeting.

(3) Papers may be circulated among the members of the Appeal Board for the purposes of this regulation by facsimile or electronic transmission of the information of the papers concerned or by such other method as the Appeal Board may determine.

Waiver of fees

24. The Appeal Board may waive, in whole or in part, any fee payable under regulations 17(3)(b) and 18(c) in any particular case or class of cases.

PART V**OFFENCES****Offences in relation to Commissioner and Appeal Board**

25.—(1) Any person who —

- (a) assaults, wilfully insults or obstructs the Commissioner, a member of the Appeal Board, a witness or an authorised officer during any sitting or while the Commissioner, a member of the Appeal Board, a witness or an authorised officer is on his way to or from such sitting;
- (b) assaults or wilfully insults or obstructs any person in attendance at any sitting;
- (c) wilfully interrupts or otherwise misbehaves at any sitting;
- (d) without lawful excuse, disobeys any order or direction of the Commissioner or the Appeal Board in relation to the conduct of proceedings at a sitting; or
- (e) makes any statement or furnishes any information to the Appeal Board which he knows, or ought reasonably to know, is false in any material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months.

(2) A Commissioner or an Appeal Board may by oral order exclude from a sitting any person whose behaviour in the opinion of the Commissioner or the Appeal Board (as the case may be) constitutes an offence under paragraph (1) whether or not such person is charged with the offence.

- (3) In this regulation, “sitting” means —
- (a) a sitting of the Commissioner in an inquiry to determine whether a person has committed a prescribed infringement under section 25C of the Act; or
 - (b) a sitting of the Appeal Board hearing an appeal by an Appellant under section 25C(8) of the Act.

Recording and transmitting devices

26.—(1) No person shall use any sound or visual recording or transmitting device —

- (a) at any pre-inquiry conference referred to in regulation 5 or any inquiry, without the prior consent of the Commissioner; or
- (b) at any sitting of the Appeal Board hearing an appeal by an Appellant under section 25C(8) of the Act, without the prior consent of the Appeal Board.

(2) Any person who contravenes paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

THE SCHEDULE

Regulations 16(1), 17(3)(b) and 18(c)

FEES

| <i>First column</i> | <i>Second column</i> |
|--|----------------------|
| 1. For filing a notice of appeal under regulation 16(1) | \$500 |
| 2. For the supply of a copy of the record of proceedings under regulation 17(3)(b) | \$5 per page |
| 3. For the hearing of an appeal under regulation 18(c) | \$500. |

Made this 2nd day of December 2013.

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

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