

**PUBLIC CONSULTATION DOCUMENT –
NEW EMPLOYMENT AGENCY REGULATORY FRAMEWORK**

AIM

The Ministry of Manpower (MOM) is seeking public feedback on the proposed enhancements to the employment agency (EA) regulatory framework.

BACKGROUND

2. EAs have a crucial role to play in ensuring the smooth functioning of the labour market, linking up job seekers with employers. Recognising the changes to the employment agency industry and the labour market since the EA Act was last amended in 1984, MOM is reviewing the employment agency regulatory framework to ensure it serves job seekers and employers while meeting the needs of the EA industry. By raising the standards of the industry, we hope Singapore will be known for its fair and effective recruitment practices.

3. The proposals in this consultation paper takes into consideration the feedback received from industry bodies, employment agencies, employers, workers, and non-government organizations, on changes to the EA regulatory framework.

KEY PRINCIPLES OF PROPOSED ENHANCEMENTS

4. The key principles underpinning the proposed changes are as follows:
- a. The regulatory framework should increase accountability of all relevant stakeholders.
 - b. The regulatory framework should recognise the diversity in operating models within the industry, and tailor requirements and sanctions accordingly.
 - c. The regulatory framework should impose sufficiently stringent penalties to deter violators from profiting from malpractices.
 - d. While allowing for industry self-regulation, critical standards and norms should be part of the EA regulations, and enforced by the Government.
 - e. The provisions and processes under the regulatory framework should be kept up-to-date and relevant to today's context.

PROPOSED CHANGES

A. Increase Accountability

5. Enhance levers against unlicensed EAs: Currently, unlicensed EAs are only subject to penalties for operating without a licence, even if they engage in conduct that

would constitute an offence if they were licensed. MOM proposes to stem both the demand for and supply of unlicensed EAs through the following measures:

- a. Apply offences in the EA regulations to unlicensed EAs as well. For example, an unlicensed EA that gives kickbacks can be prosecuted for both operating without a licence, and for giving kickbacks.
- b. Increase the penalties for EAs operating without a licence.
- c. Create an offence for persons to engage an unlicensed EA.
- d. Create an offence for EAs to make employment-related applications on behalf of persons who are not employers or workers without conducting due-diligence. This prevents unlicensed EAs from representing themselves as employers in order to get licensed EAs to operate as their front.

6. To help bona-fide EA personnel differentiate themselves from unlicensed agents and to increase market confidence, MOM is considering requiring all EA personnel involved in EA-related work to be registered, and to carry a registration card issued by the EA according to MOM specifications. Employers would be required to verify if the person they are dealing with is registered by checking the registration card and screening with MOM's website, which would contain a database of all registered EA staff and their photos. It would be an offence for a person to falsely represent themselves as a registered staff of a licensed EA by presenting a forged or invalid registration card. Each EA staff would also only be allowed to be registered under one EA at any one time, to ensure EAs have full accountability and oversight over the actions of their staff.

7. Raise professionalism of EA personnel: MOM is proposing to set stricter requirements for key appointment holders in executive positions and staff performing EA-related work. We will prohibit people who have been convicted of certain offences from holding key appointments or executive positions in an EA, or from performing EA-related work. The existing mandatory Certificate for Employment Agency course for all EA licensees will be revised and all key appointment holders in executive positions will be required to attain the certification. MOM is also proposing to develop a similar course that EA staff must attend and pass before being allowed to conduct EA-related work.

B. Provide Adequate Deterrence

8. Increase penalties: MOM proposes to increase the maximum penalties and introduce minimum penalties for more grievous offences to ensure they are commensurate with the potential gains of malpractice and strengthen the deterrent effect. For example, we propose to increase the penalty for operating an unlicensed EA from a fine of \$5,000 to fine of at least \$40,000 but not exceeding \$80,000 and/or up to 2 years imprisonment. The penalty for repeat offenders would be doubled.

9. Raise security deposit requirements: To further deter EAs from being involved in recruitment malpractices and to ensure only those with a reasonable financial standing enter and remain in the EA industry, MOM is proposing to raise the security deposit (SD) amount to \$60,000 for most EAs.¹ EAs with a lower risk profile will be subject to lower SD requirements. An EA's risk profile can be moderated by: (i) the number of Work Permit and S Pass holders placed by the EA, and (ii) number of demerit points accumulated, over a rolling 12 month period. The risk profile of each EA could be reviewed monthly and EAs would be disallowed from submitting new applications unless they have furnished MOM with the required SD. The following table illustrates how the new SD framework could be formulated:

	Profile of EA	Attribute of EA	SD Requirement
1	Ordinary	-	\$60,000
2	Low risk	EA that placed fewer than X Work Permit and S Pass holders in past 12 months	\$40,000
3	Low risk	EA that accumulated fewer than Y demerit points in the past 12 months	\$40,000
4	Very low risk	EAs that meet both (2) and (3)	\$20,000

10. Expand range of enforcement powers: With higher maximum penalties, there will be a need for a broader spectrum of enforcement actions. Hence, MOM is proposing to introduce the power to compound all offences, and to temporarily suspend the operations of an EA for any infringement, until the infringements have been rectified. MOM will also be empowered to revoke an EA's licence when the licensee is no longer a fit and proper person to continue to hold the licence.

11. Enhance investigatory powers: MOM proposes to introduce broader investigatory powers, to enable more thorough investigation of unlicensed and errant EAs. They will be based on investigatory powers already granted to MOM under the Employment of Foreign Manpower Act.

C. Ensure Minimum Standards Through Legislation

12. Enforce the use of the standard service agreement: Today, accreditation bodies require accredited FDW-placing EAs to use a standard service agreement that spells out

¹ Currently, all EAs are required to furnish MOM with a \$20,000 security deposit, except accredited EAs who are allowed to furnish MOM with a \$10,000 security deposit.

the obligations of EAs and employers in different scenarios. This helps ensure that employers have the information they need to make an informed choice of EA, and to reduce the incidence of contractual disputes. Since the industry-wide use of this standard service agreement is important, MOM proposes to make the use of the standard service agreement a requirement in the license conditions for FDW-placing EAs.

13. MOM is also considering moving other requirements, such as the provision of the standard employment contract to employers, in the accreditation framework to the license conditions. Once the basic standards are enforced through the licensing framework, MOM will be open to working with the accreditation bodies or other interested parties to develop the existing accreditation scheme into a new voluntary “trustmark” scheme, with the objective of differentiating better EAs from the rest. There is also scope to consider extending the scheme to non-FDW placing EAs, and including the attainment of the new trustmark as one of the indicators of low-risk EAs. (See paragraph 9)

D. Keep Provisions and Processes Updated

14. Update fee caps and introduce fee refund mechanism: Workers face information asymmetry and have weak bargaining power. The caps on fees for workers are therefore still necessary. However, the current cap for fee charged to workers stipulated in the EA Act is outdated and unrealistically low.² MOM is proposing to update the fee cap to reflect market realities. Fees incurred overseas (for eg, for training and medical check-ups overseas, and airfare to Singapore), even if collected by the local EA, would not be covered in the fee cap. All other fees paid by workers would be covered. In addition, EAs would be required to itemise the fees they are collecting for costs incurred overseas and declare the amount of fees collected from each worker in the Work Permit application. Concurrently, MOM is proposing to remove the caps on EA fees charged to employers as employers are now familiar with the process of recruiting foreign labour.

15. In addition, MOM is proposing to require EAs to issue a refund to workers whose contracts are terminated within 6 months of commencement. EAs would retain 50% of the fees, and pro-rate the other 50% depending on how many months of the workers’ employment contract remained. To keep the system simple, the pro-rated refund will be payable as long as the employer prematurely 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). An added advantage of doing so would be that it increases the incentive for EAs to provide employers with workers who are suitable for their needs.

16. To facilitate enforcement of the updated fee cap and fee refund system, MOM is also considering measures to make all charges transparent. EAs may be required to issue receipts, including a breakdown of all charges, to workers for all monetary transactions. EAs may also be required to declare the amount of agency fees they collect from each foreign worker at the point of work pass application, for MOM to include in the In-Principle-Approval letter sent to all workers before they depart their home country.

² Under the current fee cap, EAs are not allowed to charge workers registration fees of more than \$5 per person, and commission of more than 10% of the first month’s earnings.

E. Recognise Diversity in Operating Models

17. Adopt lighter regulatory touch where possible: MOM is proposing a new type of EA licence for EAs that wish to place only workers earning monthly salaries of more than \$7,000 (these are typically executive search firms). There is no need for conditions such as certification for their staff. Such licences could also be renewed automatically.

TRANSITION TO NEW FRAMEWORK

18. Key stakeholders in the industry were consulted from April to May 2010. Legislative changes are expected by the first half of 2011. It is expected that the transition to the new framework, including the requirement for all EA personnel to be certified and registered, should complete within 3 years from the legislative enactments in 2011.

PUBLIC CONSULTATION

19. MOM hereby invites members of the public to provide views on the proposed enhancements to the EA regulatory framework outlined above. Thank you.