

## Client Alert

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## Address from Manpower Minister on Updates to the Fair Consideration Framework and a Logistics Firm first to be Charged with False Declaration on Fair Hiring of Singaporeans

### Executive Summary

On 14 January 2020, the Minister for Manpower, Mrs. Josephine Teo announced several updates to the Fair Consideration Framework ("FCF"). These updates seek to impose greater deterrence against any form of workplace discrimination in Singapore.

On the same day, a logistics firm became the first entity to be charged in court with making a false declaration in an Employment Pass ("EP") application. The firm had falsely declared in the EP application that it had interviewed 2 Singaporeans and considered local candidates fairly for a job even though it had already pre-selected a foreign applicant. Four other entities were also taken to task under the stiffer penalties after the updates to the FCF.

### Overview of the FCF

The Ministry of Manpower ("MOM") introduced the FCF in 2014, with the aim to encourage employers to give Singaporeans a fair chance at job and development opportunities.

The FCF requires employers to: (i) to advertise on MyCareersFuture.sg portal (formerly known as the Jobs Bank) before submitting EP applications; (ii) to provide accurate job descriptions so that suitable applicants may apply; and, (iii) hire on merit.

Currently, employers are exempted from the advertising requirement if:

- (1) The entity has fewer than 10 employees;
- (2) The fixed monthly salary for the vacancy is at least SGD 15,000;
- (3) The vacancy is to be filled by an intra-corporate transferee ("ICT") as defined by the World Trade Organisation's General Agreement on Trade in Services; or
- (4) It is a short-term vacancy i.e. not more than 1 month.

The MOM has detected and took actions against employers who have:

- Pre-selected a foreigner for a job position, and went through the motions of advertising the job vacancy on MyCareersFuture.sg;





- Omitted critical job requirements so that there were no suitable applicants;
- Made false declarations to MOM that they considered local candidates fairly when they did not; and
- Located their Human Resource functions overseas and claimed that they were not familiar with Singapore laws and regulations.

The MOM further introduced the FCF Watchlist in 2016 as a proactive approach to identify employers who are suspected to have discriminatory hiring practices e.g. those with an exceptionally high share of foreign Professional, Managers, Executives and Technicians ("**PMETs**") as compared to their industry peers, or high concentrations of employees of a single nationality.

Employers who are under the FCF Watchlist will see longer processing time for their EP applications, and are also required to work with the Tripartite Alliance for Fair and Progressive Employment Practices ("**TAFEP**") to improve their hiring practices.

## Summary of Updates

### a) **Debarment from Hiring New Foreign Workers**

Employers who are found guilty of workplace discrimination or found to have breached the Tripartite Guidelines on Fair Employment Practices will not be able to apply for new work passes for at least 12 months – up from the previous minimum of 6 months. Errant employers may face a longer debarment period up to a maximum of 24 months.

### b) **Debarment Extended to Renewals**

The MOM has also extended the debarment to renewal of the work passes of existing foreign workers.

The duration of most work passes is generally 1 to 3 years. If the MOM imposes such a debarment on errant employers (i.e. between 12 months to 24 months), these employers will not be able to (i) hire new foreign workers, and (ii) renew the work passes of their existing foreign employees during the debarment period. As a result the existing and affected foreign employees may potentially lose their right to work and stay in Singapore. Accordingly in such a scenario, the employers have to hire locals in order to continue their operations in Singapore.

### c) **Prosecution of Employers and Key Personnel**

The MOM will prosecute employers and key personnel who make false declarations that they have considered all candidates fairly. All individuals involved in the false declaration will be held responsible, and prosecuted by the MOM under the Employment of Foreign Manpower Act ("**EFMA**").

Those who are found guilty under the EFMA may face imprisonment of up to 2 years, or fines of up to SGD 20,000, or both.



## **Logistics Firm first to be Charged with False Declaration on Fair Hiring of Singaporeans**

On 14 January 2020, a logistics firm became the first entity to be charged in court with making a false declaration, stating that it had considered local candidates fairly before trying to employ a foreigner. The firm has falsely declared in an EP application that it had interviewed 2 Singaporeans and considered local candidates fairly for a Business Development Manager position where in fact, it had already pre-selected the EP applicant, and had no intention to interview any local candidates. The firm has been debarred from hiring new foreign workers or renewing existing work passes for 24 months.

Four other firms in Singapore were also given stiffer penalties following the announcement of the updates to the FCF. These firms were also debarred from hiring new foreign workers or renewing existing work passes between 12 to 24 months as a result of:

- Pre-selecting an EP candidate and failing to interview local applicants who had responded to its job advertisement;
- Posting a discriminatory job advertisement looking for male production operators; and
- Posting a job advertisement with critical information missing (e.g. describing key criteria for candidates).

### **Comments**

The MOM has stepped up on enforcement efforts to ensure that employers cease engaging in any discriminatory hiring practices. Employers can hire freely, but at the same time ensure that they hire fairly. Employers should also not treat the FCF as a "paper exercise" and exclude suitably qualified local candidates. We see that the MOM will not hesitate to take action against employers who do not fulfil their responsibilities in ensuring that Singaporeans are considered fairly for the roles.

Employers should continue to ensure that the relevant personnel make accurate and truthful declarations to the MOM for work pass applications and must not deliberately circumvent the job advertising requirement. The MOM takes a very serious view on false declarations (including application details such as salary), and will charge employers accordingly under the EFMA.