Singapore: Fair consideration framework – is it fair enough?

October 3, 2013

In brief

The announcement by the Ministry of Manpower (MOM) on September 23, 2013 regarding the introduction of the Fair Consideration Framework (FCF) has understandably been the subject of significant media coverage. See previous Global Watch. The FCF presents arguably the strongest indicator to date of the Government's recognition of growing public sentiment of the need to moderate the influx of foreign workers and its perceived impact on available jobs, local infrastructure, and cost of living. It also aligns with the authorities' stated objective of raising the quality of foreign manpower and encouraging companies to embrace productivity initiatives that help reduce reliance on manpower generally.

The FCF seeks to negotiate a sensitive path between balancing the needs and wishes of Singapore citizens with the continuing growth of the economy through the encouragement of foreign investment and business set up. The FCF will formally commence in August of 2014 and thus, the MOM has some time to address concerns about the practical application of these rules.

In detail

Mandatory advertising

One of the key elements of the FCF is the requirement for employers to consider Singaporeans fairly for jobs, through the advertisement of positions in the new jobs bank administered by the Singapore Workforce and Development Agency. An advertisement must be open to Singaporeans, comply with the published Tripartite Guidelines on Fair Employment Practices and run for at least 14 calendar days before a related Employment Pass application can be submitted.

Increased scrutiny of HR practices

There will be careful assessment of firms considered to have discriminatory HR practices, who will be asked to provide details relating to their HR and recruitment processes. Unsatisfactory findings by the MOM may lead to greater scrutiny, a longer review period for Employment Pass applications and in some cases imposed restrictions on work pass privileges.

Enhanced Employment Pass

The MOM further announced an increase in the qualifying monthly salary for new Employment Pass applications from $3,000 to $3,300 from January 1, 2014. However, salary is only one component and applications will always be considered in conjunction with other factors including qualifications and experience.

Older applicants will be expected to demonstrate higher salaries as a reflection of their increased experience as compared with a new graduate

A transitional timeframe for existing pass holders will be implemented to enable those whose passes expire before January 1, 2014 to receive a one-time renewal based on the existing $3,000 salary criteria. For passes expiring between January 1, 2013 and June 30, 2014, a one-time renewal of up to one year based on existing criteria will be granted, and after June 30, 2014 pass holders must satisfy the new $3,300 criteria.

The takeaway

New framework provides 'light touch'

On initial assessment, the new framework appears to provide a 'light touch' in its measures. It has been well documented that small companies employing 25 or fewer employees or jobs with fixed monthly salaries of SGD 12,000 and above are exempt from this process.

In addition, the requirement to advertise on the jobs bank is without charge and, following the compulsory 14 day advertising period, employers are able to submit an Employment Pass application for foreign applicants for the same role if a foreign candidate is selected. An Employment Pass application for the specific job in question must be applied for within 3 months of the advertisement closing. The steps expected of an employer in its actual selection of a suitable candidate are less prescribed, other than to ensure that a fair process is followed and documented in accordance with the Tripartite Guidelines on Fair Employment Practices.

Inter-company transfers

Compliance with the FCF for newly created jobs or an existing job which becomes vacant is fair enough and should not be too burdensome for employers. However, for multinational companies operating complex international businesses, the need to transfer employees may not always fall neatly into the scenarios currently envisaged by the new framework.

Companies move employees to Singapore for a number of different reasons. Often employees are transferred here to fill a new job or an existing job that has become vacant on a long-term basis (2-3 years plus). In this situation, it is entirely reasonable that Singaporeans should be given fair consideration for the position and the FCF seeks to ensure that.

However, companies also transfer employees here for different reasons where no new job or vacancy exists, such as transfers for talent management purposes or to fill short-term resource gaps (e.g., maternity leave cover). In such circumstances, no new job or vacancy exists in Singapore and yet, under the FCF requirements, employers would need to advertise for a job that does not exist before being able to apply for an Employment Pass for the foreign inter-company transferee.

Moreover, as a global business hub, Singapore welcomes significant numbers of business travellers every year. In instances where a foreign individual's activities are not considered to comfortably fit within the permitted activities of a 'business visitor', obtaining an Employment Pass has been the favoured approach for employers wishing to ensure full immigration compliance. Such business travellers would not be taking up jobs in Singapore as envisaged by the FCF, but are instead supporting the existing workforce on a specific project or providing specialist knowledge or experience for a limited period of time.

With the formal commencement of the FCF set for August 2014, the MOM has factored in a lead time to seek to address business's concerns in advance and it is hoped that a solution can be found to address these specific practical issues with inter-company transfers.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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