A Practitioner’s Manual for Migrant Workers:
Pursuing Civil Claims in Singapore and from Abroad

Justice Without Borders
A Practitioner’s Manual for Migrant Workers: Pursuing Civil Claims in Singapore and from Abroad

Second Edition

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Published by Justice Without Borders
In partnership with the National University of Singapore, Faculty of Law,
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© May 2016

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ACKNOWLEDGEMENTS

This manual would not have been possible without the feedback of expert lawyers, professors, and direct service providers in the field. In alphabetical order, we would like to thank Celine DERMINNE, Alexis DUECKER, Jacqueline FIELD, Jennifer GOEDHUYS, Priscilla GOH, Professor GOH Yihan, June LIM, Professor Jaclyn NEO, NG Bin Hong, Matthew SAW, Jolovan WHAM, Ronald WONG, and others too modest to accept a thank you by name. We would also like to thank the Humanitarian Organisation for Migration Economics (H.O.M.E.), Transient Workers Count Too (TWC2), and HealthServe as institutions for sharing information and experiences in direct service provision, and we look forward to continuing to support their work as partners. Finally, we would like to thank the National University of Singapore (NUS) Faculty of Law, and the NUS Law Pro Bono Group, without whom this manual would not exist. They are amazing partners, and their students have been integral as Pro Bono Research Fellows at JWB.
Migrant workers are among the most common international travellers in the region. And yet, for all of the work by civil society, national governments, and international organisations to improve their migration and working conditions, access to justice remains a frustratingly domestic idea, limited to the jurisdiction they happen to find themselves in.

This manual seeks to address this glaring gap in service provision within Singapore, one of the most popular destinations for migrant workers from across Asia. By creating a guide to the legal options available to those who cannot remain in Singapore to pursue their claims, we seek to make it easier for advocates to help victims of labour exploitation or human trafficking seek just compensation against their abusers, even after going home. We also hope additional civil cases will send a message to bad employers and brokers, who sadly exist in every country, that they can no longer use a worker’s departure to flout Singapore law and avoid responsibility.

A note on audiences: this manual was designed for Singapore lawyers, Singapore direct service providers, and counterpart lawyers and entities in the clients’ home countries. For lawyers who are new to migrant worker issues, this manual provides an overview of common legal problems that migrant workers face on the job. For Singapore direct service providers, this manual can serve as a screening tool, helping paralegals and other staff identify potential claims prior to seeking a consultation with a lawyer. Finally, lawyers and service providers in clients’ home countries can use this manual to make an initial assessment of possible Singapore-based claims, and weigh the pros and cons of attempting to bring legal action from abroad.

Finally, this manual is a work in progress. Many of the issues we have sought to address involve novel questions of law that the courts have not answered. The logistical hurdles involved in cross-border pro bono litigation are also not fully understood. As such we gladly welcome your feedback on how we can improve this document. Please feel free to e-mail us at the address below with your input.

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INTRODUCTION TO THE SECOND EDITION

We are pleased to release the second edition of A Practitioner’s Manual for Migrant Workers: Pursuing Civil Claims in Singapore and From Abroad. This update addresses relevant recent changes to the law and corrects inaccuracies that several readers have kindly pointed out to us. A few notable additions to the Manual include:

1. New details on procedures to pursue civil claims. The Manual now includes the new simplified process for Magistrate’s Court claims (i.e. those under SGD $60,000), effective November 1, 2014. As migrant workers’ claims often fall below this amount, this new process could help improve claimants’ access to justice, providing a less expensive and faster route to judgment. Features of the process include upfront document exchange, initial court oversight, and emphasis on mediation and settlement.

2. An expanded section on bankruptcy and winding up proceedings. In migrant worker litigation, the hard work may actually begin after the client receives a favourable judgment. When the defendant is a defunct company, migrant workers may have difficulty collecting the amount they have been awarded. The Manual now contains more information about how migrant workers and their counsel can initiate bankruptcy and winding up proceedings, either against individuals or corporate entities, and how to participate in proceedings that are already underway.

3. Inclusion of the new requirement that employers provide and maintain key employment records, effective April 1, 2016. The Manual includes the new requirement that employers provide their employees with certain core employment documents (detailed payslips, etc.) and maintain these records for a set period of time. As one of the key barriers to migrant worker litigation is often lack of documentation, this new requirement has the potential to ensure substantive evidence is available in unpaid wage claims.

4. Increased limits under the Work Injury Compensation Act. The second edition contains the new monetary limits, applicable to claims arising after January 1, 2016, for medical expenses, permanent incapacity, and death under the Work Injury Compensation Act.

Please also note that the Second Edition uses “she” as a generic pronoun to refer to both men and women. This work continues to benefit from feedback from the legal and non-profit communities that handle migrant worker claims every day, and the great work of our volunteer lawyers and legal fellows. We are especially grateful to our Pro Bono Legal Fellows Joshua CHIA, Hui Xin CHIANG, Moses LEE, Natasha SIM, and Xenia YAU, for their sharp eyes and fine work on this Second Edition. Reports of inaccuracies or ideas for future updates are very much welcomed, and can be sent to us at info@forjusticewithoutborders.org.
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Chapter 1: An Introduction to Singapore’s Migrant Workers
by Sheila Hayre, National University of Singapore
CHAPTER 1: AN INTRODUCTION TO SINGAPORE’S MIGRANT WORKERS

1. INTRODUCTION

1.1. This chapter provides a general overview of migrant workers in Singapore to help lawyers work more effectively with migrant worker clients. It first describes the historical, social, and political context that migrant workers encounter when they come to Singapore to work. It then offers some background information and a cross-cultural framework for working effectively with migrant workers as clients. Section 2 discusses the meteoric rise of Singapore’s economy since the country’s independence nearly fifty years ago, and its resulting reliance on skilled and unskilled foreign workers to fuel this growth. Section 3 introduces a few basic concepts central to understanding the migrant worker context in Singapore, including the unique status of foreign domestic workers; the government bond as contrasted with the levy system; and the non-portability of the work permit. The chapter closes with a tutorial on techniques for cross-cultural advocacy when working with migrant workers.

2. A BRIEF HISTORY OF SINGAPORE FOR NON-SINGAPOREANS

I. The Singapore miracle

2.1. Singapore is a densely populated city-state, a tiny island of only 604 square kilometres, just off the southern tip of Malaysia. Its population is approximately 5.4 million, with non-resident foreign nationals comprising over 1.5 million and permanent residents comprising approximately half a million, totalling almost 39% of Singapore’s population.

2.2. For those unfamiliar with Singapore’s history, the city-state gained independence from Malaysia in 1965. At that time, Singapore seemed to face a bleak economic future. Yet, in just a few decades, Singapore had reinvented itself, undergoing immense political and economic changes, transforming itself from a developing country into one of the wealthiest countries in the world. “Under Lee Kuan Yew, Prime Minister from 1959 to 1990, the country grew and prospered as a powerhouse of light industry and high technology,” with an economy characterised by “government efficiency, exceptional infrastructure, minimal corruption, and a skilled workforce.” Today, Singapore is by far the wealthiest nation in Southeast Asia. Much of this prosperity can be attributed to foreign nationals and foreign labour.

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II. Early immigration to Singapore and Singapore’s demographics today

2.3. As early as 1819, Singapore was developing into a vibrant “hub of maritime commercial activities” where English traders, Chinese merchants, and Indian, Arab, and Malay traders, among others, converged. 4 “From the beginning, Singapore drew settlers from across the globe: Arabs, Armenians, Bugis, Chinese, Europeans, Indians, Javanese, and Malays.” 5 By 1891, however, “the Chinese accounted for 67 per cent of the island’s population, compared with the Malays at 20 per cent and the Indians at 9 per cent.” 6

2.4. Today, the overwhelming majority of Singaporeans are of Chinese descent (approximately 77%), while 14% are Malay, 7.6% are Indian, and the remaining 1% are mostly of Eurasians and Western expats. 7 Nonetheless, today’s Singapore is a multicultural society in which the state actively promotes racial harmony and integration. 8 While English is the primary language of Singapore, the government recognises four official languages to promote national unity and national identity, including Malay, Mandarin Chinese, and Tamil. Many Singaporeans speak one of these three languages, in addition to English. Religion is also freely practiced, and a plethora of religions exist in Singapore. 9

III. Foreign labour, including migrant workers

2.5. Out of necessity, Singapore continues to be a country of foreign nationals. “Because of persistent below-replacement fertility rates since 1975, Singapore has relaxed its immigration policies in order to attract foreign nationals to contribute to the maintenance of a high level of economic expansion and to the

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4 Kwa Chong Guan, Derek Heng, & Tan Tai Yong, Singapore: A 700-Year History: From Early Emporium to World City (Singapore: National Archives of Singapore, 2009), at 79-82.
6 Ibid. (citation omitted).
8 “Since the racial riots of the 1960s, society had been considerably harmonized, with the government making every effort to keep it so.” Malaysia and Singapore (London, UK: Penguin 2010) at 199; see also Bilver Singh, Politics and Governance in Singapore: An Introduction, 2d ed (Singapore: McGraw-Hill Education, 2012), at 126 (“When Singapore gained independence in 1965, the PAP government adopted cultural democracy as the founding principle of the new state. The government realised that it was difficult to cultivate a common Singaporean identity and culture, because all the racial communities had distinct identities, language and cultures. As the different ethnic values could not be shed just to for a homogenous national identity, the government utilized a strategy to accommodate the unique characteristics of every ethnic group by building on the strengths of ethnic diversity in order to maintain social and national stability; it would maintain the nation as multi-racial, multi-cultural, multi-lingual, and multi-religious.”).
9 Buddhists accounts for 33.3%; Muslims 14.7%; Christians 18.3%; Taoists 10.9%; Hindus 5.1%; and all others less than 1%. Malaysia and Singapore (London, UK: Penguin 2010) at 45.
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growth of the population when they become permanent residents, and subsequently citizens […]”10 The contributions of immigrants and migrants to Singapore’s economy cannot be denied: in the 1990s, foreign workers contributed 3.2 percentage points to the annual GDP growth rate of 7.8%.”11

2.6. Thus, due to its rapid economic growth, declining birth rate, and aging population, Singapore has been forced to rely heavily on “a controlled and revolving pool of foreign labour” to supplement its local workforce:

“Since Singapore began importing foreign workers in the 1960s, the percentage of non-resident populace has been growing steadily… Recruitment was selective; in the early years it was confined to Malaysia. Since the early 1980s, Singapore has looked beyond Malaysia, receiving unskilled workers mostly from other Asian countries. In the late 1980s, the Singaporean State embarked on what has been termed ‘an innovative immigration policy, using a combination of the price mechanism and employment quotas to regulate inflows of workers in line with domestic labour market conditions.’ […] [In 2007,] an estimated 80% of all foreign workers fell into the unskilled category.”12

2.7. Thus, “[t]he Singaporean government has carefully constructed a system under which different types of employment passes are issued to immigrant workers according to their qualifications and monthly salaries…. The government has also set different policies on recruiting foreign talent […] and foreign workers.”13

There are three types of work passes: the employment pass for those with professional qualifications who earn a fixed salary of at least $3,300;14 the S-pass for mid-level skilled workers earning a fixed monthly salary of at least $2,200; and finally the work permit for low-skilled or semi-skilled workers.15

2.8. Singapore’s work pass system relies on a sharp distinction between skilled “foreign talent” and less skilled or unskilled “foreign workers” or “transient” or “migrant workers” (hereinafter, “migrant workers”).16 “Foreign talent” refers to employment or S-pass holders who have professional qualifications or specialised degrees; they work at the higher end of Singapore’s economy and are eligible to apply to become permanent residents. “Migrant workers” refers to semi-skilled or unskilled foreign workers admitted on short-term work permits to perform jobs—mainly in the manufacturing, construction, and domestic services sectors—that most Singaporeans shun as “dirty, dangerous, and demeaning.”

10 Theresa W. Devasahayam, “Placement and/or protection? Singapore’s labour policies and practices for temporary women migrant workers,” (2010) 15:1 J Asia Pac Economy 45, at 47.
11 Ibid.
12 Ibid.
14 All dollar figures stated in this chapter are in Singapore dollars unless otherwise noted.
The majority of migrant workers come from the People’s Republic of China, Indonesia, India, Bangladesh, Pakistan, Myanmar, Sri Lanka, the Philippines, and Thailand, as part of bilateral agreements between Singapore and these countries.17

2.9. Migrant workers’ advocates have criticised the Singaporean work pass system as favouring economic growth over workplace protections: “Singapore is a deeply neo-liberal state, which has achieved its rapid development through the policies of a strong government that favours the interests of business and capital over labour, and especially foreign labour[…]”18. “Since the early 1980s, the rationale underlying Singapore’s labour policies has been that of maximizing economic benefits while simultaneously minimizing social and economic costs, a logic which the State has long adopted towards foreign workers.” 19 Nevertheless, despite a recent uptick in xenophobia among Singaporean voters in the 2011 elections, the government has “displayed greater seriousness in addressing migrant worker issues,” especially with respect to safeguards for domestic workers.20 For instance, as of January 2013, thanks to the Day Off Campaign orchestrated by various migrant workers and women’s rights NGOs, all newly-contracted foreign domestic workers (FDWs) were finally given one mandatory rest day per week, although many still struggle to benefit from this right.21 More recently, the government has proposed a specialised Small Claims Employment Tribunal to adjudicate claims of migrant workers.22

IV. Singaporean identity today

2.10. Despite being a nation of immigrants, Singaporeans generally do not strongly identify with the migrant labourers in their midst. “Singapore was and remains an immigrant society. Its immigrant policy is heavily affected by a pervasive sense of [in]security and economic vulnerability.”23 Surrounded by the Muslim-
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majority countries of Malaysia and Indonesia, Singapore is the only nation-state with an ethnic Chinese majority population in Southeast Asia. Paradoxically, its relative prosperity and decisive governance have […] exacerbated its innate sense of insecurity vis-à-vis its neighbours.”

Not surprisingly, the impressive changes that have occurred over the past decades have affected attitudes towards migrant workers.

2.11. Notwithstanding the country’s colourful history as an island populated by migrant labourers and hardened seafarers, most Singaporeans today do not identify as a country of immigrants, even though they celebrate their ethnic diversity every year at National Day celebrations. Although many Chinese and Indian Singaporeans have ancestors who came to the island as merchants, traders, money-lenders, and labourers, most do not relate—let alone interact—with the foreign labourers of today, even those who come from China, India, and Malaysia.

2.12. Of course, there are other more basic factors that influence Singaporeans’ attitudes to foreign workers:

In hosting well over one million foreign workers into the country, the government has ensured that the ethnic balance is generally preserved by proportionately bringing in workers and migrants from China and India. Despite this, the differences in nationalities and cultures between the Singaporeans and foreign nationals have resulted in social tension. Sentiments over cultural difference have worked together with the sheer visibility of foreign nationals in an already dense Singapore to encourage the perception amongst the public that Singaporeans are being displaced from jobs, school, public transport[,] and other living spaces.

2.13. One key problem is how and where to house and “keep” the growing migrant worker population, as housing is already at a premium among the native
difficult, even by water. Due in part to tightening immigration controls at the border, nearly half of Singapore’s illegal immigration now occurs when visitors have entered using a social visit pass overstay, or when foreign workers who have entered using a valid work pass remain in the country even after the work pass has expired or been cancelled. Illegal immigration into Singapore is severely punished, and illegal immigrants face both jail time and caning, while employers who hire illegal immigrants face jail time, fines, and possible caning.


25 Kwa Chong Guan, Derek Heng, & Tan Tai Yong, Singapore: A 700-Year History: From Early Emporium to World City (Singapore: National Archives of Singapore, 2009), at 79-82.

26 Bilver Singh, Politics and Governance in Singapore: An Introduction, 2d ed (Singapore: McGraw-Hill Education, 2012), at 115-16 (citations omitted). Critic Chris Lydgate describes Singapore’s siege mentality: “On 9 August 1965, Singapore proclaimed itself an independent republic. Through a quirk of history, the former British colony had become a … tiny overpopulated predominantly Chinese island, surrounded by hostile giants, an amputated capital dangling from the Malay peninsula… According to Minister for Information and the Arts George Yeo: ‘Our success is the result of our anxiety, and the anxiety is never fully assuaged by success.’” See Lydgate, supra note 5 at 11. It may have been this anxiety led that led voters in the 2011 elections to put pressure on the government to restrict access to permanent residence and citizenship.
population. This makes for contentious debate in Singapore, and efforts to keep the migrant worker population separate and invisible have not been wholly successful.\(^\text{27}\)

### 3. WORKING WITH MIGRANT WORKERS: SOME BUILDING BLOCKS

#### 3.1. Before discussing specific techniques of cross-cultural advocacy when working with migrant workers, this section introduces a few background concepts central to understanding the circumstances of migrant workers in Singapore. This includes the unique status of foreign domestic workers, the government bond as contrasted with the levy system, and the non-portability of the work permit.

#### I. A note on foreign domestic workers

#### 3.2. Most Singaporeans refer to foreign domestic workers as “helpers,” “maids,” and “aunties.” In contrast to the esteemed “black and white amahs” of decades past who came from Southern China,\(^\text{28}\) most foreign domestic workers in Singapore now come from the Philippines and Indonesia, “with smaller numbers from Sri Lanka, Myanmar, and India[,]” and, more recently, Cambodia. Thanks in large part to FDWs, who care for Singapore’s young and elderly, a remarkable 72% of Singaporean women today work outside the home.\(^\text{29}\)

#### 3.3. This Manual will use the more formal term “foreign domestic workers” (hereinafter “FDWs”) in recognition of the fact that these women are workers and therefore arguably deserve the rights and protection afforded to other workers under the law, despite the fact that they work in the domestic sphere, in the home, and perform only “housework,” which has traditionally not been viewed as real work.\(^\text{30}\) FDWs in fact are required to “live in” at home with their employers.\(^\text{31}\)

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\(^{27}\) Notably, in 2012, the government instituted a graduation requirement for all law students mandating that they perform at least twenty hours of pro bono work during law school. See <http://www.sile.edu.sg/pro-bono-programme>. A good number of the law students—ones who have prospered because of Singapore’s transformation and the financial security it has brought them and their families—are now looking to do more, to give back to the community and, in particular, to groups which have not benefitted equally from Singapore’s economic miracle. Low-income migrant workers have benefited from this trend.

The push to do more pro bono work has allowed law students to experience first-hand the problems of migrant workers—problems that are otherwise mostly hidden as a result of the physical and social segregation of these workers in the city-state. Most students are shocked and dismayed when they learn about some of the difficulties faced by these workers—such as unpaid wages, dangerous work conditions, forced repatriation, etc.—and increasing numbers of students have chosen to get involved in effort to improve the plight of Singapore’s migrant workers.


\(^{29}\) See e.g. Tan, supra note 24.

\(^{30}\) See Tan, supra note 24 at 108.

\(^{31}\) Ibid.
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3.4. Few of Singapore’s labour laws apply to FDWs. The Employment Act expressly excludes domestic workers, along with certain other categories of workers, exempting them from laws concerning wages, contract requirements, work conditions, sick and holiday leave, workmen’s compensation, etc. As Eugene Tan explains: “The abiding association of FDWs with the domestic sphere—buttressing the notion of privacy, harmony, familial obligations and responsibilities—denies such workers full access to a range of rights, since the home is not perceived as an appropriate setting for the structuring of an employer-employee relationship that is heavily rights-based.”

3.5. Overwhelmingly female, FDWs face special legal restrictions that other foreign workers do not. First, they are required to undergo a medical examination to screen for infectious diseases and pregnancy every six months. An FDW who fails this examination faces immediate repatriation. Giving birth in Singapore is a violation of the work permit rules. Additionally, all low-skilled foreign workers who hold a work permit—including but not limited to FDWs—must comply with Singapore’s “marriage restriction policy,” which prohibits marriage to a Singaporean citizen or Permanent Resident in or outside Singapore, both while holding a Work Permit or after the Work Permit has expired or been terminated. This marriage restriction does not apply to employment or S-pass holders, who have professional qualifications or specialised degrees and who, as noted above, are also allowed to apply to become permanent residents.

3.6. There are no minimum wage laws in Singapore. Generally, the salaries of FDWs range from $400 to $700 per month. However, salaries remain unregulated and can actually be less than $400 per month, especially for those FDWs who are less fluent in English, who are less knowledgeable, and who are thus less assertive vis-à-vis their employers.

II. Monthly levy versus one-time security bond

3.7. With all foreign workers, it is important to distinguish between the monthly levy and the one-time security bond. In short, the levy is a monthly tax imposed by the Singaporean government on foreign labour, whereas the government security bond is like a security deposit, which is forfeited by employers if they, or their worker, fail to comply with certain conditions.

A. The levy

3.8. Every employer must pay a monthly levy for each of the foreign workers she employs. The levy is essentially a government tax aimed at discouraging employers from hiring foreign employees over local ones. Notably, the levy

32 Employment Act, Ch.91, Statutes of the Republic of Singapore (revised ed. 2009).
33 Tan, supra note 24 at 108.
34 Ibid. at 112.
35 Ibid. at 112.
amount is substantially higher for hiring an unskilled worker than for a professional foreign worker (upwards of $400 versus only $80 per month). In the case of FDWs, for example, an employer generally pays a levy of $265 per month to the government; notably, some of these employers pay the workers themselves only $300 or $400 per month. Migrant worker NGOs have argued that the high levy amount—all of which goes directly to state coffers—substantially increases the cost of hiring foreign employees in sectors where locals are unwilling to work anyway. This creates incentives for employers to pass the additional cost onto the workers in the form of exploitative cost-cutting practices.

B. The bond

3.9. Since 1986, all employers of non-Malaysian work permit holders must post a one-time security bond, currently a flat S$5,000.00 per worker. The bond is forfeited if the employer is deemed to have failed to ensure that her worker complies with the terms of employment. For example, the bond can be forfeited if the employer does not pay for the worker’s repatriation or other necessities or, in theory, if the employer fails to pay the worker’s salary and medical expenses or to provide “acceptable” accommodation. NGO advocates like Alex Au of TWC2 (“Transient Workers Count Too”) have argued that the security bond has created a system of private policing in which employers, not wanting to forfeit their bond, feel compelled to monitor their employees’ whereabouts, to “safeguard” their employees’ passports and identification documents, and even resort to using repatriation companies to locate and forcibly remove employees if they go missing. This policing can be especially egregious in the case of FDWs, whose employers may prevent them from having rest days or from leaving the home unaccompanied out of fear that she “may be in bad company or engage in activities that would breach the conditions attached to the work-permits,” such as by becoming pregnant. According to critics, the bond increases the likelihood that employers will “exercise their power to the point of being abusive.”

3.10. Unfortunately for migrant workers, notwithstanding the bond conditions imposed on employers (e.g. to pay the worker), the Ministry of Manpower does not use the forfeited bond amounts to reimburse workers for legitimate employment claims they have against their employers, such as unpaid wages, despite NGO requests to do so.

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37 Advocates from migrant worker NGOs have more generally argued that imposing higher levies on lower paid workers seems counterintuitive given that most Singaporean adults want professional jobs requiring skills and generally refuse unskilled jobs, regardless of the pay. See generally Devasahayam, supra note 10 at 49.


39 In addition to levies, the Singaporean government imposes outright quotas on certain sectors that employ foreign workers. See <http://www.mom.gov.sg/foreign-manpower/foreign-worker-levies/Pages/calculation-of-foreign-worker-quotas.aspx>.

40 See Devasahayam, supra note 10 at 49.

41 Ibid.

42 Ibid.
III. Law in theory versus law in practice: the harsh realities of migrant work in Singapore

“Fear of losing one’s job is a dilemma faced by every worker who wishes to file a complaint against an employer.”

3.11. For those work-permit holders who face financial exploitation and even physical abuse, speaking out comes with huge risks, hence most choose to remain silent. The biggest barrier to speaking out is the near impossibility of transferring employers while retaining one’s work permit. “An inflexible work pass system that restricts job mobility and allows employers to terminate workers swiftly leaves workers at a disadvantage and unable to bargain for better working conditions.” If the employer decides to terminate a worker for any reason, he can unilaterally cancel the worker’s work permit, sometimes as quickly as within one day, and the worker will be forced to return home. Only in certain special cases does Singapore’s Ministry of Manpower (“MOM”) allow workers with valid claims to seek a change in employer. (For more, see MOM subsection on “Temporary Job Scheme” below at 3.18).

3.12. Thus in general, “[w]orkers who wish to switch employers need to return to their countries of origin before making a fresh application for a job in Singapore. However, this is a costly option for many workers, as it would mean they would have to pay hefty recruitment fees or “agent fees” again.” In order to reach Singapore, many workers must pay exorbitant fees charged by the agent and other middle men. Many must sell their only assets or valuables—including land, homes, or family jewellery—or take on enormous debt, from relatives, banks, and money lenders to pay these fees. For example, many Bangladeshis pay $8,000 or more, to come to Singapore. It would take more than 95 months


44 When they first hear stories of migrant workers tolerating repeated and systematic wage theft—and, especially in the case of FDWs, sometimes even physical and emotional abuse—law students inevitably ask why any rational person would tolerate such behaviour. In fact, a better question would be why any rational person in the difficult circumstances many migrant workers face ever speaks out, given the enormous stakes.

45 See Justice Delayed, supra note 43 at 1.

46 Ibid.

47 Except in very limited cases, the migrant worker cannot transfer his work permit to another employer. Only in certain special cases does MOM allow workers with valid claims to seek a change in employer. If their employment relationship is terminated, FDWs are given only one week to find another employer or face repatriation, and, even then, transfer requires approval from their previous employer. Ibid.

48 Ibid. at 9. The premature termination of a contract is a great loss for a migrant worker. The current system of international migration for low-wage workers is largely controlled by private companies and individuals spanning international borders. The transnational nature of the industry poses a major challenge for governance. Businesses involved in labour migration generate profit by charging fees for services rendered such as job training and job placements. These fees are largely extracted from migrant workers. Ibid.

49 See Justice Delayed, supra note 43 at 9-10.
CHAPTER 1: AN INTRODUCTION TO SINGAPORE’S MIGRANT WORKERS

(nearly 8 years) for a Bangladeshi worker earning a garment worker’s minimum wage of $85 per month to pay off this debt.50

3.13. Moreover, many migrant workers do not choose to “exercise their entitlements under the contract for fear of getting themselves in trouble and creating a ‘black mark’ in their ‘work card report’ in Singapore,”51 making it difficult for them to return to work in Singapore in the future. “The ease with which an employer can terminate a worker’s employment and cancel his or her work permit makes the worker vulnerable to unjust dismissals. Knowing that migrant workers are dependent on them for their livelihood, some employers abuse this power for the purpose of keeping migrant workers compliant.”52 For this reason, many savvy workers will wait until their work permit is about to expire before bringing claims against their employers, even if they know that failure to do so immediately will be viewed with suspicion and that their total recovery may be limited by their failure to bring their claims in a timely manner.

3.14. It is therefore no wonder that workers in these situations feel that they cannot complain when they arrive in Singapore, and they discover that reality may be different from what they were promised: some do not get the wages they were promised; others must pay their employer a kickback; and still others face large salary deductions for substandard housing that was promised as free. It is not surprising that many workers seeking help for one issue end up disclosing after an extended interview the existence of a myriad other employment law violations they have suffered. For example, countless workers seek assistance from local Singaporean NGOs after suffering debilitating work-related injuries, only to reveal that they have not been paid their full salary for many months, or that their employer has been regularly making unlawful deductions from their salary.

3.15. The Singapore experience for workers who are forced to return home early because of injury or unjust termination (simply because they complained) is often tragic. After working for only a few months, some are repatriated while still in debt and worse off financially than they were before they migrated to Singapore.53

50 Ibid. “On average, the fee paid to agents constitute at least ten months of a migrant worker’s potential earnings in Singapore.” Ibid. “The industry is notorious for unethical practices and human rights abuses, with the harshest critics likening it to slavery. The current system takes advantage of migrants from less economically developed countries where migration is necessary for many in order to improve their livelihood. Like in many other destination countries, the recruitment of migrant workers in Singapore is dominated by private companies. A migrant worker bound for Singapore parts with thousands of dollars in fees that are usually paid to labour agents. … This fee differs for different nationalities and occupations and has changed over time.” Ibid. at 9.

51 See Devasahayam, supra note 10 at 52.

52 See Justice Delayed, supra note 43 at 9.

53 Undoubtedly, the remittances sent home as a result of the Singaporean migrant economy benefit various countries across the region: the Philippines alone received about S$300 million for the first quarter of 2013 alone. See e.g. <http://www.philstar.com/business/2013/02/15/909187/2012-remittances-hit-record-high>; <http://therealsingapore.com/content/filipinos%E2%80%99-remittance-reaches-56b-philippines>. Most poignant was the story of the Bangladeshi construction worker who returned home permanently injured and still owing thousands of
3.16. **Limitations of the special pass.** When workers decide to bring claims against their employers pursuant to MOM’s labour court process, their work permits are cancelled, and the Ministry issues a Special Pass, enabling them to remain in Singapore—but not to work—until their case is resolved. Advocates have argued that the Special Pass system punishes workers, making them choose between pursuing their livelihood and pursuing their legal claims:

Ensuring workers receive justice and compensation is a difficult and protracted process... The long and uncertain wait ... has a damaging impact on the [worker’s] economic, emotional and physical health due to the restriction against working. ... Migrant workers can languish in Singapore on this visa for months that can stretch into years, making them an exemplary case of ‘permanently temporary’ migrants. As one migrant worker in this situation reflected, “Singapore is like a prison to us[,]” ... It seems that not only do employers punish workers who stand up for their rights, but that the visa regime of the Special Pass further penalizes them. [M]any men on Special Passes... suffer social and emotional damage during their long and uncertain existence on a Special Pass.  

3.17. Of course, many of these workers—without food, housing, and a job—eventually start working illegally. Without the job and salary restrictions imposed by their work permits, these workers can get a variety of jobs and often end up earning upwards of $80 per day, in contrast to the $30 per day or less they earned working legally. However, they risk criminal prosecution and having their employment claims thrown out. Many live in fear of being caught, but feel that they have no choice, having been left with no means to support themselves and their families.  

Complicating matters, those who choose to pursue administrative hearings at MOM often face contrary testimony not only from the employers who wronged them, but also from their fellow employees, many of whom offer false testimony on behalf of the employer out of a legitimate fear of losing their own jobs.

3.18. **Temporary job scheme.** The one bright spot in the landscape is the relatively recent Temporary Job Scheme (TJS). Under the scheme, MOM issues renewable six-month work permits to workers who are assisting authorities with investigations as prosecution witnesses. Unfortunately, the TJS excludes certain workers: “workers pursuing salary arrears claims and work injury...
compensation claims are not eligible to see work through the TJS.” Furthermore, many workers have difficulty finding jobs that qualify under myriad rules and regulations imposed by the TJS regime.

4. WORKING WITH MIGRANT WORKERS: CROSS-CULTURAL ADVOCACY

4.1. It would be a weighty task to try to familiarise oneself with every migrant group in Singapore, as well as their specific subgroups that vary based on gender, socio-economic status, educational level, religion, etc. Only by actually working over a sustained period of time with migrant workers themselves can an advocate begin to gain some of this knowledge. Rather than trying to cover the whole field, this section seeks to sensitise readers to just a few of the cross-cultural issues that may arise when interacting with Singapore’s migrant workers.

4.2. First, it is important to recognise that there can be enormous diversity within a single country or region, and although a worker may come from a particular country or region, he may differ significantly from his compatriots as a result of various cultural factors. For example, one long-time TWC2 volunteer explained that her NGO had to partner with two different restaurants for its Cuff Road Project, a free meal programme for injured workers from South Asia. TWC2 realised that Bangladeshi and Tamil cuisines differ in important respects, despite their basic similarities. Most Tamils maintain a vegetarian diet, while Bangladeshis tend to prefer dishes made from fish and lamb.

4.3. Because of historic tensions based on religion, language, tribe, ethnicity, etc., migrant groups whose home countries or regions are close geographically may actually find this very closeness to be a barrier to forming ties. For example—in spite of, or perhaps as a result of, having lived in close proximity for centuries in what was once the British colony of India—Bangladeshis and Pakistanis may feel antagonism toward Indian Punjabis, and vice versa. It is no surprise that local Singaporean charities that receive and give food donations are careful to distinguish items donated after being used as altar offerings and foods designated as halal. Some Muslims might take offense at being offered these “left-over” offerings from a Buddhist or Hindu shrine.

4.4. Different motivations for different workers: an example. No matter how well practitioners think they understand a worker and his cultural background, they should refrain from making assumptions and, when they must make assumptions, they should be sure to test them regularly. HealthServe, a local migrant worker NGO, was assisting a Chinese construction worker from Guangdong Province who insisted on remaining in Singapore for months after his work permit had been cancelled in order to litigate his salary claims. An untrained advocate might have assumed that she understood his motivations in remaining in Singapore: i.e. he was staying because he needed the money to support his wife and child back home.

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58 Ibid.
59 Ibid.
4.5. Based on this assumption, an untrained advocate might also have recommended that the worker would do better by returning home and finding a job there. She might even have “done the math” for the worker in an effort to show him that he had already spent more in living expenses while in Singapore than he would recover from his salary claim, even assuming he was awarded the full amount he had requested. However, the seasoned advocates at HealthServe understood that the worker was determined to stay and fight his case as a matter of principle, both for himself and his fellow workers. Only by understanding the worker’s underlying motivations were the HealthServe advocates able to fully appreciate the worker’s concerns and properly advise him.

I. Migrant workers’ perceptions of the law and the criminal justice system

4.6. Most migrant workers come from countries where, in stark contrast to Singapore, the legal system and the criminal justice system in particular—including the police, prosecutors, and judges—are inefficient, unreliable, and often corrupt. Members of the general public in workers’ home countries may fear contact with the criminal justice system, especially the police, as these institutions are seen as using violence and other unlawful techniques in carrying out their duties. Because of rampant corruption at home, those accused of crimes can often avoid prosecution by bribing officials at various levels, including the police and even judges.

4.7. Not surprisingly, many FDWs accused of stealing small items from their employer’s homes are surprised at the speed with which their Singaporean employers call the police and with which charges are brought against them. Similarly, the South Asian migrant workers allegedly involved in the Little India Riot of December of 2013 may have been unprepared for the swiftness of the response of the Singaporean criminal justice system. Some commentators have argued that the events leading up to the rioting were shrouded in cultural misunderstanding, and that the crowd may have misinterpreted the behaviour of the Singaporean police towards the guilty party (the lorry driver) as being ill-intentioned, based on their assumption that police officers normally behave in a manner that is corrupt.60

60 The crowd of workers apparently became increasingly agitated when the police removed from the scene the driver of the bus that killed the worker without placing him in handcuffs. Based on South Asian perceptions of police misconduct, the crowd may have misinterpreted the police as removing the guilty driver from the scene in order to protect him from being properly punished. Supporting this interpretation, “Tamil-speaking officers [on the scene] quoted some of the rioters shouting ‘Are our lives worthless?’ and ‘You all only look after the local people!’” See Channel News Asia, “Committee of Inquiry: What Cause the Little India riot?” (30 June 2014), at: http://www.channelnewsasia.com/news/singapore/committee-of-inquiry-what/1222586.html. After traffic accidents in South Asia, observers often engage in “retributive justice,” taking matters into their hands and sometimes even assaulting the guilty party, in part because the police either cannot or will not (because of corruption) mete out justice themselves. In fact, the Singaporean police were simply doing their jobs—removing from the scene the driver as the possible source of a likely riot and pulling him aside for questioning. The police undeniably made mistakes that night,
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4.8. Comparing Chinese and Indian attitudes towards lawyers can also be instructive. In general, migrant workers from mainland China tend to be distrustful of lawyers and the law, seeing the law as “purely instrumental and applied arbitrarily, providing little protection for rights or expectations.”\(^61\) In general, because the role of advocate often conflicts with the culture’s preference for mediation and conciliation, the Chinese have never fully supported the role of lawyers in society, although attitudes are now changing. However, even today, lawyers in China are not seen as wholly independent of the government, and are perceived as not acting as zealously as they might in order to avoid jeopardising their own careers.\(^62\)

4.9. By contrast, Indians may have greater faith in the legal system as a means of correcting injustice, notwithstanding the Indian criminal justice system’s susceptibility to graft. Because of the possibility of corruption in the legal system, however, Indian litigants may insist on remaining in the jurisdiction until their claim has been adjudicated, feeling that their absence from court might prejudice the process. Of course, aside from these generalisations, practitioners should be aware that perceptions of lawyers, the criminal justice system, and the legal system in general will vary greatly depending on the experiences of each individual migrant worker, including his education level, his past experiences with the legal system, and other factors.

4.10. Another source of cross-cultural disconnect can be the timing and length of the legal process. The Singaporean legal system is remarkably efficient in comparison with those of other countries. In India, for example, a case can take years to resolve, and a number of cases have been pending for more than twenty years.\(^63\) Many workers simply have no idea how long their Singaporean cases will take. Others, thinking that their MOM case will take approximately 3-6 months, become disillusioned when they learn that enforcing their MOM judgment in civil court may take a few more months at the very least. Advocates should set aside extra time to explain to workers how long the legal process— with all its various permutations—may take, while making sure not to give workers unrealistic hopes about timing and outcome. Advocates should always remember that assessments of a case’s length and timing will affect a worker’s decision whether to remain in Singapore to pursue the case in hopes of settlement or judgment, to return home and fight the case from abroad, or to not pursue the case at all.

but their behaviour merits commendation in that nearly all the injuries that night were suffered by Singaporean law enforcement and not members of the crowd.


II. Challenges with language and interpreting/translation

4.11. First and most importantly, advocates should never “talk down” to their clients. Even when using simple language, the advocate should speak to the client as the advocate would like to be spoken to. In terms of language, when working with migrant workers in Singapore, being able to speak a second or third language is a tremendous asset. Undeniably, workers—like all clients—tend to develop rapport and trust more quickly when they are working with someone who can speak their own language. That said, numerous challenges come with being able to speak to the workers in their native tongue. Singaporean advocates and their clients may become frustrated when the Mandarin or Tamil that advocates learned in school or at home is quite different than what the client speaks. Variations arising from the speaker’s background—such as geography (including regional variations in accent or dialect), educational background, socio-economic status, and even gender—can all affect communication.

4.12. For those times when advocates are unable to speak the client’s mother tongue(s), if the worker clearly feels comfortable speaking in English, using Singlish can be indispensable. Singlish represents the lingua franca used by migrant workers to speak amongst themselves in the face of language barriers on the job and can greatly aid communication.

4.13. **Explaining legal terms.** Even if the advocate speaks the client’s native language fluently, legal terms will always present a challenge when translating or interpreting. One suggestion is to consider in advance which legal or non-legal terms needed in an interview with a migrant worker (“housing,” “wages” or “pay,” “deduction,” “sex worker,” etc.) and familiarise oneself with them beforehand. That said, some legal terms of art will be difficult—if not impossible—to translate or interpret word for word. Take, for example, the legal terms like “mediation,” “medical leave,” “consent,” and “defence.” Such legal terms of art cannot and probably should not be translated word-for-word. Even native English-speakers untrained in the law will not fully grasp the meaning of such terms. Thus, when faced with difficult terms to translate, advocates should see this as an opportunity to use simple words the client will understand, and to confirm and perhaps even test that she has properly understood by asking her to repeat back what has been said. Depending on the circumstances, an approximation of the term’s meaning may suffice.

4.14. Advocates should therefore never hesitate to ask when they are unsure about the meaning of a particular term. Advocates should be mindful of their limitations, but not stymied by the need for the “perfect translation.” When unsure about a

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64 As a lawyer in court, I remember being hesitant when asked by judges to translate for an unrepresented party who did not speak any English. One of my fears was that I would come across a word like “perjury” or “unreimbursed medical expenses” and would be unable to find an English equivalent. Eventually, I realized that the parties for whom I was translating these terms actually understood these terms better than those who spoke English because I was not translating word-for-word. This experience led me to think more about how to best to explain what “unreimbursed medical expenses” are to my own clients, English and non-English-speaking alike, and I am a better lawyer because of it.
particular vocabulary word, ask the client for help; in most cases, clients will feel empowered that they are in a position to assist, and the exchange will help to break down barriers. For many advocates, it is thanks to their clients that they have achieved fluency in a second or third language. One first-year law student reported that after working with one of HOME’s Chinese-speaking case workers, his Chinese improved exponentially, in ways he would never have anticipated, and learned many things he could never have in a classroom setting.

III. Workers’ educational levels and socio-economic background

4.15. Advocates may be surprised to learn that not all low-skilled or semi-skilled migrant workers in Singapore come from low-income families. In fact, they may be quite educated and well off compared to their peers back home. Knowing that they will have to invest thousands of dollars in recruitment fees simply to get their loved ones to Singapore, many families send their smartest, most promising members to work abroad, whether children, siblings, spouses, or parents. FDWs, in particular, are required to have a minimum of eight years of formal education, and many, especially those from the Philippines, have technical diplomas and/or university degrees. They simply cannot find jobs back home or cannot earn as much as they can in Singapore. Some workers are promised decent jobs and are brought in on skilled or semi-skilled work permits, only to find themselves doing manual labour when they arrive in Singapore—the result of unscrupulous employers’ attempts to avoid paying the higher levy for unskilled workers. Advocates should not assume that a worker is uneducated and does not possess at least some technical training simply because he performs unskilled construction work while in Singapore.

IV. A healthy dose of realism

4.16. The biggest challenge in working with migrant workers is how to advise them, given the disconnect between the law and reality. When working in this area, one quickly realises how knowledgeable and experienced the NGO case workers and volunteers are, and one comes to appreciate their ability to give the workers hopeful substantive advice without creating unrealistic expectations.

4.17. The greatest disservice advocates can do for migrant workers is to give them an unrealistic assessment of their case based on laws in books that do not reflect the reality on the ground. It can be disheartening to see a pro bono lawyer from a prestigious law firm advising a worker that in order to substantiate his forgery allegation to bolster his unpaid wages case pending before MOM, all he has to do is make a report of the forgery at a police station and ask that an expert handwriting analysis be done to compare the signatures. Unfortunately, the reality in most cases is that after taking a report from the worker and interviewing the employer, the police are forced to tell the worker that they cannot do much more unless he can pay for the handwriting expert, which can cost upwards of S$5,000.

4.18. Even worse, advocates can give advice that endangers the very workers they are trying to assist. Workers who stand up to exploitative employers may face forced repatriation and even violence at the hands of thugs hired by the
employers, their managers, and employment agents. Remaining in Singapore to fight one’s employment claim may not make sense either, especially considering the financial drain of remaining in Singapore without a job, and the emotional stress of spending months apart from one’s family. Advocates must also consider the possibility that the judgment ordered by the MOM Labour Tribunal or the civil court will represent only a portion of the amount actually owed, as well as the reality that it will be costly, if not impossible, to enforce the judgment against a transient employer. These concerns—combined with the Singaporean rule that losing parties are responsible for paying court expenses and costs—may make it imprudent for a worker to pursue even the strongest employment claims.

4.19. The greatest service advocates can perform is to listen and empathise; if they are lucky, in a few cases, they may also be able to make a difference. For example, a Malaysian father of three, who had been waiting in limbo for over a year in Singapore while MOM investigated his employment case and withheld his passport, was grateful simply because the clinic student who interviewed him listened and empathised, offering him a tissue when he broke down remembering the last time he had held his infant daughter. Fortunately, thanks to an email to MOM drafted by the student and sent by the caseworker, followed up with a phone call, MOM returned the worker’s passport three days later and, overjoyed, he returned home to his wife and young children. Unfortunately, as any migrant workers advocate will confirm, successes like this can sometimes be rare. Even where cases bring defeat, disappointment, and even disillusionment for both the workers and the advocates advising them, the gratitude of the workers and the occasional victories make advocacy in this area worthwhile. And with each victory—however small—the state of legal justice in Singapore advances.

4.20. The next chapter explores some of the most common legal issues that migrant workers face, and the potential legal remedies available to those who will be bringing or continuing their claims from abroad.

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65 See Justice Delayed, supra note 43 at 13-14.
Chapter 2: Common Legal Problems and Available Remedies
CHAPTER 2: COMMON LEGAL PROBLEMS AND AVAILABLE REMEDIES

1. INTRODUCTION

I. An outline of the chapter

1.1 This chapter highlights common problems faced by migrant workers and lays out the available substantive civil causes of action. The aim is to aid practitioners in evaluating the client’s case to identify viable claims, keeping in mind the legal elements, evidentiary requirements, burden of proof, and remedy sought.

1.2 Section 2 explores the various options available to migrant workers facing issues of non-payment of salary. In three parts, it lays out recruitment and employment matters, including relevant statutes relating to employment law—primarily the Employment Act (EA) and Employment of Foreign Manpower Act (EFMA); common salary disputes, which can be divided into underpayment of an agreed salary and dispute over the sum to be paid; and finally the legal remedies available.

1.3 Another common problem that migrant workers face is illegal payments and deductions that are made from their salary by employers or employment agents. Section 3 highlights the various forms of illegal payments and deductions that practitioners should look out for, and the causes of action that may be available against employers or employment agents to recover these sums of monies.

1.4 Section 4 addresses two other common non-salary employment agreement problems: breach of non-salary employment conditions and promises of non-existent jobs. The former focuses on the statutory obligation of employers to bear the costs of upkeep and maintenance of workers, and to ensure minimum standards of food and accommodation.

1.5 Apart from salary and contractual problems, some workers face difficulty in claiming compensation for injuries sustained on the job. Section 5 lays out and compares the two main routes by which an injured worker can pursue a claim for workplace injury—by statute (WICA) or through the tort of negligence in common law.

1.6 Workers may also sustain injuries outside of work. Section 6 highlights the civil claims available to a victim of physical abuse by their employer.

1.7 The final section will consist of the relevant statutes and cases that were mentioned in this chapter.
2. Basic Employment Matters and Salary Disputes

2.1. This section addresses basic employment matters, common salary disputes migrant workers encounter, and the legal remedies that are available.

2.2. As a preliminary note, Singapore does not have a minimum wage (but a tripartite body formulates wage guidelines).\(^1\) This means that an employee's salary is, in principle, subject to negotiation between employees and employers. In practice, however, power imbalances between employers and employees mean that employees rarely have much involvement in the setting of salary.

2.3. Non-payment of salary may involve the underpayment or complete non-payment of the agreed salary. Simple claims of contractual debt may involve factual disputes, such as when an employer contests the number of overtime hours worked by the client and refuses to pay the full outstanding amount.

2.4. More complex situations arise where the enforceable contract term is in dispute. The organisation of labour in the low-wage, low-skilled worker sector is often haphazard and informal. During the process of recruitment, migration, and employment, labour agents and employers may make representations and promises that are inconsistent or even contradictory.

I. Basic employment matters

2.5. This subsection addresses A) the process of recruitment during which salary issues may arise, B) the main pieces of legislation relating to employment law—EA and EFMA, and C) the formulas for calculating salary payable to a client.

A. Process of recruitment

2.6. The recruitment of migrant workers in Singapore is dominated by private companies.\(^2\) To secure a job in Singapore, a prospective worker will typically contact a labour agent while still in their home country. This agent will often make representations or promises about the potential offer or terms and conditions of employment in the receiving country. Where a prospective worker agrees to accept a job organised by the home country labour agent, not all agreements between the agent and prospective worker are recorded in writing and many remain entirely oral.

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\(^1\) As of September 2014, employers must comply with licensing conditions under the government’s new licensing regime, which mandates an entry-level wage of S$1000 for cleaners. However, this legislation only applies to the resident workforce. Ministry of Finance, Speech, “Speech By Mr Tharman Shanmugaratnam, Deputy Prime Minister & Minister for Finance, At The e2i Best Sourcing Symposium” (8 January) online: MOF Newsroom <http://app.mof.gov.sg/>.

2.7. A migrant worker bound for Singapore often pays thousands of dollars in placement fees. Three common types of placement fees are:

1) Home country agent fees;
2) Home country training centre fees; and
3) Host country agent fees.

2.8. Interviews conducted by Transient Workers Count Too (TWC2) reveal that such a sum of money is regularly raised by selling real property assets, and borrowing from relatives, banks, and/or money lenders. Further, TWC2’s interviews indicate that on average, the fees paid to agents constitute at least ten months of a migrant worker’s potential earnings. This fee differs by nationality and occupation, and changes over time.

B. Employment legislation

2.9. Apart from common law contractual principles, employment contracts are subject to the Employment Act\(^4\) (EA) and Employment of Foreign Manpower Act\(^5\) (EFMA).

i. Employment Act (EA)

2.10. The EA is Singapore’s main labour legislation, and it specifies the minimum terms and conditions of employment. For clients who fall within the scope of EA, the law provides two avenues for redress:

1) Lodging a claim with the Labour Commissioner (i.e. “The Ministry of Manpower route”); or
2) Bringing a civil claim via the courts (i.e. “The civil route”).\(^6\)

2.11. Where the employer breaches a right conferred by the Act or specifically conferred by the contract of service, the employee has a civil right of action for breach of statutory duty.\(^7\) The civil route is open to a client as long as proceedings with the Labour Commissioner are either not instituted, or, if instituted, have not proceeded to judgment under the Act.\(^8\) Refer to Chapter 3, Section 3 for the processes of the two routes.

2.12. In terms of employment conditions, Part III of the EA governs the conditions for payment of salary, and Part IV specifies the payment of overtime and work on rest days.

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\(^3\) Ibid.
\(^6\) Ravi Chandran, LexisNexis Annotated Statutes of Singapore Employment Act (Singapore: LexisNexis 2009) at 183 [Chandran, Annotated EA].
\(^7\) Ibid. at 188.
\(^8\) EA, supra note 4 at s 132.
A primer on new obligations to keep records of salary payment and employment terms under the EA

2.13. From 1 April 2016, amendments to the EA require employers to provide itemised payslips\(^9\) and key employment terms\(^10\) to all their employees covered under the EA.

2.14. Itemised payslips can be issued in hard or soft copy and must be given together with salary payment to an employee or within 3 working days of payment and must be issued at least once a month. These payslips must have details on payment of an employee’s basic salary, deductions and overtime hours worked. Employers are also required to keep a record of all payslips issued for the past two years. For ex-employees, records of the last two years of payslips are to be kept for one year after the employee leaves employment.

2.15. Key employment terms must be issued to employees covered by the EA who are newly employed on or after 1 April 2016 and are employed for a continuous period of 14 days of more. These key employment terms must be issued in hard or soft copy and must contain terms, unless they are not applicable, such as:

1) Name of the employer and employee;
2) Job title and main duties and responsibilities;
3) Date of start of employment;
4) Duration of employment (if employee is on a fixed-term contract);
5) Work arrangements, such as daily working hours, number of working days per week and rest days;
6) Salary period, i.e. what dates the payment is for;
7) Basic salary per salary period;
8) Fixed allowances and deductions per salary period;
9) Overtime rate of pay;
10) Other salary-related components such as bonuses and incentives;
11) Leave entitlements;
12) Medical benefits;
13) Probation period; and
14) Notice period.

2.16. These requirements for employers to keep this information will help assist employees in establishing potential claims for non-payment of salary or breach of employment terms. Employers who fail to keep these new obligations are liable for administrative penalties.\(^11\)

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\(^9\) EA Section 96. See Chapter 2, Section 8.IV for the text of the law.

\(^10\) EA Section 95A. See Chapter 2, Section 8.IV for the text of the law.

\(^11\) EA Section 126A and 126B. See Chapter 2, Section 8.IV for the text of the law. The exact amount of administrative penalties that can be levied can be found in the Schedule of the Employment (Administrative Penalties) Regulations 2016. The Ministry of Manpower has announced that employers will be given a one-year grace period from 1 April 2016 to comply with these requirements before administrative penalties will be levied, see Ministry of Manpower announcement at <http://www.mom.gov.sg/newsroom/press-releases/2015/0817-employment-amendment-bill>.
CHAPTER 2: COMMON LEGAL PROBLEMS AND AVAILABLE REMEDIES

Who is considered an employee under the Employment Act (EA)

2.17. Under the EA, an “employee” means any person who has entered into or works under a contract of service with an employer, excluding:12

1) Seafarers;
2) Domestic workers; and
3) Professionals, managers and executives (PMEs) earning above $4,500 a month.13

2.18. The EA creates a subcategory of “employees” for the purposes of Part IV of the Act, which provides for certain minimum entitlements. Part IV of the Act applies only to the following categories of employees covered by the EA:

1) All employees who fall within the scope of the Act (other than workmen and PMEs) who are earning not more than $2,500 per month (excluding overtime payments, bonuses, annual wage supplements and productivity incentive payments); and
2) All “workmen” who earn not more than $4,500 (excluding overtime payments, bonuses, annual wage supplements and productivity incentive payments).14

2.19. A “workman” is defined by the EA as:15

1) Any person, skilled or unskilled, doing manual work;
2) Any person, other than clerical staff, employed in the operation or maintenance of mechanically propelled vehicles that transport passengers, for hire or for commercial purposes;
3) Any person employed to supervise any workman and perform manual labour, provided that the time spent on manual work is more than half of the total working time in a salary period; or
4) Any person specified in the First Schedule of the EA, namely cleaners; construction workers; labourers; machine operators and assemblers; metal and machinery workers; train, bus, lorry, and van drivers; train and bus inspectors; and all workmen employed on piece rates at the employer’s premises.16

12 Ibid., s 2(1).
13 The exception is Part IV, the purposes for which all PMEs are not regarded as employees, ibid., s 2(2).
14 Ibid., s 35.
15 Ibid., s 2(1).
16 Ibid., First Schedule.
2.20. The table below clarifies the limits of the EA’s scope.

Table 1: Scope of Employment Act

<table>
<thead>
<tr>
<th></th>
<th>Part III- Payment of salary</th>
<th>Part IV- Rest days, hours of work and other conditions of service</th>
<th>Part X- Holiday and sick leave entitlements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workmen</td>
<td>✓</td>
<td>Applications only if salary does not exceed $4,500</td>
<td>✓</td>
</tr>
<tr>
<td>Non-workmen (e.g. clerks, sales staff)</td>
<td>✓</td>
<td>Applications only if salary does not exceed $2,500</td>
<td>✓</td>
</tr>
<tr>
<td>Professionals, managers and executives (PMEs)</td>
<td>Applies only if salary does not exceed $4,500</td>
<td>✗</td>
<td>Applies only if salary does not exceed $4,500</td>
</tr>
</tbody>
</table>

2.21. The reason given for excluding seafarers from the coverage of the EA is that the nature of their duties requires them to work longer than the prescribed maximum hours of 8 hours per day.\(^{17}\) Note that the meaning of “seafarer” has been clarified to exclude individuals who are not based at sea, such as those on land who do some work on ship. This includes pilots, port workers, and persons temporarily employed on the ship during the period it is in port.\(^{18}\)

2.22. Likewise, the justification given for excluding domestic workers is that the nature of domestic work is quite different from normal work, making it difficult to regulate employment conditions.\(^{19}\) Instead, employment of foreign domestic workers is regulated under EFMA.

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\(^{18}\) EA, supra note 4, s 2(1).

ii. Employment of Foreign Manpower Act (EFMA)

2.23. EFMA prescribes the responsibilities and obligations of employers to migrant workers. EFMA does not provide direct rights of civil action to these workers. Rather, it sets out employers’ obligations towards them. EFMA covers all “foreign employees”, which includes all foreign nationals, other than those who are self-employed, seeking or have not been offered employment in Singapore.\(^{20}\) This includes foreign domestic workers (FDW) who are excluded from the protection of the EA.

2.24. The Employment of Foreign Manpower (Work Passes) Regulations 2012 accompanies EFMA and prescribes conditions of employment for migrant workers in relation to their upkeep, maintenance and well-being before, during, and after their period of employment. The regulations are divided between employment conditions for domestic workers and all other workers. Parts I and II of the Fourth Schedule pertain to the employment conditions of domestic workers, while Part III and IV relate to employment conditions of non-domestic workers.

2.25. Violations of EFMA are treated as either administrative infringements or criminal offences. The question of whether a migrant worker can bring a claim against their employer for a breach of a statutory duty upon violation of EFMA provisions has yet to be tested in the Singapore courts. However, one potential line of argument is that EFMA provisions constitute terms implied by law to an employment contract, giving rise to a cause of action for breach of contract when an employer violates EFMA’s provisions. This argument is in line with Parliament’s stated intention for EFMA to provide basic protections for vulnerable migrant workers.\(^{21}\) EFMA may also render certain contracts illegal.

2.26. Workers are also often charged for mandatory job training which is provided in training centres in their home countries and/or in Singapore.

Table 2: Range of agent fees paid by Indian, Bangladeshi and Chinese workers

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Agent fees in home country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian</td>
<td>$6,000(^{22}) – $7,000</td>
</tr>
<tr>
<td>Bangladeshi</td>
<td>$8,000 – $10,000</td>
</tr>
</tbody>
</table>

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20 EHMA, supra note 5 at s 2. See Chapter 2, Section 8.VI for the text of the law.
21 Parliamentary Debates vol 85, supra note 19.
22 All dollar figures stated in this chapter are in Singapore dollars unless otherwise noted.
2.27. In addition to fees paid to their home country agents, some migrant workers are also required to pay fees upon their arrival to agencies in Singapore. Under the Employment Agencies Rules 2011 employment agents are only permitted to charge placement fees of one month’s salary per year of contract or validity of work pass, whichever is shorter, subject to a cap of two months’ salary. In practice, placement fees paid to local agents can range from $3,000 – $8,000 for non-domestic workers, while placement fees for domestic workers average $1,900, equivalent to about four months’ salary.

2.28. After the agent has matched a worker with an employer in Singapore, the employer must apply for a Work Permit or S Pass for that worker before employing them. Upon approval of such application, the Ministry of Manpower (MOM) will issue an In-Principle Approval (IPA) setting out the employer’s name, the worker’s monthly basic salary, and any allowance and deductions that may apply.

2.29. The IPA is an administrative document issued by MOM, based on the employer or agent’s application, and is itself not a contract of employment. Even though the worker may have knowledge of the terms of the IPA, as they should have obtained a copy in their native language, it may at best serve as evidence of the contract between the employer and the client, but it is not the employment contract.

2.30. Once they reach Singapore, workers may or may not sign a fresh contract with the employer. Where there is no new contract, the IPA may be one form of evidence that there is an agreement between the worker and their employer.

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24 Ibid. at s 12(1)(a).
26 Amelia Tan, “10 maid agencies face temporary ban”, The Straits Times (13 April 2013) online: The Straits Times <http://www.straitstimes.com/>.
27 See Chapter 3, Section 1.10 for work passes foreign workers commonly hold.
29 Winsor Homes Ltd. v St. John’s Municipal Council 20 Nfld. & P.E.I.R. 361; 53 APR 361 (1978); Halsbury’s Laws of England, Volume 22, 5th ed (Singapore: LexisNexis, 2012) at 191 (“It follows that, prima facie, there is no concluded contract where further agreement is expressly required [...] If the parties have reached an agreement in principle only, it may be that the proper inference is that they have not yet finished agreeing, for instance: where they make their agreement subject to details or subject to contract; or where so many important matters are left uncertain that their agreement is incomplete” at para 268).
2.31. This convoluted process of cross-border job placement poses problems in identifying the enforceable agreement and pinpointing specific terms of the agreement. Possible scenarios include:

1) Multiple agreements with differing terms on salary;
2) Workers signing a contract without knowing what the terms are; and
3) The contract being void for illegality, as the employee does not have a valid work permit.

2.32. On the evidentiary level, the informal, i.e. unwritten, nature of employment arrangements and the power imbalance between employers and workers mean that documentation is often lacking or easily falsified by the employers.

C. Calculation of salary owed

2.33. Salary calculations are subject to the EA, EFMA and the general law of contract. References to salary in this section include i. basic pay, ii. overtime pay, iii. paid rest days, iv. paid sick leave, v. paid annual leave, vi. paid holidays, and other contractual terms relating to salary.

2.34. A worker’s salary may be calculated by reference to monthly, daily, hourly or piece-rates (i.e. payment for each task of work completed). Calculations of gross and basic rates of pay for employees may depend on whether they are paid on a monthly or piece rate basis, and whether they work regular hours or perform shift work.

i. Calculation of salary owed for overtime work

2.35. It is mandatory to pay employees covered under Part IV of the EA for overtime work. The overtime rate payable to a non-workman employee is capped at the monthly basic salary level of $2,250.

2.36. A worker is entitled to payment for overtime if they, at the request of the employer, work more than 8 hours in one day, or more than 44 hours in one week. Overtime work must be paid at a rate of no less than 1.5 times the

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30 For employees covered under Part IV of EA, see Sections 2.17- 2.19.
31 EA, supra note 4, Fourth Schedule.
32 Ibid., s 38(4). Where it is agreed under the contract of service that the worker is required to work less than 8 hours on one or more days of the week, or is required to work not more than 5 days in a week, the limit of 8 hours in one day may be exceeded. However, a worker cannot be required to work for more than 9 hours in one day or 44 hours in one week, EA, supra note 4, s 38(1). In such an instance i.e. if requested by the employer to work more than 9 hours in one day or more than 44 hours in one week, the worker will be entitled to overtime pay.
33 Ibid. Where it is agreed under the contract of service that the worker is required to work less than 44 hours in every alternate week, the limit of 44 hours in one week may be exceeded in the other week. However, a worker cannot be required to work more than 48 hours in one week or for more than 88 hours in any continuous period of 2 weeks. In such an instance, the worker will be entitled to overtime pay if requested by the employer to work more than 48 hours in one week, or more than 88 hours in any continuous period of 2 weeks.
employee’s hourly basic rate of pay. The formula for calculating overtime pay is as follows:

Table 3: Formulas for calculating overtime pay

<table>
<thead>
<tr>
<th>Description</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>For workmen employed on a monthly rate of pay:</td>
<td>1.5 x number of hours worked overtime ( \times ) ( \frac{12 \times \text{monthly basic rate of pay}}{(52 \text{ weeks x 44 hours})} )</td>
</tr>
<tr>
<td>For non-workmen employed whose monthly basic rate of pay is less than $2,250:</td>
<td>1.5 x number of hours worked overtime ( \times ) ( \frac{12 \times \text{monthly basic rate of pay}}{(52 \text{ weeks x 44 hours})} )</td>
</tr>
<tr>
<td>For non-workmen employed whose monthly basic rate of pay is $2,250 or more:</td>
<td>1.5 x number of hours worked overtime ( \times ) ( \frac{(12 \times $2,250)}{(52 \text{ weeks x 44 hours})} )</td>
</tr>
</tbody>
</table>

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34 *Ibid.* For a worker’s hourly basic rate of pay for calculation of payment due for overtime see *EA, supra* note 4 Fourth Schedule.


36 *EA, supra* note 4, Fourth Schedule. The overtime rate payable to a non-workman employee is capped at the monthly basic salary level of $2,250, and thus calculated as such.
Table 4: Example of overtime pay calculation (workmen)^37

<table>
<thead>
<tr>
<th>Type of employee</th>
<th>Salary</th>
<th>Formula to calculate hourly basic rate</th>
<th>Calculation of hourly basic pay</th>
<th>No. of hours worked overtime</th>
<th>Overtime pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly rated</td>
<td>$800 per month</td>
<td>12 x Monthly basic rate of pay</td>
<td>12 x $800</td>
<td>2 Hours</td>
<td>$4.20 x 1.5 x 2hrs = $12.60</td>
</tr>
<tr>
<td></td>
<td></td>
<td>52 x 44</td>
<td>52 x 44</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily rated</td>
<td>$20 per day</td>
<td>Daily pay at the basic rate</td>
<td>$20</td>
<td>2 Hours</td>
<td>$2.50 x 1.5 x 2hrs = $7.50</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Daily hours of work</td>
<td>8</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 5: Example of overtime pay calculation (non-workmen)^38

<table>
<thead>
<tr>
<th>Type of employee</th>
<th>Salary</th>
<th>Formula to calculate hourly basic rate</th>
<th>Calculation of hourly basic pay</th>
<th>No. of hours worked overtime</th>
<th>Overtime pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly rated</td>
<td>$1,600 per month</td>
<td>12 x Monthly basic rate of pay</td>
<td>12 x $1,600</td>
<td>4 Hours</td>
<td>$8.40 x 1.5 x 4hrs = $50.40</td>
</tr>
<tr>
<td></td>
<td></td>
<td>52 x 44</td>
<td>52 x 44</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monthly rated</td>
<td>$2,250 per month</td>
<td>12 x Monthly basic rate of pay</td>
<td>12 x $2,250</td>
<td>2 Hours</td>
<td>$11.80 x 1.5 x 2hrs = $35.40</td>
</tr>
<tr>
<td></td>
<td></td>
<td>52 x 44</td>
<td>52 x 44</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

^37 TAFEP Guide, supra note 35.

^38 Ibid.
### ii. Calculation of salary owed for an incomplete month of service or work

2.37. Salary payable to a monthly-rated employee for an incomplete month of work is calculated using the following formula:\(^{40}\)

\[
\text{Salary payable} = \frac{\text{Monthly gross rate of pay} \times \text{Total no. of days the employee actually worked in that month}}{\text{Total no. of working days in that month}}
\]

2.38. Monthly gross rate of pay refers to the total amount of money, including allowances payable to an employee for working for one month, but excluding:

1) Additional payments by way of overtime payments, bonus payments, or annual wage supplements;
2) Any sum paid to the employee for reimbursement of special expenses incurred by them in the course of employment;
3) Productivity incentive payments; and
4) Travelling, food, or housing allowances.\(^{41}\)

2.39. Total number of working days in that month excludes rest days and non-working days but includes public holidays.\(^{42}\)

2.40. Total number of days the employee actually worked in that month includes public holidays, paid hospitalisation leave, or annual leave if entitled.\(^{43}\)

2.41. A working day with more than 5 hours is regarded as one working day, while one with 5 hours or fewer is considered as half a working day.\(^{44}\)

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\(^{39}\) EA, supra note 4, Fourth Schedule. The overtime rate payable to a non-workman employee is capped at the monthly basic salary level of $2250, and thus calculated as such.

\(^{40}\) Ibid., s 20A(1).

\(^{41}\) Ibid., s 2(1).

\(^{42}\) TAFEP Guide, supra note 35.

\(^{43}\) Ibid.

\(^{44}\) EA, supra note 4, s 20A(2).
iii. Calculation of salary owed for work done on rest days

2.42. Employees covered under Part IV of the EA\(^{45}\) are entitled in each week to a rest day of one whole day without pay.\(^{46}\) The rate of pay may be higher for work done on a rest day.

2.43. The amount payable depends on the work duration and whether the request to work was from the worker or the employer. The overtime rate payable to a non-workman employee is capped at the monthly basic salary level of $2,250.\(^{47}\)

**Table 6: Formula for calculating payment due for work done on rest days**\(^{48}\)

<table>
<thead>
<tr>
<th>Duration of work</th>
<th>Employee works on rest day at his own request</th>
<th>Employee works on rest day at employer’s request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than half of normal hours of work for one day</td>
<td>Half day’s basic salary</td>
<td>One day’s basic salary</td>
</tr>
<tr>
<td>More than half, but not exceeding normal hours of work for one day</td>
<td>One day’s basic salary</td>
<td>Two day’s basic salary</td>
</tr>
<tr>
<td>More than normal hours of work for one day</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. One day’s basic salary; and</td>
<td>1. Two days’ basic salary; and</td>
</tr>
<tr>
<td></td>
<td>2. Overtime pay of at least 1.5 times hourly basic rate of pay</td>
<td>2. Overtime pay of at least 1.5 times hourly basic rate of pay</td>
</tr>
<tr>
<td></td>
<td>x No. of overtime hours worked</td>
<td>x No. of overtime hours worked</td>
</tr>
</tbody>
</table>

---

\(^{45}\) For employees covered under Part IV of EA, see Sections 2.17-2.19.

\(^{46}\) Ibid., s 36.

\(^{47}\) Ibid., Fourth Schedule.

\(^{48}\) Adapted from TAFEP Guide, supra note 35; EA, supra note 4, s 37.
iv. **Paid sick leave entitlement**

2.44. This section covers general paid sick leave entitlement under the EA. This should be distinguished from medical leave wages that may be claimed under the Work Injury Compensation Act[^49^] (WICA), which is specific to medical leave wages associated with workplace injury. To calculate payable wages for clients on workplace injury related medical leave, see instead Chapter 2, Section 5, Table 14.

2.45. All employees covered under the EA are entitled to paid sick leave if they fulfil the following requirements:

1) Have worked with their employer for at least 3 months[^50^];
2) Have obtained a medical certificate from the company doctor. If the Company doctor is not available, the employee may obtain the medical certificate from a government doctor[^51^] and
3) Have informed the employer of the sick leave within 48 hours[^52^]. The number of days of paid sick leave that the worker is entitled to depends on their service period:

<table>
<thead>
<tr>
<th>No. of months of service completed</th>
<th>Paid outpatient sick leave (working days)</th>
<th>Paid hospitalisation leave (working days)[^54^]</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 months</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>4 months</td>
<td>8</td>
<td>30</td>
</tr>
<tr>
<td>5 months</td>
<td>11</td>
<td>45</td>
</tr>
<tr>
<td>6 months and above</td>
<td>14</td>
<td>60</td>
</tr>
</tbody>
</table>

2.46. If the employee has worked for at least three months, the employer is legally obliged to bear the medical examination fee, i.e. medical consultation fee. For other medical costs such as medication, treatment or ward charges, the

[^49^]: *Work Injury Compensation Act* (Cap 354, 2009 Rev Ed Sing) [WICA].
[^50^]: Ibid., s 89(2).
[^51^]: Ibid., s 89(1), s 89(2). Visit www.mom.gov.sg for the list of approved public medical institutions.
[^52^]: Ibid., s 89(4).
[^53^]: Adapted from TAFEP Guide, supra note 35; *EA*, ibid note 4, s 89(1), 89(2).
[^54^]: This includes any outpatient sick leave if taken.
employer may be obliged to bear such costs depending on the medical benefits provided for in the employee’s employment contract.\textsuperscript{55}

v. Paid holiday leave entitlement

2.47. Employees are entitled to a paid holiday at their gross rate of pay for the days specified in the Holidays Act\textsuperscript{56} that fall during the time they are employed.\textsuperscript{57} If the holiday falls on rest day, the next working day following that rest day shall be a paid holiday.\textsuperscript{58}

2.48. An employee who is required by his employer to work on any specified public holiday is entitled to an extra day’s salary at the basic rate of pay for one day’s work in addition to the gross rate of pay for that day.\textsuperscript{59}

vi. Paid annual leave entitlement

2.49. Employees covered under Part IV of the EA are entitled to be paid annual leave if they have served for at least three months.\textsuperscript{60}

2.50. Annual leave entitlement is subject to agreement between the worker and employer. However, it should not be less than that prescribed by the EA, which is as follows:

Table 8: Number of days of paid annual leave entitlement\textsuperscript{61}

<table>
<thead>
<tr>
<th>Years of continuous service</th>
<th>Days of leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>1\textsuperscript{st}</td>
<td>7</td>
</tr>
<tr>
<td>2\textsuperscript{nd}</td>
<td>8</td>
</tr>
<tr>
<td>3\textsuperscript{rd}</td>
<td>9</td>
</tr>
<tr>
<td>4\textsuperscript{th}</td>
<td>10</td>
</tr>
<tr>
<td>5\textsuperscript{th}</td>
<td>11</td>
</tr>
<tr>
<td>6\textsuperscript{th}</td>
<td>12</td>
</tr>
<tr>
<td>7\textsuperscript{th}</td>
<td>13</td>
</tr>
<tr>
<td>8\textsuperscript{th} and thereafter</td>
<td>14</td>
</tr>
</tbody>
</table>

\textsuperscript{55} TAFEP Guide, supra note 35.


\textsuperscript{57} EA, supra note 4, s 88(1).

\textsuperscript{58} Ibid.

\textsuperscript{59} Ibid, s 88(4).

\textsuperscript{60} Ibid, s 43. For employees covered under Part IV of EA, see Sections 2.17-2.19.

\textsuperscript{61} Adapted from TAFEP Guide, supra note 35; EA, supra note 4, s 43(1).
2.51. Employees who have served for a period of more than 3 months, but less than one year are entitled to annual leave in proportion to the number of completed months of work in that year.62

II. Common examples of salary disputes

2.52. Salary disputes typically fall under one of two categories: A. where the rate of pay agreed upon is undisputed and the aim is simply to claim for a debt owed, or B. where the rate of pay is disputed due to the existence of multiple conflicting terms on salary.

A. Where a clear term on salary exists

2.53. Where there is an undisputed written or oral contractual term on the rate of pay, the focus may be on the factual issue of showing that such sums of salary were not paid to the client by the employer. Below are examples of situations where a clear contractual term can be found:

i. Written contract

2.54. A worker signs a contract with an employer. The worker understands all the terms of the contract, which are consistent with the stated salary in the IPA. The employer is not able to pay the employee their full salary for several months. The employer delays paying the worker the full salary owed to them, until the company closes down. The worker is no longer employed, and is owed salary arrears. However, there is no practice of issuing receipts upon payment of salary, and the worker faces difficulty in showing that they were underpaid for several months.

ii. Oral contract

2.55. The worker is orally promised a higher salary than is stated in their IPA. The employer consistently pays them the higher salary, which is also recorded in payslips. The worker’s salary is delayed for a few months. Eventually the company closes down. The worker is no longer employed, and is owed several months in salary arrears.

B. Where there is no clear term on salary

2.56. Where there are multiple conflicting terms of salary, the primary issue is identifying the enforceable terms.

2.57. Multiple contractual terms on salary may arise during the process of recruitment as detailed above in Chapter 2, Section 2.II.B. Identifying the enforceable contractual terms may depend on the circumstances under which the agreement was purportedly reached, the nature of the agreement, the substance of the contractual terms, and the parties’ subsequent course of conduct. Below are examples of circumstances under which multiple

62 EA, supra note 4, s 43(2). In calculating the proportionate annual leave entitlement, fractions of less than half a day should be disregarded, while fractions of half or more should be considered as one day, EA, supra note 4, s 43(3).
agreements may arise and the circumstances under which written agreements may be obtained:

i. **Multiple agreements reached with different parties containing different terms on salary**

2.58. The worker signs a contract with an agent in their home country. The contract states that the worker’s salary will be $X. Their IPA also states that they are to be paid a basic salary of $X. Upon arriving in Singapore, the employer or agency makes the worker sign a contract which states that they will be paid a basic salary of $Y, which is lower than $X.

ii. **Worker signed contract without understanding the meaning of the terms**

2.59. The worker’s IPA provides for a basic salary of $X. Upon arriving in Singapore, the employer makes them sign a contract in English, which the worker cannot read. The contract states that the worker will be paid a basic salary of $Y, which is lower than the $X provided for in the IPA.

2.60. The worker’s IPA provides for a basic salary of $X. Upon arriving in Singapore, the employer forces them to sign a blank piece of paper. Later, the employer fills the paper with a contract which states that their basic salary is $Y, which is lower than the $X provided for in the IPA.

2.61. The worker’s IPA provides for a basic salary of $X. Upon arriving in Singapore, the employer forces them to sign a contract which is folded over such that they are not able to read the terms of the contract. The contract states that the worker will be paid a basic salary of $Y, which is lower than in the $X provided for in the IPA.

III. **Remedies and rules**

2.62. Innumerable varieties of fact situations relating to agreements on salary may arise. Each client’s objective may be different—one client may wish to enforce a contract signed in Singapore which promises a higher salary than their IPA, while another client may wish to void the contract signed in Singapore and enforce instead a contract signed in their home country.

2.63. This section lays out the various objectives that a client may wish to achieve, and the causes of action that are available to reach such an outcome. Possible objectives of a client covered under this section are: A. claiming for contractual debt on the basis of a written contract; B. enforcing an oral promise; C. voiding a contract; D. enforcing a contract signed overseas; E. enforcing the employment contract of a worker who does not have a valid work pass; and F. identifying enforceable terms where they are vague and/or conflicting. Each part includes a legal definition, elements of the claim, and an evaluation of the potential effectiveness of the claim in the migrant worker context.
A. Claiming for contractual debt on the basis of a written contract

2.64. Where a clear written contract exists, the client may claim for arrears on the basis of terms in the written agreement.

2.65. The difficulty may lie in proving the non-payment of salary. Payslips or bank statements are typically taken as proof of payment. However, such records are easily falsified by unscrupulous employers.

i. Bringing an action for debt on the basis of the written agreement

Definition

2.66. Where a contract provides for payment of some amount of money in consideration for the other party performing services, then the party performing a service is entitled to this money upon completion of service. Should the paying party default, the performing party's remedy is a debt action to collect the contract sum.

2.67. Where the contract terms provide for payment portions for each stage of performance, (i.e. the contract is divisible) the claimant can sue for each part of the contract price as the relevant work is completed. Workers usually have divisible contracts as they typically contract for monthly, hourly, or piece-rate salaries.

Elements

2.68. First, the client must prove the existence of a term of the contract stipulating their contractual rate of pay. This can be done by producing the written contract. If there is no written contract, see Section 2.III.B. in this chapter on oral agreements.

2.69. Next, the client must prove that the debt exists by providing documentation, such as the client’s timesheet, to show that they have worked the number of hours for which they are claiming payment. Unfortunately, workers often do not have access to their own documentation as it is usually held by their employers. Unscrupulous employers may also forge documents.

2.70. The next best alternative is to provide the client’s personal record of hours worked. If the client is still employed, they should be advised to keep their own record of the hours worked. Original documents are required (i.e. not photocopies or print outs).

2.71. The client must then give testimony that they have not been paid their salary for the hours worked.

63 MP-Bilt Pte Ltd v Oey Widarto, [1999] 1 SLR(R) 908 [55]; [1999] SGHC 70 [MP-Bilt].

64 The EA treats employment contracts as divisible as evident from the formulas for the calculation of salary. Under the EA, a worker paid on a monthly basis may bring a claim for any outstanding salary due in respect of the number of days actually worked, as well as salary for half a day where they worked 5 hours or less, where the period in question constitutes less than one month, EA, supra note 4 at s 20As. Overtime pay is calculated on an hourly basis irrespective of the basis on which the client’s rate of pay is fixed, EA, supra note 4 at s 37.
2.72. The evidentiary burden then shifts to the employer to prove payment as a defence to the client’s claim for a debt, where consideration has been provided in the form of services rendered. A debt once proved to have existed is presumed to continue unless payment or discharge can be proven or established by circumstance to be more likely than not.\footnote{Young v Queensland Trustees Limited, [1956] HCA 51. See Chapter 2, Section 8.II for a case summary.}

2.73. The mere fact that the employer is able to produce receipts or payslips is not determinative proof that payment has been made. Improbabilities may still render the burden insufficiently discharged.\footnote{Ibid.} Facts that may undermine the employer’s account will be specific to each case.

**Evaluation of bringing an action for debt**

2.74. Even if the client keeps the contract alive\footnote{MP-Bilt, supra note 63 [57].} by continuing to work despite the employer’s continued breach of contract by paying at a lower rate, the client can recover any instalments already accrued as debt after performance. The client is not under a duty to mitigate in a claim for debt.\footnote{Ibid. at [20].} However, it must be clear that the client’s continued performance is an affirmation of the contract at the previously agreed upon rate of pay, and not an affirmation of the lower rate of pay as a revised term of the contract.

2.75. Bringing a claim for contractual debt is open to all workers as long as they have a legal contract of service with an employer. For enforcing illegal contracts, see Section 2.III.E.

**B. Enforcing oral promises made by an employer**

2.76. Clients may wish to enforce oral promises made by their employer. This may occur where employers orally promise clients a higher salary than stated in the IPA, where no written agreement of any kind exists; or where employers make oral promises outside of the written contract, such as bonus payments. Alternately, the client may wish to bring an action for damages for misrepresentation by the employer. The challenge in both cases lies in proving the existence of the oral promise.

i. **Bring an action for debt on the basis that the verbal promise by the employer is an oral term of the contract**

2.77. Employees may seek to recover contractual debt by claiming that verbal promises were terms of an oral contract, or of a partly written, partly oral contract.

2.78. The EA recognises oral contracts of service, whether express or implied.\footnote{EA, supra note 4 at s 2(1). See Chapter 2, Section 8.IV for the text of the law.} Courts will also recognise partly oral, partly written contracts of service.\footnote{Carmichael v National Power Plc, [1999] ICR 1226 [Carmichael]. See Chapter 2, Section 8.IV for a case summary.}
2.79. In order to bring an action for debt based on an oral promise, plaintiffs must show that 1) the statement is an express term of the contract, and not a mere representation external to the contract and 2) the statement liable to become a term was incorporated into the contract.\textsuperscript{71} Both elements will be discussed in detail below.

2.80. Including evidence of unwritten, oral promises into evidence is possible, provided that not all of the terms have been written into the contract. This is known as the “parole evidence” rule, and is enshrined in the Evidence Act.\textsuperscript{72} However, some contracts include a provision stating that the written terms comprise the entire contract (known as "entire agreement" clauses). In such cases, it is far more difficult to admit evidence of additional oral provisions.

2.81. Testimony by the employer and worker can be sufficient to prove that an oral term exists regarding salary. In previous cases, the finding of oral terms has been made based on testimony given by an executive director\textsuperscript{73} and a manager.\textsuperscript{74}

2.82. Oral terms may also be implied by subsequent conduct. It is not necessary to rely on memory of the precise conversation. When both parties agree about what they understood their mutual obligations to be, this evidence may be taken into consideration.\textsuperscript{75} Mutual understanding of an oral agreement can be implied from a course of dealing, such as a pattern of payment of the promised sum over a period of time. In one case, a contract of service was implied by the defendant’s subsequent conduct of allowing the plaintiff to work at his place of employment and paying the plaintiff salary for two months.\textsuperscript{76}

Differentiating an express term from a representation

2.83. Even if what the employer promised can be clearly established, it does not necessarily follow that it has been incorporated into the contract. Statements made during negotiations may be either mere representations, or, in the alternative, they may be legally binding terms of the contract.

2.84. A term is a promise for which the employer assumes contractual responsibility, while a representation is a statement which simply asserts the truth of past or present facts, and induces a person to enter into a contract. Representations, if


\textsuperscript{72} \textit{Evidence Act} (Cap 97, 1997 Rev Ed), ss 93-100. See also \textit{Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd} [2008] 3 SLR(R) 1029 and \textit{Sembcorp Marine Ltd v PPL Holdings Pte Ltd} [2013] 4 SLR 193. See Chapter 2, Section 8.I for case summaries.

\textsuperscript{73} \textit{Melaka Farm Resorts (M) Sdn Bhd v Hong Wei Seng}, [2004] 6 MLJ 506 at [13] [\textit{Melaka Farm Resorts}]. See Chapter 2, Section 8.IV for a case summary.

\textsuperscript{74} \textit{Ibid}.

\textsuperscript{75} \textit{Carmichael}, supra note 70.

\textsuperscript{76} \textit{Melaka Farm Resorts}, supra note 73.
real at the given point of time, do not legally bind the representor and they can go back on their representation.\footnote{\textit{Kleinwort Benson Ltd v Malaysia Mining Corporation BHD}, [1989] 1 WLR 379. See Chapter 2, Section 8X for a case summary.}

2.85. There are several factors which aid in differentiating between terms and representations, including a) the parties’ objective intentions; b) stage of the transaction at which the crucial statement was made; c) reduction of the terms of contract to writing; and d) special knowledge the employer had about the employment.

a) Intentions of the parties as objectively determined

2.86. Simply stating that a fact is true without a promise (or “warranty”) of its truth is only a representation. The employer must intend to give their guarantee on the truth of the fact.\footnote{\textit{Oscar Chess Ltd v Williams}, [1957] 1 All ER 325. See Chapter 2, Section 8X for a case summary.}

2.87. If a representation is made in the course of dealings for a contract for the very purpose of inducing the client to enter into the contract, there is a prima facie reason for inferring that the representation was intended as a warranty, i.e. that the employer intends to give their guarantee on the truth of the fact.\footnote{\textit{Dick Bentley Productions v Harold Smith Motors}, [1965] 2 All ER 65 [Dick Bentley]. See Chapter 2, Section 8X for a case summary.}

2.88. The employer can rebut this inference if they can show that they were innocent of fault in making the statement, due to it being unreasonable in the circumstances for them to be bound by it because they were not in a position to find out the truth.\footnote{\textit{Ibid}.}

b) Stage of the transaction at which the crucial statement was made

2.89. The statement must be designed as a term of the contract and not merely incidental to the preliminary negotiations.

2.90. If the statement was made close to the formation of the contract, it is more likely to be deemed a term of the contract.\footnote{\textit{Bannerman v White}, [1861] 10 CBNS 844. See Chapter 2, Section 8X for a case summary.}

c) Reduction of the terms of contract to writing

2.91. It is necessary to consider if the oral statement was followed by a reduction of the terms to writing.

2.92. If parties intended the contract to be partly written, partly oral, the statement may be an oral warranty collateral to the written contract,\footnote{\textit{Birch v Paramount Estates Ltd}, [1956] 167 Estates Gazette 396. See Chapter 2, Section 8X for a case summary.} i.e. there is an oral guarantee that is part of the entire contract. The oral statement would thus be considered to be an oral term of the contract, rather than a representation external to the contract.
d) Special knowledge of employer

2.93. Where information asymmetry exists, (i.e. one party knows more than the other) courts tend to decide against the party with special knowledge, who is in a better position to discover the truth. Employers almost always have more knowledge about the conditions of employment than the employees do.

2.94. Once the oral term can be proven, the client can claim contractual debt under that term. Refer to Section 2.III.A.i. which discusses bringing an action for debt.

Evaluation of bringing an action for debt on oral terms:

2.95. An oral term is easier to prove where there is evidence, such as payslips from previous payments or recordings of conversations.

2.96. Even if the client keeps the contract alive by continuing to work despite the employer’s continued breach of contract by paying at a lower rate, the client can recover any instalments already accrued as debt after performance. The client is not under a duty to mitigate in a claim for debt.

2.97. This rule will only help the client recover instalments of payment for services already rendered. If the claimant desires to claim future payments in advance, they must accept repudiation of the contract and sue for damages, which subjects them to rules governing mitigation.

2.98. Bringing a claim for contractual debt is open to all workers as long as they have a legal contract of service with an employer. For enforcing illegal contracts, see Section 2.III.E.

ii. Bring an action for damages for misrepresentation by the employer

Definition

2.99. An action for misrepresentation may be more appropriate where a verbal statement is not a term of the contract, but instead a statement of past or existing fact which materially induced the client to enter the employment contract.

Elements

2.100. To establish misrepresentation, the following elements must be found 1) a statement of fact is made by one contracting party to another; 2) the statement is in fact false; and 3) the statement materially induces the innocent party into entering the contract.

1) A statement of fact is made by one contracting party to another

2.101. Only a statement of fact can amount to an operative misrepresentation. A statement of fact must be distinguished from statements of intention, statements

83 Dick Bentley, supra at note 79.
84 MP-Bilt, supra note 63 at [57].
85 Ibid. at [20].
of opinion, which are described below, as well as sales puffs (advertising exaggerations about the qualities of a product or service). Some of the relevant factors in determining what constitutes a statement of fact include: the contracting parties’ knowledge, relative positions of the contracting parties, the words used, and the nature of the subject matter in the contract.

*Distinguishing statements of fact from statements of opinion*

2.102. A statement of opinion is a subjective judgment that does not state the truth of the matter. It is not actionable even if the opinion turns out to be inaccurate.⁸⁶

2.103. For example, a statement by an agent that, in their own judgment, the employer is a good employer, is merely an expression of opinion, if honestly held.

2.104. An exception is if there is an imbalance in knowledge which would allow the courts to imply a factual representation of reasonable grounds for such an opinion.⁸⁷

2.105. If an agent makes the same statement above, despite knowing that the employer has failed to pay the salaries of their employees for several months, the statement may be actionable as against the agent on the basis that the agent impliedly stated that he knew facts which justified his opinion.

*Distinguishing statement of fact from statement of intention*

2.106. While a statement of fact alludes to a past or existing fact, a statement of intention or prediction refers to future conduct and is usually not actionable for misrepresentation.

2.107. An employer may state that there will be overtime work for the employee every week. This may merely be a prediction of the availability of work, and not a guarantee of overtime work for the employee.

2.108. However, a statement of intention could constitute a promise, and if it becomes a term of the contract, failure of the employer to perform may amount to a breach. See Section 2.III.B.i. on bringing an action for debt on an oral term of the contract.

2.109. Embedded within a statement of intention is a statement of fact which impliedly represents the employer’s state of mind. If the employer had falsely represented (i.e. lied about) his intention at the time the representation was made, there is a false representation of an existing fact, which qualifies as misrepresentation and is therefore actionable.⁸⁸

2) The statement is in fact false

2.110. Generally, there must be an unambiguous false statement of fact to constitute an operative misrepresentation.

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⁸⁸ *Smith v Land & House Property Corporation*, [1884] 28 Ch D 7. See Chapter 2, Section 8.IX for a case summary.

⁸⁹ *Deutsche Bank*, supra note 86; *Edgington v Fitzmaurice*, [1885] 29 Ch D 459. See Chapter 2, Section 8.IX for a case summary.
CHAPTER 2: COMMON LEGAL PROBLEMS AND AVAILABLE REMEDIES

Half-truths can amount to misrepresentation

2.111. A statement that is true, but omits materials facts and thereby creates a false impression which misleads the client can constitute an operative misrepresentation.90

Continuing duty to correct representation when circumstances change

2.112. There is a continuing duty to correct a representation when there is a change of circumstances which would make the representation false. Silence can amount to an operative misrepresentation where such duty to disclose or correct arises.91

Misrepresentation can be found through conduct

2.113. An implied misrepresentation can be inferred from the employer’s conduct.92

Wilful suppression of material facts can amount to misrepresentation

2.114. While mere silence is generally insufficient to amount to an operative misrepresentation where there is no duty to disclose, silence can constitute misrepresentation if there is active concealment of important facts that if revealed would render statements untrue.93

3) Material inducement

2.115. An employer’s false statement must have materially induced the employee to enter the contract. The statement need not be the only inducement; it merely needs to be relevant to the contract.

2.116. There is inducement if the client:

   a) Was aware of the statement;
   b) Did not know that the statement was untrue;
   c) Relied on the statement;94 and
   d) Did not have reasonable grounds for doubting the accuracy of the statement. The fact that the client could have verified the accuracy of the statement is not fatal to the claim.95

91 With v O’Flanagan, [1936] Ch 575. See Chapter 2, Section 8.IX for a case summary.
93 Trans-World (Aluminium) Ltd v Caroilder China (Singapore), [2003] 3 SLR 501. See Chapter 2, Section 8.IX for a case summary.
94 Holmes v Jones, (1907) 4 CLR 1692; Leow Chin Hua v Ng Poh Buan, [2005] SGHC 39. See Chapter 2, Section 8.IX for a case summary.
95 Redgrave v Hurd, [1881] 20 Ch D 1; Jurong Town Corporation v Wishing Star Ltd, [2005] 3 SLR 283 SGCA. See Chapter 2, Section 8.IX for a case summary on Redgrave v Hurd.
2.117. Two remedies are available upon proof of misrepresentation:

1) The client may rescind the contract as a result of the misrepresentation.
2) The employee may sue for damages on the basis of being induced to enter into the contract by the misrepresentation.

2.118. Several types of misrepresentation exist and are discussed below. These are: 1) fraudulent misrepresentation; 2) negligent misrepresentation; 3) statutory action for negligent misrepresentation; and 3) innocent misrepresentation. Remedies available to the client depend on the type of misrepresentation found.

1) Misrepresentation: fraudulent misrepresentation

Definition

2.119. Fraudulent misrepresentation, or the tort of deceit, is a cause of action under tort law.

2.120. A fraudulent misrepresentation is the “wilful making of a false statement with the intent that the client shall act in reliance upon it and with the result that they do so and suffer damage in consequence.”

Elements

2.121. The false statement must have been made:

a) Knowingly;

b) Without belief in its truth; or

c) Recklessly, carelessly as to whether it be true or false.

Remedy

2.122. There are two remedies open to the client: a) rescind the contract and recover any money paid in reliance upon the misrepresentation; and b) claim all damages resulting from the misrepresentation.

a) Remedies for fraudulent misrepresentation: rescind the contract and recover reliance interest

2.123. Rescission treats the contract as if it never existed, with remedies intended to financially restore the parties to their pre-contract positions.

2.124. The contract being rescinded in this context is the contract of service between the employer and the client. The sums to be recovered must have been paid in reliance upon the misrepresentation. Hence, what can be recovered depends on the timing at which the misrepresentation was made by the employer to the client.

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96 Kea Holdings Pte Ltd v Gan Boon Hock, [2000] 2 SLR(R) 333.
97 Derry v Peek, [1889] 14 App Cas 337. See Chapter 2, Section 8.VII for a case summary.
2.125. If the employer directly contacted the client while they were still in their home country and made the misrepresentation at that point, the client may be able to recover expenses such as:

- Training centre fees;
- Transportation fees; and
- Any other fees paid to the employer or MOM in coming to Singapore.

2.126. However, it is more often the case that the client first contacts an employment agency in their home country, instead of directly contacting the employer. In this situation, it is arguable that the employer is still responsible for the fraudulent misrepresentation because a principal-agent relationship exists between the employment agency and the employer.

2.127. Agency is the relationship which arises where one person (the agent) acts for another (the principal). Through the acts of the agent, the principal and a third party may be brought into a contractual relationship. The agent has such a power because the principal has authorised the agent to do the acts in question and the agent has agreed.

2.128. Here, it could be argued that the employment agency is the agent acting between the client (the third party) and the employer (the principal).

2.129. Hence, if the agent acted within the employer’s authority, the employer may be held liable for any misrepresentation made by the employment agency. If so, in addition to the fees listed above, the employer could also be liable for agent fees, which were paid in reliance on false statements made by the employment agency within the employer’s authority. Note that at the time of publication, this legal argument has not been attempted in this context in Singaporean courts. Thus, strategic litigation will be necessary to establish whether this is a viable line of argument.

2.130. If no principal-agent relationship can be established between the employment agency and the employer, or the agent acted outside of the employer’s authority, the employer will not be liable for misrepresentations made by the employment agency. The claim for fraudulent misrepresentation may be brought against the employment agency directly. In such a case, tort must be proved against the agency. Alternatively, the client may bring a claim for breach of warranty by the employment agency that they were acting within the authority of the employer.

2.131. In that case, the client’s claim against the employer will be limited to any misrepresentations made by the employer themselves while the client was present in Singapore. Any fees or costs incurred in the home country will thus be unrecoverable in Singapore (although potentially recoverable in the client’s home country). The client can only claim for any sums paid after the employer’s misrepresentation.

98 MP-Bill, supra note 63 at [21].
2.132. To rescind the contract, the client must clearly and unequivocally communicate their decision to rescind the contract to the employer. Communication of rescission can be express or implied and can be by conduct, but where possible, workers should try to document proof of the conversation by:

- Voice recording the conversation; or
- Videoing the conversation; and
- Ensuring the other party states their name and identification.

**Limits to rescission**

2.133. Bars against rescinding the contract are:

i. The client affirming (i.e. agreeing to) the contract after becoming aware of the falsity of the misrepresentation;

ii. Impossibility of restitution; or

iii. When the right to rescind is not exercised within a reasonable time.

2.134. Thus, an action to rescind a contract should be brought where the client sought legal help as soon as possible after discovering that the employer misrepresented employment conditions. If the client performs the contract by working despite learning about the employer’s misrepresentation, his actions could be taken as an affirmation of the contract i.e. agreeing to the contract despite the misrepresentation.

b) **Remedies to fraudulent misrepresentation: Client can claim all consequential damages flowing from misrepresentation**

2.135. Damages for fraudulent misrepresentation can be claimed even if the contract is rescinded.  

2.136. The award of damages for fraudulent misrepresentation aims to put the claimant in the position in which they would have been had the tort not been committed. The client can recover losses which they would have avoided if the employer had been truthful, including direct and consequential losses flowing from the misrepresentation. This includes all losses that resulted directly from the client entering into the contract in reliance on the fraudulent misrepresentation, regardless of whether such loss was foreseeable.

2) **Misrepresentation: statutory action for negligent misrepresentation**

2.137. The Misrepresentation Act supplements the negligent misrepresentation under tort law.

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100 Direct damages are damages that result directly from the breach of contract, while consequential remedies are losses that the parties would have reasonably expected to be the probable result of such a breach. For example, direct loss from a contractor’s late completion of a project in breach of a contract may be the cost to complete the unfinished work, while the consequential losses would be the loss of operating revenue due to the late completion.


102 Ibid. at [28].
Chapter 2: Common Legal Problems and Available Remedies

Elements

2.138. The client must prove that:
   a) They entered into the contract due to misrepresentation; and
   b) They suffered loss as a result.

2.139. Upon establishing these elements, the agent or employer will bear the burden of proving that they had reasonable grounds to believe, and did believe up to the time that the contract was made, that their statement was true.\(^{103}\)

Remedy

2.140. As statutory tort action, this claim entitles the claimant to the same measure of damages as fraudulent misrepresentation.\(^{104}\) Unlike damages for the tort of negligence, claims under the Misrepresentation Act are not restrained by whether damages were foreseeable by the employer or agent.

2.141. Rescission may be granted at the court's discretion and is subject to the bars listed in paragraph 2.133.

3) Misrepresentation: innocent misrepresentation

2.142. Where the misrepresentation was made without the requisite fault under fraudulent or negligent misrepresentation, the court has discretion to allow the contract to be rescinded or to award damages in lieu of rescission.\(^{105}\)

Evaluation of bringing an action for misrepresentation

2.143. Misrepresentation is useful where the statement made is too vague to constitute an enforceable term of contract.

2.144. An action for misrepresentation is viable where evidence of an actual statement by the employer is available, such as recordings of actual conversations. It requires evidence of the actual statement made, which is more difficult to show compared to an oral term which can be implied from a consistent course of conduct.

2.145. The remedy of rescission may be barred where reasonable time has lapsed and there is conduct that can be taken as affirmation of the contract.

C. Voiding a contract

2.146. Workers may be coerced into signing fresh contracts with less favourable terms upon their arrival in Singapore. The client may wish to void contracts entered into under duress in order to enforce a more favourable contract that may have been signed earlier.

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\(^{103}\) Misrepresentation Act (Cap 390, 1994 Rev Ed Sing), s 2(1).

\(^{104}\) Ibid.

\(^{105}\) Ibid., s 2(2).
i. **Voiding the contract on the basis of economic duress**

2.147. Duress is a factor which renders a contract voidable. Economic duress is the most common form of duress exercised against migrant workers.

2.148. Economic duress presents itself most often in the form of unilateral contract modifications, where the employer threatens to breach an existing contract unless the client agrees to change the contract by accepting less than what was originally promised.

### Elements

2.149. There are two elements required to prove economic duress:

1) The threat or the demand accompanying the threat made by the employer is in a manner as to render the pressure illegitimate;
2) The client was affected by the threat such that their will was coerced.

2.150. Where the employer threatens to breach the employment contract, proof of bad faith can be an important factor in inferring illegitimate pressure. A threat that is aimed at exploiting the client's weak bargaining position rather than solving financial or other problems of the employer is one form of acting in bad faith.

2.151. An employer's lawful threat to terminate the contract in accordance with the EA may nevertheless be illegitimate and constitute 'lawful act duress' where:

1) The threat involves an abuse of the legal process;
2) The demand is not made in good faith;
3) The demand is unreasonable; or
4) The threat is considered unconscionable.

2.152. However, Singapore courts are cautious in finding lawful an act of duress unlawful. Where the threat of termination is itself lawful, it is relatively rare that it will be regarded as illegitimate so as to constitute duress.

2.153. The option of rescinding the contract is subject to the bars against rescission. See Paragraph 2.133.

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110 These 4 factors were applied by the Singapore High Court in *Tam Tak Chuen v Khairul bin Abdul Rahman and Others* [2009] 2 SLR 240; [2008] SGHC 242. See Chapter 2, Section 8.III for a case summary.
111 *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Limited and another, Interveners)*, [2010] SGHC 270 at [48]-[59].
D. Enforcing a contract signed overseas

2.154. Workers may sign contracts in their home countries. These may be with employers or employment agencies in Singapore, stipulating certain employment terms which the client may wish to enforce.

2.155. The main issue is whether Singapore has jurisdiction to enforce a contract signed overseas. The two basic concepts that underlie the determination of jurisdiction in cross-border disputes are:

1) There must be a legal connection between the case or the defendant (here, the employer) and Singapore for jurisdiction to exist; and
2) Singapore should be the most appropriate forum for the dispute, taking into account the degree of connection between the case and Singapore, compared with the degree of connection that might exist between the case and other countries.¹¹²

2.156. The court’s jurisdiction is determined by the proper law of the contract. There are three ways in determining the proper law of the contract:

1) If the parties to the contract have expressly selected a jurisdiction to govern the contract, that will be the subjective proper law, unless the choice was not made in good faith.¹¹³ The exception is narrowly construed. The choice of an unconnected governing law is not in itself objectionable.
2) If parties have not made any express selection, the court may infer a choice from the contract and the surrounding circumstances at the time of making the contract.
3) If the court cannot find any choice by the parties under 1) and 2), then the proper law is the law of the country or system of law with the closest and most real connection with the transaction and parties—the objective proper law.¹¹⁴

2.157. The proper law at 3) above is found by the usual analysis of objective facts in the common law approach in determining the objective intention of the contracting parties. The parties’ subjective intent is irrelevant.

i. Enforcing a choice of court agreement

2.158. The contract may include a choice of court clause which provides the basis for service within Singapore’s jurisdiction. A choice of court agreement can serve two distinct functions, either as a non-exclusive or exclusive jurisdiction agreement.

¹¹² Yeo Tiong Min, Ch. 06 The Conflict of Laws, online: SingaporeLaw.sg <http://www.singaporelaw.sg/sglaw/> at para 6.2.1 [Yeo, The Conflict of Laws].
¹¹⁴ Yeo, The Conflict of Laws, supra note 112 at para 6.3.8.
1)  **Non-exclusive jurisdiction agreement**

2.159. Parties may have agreed to submit to the jurisdiction of the Singapore courts. If the non-exclusive jurisdiction clause stipulates another jurisdiction, the nature of the agreement does not prevent action from being commenced in Singapore.\(^{115}\)

2)  **Exclusive jurisdiction agreement**

2.160. Where there is a valid exclusive choice of court clause in the contract, the starting point is that the court will give effect to the clause as a matter of enforcing the contract.\(^{116}\)

2.161. If Singapore is the stipulated jurisdiction, the employer or agent has to show strong cause why they should be allowed to breach the contract and prevent the commencement of proceedings in Singapore. Conversely, where Singapore is not the stipulated jurisdiction the client must show strong cause as to why they should be allowed to carry on their action in breach of contract.\(^{117}\)

2.162. Where the employer or agent has agreed that the Singapore court has jurisdiction to hear the dispute, the Singapore court has jurisdiction on the basis that the parties have agreed to submit to the jurisdiction of the Singapore court.\(^{118}\)

2.163. Upon establishing local jurisdiction of the court, the client can proceed to bring a claim under the contract. This process will differ depending on the nature of the relationship the client has with the other party to the contract. If the contract was signed with the employer, the client may wish to bring an action for contractual debt. If the contract was signed with an employment agency, damages for breach of warranty may be sought instead.

**E. Enforcing the employment contract of a worker who does not have a valid work pass**

2.164. A contract that violates EFMA will be an illegal contract that will generally be treated as void and unenforceable under the doctrine of illegality.\(^{119}\) Once a contract is ascertained by the court to have been either expressly or impliedly prohibited by statute, no recover whatsoever is permitted, regardless of the

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\(^{115}\) Ibid. at para 6.2.13.


\(^{118}\) *Supreme Court of Judicature Act* (Cap 322, 2007 Rev Ed Sing), s 16(1)(b) [SJCA] and *Rules of Court* (Cap 322, R 5, 2014 Rev Ed Sing), 0 10 r 3 [RC] if a method of service is provided under the contract, and SJCA, s 16(1)(a)(ii) and RC o 11 r1(d)(iv) if no method of service is provided for in the contract.

culpability of the parties to the contract.\footnote{120}{Phang and Goh, *Contract Law in Singapore*, supra note 71 at para 854, citing *Sinnathamby Rajespathy v Lim Chong Seng* [2002] 2 SLR(R) 608.} The protection of minimum entitlements under the EA is also unlikely to apply if the contract is illegal.\footnote{121}{Chandran, *Annotated EA*, supra note 6 at 29.}

2.165. The client may be tricked into entering an illegal contract, where the employer commits work pass fraud or illegally deploys them to work for another company or at another job site.

2.166. A common scenario involves an employer continuing to employ the foreign worker even after their work permit has been revoked. Employment of a foreign worker without a valid work permit is an offence under EFMA.\footnote{122}{EFMA, supra note 5, s 5(1).}

2.167. Another form of illegality is commonly known as a false salary declaration scam. Under this scam, an employer applies for an S Pass for a worker rather than a more appropriate work permit. An S Pass requires a higher minimum salary than a work permit, and an employer may falsely declare a salary that meets this threshold, then deduct a portion of the employee’s salary each month. Furnishing false information is an offence under EFMA.\footnote{123}{Ibid., s 22(1)(d).} Clients will fall under this category, especially if their employers have already been found guilty of false salary declaration.

2.168. Employers may take advantage of such situations to claim illegality as a defence against a client’s claim for payment.

2.169. However, the High Court in a criminal case ordered the employer financial compensation to a foreign domestic worker for time worked without a valid work permit. At the time, she was not aware of the revocation of her work permit, and hence innocent of any wrongdoing.\footnote{124}{Public Prosecutor v Donohue Enilia, [2005] 1 SLR 220. See Chapter 2, Section 8.VIII for a case summary.}

2.170. This court’s decision suggests that the innocence of the client may be a determining factor of the enforceability of the contract in civil courts.\footnote{125}{Chandran, *Annotated EA*, supra note 6 at 29.} While yet untested, it could be argued that the employment contract under which the worker is illegally deployed or where false salary is declared is not in itself illegal. Instead, the contracts have been rendered illegal by being performed in an illegal way, or with an illegal purpose.

2.171. Three main principles apply to contract illegality:\footnote{126}{Ting Siew May v Boon Lay Choo [2014] 3 SLR 609. See Chapter 2, Section 8.VIII for a case summary.}

1) If the contract is expressly or implied prohibited by statute, or contrary to public policy, the contract is void.

2) If the contract is entered into with the intention of committing an illegal act, the contract may be void, provided that this is a proportionate response to the illegality. (emphasis added)

3) A claimant may possibly recover under an illegal contract if they did not need to rely on their illegal conduct.

\footnote{120}{Phang and Goh, *Contract Law in Singapore*, supra note 71 at para 854, citing *Sinnathamby Rajespathy v Lim Chong Seng* [2002] 2 SLR(R) 608.}
\footnote{121}{Chandran, *Annotated EA*, supra note 6 at 29.}
\footnote{122}{EFMA, supra note 5, s 5(1).}
\footnote{123}{Ibid., s 22(1)(d).}
\footnote{124}{Public Prosecutor v Donohue Enilia, [2005] 1 SLR 220. See Chapter 2, Section 8.VIII for a case summary.}
\footnote{125}{Ibid.}
\footnote{126}{Ting Siew May v Boon Lay Choo [2014] 3 SLR 609. See Chapter 2, Section 8.VIII for a case summary.}
2.172. These principles may make it more difficult for a client without a valid work permit to make a claim. The contract could be characterised as an employment contract for an unlicensed foreign worker, which would render the contract illegal in formation. Furthermore, the client would have to rely on their illegal conduct (i.e. working without a valid work pass) in bringing their claim.

2.173. Detailed below are two alternative claims that can be brought by a client, without having to rely upon the illegal contract. These are breach of a collateral contract, or that there should be restitution of benefits that unjustly enriched the employer.

i. **Claiming damages for breach of a collateral contract**

2.174. Employers who fail to obtain a valid work permit for the client have breached their promise (whether expressly stated or implied) to procure the correct work permit for their employee. This promise amounts to a collateral contract. The client entered into the employment contract with the employer on the reliance that the latter had obtained (or would obtain) the appropriate work permit. As this promise was broken, the client can bring a claim to recover damages, usually for expenses incurred in making themselves available for work. These expenses may include: agent fees, transportation fees, training fees, and any other fees paid to their employer or MOM.

2.175. Employees who are misled into working without a valid work pass and thus commit an offence under EFMA may attempt to obtain damages. They must prove fraud, or breach of warranty by the employer and the employee must not be guilty of culpable negligence in either entering into the contract or working pursuant to its terms. Additionally, if at some point the client became aware of the illegality and continued to work nonetheless, they may be barred from claiming damages.

ii. **Seeking restitution of benefits that unjustly enriched the employer**

2.176. Finally, an employee may seek restitution of the benefits they have conferred on the employer under the contract. In other words, if the employer benefited by the employee’s work, then the employee may claim the value of those benefits. The burden of proof is on the employee to show that the employer was unjustly enriched at their expense. Damages awarded will be a reasonable sum for services rendered, i.e. *quantum meruit*.

**Elements**

2.177. Generally, illegality bars both the enforcement of contractual rights and restitutionary claims. However, there are exceptions where:

1) The client’s fault is less than that of the employer;
2) The client rejected the illegal contract in a timely manner.

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2.178. Recognised situations in which the client will be seen as less culpable in the illegal act are where she or he:

1) Was pressured to enter into the contract;
2) Was unaware of the illegality because of mistake or misrepresentation; or
3) Belonged to a class of people the statute seeks to protect.\textsuperscript{130}

2.179. The client must reject the contract before the illegal purpose or performance was substantially achieved. The rejection must be voluntary.

2.180. Employment contracts for migrant workers can often include unclear or contradictory terms. Also, not all contract terms may be legal, and may in fact conflict with provisions of the EA. Two rules may help identify the enforceable terms in such a situation: 1) terms that are less favourable than the EA are illegal; and 2) terms should be interpreted against the drafter of the contract.

i. Rendering a term illegal where it is less favourable than the EA

2.181. Where an employee is covered by the EA, every term of a contract of service that is less favourable to that employee than the relevant terms prescribed by the EA is illegal, null, and void, at least to the extent that it is less favourable.\textsuperscript{131}

2.182. Where multiple terms cover the same area of work, any term less favourable than conditions stipulated under the EA will not be enforceable, and the more favourable term will be considered enforceable instead. For terms that can be interpreted in several ways, only interpretations that conform to the EA’s minimum standards will be enforceable. The worker can then claim for damages based on a breach of that term.\textsuperscript{132}

2.183. Where all terms, or all possible interpretations of a term, are less favourable than the EA, the condition prescribed in the EA will become the enforceable term.\textsuperscript{133}

ii. Interpreting terms against the drafter of the contract

2.184. Where there are two reasonable interpretations of a contractual term, the court will adopt interpretations less favourable to the drafter of the contract. Although employers do not always directly draft their own contracts, they are the ones that provide the employment contract, and so are likely to be treated as the drafter.

\textsuperscript{130} Kiriri Cotton Co Ltd v Dewani,[1960] AC 192 (Uganda PC).
\textsuperscript{131} EA, supra note 4, s 8.
\textsuperscript{133} Ibid.
3. Illegal Payments and Deductions

I. Overview

3.1. Also known as “kickbacks,” illegal payments and deductions refers to sums of money passed from the migrant worker to the employer or to local employment agencies which are not authorised by the EA or EFMA.

3.2. These deductions can come in several forms as detailed in Section 3.II.

3.3. Many workers do not realise that certain deductions made from their salary are illegal and thus may not realise the need to document or even mention deductions taken from their salary. Hence, it is important to ask clients the right questions in order to uncover illegal deductions that may have been made. Such questions include:

- Did your boss deduct ‘savings/ deposit money’ from your pay each month, which they promised would be returned upon termination of your work permit?
- Did your boss deduct ‘renewal money’ from your pay for the renewal of your work permit?

3.4. Proving that illegal deductions have been made from the salary of the client by the employer may be particularly difficult. There is often no paper trail for such payments. See Section 3.II for examples of tactics employers use to mask evidence of illegal deductions. There are also employers who receive kickbacks by deducting wages and re-labelling them as authorised deductions from salaries.\(^\text{134}\)

3.5. There may also be difficulty in establishing evidence of excessive placement fees paid to local employment agencies.\(^\text{135}\) It is a common practice for employment agencies not to give out receipts to workers for payments made. Workers’ request for a receipt or contract are routinely denied. Employment agencies may also threaten that workers will not be offered a job if they insist upon having their transactions documented. Even where a receipt is issued, there may be no form of identification such as the name of the agency or the person issuing the receipt to show that the receipt was issued by the employment agency.\(^\text{136}\)


\(^{135}\) In 2009 H.O.M.E. saw a total of 23 Chinese workers who had paid money to local agents in Singapore but were unable to reclaim these funds because they did not have any evidence in the form of receipts or contracts, *ibid.* at 26.

A. Unauthorised deductions by employers

3.6. The employer is not allowed to make any deduction other than those permitted by the EA. The following salary deductions are authorised under the EA:

1) For absence from work;
2) For damage to or loss of goods or money expressly entrusted to the employee, where the damage or loss is directly attributable to his negligence or default. The amount to be deducted cannot exceed 25% of one month’s salary and the deduction can only be made after establishing that the loss or damage is due to the employee’s negligence or default;
3) For actual cost of meals supplied by the employer at the employee’s request;
4) For house accommodation or amenities and services supplied by the employer and which the employee has accepted. The amount deducted for house accommodation, amenities and services cannot exceed 25% of one month’s salary;
5) For recovery of advances, loans or adjustment of overpayments of salary. The amount deducted should not exceed 25% of one month’s salary in the case of deductions for advances and loans;
6) For contributions to superannuation scheme or provident fund or any other scheme at the request of the employee in writing. However, these schemes must be lawfully established for the benefit of the employee and approved by the Commissioner for Labour; and
7) For payments to any registered co-operative society with the written consent of the employee.\(^\text{137}\)

3.7. The maximum amount of deductions in respect of any one salary period is 50% of the employee’s salary but this does not include deductions made for:

1) Absence from work;
2) Recovery of advances/loans; and
3) Payments with the consent of the employee, to registered co-operative society in respect of subscriptions, entrance fees, instalment of loans, interest and other dues payable.\(^\text{138}\)

3.8. It is also an offence under the EA for an employer to receive payments from workers as consideration for their employment\(^\text{139}\) or recover employment-related expenses such as the foreign worker levy that the employer is supposed to bear.\(^\text{140}\)

\(^\text{137}\) EA, supra note 4, s 27; TAFEP Guide, supra note 35.
\(^\text{138}\) Ibid, s 32(1).
\(^\text{139}\) EFMA, supra note 5, at s 22A. See Chapter 2, Section 8.VI for the text of the law.
\(^\text{140}\) Ibid, at s 25(4)(a) and (b).
B. Unauthorised deductions by employment agents

3.9. Agency fees paid to agents in excess of the limits in the Employment Agencies Act (EAA)\(^{141}\) are also a form of illegal payment.

3.10. Under EAA, placement fees cannot exceed one month’s salary for each year of:

1) The period of validity of the client’s work pass; or
2) The period of the contract of employment, whichever is shorter.\(^{142}\)

3.11. Placement fees are capped at a maximum of 2 months’ salary.\(^{143}\)

II. Common examples of illegal deductions

3.12. Three common types of illegal deductions are illustrated in the examples below: 1) deductions of deposit money; 2) deductions for renewal of the work permit; and 3) deductions for accommodation. This is a non-exhaustive list, and illegal deductions can come in many other forms, such as deductions for the damage of tools beyond the actual costs of the items.

3.13. The fourth example demonstrates some of the tactics that employers may use to mask illegal deductions that are made from the salary of the client.

1) ‘Savings’ or deposit money

3.14. The worker’s employer deducts $X from their salary at the end of every month, explaining that they are helping the worker to save up a sum which they will receive when they return to their home country. The worker sees the employer returning other workers’ ‘savings’ money before they leave Singapore, and trusts the employer. However, the worker gets into a dispute with their employer and their employment is terminated by the employer. The employer then claims that the workers’ savings money will be forfeited because they have breached the contract.

2) Renewal money

3.15. The worker’s work permit is reaching its expiry date. The worker’s employer tells them that they have to pay $X if they wish to renew their work permit. The worker agrees, and $X is deducted from their salary over three months.

3) Accommodation

3.16. The worker’s IPA indicates that no deductions from their salary will be made for accommodation. However, $X is deducted from their salary every month, which the employer informs them is for the rent of their dormitory room.


\(^{142}\) Employment Agencies Rules, supra note 23.

\(^{143}\) Ibid.
4) Deduction not documented

3.17. The worker’s employer pays them in cash. $X is deducted from their salary each month. When the worker receives their salary, they sign a payslip on which the employer has recorded that they have received the sum before deductions.

3.18. Alternately, the worker’s salary is paid through bank transfer. $X is deducted from their salary each month. After the worker receives their salary, the employer accompanies them to an ATM where they withdraw $X to return to the employer.

III. Remedies and rules

A. Claiming for unauthorised deductions from client’s pay

3.19. Clients may wish to claim unauthorised deductions or illegal payments either from their employers or employment agencies.

i. Bringing an action for debt on the basis that terms less favourable than those provided by the Employment Act (EA) are illegal and void

3.20. No deductions other than those authorised under the provisions of the EA are legal. Terms that allow employers to make unauthorised deductions will be rendered illegal and void. The sums deducted under such terms are thus contractually due to the client.

Elements

3.21. The client must first prove the term of contract which stipulates the illegal payment or deduction of such monies. This can be done by producing a written contract. Where such requirements are not documented, proof of a consistent course of conduct in making such deductions or payments may be evidence of an oral agreement.

3.22. Whether there is a written contract, or in order to prove that an oral agreement was reached, the client must show that such deductions have been made from their salary. Evidence that can be collected to support such a claim include itemised payslips and bank records showing consistent withdrawal of certain sums each month, which would suggest an employer forcing the client to return part of his salary.

3.23. Once the client can prove these deductions, it will be presumed that the sum was collected as consideration for employment, i.e. employment kickbacks. The

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144 EA, supra note 4, s 26.
145 Ibid., s 8.
burden is then on the employer to rebut the presumption by showing that there were legal purposes for deducting or collecting monies from the client.\textsuperscript{146}

ii. Seeking refund for excessive fees charged by employment agencies

3.24. Workers may lodge a complaint at the Small Claims Tribunal (SCT) to seek a refund for their agency fee. See Chapter 3, Section 3.IV.C for the process of lodging a claim at the SCT.

3.25. Workers should retain receipts and contracts from the employment agency. There should be some form of identification to show that the receipt was issued by that particular agency, such as the name of the agency or the name of the person who issued the receipt.\textsuperscript{147}

Evaluation

3.26. Workers may find it difficult to legalise their stay while pursuing a claim at the SCT as MOM does not issue Special Passes\textsuperscript{148} to workers with claims against agents for fees paid to them. The SCT adjudication process may take a month or more.\textsuperscript{149}

4. Non-Salary Employment Agreement Problems

I. Overview

4.1. This section covers two main categories of non-salary employment agreement problems: breach of non-salary employment conditions and promises of non-existent jobs by employers or employment agents.

A. Non-salary employment conditions

4.2. Employers are required by law to bear the costs of upkeep and maintenance of foreign domestic workers whom they hire. “Upkeep” and “maintenance”\textsuperscript{150} are not defined under Singaporean law, but includes provision of adequate food and medical treatment. The employer is also required to ensure that the foreign worker has “acceptable accommodation”.\textsuperscript{151} This obligation spans the time

\textsuperscript{146} EFMA, supra note 5, s 22A.
\textsuperscript{147} See generally H.O.M.E. & TWC2, Justice Delayed, Justice Denied, supra note 2 at 26.
\textsuperscript{148} Ibid.
\textsuperscript{149} Ibid.
\textsuperscript{150} See e.g. The Employment of Foreign Manpower (Work Passes) Regulations 2012 (S 569/2012 Sing), Fourth Schedule Part I para 1.
\textsuperscript{151} See e.g. ibid. Fourth Schedule Part I para 4, Fourth Schedule Part III para 2.
before, during, and after employment, for as long as the worker remains in Singapore.

4.3. In reality, most employers will only provide subsidised accommodation and food when these expenses can be deducted from a worker’s monthly salary, as these are considered authorised deductions under the EA. However, a worker who is waiting for a work injury claim or a resolution for salary arrears is prohibited from working, and many are forced to find their own shelter and food.\textsuperscript{152}

B. Non-existent jobs

4.4. Some employers set up shell or partial-sham businesses to lure foreign workers to Singapore with false employment promises. After collecting large sums of money from these workers, they do not apply for the appropriate work passes and leave the workers to find their own work in Singapore and fend for themselves.

II. Remedies and rules

A. Enforcing implied terms governing non-salary employment conditions

i. Bring a claim for breach of contractual terms implied by statute

4.5. It is yet untested whether EFMA provisions provide a civil right of action. EFMA provisions could theoretically be treated as implied terms by law to an employment contract, giving rise to a cause of action in breach of contract when contravened.

4.6. Post-employment, an employer continues to be responsible for the upkeep and maintenance costs of any foreign worker remaining in Singapore who is awaiting resolution and payment of statutory claims for salary arrears under the EA, or work injury compensation under WICA. The employer must also ensure that the worker has acceptable accommodation.\textsuperscript{153}

4.7. Thus, where the employer has breached any of these conditions, it is arguable that the client could claim from the employer all expenses in respect to upkeep, maintenance and housing up until repatriation after resolution of the EA or the WICA claim. Note that at the time of publication, this legal argument has not been attempted in this context in Singaporean courts. Thus, strategic litigation will be necessary to establish whether this is a viable line of argument.

\textsuperscript{152} See generally H.O.M.E. & TWC2, Justice Delayed, Justice Denied, supra note 2 at 30.

\textsuperscript{153} See supra note 150, Fourth Schedule, Part III, para. 16.
B. Seeking damages for expenditure made in reliance of false promises of jobs

i. Bringing a claim for misrepresentation by the employer or employment agent

4.8. See Section 2.III.B.ii. on claims for misrepresentation.

4.9. The false representation in these cases is that a job in Singapore exists for the client. This representation must have been made, either by the employer or agent, in the worker’s home country, inducing them to enter into the employment contract and job placement contract. Claimable losses thus include: agent fees, training fees, transportation fees, and any sums paid to the employer or MOM.

4.10. A possible complication may arise if the client has opted to seek employment with another company after learning that the promised job does not exist. A common scenario is that the employer agrees to keep the worker’s work permit live in exchange for the worker finding employment with another company. As work permits are tied to a single employer, this practice is illegal, both for the worker and employer.154

5. WORKPLACE INJURY

I. Overview

5.1. Apart from salary and contractual problems, workplace injury compensation claims are another common legal problem foreign workers face. Employers can refuse to recognise the injury as having occurred in the workplace or refuse to pay medical costs and other compensation associated with the injury. Employers may also bring injured workers to see doctors who may be cooperating with employers at the expense of the worker’s actual medical needs.

5.2. There are two main ways an injured worker can pursue a claim for workplace injury:

1) Statute- the Work Injury Compensation Act (WICA)
2) Common law (Tort of negligence)

5.3. The employee must choose one of these routes and can only obtain compensation from one route. The general differences are listed below.

154 See EFMA, supra note 5, ss 22B - 23. See Section 8.VI for the text of the law.
II. Differences between a WICA claim and a claim under common law (tort of negligence)

A. Time bars

5.4. The employee has **one year** from the date of the accident to bring a claim under WICA, while he has **three years** to bring a claim under common law for personal injury. If an employee initially brings a claim under common law, the employee can change to WICA but only if it is within the one year time limit.

B. Amount of possible award

5.5. The amount of any award of compensation may be greater if the employee pursues a common law claim, than if the employee pursues a WICA claim. This is because WICA specifies compensation caps for injuries, meaning that an award cannot go above a certain amount.

C. Difference in evidentiary requirements

5.6. For filing of damages under common law, the employee will have to show that:

1) The employer failed to provide a safe place of work;
2) The employer breached a duty required by law; or
3) The injury was caused by his employer’s negligence.

5.7. On the other hand, compensation is payable on a no-fault basis under WICA. As long as an employee suffers an injury that arises out of and in the course of his or her employment, the employee is able to claim work injury compensation. There is no need to prove that the employer was negligent or that sufficient measures were not taken to prevent the accident. As long as the employee was not at fault (e.g. for being an aggressor in a fight), the employee can claim compensation.

D. Need for counsel

5.8. There is no need for the employee to engage a lawyer if he wants to pursue a claim under WICA.

Table 9: Differences between a claim in common law and in WICA

<table>
<thead>
<tr>
<th></th>
<th>Common law</th>
<th>WICA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fault</td>
<td>Need to prove that employer/3rd party was at fault</td>
<td>Do not need to prove employer was at fault. Only need to show injury was due to work</td>
</tr>
</tbody>
</table>
### III. Work Injury Compensation Act (WICA)

5.9. Domestic workers are not covered under WSHA or WICA.\(^\text{155}\)

5.10. WICA provides injured employees with a low-cost and relatively speedy alternative to common law to settle compensation claims. There is no need to prove fault or negligence, but in return, the amount of compensation is computed based on a fixed formula\(^\text{156}\) and is subject to caps.

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\(^{155}\) WICA, supra note 49. See Chapter 2, Section 8.XII for the text of the law.

\(^{156}\) Ministry of Manpower, “What can be claimed under WICA?”, online: Ministry of Manpower <http://www.mom.gov.sg/workplace-safety-health/work-injury-compensation/Pages/WICA_claimed.aspx> [MOM What can be claimed?].
5.11. Under WICA, every employer must maintain adequate work injury compensation insurance for all employees who are engaged in:\(^{157}\):

1) Manual work, regardless of salary level, or
2) Non-manual work and earning $1,600 or less a month.

5.12. Failure to do so is an offence punishable by a maximum fine of $10,000 and/or imprisonment of up to 12 months. Maintaining inadequate insurance (e.g. employing ten manual workers but having purchased insurance for only eight workers) is also an offence.

i. What is a workplace injury?

5.13. To claim under WICA, the employee needs only prove that he/she was injured in a work accident or suffered a disease due to their work. Occupational diseases include any diseases that are attributable to chemical and biological agent exposure at work. Situations where an employee is travelling from their workplace in a company vehicle are also covered by WICA.\(^{158}\)

5.14. The following sections will discuss remedies available under WSHA and WICA.

IV. Remedies and rules

A. Claiming under Work Injury Compensation Act (WICA)

i. Who is eligible to apply for a WICA claim?

5.15. The following groups of people are not covered by the WICA scheme:\(^{159}\):

1) Uniformed personnel (Singapore Armed Forces, Police, Civil Defence, Central Narcotics Bureau, and Prisons Service);
2) Self-employed persons / independent contractors; and
3) Domestic workers. (emphasis added)

5.16. All other employees can make a claim through WICA. If death results from the injury, the deceased employee’s estate or dependents can make a claim.\(^{160}\)

\(^{157}\) WICA, supra note 49, s 23(1). See Chapter 2, Section 8.XII for the text of the law. Pursuant to the Work Injury Compensation (Waiver from Insurance Requirement) Notification 2008 S 171/2008, the requirement to maintain insurance under WICA s 23(1) is waived in respect of the Government, employers of all persons with monthly earnings of more than $1,600 and who are employed otherwise than by way of “manual labour”.

\(^{158}\) TWC2 News, “Confined to wheelchair for months, worker had no good advice how to make a claim” (8 November 2012), online: Transient Workers Count Too <http://twc2.org.sg>. [TWC2 News, “Confined to wheelchair for months, worker had no good advice how to make a claim”] <http://twc2.org.sg/2012/11/08/confined-to-wheelchair-for-months-worker-had-no-good-advice-how-to-make-a-claim/>.

\(^{159}\) WICA, supra note 49, Fourth Schedule. See Chapter 2, Section 8.XII for the text of the law.
### B. What kinds of injuries are covered under WICA?

5.17. Any kind of injury can be eligible for compensation as long as it occurred in the course of employment.

#### i. What can be claimed for under WICA?

5.18. In general, the following types of expenses for injury can be claimed: a) medical expenses, including but not limited to medical consultation costs, hospitalisation costs, treatment and surgery, artificial limbs and surgical appliances; b) medical leave wages; and c) a lump sum for permanent incapacity or death.

#### a) Medical expenses

5.19. These expenses are payable by the employer;

1) Up to specific limits set by law\(^{161}\);
2) As long as treatment is considered “necessary” \(^{162}\) by Singapore-registered doctors.

Medical expenses include charges in connection with emergency medical transport; fees for medical reports required for the purposes of the WICA claim; charges for physiotherapy and occupational and speech therapy; charges for case management, psychotherapy for post-traumatic stress disorder, functional capacity evaluation, worksite assessment, required for the purposes of rehabilitation and enabling an injured employee to return to work; and the cost of medicines, artificial limbs and surgical appliances.\(^{163}\)

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**Table 10: Limits on medical expenses claim**

<table>
<thead>
<tr>
<th>Medical expenses</th>
<th>Limits</th>
<th>Accidents occurring before 1 Jan 2016(^{164}) (in S$)</th>
<th>Accidents occurring on and after 1 Jan 2016 (in S$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical expenses</td>
<td>Maximum</td>
<td>$30,000 per accident or cost of medical treatment received within one year of the accident,</td>
<td>$36,000 per accident or cost of medical treatment received within one year of the accident,</td>
</tr>
</tbody>
</table>

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\(^{160}\) *WICA*, supra note 49, s 6(1). See Chapter 2, Section 8.XII for the text of the law.

\(^{161}\) *WICA* supra note 49, Third Schedule, para 5(1).

\(^{162}\) *WICA*, supra note 49, s 14(2).

\(^{163}\) *WICA*, supra note 49, Third Schedule, para 5(2).

\(^{164}\) These limits apply to accidents occurring after 1 Jun 2012 and before 1 Jan 2016.
whichever is less whichever is less

b) Medical leave wages

Table 11: Payable medical leave wages

<table>
<thead>
<tr>
<th></th>
<th>MC leave</th>
<th>Hospitalisation leave</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Full pay</strong></td>
<td>Up to 14 days</td>
<td>Up to 60 days</td>
</tr>
<tr>
<td><strong>⅔ pay</strong></td>
<td>15th day onwards, up to one year from accident</td>
<td>61st day onwards, up to one year from accident</td>
</tr>
</tbody>
</table>


c) Permanent incapacity (PI)

Table 12: Limits on PI claims

<table>
<thead>
<tr>
<th></th>
<th>Limits</th>
<th>Accidents occurring before 1 Jan 2016 (in S$)</th>
<th>Accidents occurring on and after 1 Jan 2016 (in S$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent incapacity</td>
<td>Minimum</td>
<td>$73,000 multiplied by % loss of earning capacity</td>
<td>$88,000 multiplied by % loss of earning capacity</td>
</tr>
</tbody>
</table>

See WICA, supra note 49, s 2(1) for the definition of "earnings" and s 8 for the calculation of "monthly earnings". The amount that the worker can claim is not based on his fixed salary, but on his Average Monthly Earnings (AME). Generally, this is the average earnings over the last 12 months before the accident (including overtime pay, but excluding transport allowance & reimbursement and non-working days e.g. rest day, public holiday).

WICA, supra note 49, Third Schedule, para 2.

Supra note 164.
Permanent incapacity | Maximum | $218,000 multiplied by \% loss of earning capacity, and additional 25\% compensation paid to workers with permanent total incapacity | $262,000 multiplied by \% loss of earning capacity and additional 25\% compensation paid to workers with total permanent incapacity

d) Death\(^{168}\)

Table 13: Limits on permanent claims for death

<table>
<thead>
<tr>
<th>Limits</th>
<th>Accidents occurring before 1 Jan 2016 (in S$)</th>
<th>Accidents occurring on and after 1 Jan 2016 (in S$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Death</td>
<td>Minimum</td>
<td>$57,000</td>
</tr>
<tr>
<td>Death</td>
<td>Maximum</td>
<td>$170,000</td>
</tr>
</tbody>
</table>

e) Self-calculation of claimable compensation

Table 14: Calculation of claimable compensation

| Compensation payable | [employee’s monthly earnings] x [multiplying factor] X [\% loss of earning capacity]\(^{169}\) |

5.20. If the calculated compensation falls within the range as specified in Table 12 (for example, the range for accidents occurring after January 1, 2016 with a PI%\(^{168}\) WICA, supra note 46, Third Schedule, para 1.\(^{169}\) Here, the maximum limit is $218,000 x [\% loss of earning capacity]. The minimum limit is $73,000 x [\% loss of earning capacity].
of 10% would be $8,800 - $26,200), the employee is likely to be awarded the full amount. If the calculated compensation falls below the minimum, however, the employee is likely to get the minimum and if it falls above the range, the employee is likely to get the maximum.

5.21. An additional 25% of the compensation is awarded if the employee suffered permanent total incapacity. Lastly the employee can also claim for medical leave wages that he has not received for the past year.

5.22. An online calculator (WIC Self-Assessment Tool) is available at the official MOM website.\(^{170}\)

ii. Notice of claim and Evidence required

5.23. Where possible, notice of the accident should be given to the employer as soon as practicable after the accident has happened. Additionally, a claim for compensation under WICA must made within one year from the happening of the accident that caused the injury, or in the case of death, within one year from the date of the death.\(^{171}\)

5.24. Generally, employees should:

1) Obtain photos/videos, witness testimony to show that it was a workplace injury
2) Keep a photocopy of the Medical Certificate and pass the original to the employer to claim the medical leave wages. The employer is required to pay by the next pay day.\(^{172}\)
3) Keep photocopies of all medical bills related to the injury and pass originals to the employer, who will pay directly to the clinic / hospital. If the worker has already paid, the employer must reimburse the worker.

C. Claiming at common law under tort of negligence

5.25. One common problem faced by employees when they first bring a claim under WICA is that they must demonstrate that their injury was a workplace injury. This may be difficult, as the employer may deny that the injury occurred during work. In such instances, the claim may fail if the employee does not produce supporting evidence, such as photos, videos, or co-worker testimony. Additionally, while claims under WICA cannot be brought where the employee


\(^{171}\) See WICA, supra note 49, s 11(1).

\(^{172}\) H.O.M.E. & TWC2, Justice Delayed, Justice Denied, supra note 2 at 30.
caused the accident, such employees may still bring claims in tort at common law.\textsuperscript{173}

i. What can be claimed under common law if negligence is successfully proven?

5.26. Damages under common law will include compensation for pain and suffering, loss of wages, medical expenses and any future loss of earnings.

   **Elements**

5.27. The plaintiff must prove that the defendant owed him/her a duty of care. This is done fairly easily with the concepts of non-delegable duty\textsuperscript{174} and statutory duties as defined in legislation.\textsuperscript{175} The employer owes the employee a non-delegable duty of care (DOC) to ensure the employee’s personal safety at the workplace (even when temporarily sent to work on another’s ship etc.)\textsuperscript{176} A non-delegable DOC can arise from statute as well.\textsuperscript{177} However, it is currently unclear whether the breach of duties as defined in WSHA can give rise to a civil right of action. There is no automatic common law DOC if there is a statutory duty but the statutory duty may give rise to a finding of a common law DOC.\textsuperscript{178} It is unclear what the advantages would be of using the common law breach of a statutory DOC. However, possible advantages could include the larger quantum of damages under common law or the longer time bar.

5.28. The plaintiff must prove that the defendant breached the duty by failing to conform to the required standard of conduct.

5.29. The plaintiff must establish the causal link between her injury and the employer’s negligence.

5.30. The plaintiff must prove that he/she was indeed harmed.

5.31. The employer has a duty to take reasonable care to provide its employees with, among other things, a safe working environment and properly maintained equipment.\textsuperscript{179}

\textsuperscript{173} In such cases, contributory negligence operates as a partial defence to reduce the plaintiff’s claim for damages, see Gary Chan Kok Yew, *The Law of Torts in Singapore* (Singapore: Academy Publishing, 2011) at 297. However, the client may still be able to get some form of damages as opposed to WICA where his claim would be barred.


\textsuperscript{175} See e.g. Worksafe Safety and Health Act (Cap 354A, 2009 Rev Ed Sing) s 12, s 14 [WSHA].


\textsuperscript{179} The case of Araveanthan and another v Nippon Pigment (S) Pte Ltd, [1992] SGHC 20 [Araveanthan], highlights this duty to take reasonable care. Although the legislation that was referred to in this case was the Factories Act, which is
Evidence required

5.32. The plaintiff must prove that the defendant breached the duty by failing to conform to the required standard of conduct. This can be done by calling witnesses and submitting photos and videos of the workplace before and after the accident.

5.33. The plaintiff must establish a causal link between the workplace injury and the employer’s negligence. Shift records, payslips, and the testimony of fellow workers can be used to support this claim.

5.34. The plaintiff has to prove that she was indeed harmed. The plaintiff can use medical records to prove that she was harmed.

Burden of proof

5.35. The plaintiff must prove a prima facie case on the balance of probabilities. This means that the plaintiff must first allege that the facts, if true, would support a claim of negligence. The employer/putative defendant then has the burden to prove that she had taken sufficient precautionary measures. The legal burden remains with the plaintiff but the evidentiary burden shifts to the defendant once the plaintiff has proved negligence on a balance of probabilities.\(^{180}\)

ii. Potential use of WSHA to substantiate negligence

5.36. Theoretically, an employer’s breach of WSHA may be relevant in substantiating a claim of negligence. WSHA sets forth rules and standards to which all workplaces except those involving domestic workers must conform. When an employee brings a claim under WICA or the common law, proof of an employer’s breach of WSHA can contribute to substantiating the claim and go towards supporting an argument that the employer has been negligent.

5.37. Companies and employees covered under WSHA must take reasonably practicable measures to ensure their workplaces are safe. This includes proper risk management or taking steps to identify and manage the existing risks in

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now replaced by WSHA, whether the duties as set out in the WSHA are absolute and whether they give rise to a private right of action is an open question and needs to be litigated. It is also unclear whether the jurisprudence created out the Factories Act are applicable to the WSHA. One view would be that since most of the sections of the WSHA are similar to the Factories Act, at least some of the latter’s case law could apply to the former. On the other hand, the Factories Act was repealed and replaced with WSHA. If there had been intent to continue the former’s jurisprudence, it could be argued that the Factories Act would not have been replaced and instead, but rather amended. See Chapter 2, Section 8.XIV for a case summary.

\(^{180}\) Loh Tek Hua v Tey Joo Soon and Another, [2006] SGDC 225 [Loh Tek Hua]. For a case summary see Chapter 2, Section 8.XIV for a case summary.
one’s workplace so as to prevent work accidents. Under WSHA, liabilities are specified for a range of people.\textsuperscript{181}

6. PHYSICAL ABUSE AND OTHER NON-WORK INJURIES

I. Overview

6.1. These claims are usually brought by domestic workers against their employers. While most victims of abuse seek to hold the employer criminally liable for assault and battery, the victim may also pursue a civil claim to recover damages. The most relevant cause of action is usually battery because that involves the actual infliction of physical contact/force on the plaintiff's body.

II. Remedies and rules

A. Action for battery

i. Elements

6.2. Battery is defined as an act that is intentionally and directly causes contact with the body of the plaintiff without lawful excuse or justification.\textsuperscript{182}

1) Directly causing contact

6.3. Some examples of actions that cause direct contact are slapping, punching and shaking. Other examples include pulling the victim's hair or pouring hot oil over her body.

2) Lawful excuse or justification

6.4. A lawful excuse is a defence that may be raised by the defendant at trial. The onus/burden is on the defendant that even though she was committing a tort, she had a legal reason to do it, and thus should not be found guilty.

3) Intention

6.5. The plaintiff must prove intention on the part of the defendant.\textsuperscript{183} In some cases, the defendant must intend the consequences of the interference. Intent can be transferred with battery (i.e. a person swings to hit one person and misses and hits another, he or she is still liable for a battery). An omission can constitute the

\textsuperscript{181} WSHA, supra note 175. Some of these duties are laid out in Part IV of the WSHA, Part IV. See Chapter 2, Section 8.XIII. for the text of the law.


\textsuperscript{183} Letang v Cooper, [1965] QB 232 [Letang].
application of force.\textsuperscript{184} There is no requirement to show hostility on the defendant’s part\textsuperscript{185} Rather, the requirement still remains to prove intention.

6.6. Apart from the above, the plaintiff would have to prove the following:

a) Who is the person that caused the injury?

b) What is the injury that was caused?

4) Aggravating or mitigating factors

6.7. Aggravating factors are any relevant circumstances, supported by the evidence presented during trial that makes the harshest penalty appropriate. Such factors contribute towards the amount of compensation awarded as well as the sentence handed down.

6.8. Some examples include hitting vulnerable parts of the body, abuse of position of power, lack of remorse for actions and systematic pattern of abuse.\textsuperscript{186}

6.9. Mitigating factors are any evidence regarding the defendant's character or the circumstances of the crime, which would cause a judge to mete out a lesser sentence.

6.10. Some examples include the age of the defendant at the time of the crime; the extent of the defendant’s participation in the crime; and whether the defendant acted under extreme duress or under the substantial domination of another person.

ii. Evidence required

6.11. In order to prove that there was an act that intentionally and directly caused contact with the body of the plaintiff without lawful excuse or justification, the plaintiff can make use of witnesses, medical reports, phone calls, photos or videos, and physical marks or bruises. Clinical examinations are also useful for proving that the accused has indeed caused injury to the victim.

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\textsuperscript{184} Fagan v Commissioner of Metropolitan Police, [1969] 1 QB 439 [Fagan].

\textsuperscript{185} Wilson v Pringle, [1986] 2 All ER 440 [Wilson].

\textsuperscript{186} ADF v Public Prosecutor and another appeal, [2010] 1 SLR 874; [2009] SGCA 57 [78], [85].
7. CONCLUSION

7.1. This chapter summarises common legal problems migrant workers encounter and available legal remedies. There are five common problems identified:

5) Non-payment of salary;
6) Illegal payments and deductions;
7) Non-salary employment agreement problems;
8) Work place injury;
9) Physical abuse and other non-work injuries

7.2. It is important to take note of the differences between bringing a claim under common law as opposed to a statute. Some of the key differences, like time bars, burden of proof and the evidentiary requirements directly affect the feasibility of some of the actions. While some of the remedies are tried and tested, the others will require litigation in order to determine whether they are applicable and effective. Most importantly, the practitioner must evaluate the case before him (in terms of evidence etc.) and determine which causes of action are the most feasible.

7.3. Having dealt with the substantive areas of law relating to migrant workers in Chapter 2, Chapter 3 provides an in-depth examination of the procedural law involved when pursuing causes of action for migrant workers.

8. BLACK LETTER LAW AND CASE LAW ANALYSIS

I. Introduction

8.1. Many references to various statutes and cases were made throughout Chapter 2. Arranged in alphabetical order, this section is a compilation of the relevant portions of the aforementioned statutes as well as the relevant case law to better explain the interpretation of the law.

II. Action for contractual debt

<table>
<thead>
<tr>
<th>Young v Queensland Trustees Limited</th>
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<tbody>
<tr>
<td>[1956] HCA 51</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Holding</th>
</tr>
</thead>
</table>
| • The debtor must allege and prove payment by way of discharge as a defence to an action for indebtedness in respect of an executed consideration.
| • A debt once proved to have existed, is presumed to continue unless payment, or some other discharge, be either proved, or established by circumstances. |
III. Economic duress

**Huyton SA v Peter Cremer GmbH & Co,**

*[1998] EWHC 1208 (Comm)*

<table>
<thead>
<tr>
<th>Holding</th>
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<tbody>
<tr>
<td>“The minimum basic should be the “but for” test: The illegitimate pressure must have […] actually caused the making of the agreement, in the sense that it would not otherwise have been made either at all or, at least, in the terms in which it was made. In that sense, the pressure must have been decisive or clinching.”</td>
</tr>
</tbody>
</table>

**Tam Tak Chuen v Khairul bin Abdul Rahman and Others**

*[2009] 2 SLR 240; [2008] SGHC 242*

<table>
<thead>
<tr>
<th>Holding</th>
</tr>
</thead>
</table>
| [50]: The four categories of circumstances that indicate when a threat of lawful action that is not unlawful is illegitimate are:  
  o where the threat is an abuse of legal process;  
  o where the demand is not made bona fide;  
  o where the demand is unreasonable; and  
  o where the threat is considered unconscionable in light of all the circumstances.  
  
  Although the threat made by the defendant was lawful, he acted with a collateral motive and the presence of that motive made the threat illegitimate.  
  
  [54]: [Upon discovering the situation that Dr Tam had repeatedly lied to him about his relationship with Ms Chew], “Dr Khairul was perfectly entitled to take all legal steps available to him to terminate the relationship, and to minimise the loss that he himself would suffer from such a termination. He was not however entitled to take advantage of the situation and unfairly profit from it.”  
  
  [55]: “It is material that once Dr Khairul’s suspicions had been confirmed, he did not do anything for a period of three months. During that period, he discussed the situation with others and took legal advice. By the time he called Dr Tam and Dr Ashraff to the meeting on 4 March 2007, he had had the transfer documents and the Liability Transfer Agreement prepared and ready for execution. His actions that evening
had therefore been very carefully orchestrated.”

[57]: “On the balance of probabilities, the evidence establishes that not only did Dr Khairul want to end his partnership with the plaintiff but that he also wanted to take over the plaintiff’s shares at an undervalue. […] For Dr Khairul to bring the business relationship to an end, it really was not necessary for him to say that unless one of them bought out the other, he would proceed with a compulsory winding up and present the necessary evidence. I am satisfied that in making that threat, although it was a threat of a lawful action, Dr Khairul was acting with a collateral motive and the presence of that motive made the threat illegitimate.”

- His threat was also illegitimate on the basis that the demands were unreasonable.

[58]: “As I have held, the true value of the plaintiff’s shares in the J Companies was far more than the $50,000 that Dr Khairul offered Dr Tam for those shares […] As the demands made by Dr Khairul in respect of the consideration for the transfer of all the plaintiff’s shares in all the companies were unreasonable, his threat was illegitimate on this basis as well.”

IV. Employment Act (Cap 91, 2009 Rev Ed Sing)

Section 2. Interpretation

(1) In this Act, unless the context otherwise requires —

“basic rate of pay” means the total amount of money (including wage adjustments and increments) to which an employee is entitled under his contract of service either for working for a period of time, that is, for one hour, one day, one week, one month or for such other period as may be stated or implied in his contract of service, or for each completed piece or task of work but does not include —

(a) additional payments by way of overtime payments;

(b) additional payments by way of bonus payments or annual wage supplements;

(c) any sum paid to the employee to reimburse him for special expenses incurred by him in the course of his employment;

(d) productivity incentive payments; and

(e) any allowance however described;
“contract of service” means any agreement, whether in writing or oral, express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract or agreement;

<table>
<thead>
<tr>
<th>Acme Canning Corporation Ltd v Lee Kim Seng</th>
<th>[1977] 1 MLJ 252</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Holding</strong></td>
<td>A term of an oral contract of service is an express condition of the contract:</td>
</tr>
<tr>
<td></td>
<td>“It is clear from the evidence that although there was no written contract of service there was a well-defined and well-understood oral contract of service between the parties, and express condition does not necessarily mean written. It is only in contrast to implied.”</td>
</tr>
</tbody>
</table>

| Summary of facts                           | This was an appeal against the decision of the Labour Officer, Butterworth who awarded a sum of $2,865.11 as overtime wages and double wages for working on rest days. The respondent was employed as a foreman in the factory and had agreed to work as a monthly rated employee under the terms and conditions which provided no limit in hours in return for such benefits as housing allowance, bonus and incentive payments. |

<table>
<thead>
<tr>
<th>Carmichael v National Power Plc</th>
<th>[1999] ICR 1226</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Holding</strong></td>
<td>Employment contracts may be partly written, partly oral contracts.</td>
</tr>
<tr>
<td></td>
<td>“Putting the matter at its lowest, I think that it was open to the industrial tribunal to find, as a fact, that the parties did not intend the letters to be the sole record of their agreement but intended that it should be contained partly in the letters, partly in oral exchanges at the interviews or elsewhere and partly left to evolve by conduct as time went on. This would not be untypical of agreements by which people are engaged to do work, whether as employees or otherwise.”</td>
</tr>
<tr>
<td></td>
<td>Where a contract is intended to be partly written, partly oral, oral terms may be implied by subsequent conduct, such as evidence showing mutual understanding of obligations.</td>
</tr>
</tbody>
</table>
Memory of the precise conversation is not necessary.

“In the case of a contract which is based partly upon oral exchanges and conduct, a party may have a clear understanding of what was agreed without necessarily being able to remember the precise conversation or action which gave rise to that belief.”

“The evidence of a party as to what terms he understood to have been agreed is some evidence tending to show that those terms, in an objective sense, were agreed. [...] when both parties are agreed about what they understood their mutual obligations (or lack of them) to be, it is a strong thing to exclude their evidence from consideration.”

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Melaka Farm Resorts (M) Sdn Bhd v Hong Wei Seng
[2004] 6 MLJ 506

Holding

- Contracts of service may be formed orally.
  
  [13]: “A contract of service may be orally entered into, as in here, where the defendant’s executive director testified that the plaintiff’s monthly salary was RM2,000.”

- A contract of service may be implied by the conduct of the parties.
  
  [14]: “Further, a contract of service may also be implied by the conduct of the parties, as e.g. in the instant appeal, where the defendant has allowed the plaintiff to work in the defendant’s place of employment and a sum of RM4,000 has been paid by the defendant to the plaintiff as salary for two months viz September and October 2001.”

- The burden of proof is on the employer to prove that the employee’s salary has been paid. The employer failed to discharge the burden in failing to produce documentation of payments in the form of payment vouchers, pay slips, cheques etc.
  
  [18]: “The burden is on the defendant as the employer to prove this fact. If at all the defendant has paid the arrears of salary, the defendant being a company incorporated under the Companies Act 1965 would certainly have documented the payments in the form of payment vouchers, pay slips, cheques [...] The fact that the defendant has failed to produce the documents evidencing such payments clearly shows on a balance of probabilities that the defendant has failed to
discharge the burden of proof."

<table>
<thead>
<tr>
<th>Summary of facts</th>
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<tbody>
<tr>
<td>The appellant ('the defendant') had orally agreed to employ the respondent ('the plaintiff') as its general manager in absence of a written contract of employment. The plaintiff later resigned and claimed for RM18,000 as arrears for his salary from November 2001 to July 2002, to which the defendant disputed. The director of labour found for the plaintiff but reduced his claim to RM16,000 on the ground that he had worked for only two days in the last month. Dissatisfied, the defendant appealed against the director's decision. The issues before the court were whether an employment contract existed between the parties and whether defendant should pay the arrears in question.</td>
</tr>
</tbody>
</table>

"domestic worker" means any house, stable or garden servant or motor car driver, employed in or in connection with the domestic services of any private premises

"employee" means a person who has entered into or works under a contract of service with an employer and includes a workman, and any officer or employee of the Government included in a category, class or description of such officers or employees declared by the President to be employees for the purposes of this Act or any provision thereof, but does not include —

(a) any seafarer
(b) any domestic worker;
(c) subject to subsection (2), any person employed in a managerial or an executive position; and
(d) any person belonging to any other class of persons whom the Minister may, from time to time by notification in the Gazette, declare not to be employees for the purposes of this Act;

<table>
<thead>
<tr>
<th>Holding</th>
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</thead>
<tbody>
<tr>
<td>• The contract of employment for a foreign national without the necessary employment pass will be an illegal contract and cannot be enforced.</td>
</tr>
</tbody>
</table>

[45]: “The second defendant could not have been an employee of the plaintiff as that would have been a contravention of the Immigration Act and the Employment of Foreign Workers Act. If a contract of employment did exist, it could not be enforced because it would be an illegal contract. The defence of illegality could be raised notwithstanding the refusal of leave to amend the Defence in the course of trial to
Analysis

Professor Chandran suggests that if the contract rendered illegal by the employee not having the required work permits, the EA is unlikely to be applicable\textsuperscript{187}. The logic is likely that applicability of the EA is tied to the validity of the contract. If the contract is rendered void because of an illegality, the EA cannot apply.

\textbf{“employer”} means any person who employs another person under a contract of service and includes —

(a) the Government in respect of such categories, classes or descriptions of officers or employees of the Government as from time to time are declared by the President to be employees for the purposes of this Act;

(b) any statutory authority;

(c) the duly authorised agent or manager of the employer; and

(d) the person who owns or is carrying on or for the time being responsible for the management of the profession, business, trade or work in which the employee is engaged;

\textbf{“gross rate of pay”} means the total amount of money including allowances to which an employee is entitled under his contract of service either for working for a period of time, that is, for one hour, one day, one week, one month or for such other period as may be stated or implied in his contract of service, or for each completed piece or task of work but does not include —

(a) additional payments by way of overtime payments;

(b) additional payments by way of bonus payments or annual wage supplements;

(c) any sum paid to the employee to reimburse him for special expenses incurred by him in the course of his employment;

(d) productivity incentive payments; and

(e) travelling, food or housing allowances;

\textbf{“hours of work”} means the time during which an employee is at the disposal of the employer and is not free to dispose of his own time and movements exclusive of any intervals allowed for rest and meals;

\textbf{“overtime”} means the number of hours worked in any one day or in any one week in excess of the limits specified in Part IV;

\textsuperscript{187} Chandran, Annotated EA, supra note 6 at 29.
"salary" means all remuneration including allowances payable to an employee in respect of work done under his contract of service, but does not include —

(a) the value of any house accommodation, supply of electricity, water, medical attendance, or other amenity, or of any service excluded by general or special order of the Minister published in the Gazette;

(b) any contribution paid by the employer on his own account to any pension fund or provident fund;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum paid to the employee to reimburse him for special expenses incurred by him in the course of his employment;

(e) any gratuity payable on discharge or retirement; and

(f) any retrenchment benefit payable on retrenchment;

"seafarer" means any person, including the master, who is employed or engaged or works in any capacity on board a ship, but does not include —

(a) a pilot;

(b) a port worker;

(c) a person temporarily employed on the ship during the period it is in port; and

(d) a person who is employed or engaged or works in any capacity on board a harbour craft or pleasure craft licensed under regulations made under section 41 of the Maritime and Port Authority of Singapore Act (Cap. 170A), when the harbour craft or pleasure craft is used within a port declared by the Minister under section 3 of that Act;

"workman" means —

(a) any person, skilled or unskilled, who has entered into a contract of service with an employer in pursuance of which he is engaged in manual labour, including any artisan or apprentice, but excluding any seafarer or domestic worker;

(b) any person, other than clerical staff, employed in the operation or maintenance of mechanically propelled vehicles used for the transport of passengers for hire or for commercial purposes;

(c) any person employed partly for manual labour and partly for the purpose of supervising in person any workman in and throughout the performance of his work:

Provided that when any person is employed by any one employer partly as a workman and partly in some other capacity or capacities, that person shall be deemed to be a workman unless it can be established that the time during which that workman has been required to work as a workman in any one salary period as defined in Part III has on no occasion amounted to or exceeded one-half of the total time during which that person has been required to work in such salary period;

(d) any person specified in the First Schedule;

(e) any person whom the Minister may, by notification in the Gazette, declare to be a workman for the purposes of this Act.
(2) Any person who is employed in a managerial or an executive position and is in receipt of a salary not exceeding $4,500 a month (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance however described), or such other amount as may be prescribed in substitution by the Minister, shall be regarded as an employee for the purposes of this Act except the provisions in Part IV.

Section 8. Illegal terms of contracts of service

Every term of a contract of service which provides a condition of service which is less favourable to an employee than any of the conditions of service prescribed by this Act shall be illegal, null and void to the extent that it is so less favourable.

<table>
<thead>
<tr>
<th><strong>Holding</strong></th>
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<tbody>
<tr>
<td>Where an employee agrees to accept other benefits under a scheme of service in lieu of overtime pay, the doctrine of election applies to bar them from claiming for overtime pay later.</td>
</tr>
</tbody>
</table>

“According to respondent’s own evidence he agreed to work as a monthly-rated employee under the terms and conditions which included without limit in hours in return for such benefits as housing allowance, food allowance, bonus and incentive payments. Having agreed to accept these benefits under a scheme of service instead of overtime benefits which he would have received otherwise, he cannot now come to court and complain that he is entitled to receive overtime benefits. This is not a case where an employee who by virtue of his inability to obtain other employment or other schemes of service has been forced to work overtime. The type of work which the respondent did, according to his own evidence, involved long periods of standing by doing nothing, i.e., the actual work he had to do was of a much shorter period than 8 hours. It was the nature of the work which persuaded him to continue under the terms and conditions of his service. He himself has said that he made no protest, no complaint, nor did he want to alter his terms of service.”

*Acme Canning Corporation Ltd v Lee Kim Seng*  
[1977] 1 MLJ 252
**Monteverde Darvin Cynthia v VGO Corp Ltd**\(^{188}\)  
[2013] SGHC 280

<table>
<thead>
<tr>
<th>Holding</th>
</tr>
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</table>
| • [10]: On correct interpretation of the contract, $1900 is the basic rate of pay, excluding any overtime payment.  
  o Appellant’s contract expressly disclaimed the concept of additional payment for overtime hours worked, stating that the Appellant was “hired for job completion and not for number of hours worked”  
  o The contract does not provide for a fixed number of hours to be worked but purportedly imposes an obligation on the part of the Appellant to work a maximum of 60 hours per week. If she had been required to work fewer than 60 hours a week, it would still be obliged to pay her a monthly salary of $1900.  
• [12]: Even if the contract required the Appellant to work a fixed number of 60 hours a week rather than expressing a maximum, finding would remain the same. Such a clause would be rendered illegal, null and void to the extent that it is less so favourable. Thus, that particular clause would be treated as one which only imposed an obligation to work no more than 44 hours a week, but the contractual obligation to pay her a monthly salary of $1900 would remain unchanged.  
|  
| Summary of facts |  
| The Appellant brought a claim against her former employer, the Respondent, for overtime pay during the period of her employment.  
The Appellant was employed by the Respondent as a senior boutique associate. It was not disputed that her last drawn monthly basic salary was $1,900 and that she worked 60 hours per week. She ceased her employment with the Respondent when her work pass was cancelled. She then lodged a claim with the Commissioner of Labour for overtime pay for the period from the date of commencement of her employment to the date of termination of her employment.  
The Commissioner found that as the Appellant had agreed to work 60 hours a week at a monthly basic salary of $1900, it was reasonable to presume that the parties had agreed for the Respondent to pay a single  

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\(^{188}\) *Monteverde* can be reconciled with *Acme* because based on the decision in *Monteverde*, it is still possible for employees to come to an arrangement where they elect to be paid a higher fixed monthly salary in lieu of overtime salary. Thus, *Monteverde* merely stands for the proposition that there cannot be a contractual obligation to work more than 44 hours per week. *Monteverde* is also distinguishable from *Acme Canning* because in *Monteverde*, it was not clear that the worker was offered a higher salary in lieu of overtime payment. On the other hand, in *Acme Canning*, the worker was explicitly offered a choice of working as a monthly-rated employee with other benefits in lieu of overtime salary, or as an hourly-rated employee.
rate for all hours of work, including the hours worked in excess of 44 hours a week. Thus the respondent had to pay an additional 0.5 times the hourly basic rate for the overtime hours.

The issue was whether the Commissioner had erred in accepting that payments for the overtime hours were already included in the Appellant's basic salary of $1900 except for the increase of 50%, i.e. 1.5 times the hourly basic rate of pay.

Section 20. Fixation of salary period

(1) An employer may fix periods, which for the purpose of this Act shall be called salary periods, in respect of which salary earned shall be payable.

(2) No salary period shall exceed one month.

(3) In the absence of a salary period so fixed, the salary period shall be deemed to be one month.

Section 20A. Computation of salary for incomplete month's work

(1) If a monthly-rated employee has not completed a whole month of service because —

(a) he commenced employment after the first day of the month;
(b) his employment was terminated before the end of the month;
(c) he took leave of absence without pay for one or more days of the month; or
(d) he took leave of absence to perform his national service under the Enlistment Act (Cap. 93),
(e) the salary due to him for that month shall be calculated in accordance with the following formula:

\[
\text{Monthly gross rate of pay} \times \frac{\text{Number of days on which the employee is required to work in that month}}{\text{Number of days the employee actually worked in that month}}
\]

(2) In calculating the number of days actually worked by an employee in a month under subsection (1), any day on which an employee is required to work for 5 hours or less under his contract of service shall be regarded as half a day.

Section 26. No unauthorised deductions to be made

No deduction shall be made by an employer from the salary of an employee, unless the deduction is authorised by or under any provision of this Act or is required to be made —

(a) by order of a court or other authority competent to make such order;
(b) pursuant to a declaration made by the Comptroller of Income Tax under section 57 of the Income Tax Act (Cap. 134), the Comptroller of Property Tax under section 38 of the Property Tax Act (Cap. 254) or the Comptroller of Goods and Services Tax under
section 79 of the Goods and Services Tax Act (Cap. 117A) that the employer is an agent for recovery of income tax, property tax or goods and services tax (as the case may be) payable by the employee; or

(c) pursuant to a direction given by the Comptroller of Income Tax under section 91 of the Income Tax Act.

Section 27. Authorised deductions

(1) The following deductions may be made from the salary of an employee:

(a) deductions for absence from work;

(b) deductions for damage to or loss of goods expressly entrusted to an employee for custody or for loss of money for which an employee is required to account, where the damage or loss is directly attributable to his neglect or default;

(c) deductions for the actual cost of meals supplied by the employer at the request of the employee;

(d) deductions for house accommodation supplied by the employer;

(e) deductions for such amenities and services supplied by the employer as the Commissioner may authorise;

(f) deductions for recovery of advances or loans or for adjustment of over-payments of salary;

(g) [Deleted by Act 26 of 2013 wef 01/04/2014]

(h) deductions of contributions payable by an employer on behalf of an employee under and in accordance with the provisions of the Central Provident Fund Act (Cap. 36);

(i) deductions made at the request of the employee for the purpose of a superannuation scheme or provident fund or any other scheme which is lawfully established for the benefit of the employee and is approved by the Commissioner;

(j) deductions made with the written consent of the employee and paid by the employer to any cooperative society registered under any written law for the time being in force in respect of subscriptions, entrance fees, instalments of loans, interest and other dues payable by the employee to such society; and

(k) any other deductions which may be approved from time to time by the Minister.

(2) For the purposes of subsection (1)(e), “services” does not include the supply of tools and raw materials required for the purposes of employment.

Section 29. Deductions for damages or loss

(1) A deduction under section 27(1)(b) shall not exceed the amount of the damages or loss caused to the employer by the neglect or default of the employee except with the permission of the Commissioner shall in no case exceed one-quarter (or such other proportion prescribed in substitution by the Minister) of one month’s wages and shall not be made until the employee has been given an opportunity of showing cause against the deduction.
Section 30. Deductions for accommodation, amenity and service

(1) A deduction under section 27(1)(d) or (e) shall not be made from the salary of an employee unless the house accommodation, amenity or service has been accepted by him, as a term of employment or otherwise.

(2) Any deduction under section 27(1)(d) or (e) shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied, and the total amount of all deductions under section 27(1)(d) and (e) made from the salary of the employee by his employer in any one salary period shall in no case exceed one-quarter (or such other proportion prescribed in substitution by the Minister) of the salary payable to the employee in respect of that period.

(3) In the case of a deduction under section 27(1)(e), the deduction shall be subject to such conditions as the Commissioner may impose.

Section 32. Deductions not to exceed prescribed limit

(1) The total amount of all deductions made from the salary of an employee by an employer in any one salary period, other than deductions under section 27(1)(a), (f) or (j), shall not exceed 50% (or such other percentage prescribed in substitution by the Minister) of the salary payable to the employee in respect of that period.

(2) Subsection (1) shall not apply to deductions made from the last salary due to an employee on termination of his contract of service or on completion of his contract of service.

Section 35. Application of this Part to certain workmen and other employees

The provisions of this Part shall apply —

(a) to workmen who are in receipt of a salary not exceeding $4,500 a month (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance however described) or such other amount as may be prescribed by the Minister; and

(b) to employees (other than workmen) who are in receipt of a salary not exceeding $2,000 a month (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance however described) or such other amount as may be prescribed by the Minister.

The provisions of this Part shall apply —

(a) to workmen who are in receipt of a salary not exceeding $4,500 a month (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance however described) or such other amount as may be prescribed by the Minister; and

(b) to employees (other than workmen) who are in receipt of a salary not exceeding $2,500 a month (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance however described) or such other amount as may be prescribed by the Minister.
Section 36. Rest day

(1) Every employee shall be allowed in each week a rest day without pay of one whole day which shall be Sunday or such other day as may be determined from time to time by the employer.

(2) The employer may substitute any continuous period of 30 hours as a rest day for an employee engaged in shift work.

(3) Where in any week a continuous period of 30 hours commencing at any time before 6 p.m. on a Sunday is substituted as a rest day for an employee engaged in shift work, such rest day shall be deemed to have been granted within the week notwithstanding that the period of 30 hours ends after the week.

Section 37. Work on rest day

(1) Subject to section 38(2) or 40(2A), no employee shall be compelled to work on a rest day unless he is engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts.

(1A) In the event of any dispute, the Commissioner shall have power to decide whether or not an employee is engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts.

(2) An employee who at his own request works for an employer on a rest day shall be paid for that day —

(a) if the period of work does not exceed half his normal hours of work, a sum at the basic rate of pay for half a day’s work;
(b) if the period of work is more than half but does not exceed his normal hours of work, a sum at the basic rate of pay for one day’s work; or
(c) if the period of work exceeds his normal hours of work for one day —
   (i) a sum at the basic rate of pay for one day’s work; and
   (ii) a sum at the rate of not less than one and a half times his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day.

(3) An employee who at the request of his employer works on a rest day shall be paid for that day —

(a) if the period of work does not exceed half his normal hours of work, a sum at the basic rate of pay for one day’s work;
(b) if the period of work is more than half but does not exceed his normal hours of work, a sum at the basic rate of pay for 2 days’ work; or
(c) if the period of work exceeds his normal hours of work for one day —
   (i) a sum at the basic rate of pay for 2 days’ work; and
   (ii) a sum at the rate of not less than one and a half times his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day.

(3A) In this section —

(a) “normal hours of work” means the number of hours of work (not exceeding the limits applicable to an employee under section 38 or 40, as the case may be) that is agreed
between an employer and an employee to be the usual hours of work per day; or in the absence of any such agreement, shall be deemed to be 8 hours a day; and

(b) an employee’s “hourly basic rate of pay” is to be calculated in the same manner as for the purpose of calculating payment due to an employee under section 38 for working overtime.

Section 38. Hours of work

(1) Except as hereinafter provided, an employee shall not be required under his contract of service to work —

(a) more than 6 consecutive hours without a period of leisure;
(b) more than 8 hours in one day or more than 44 hours in one week:

Provided that —

(i) an employee who is engaged in work which must be carried on continuously may be required to work for 8 consecutive hours inclusive of a period or periods of not less than 45 minutes in the aggregate during which he shall have the opportunity to have a meal;
(ii) where, by agreement under the contract of service between the employee and the employer, the number of hours of work on one or more days of the week is less than 8, the limit of 8 hours in one day may be exceeded on the remaining days of the week, but so that no employee shall be required to work for more than 9 hours in one day or 44 hours in one week;
(iii) where, by agreement under the contract of service between the employee and the employer, the number of days on which the employee is required to work in a week is not more than 5 days, the limit of 8 hours in one day may be exceeded but so that no employee shall be required to work more than 9 hours in one day or 44 hours in one week; and
(iv) where, by agreement under the contract of service between the employee and the employer, the number of hours of work in every alternate week is less than 44, the limit of 44 hours in one week may be exceeded in the other week, but so that no employee shall be required to work for more than 48 hours in one week or for more than 88 hours in any continuous period of 2 weeks.

(2) An employee may be required by his employer to exceed the limit of hours prescribed in subsection (1) and to work on a rest day, in the case of —

(a) accident, actual or threatened;
(b) work, the performance of which is essential to the life of the community;
(c) work essential for defence or security;
(d) urgent work to be done to machinery or plant;
(e) an interruption of work which it was impossible to foresee; or
(f) work to be performed by employees in any industrial undertaking essential to the economy of Singapore or any of the essential services as defined under Part III of the Criminal Law (Temporary Provisions) Act (Cap. 67).

(4) If an employee at the request of the employer works —

(a) more than 8 hours in one day except as provided in paragraphs (ii) and (iii) of the proviso to subsection (1), or more than 9 hours in one day in any case specified in those paragraphs; or
(b) more than 44 hours in one week except as provided in paragraph (iv) of the proviso to subsection (1), or more than 48 hours in any one week or more than 88 hours in any continuous period of 2 weeks in any case specified in that paragraph,
Section 40. Shift workers, etc.

(1) Notwithstanding section 38(1), an employee who is engaged under his contract of service in regular shift work or who has otherwise consented in writing to work in accordance with the hours of work specified in this section may be required to work more than 6 consecutive hours, more than 8 hours in any one day or more than 44 hours in any one week but the average number of hours worked over any continuous period of 3 weeks shall not exceed 44 hours per week.

(2) No consent given by an employee under this section shall be valid unless this section and section 38 have been explained to the employee and the employee has been informed of the times at which the hours of work begin and end, the number of working days in each week and the weekly rest day.

(2A) An employee to whom this section applies may be required by his employer to exceed the limit of hours prescribed in subsection (1) and to work on a rest day, in the case of —

(a) accident, actual or threatened;
(b) work, the performance of which is essential to the life of the community;
(c) work essential for defence or security;
(d) urgent work to be done to machinery or plant;
(e) an interruption of work which it was impossible to foresee; or
(f) work to be performed by employees in any industrial undertaking essential to the economy of Singapore or any of the essential services as defined under Part III of the Criminal Law (Temporary Provisions) Act (Cap. 67).

(3) Except in the circumstances described in subsection (2A)(a), (b), (c), (d) and (e), no employee to whom this section applies shall under any circumstances work for more than 12 hours in any one day.

(4) Section 38(4) shall not apply to any employee to whom this section applies, but any such employee who at the request of his employer works more than an average of 44 hours per week over any continuous period of 3 weeks shall be paid for such extra work in accordance with section 38(4).
FOURTH SCHEDULE
EMPLOYEE’S HOURLY BASIC RATE OF PAY
FOR CALCULATION OF PAYMENT DUE FOR OVERTIME

<table>
<thead>
<tr>
<th>First column</th>
<th>Second column</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of employee</td>
<td>Calculation of hourly basic rate of pay</td>
</tr>
<tr>
<td>1. A workman employed on a monthly rate of pay</td>
<td>12 x Monthly basic rate of pay 52 x 44</td>
</tr>
<tr>
<td>2. A non-workman whose monthly basic rate of pay is less than $2,250</td>
<td>12 x Monthly basic rate of pay 52 x 44</td>
</tr>
<tr>
<td>3. A non-workman whose monthly basic rate of pay is $2,250 or more</td>
<td>12 x $2250 52 x 44</td>
</tr>
<tr>
<td>4. A workman employed on piece rates</td>
<td>The total weekly pay at the basic rate of pay received divided by the total number of hours worked in the week</td>
</tr>
<tr>
<td>5. A non-workman employed on piece rates</td>
<td>The total weekly pay at the basic rate of pay received divided by the total number of hours worked in the week, or the hourly basic rate of pay of an employee specified in this column for item 3, whichever is the lower</td>
</tr>
<tr>
<td>6. A workman employed on an hourly rate of pay</td>
<td>Actual hourly basic rate of pay</td>
</tr>
<tr>
<td>7. A non-workman employed on an hourly rate of pay</td>
<td>Actual hourly basic rate of pay, or the hourly basic rate of pay of an employee specified in this column for item 3, whichever is the lower</td>
</tr>
<tr>
<td>8. A workman employed on a daily rate of pay</td>
<td>Daily basic rate of pay divided by the number of working hours per day</td>
</tr>
<tr>
<td>9. A non-workman employed on a daily rate of pay</td>
<td>Daily basic rate of pay divided by the number of working hours per day, or the hourly basic rate of pay of an employee specified in this column for item 3, whichever is the lower</td>
</tr>
</tbody>
</table>
V. Employment Agencies Act (Cap 92, 2012 Rev Ed Sing)

Employment Agencies Rules 2011

12.—(1) For the purposes of sections 14 and 23(1) of the Act and subject to paragraph (2), the fees that a licensee may charge or receive from an applicant for employment, whether directly or indirectly, for emplacing the applicant for employment with an employer on or after 1st April 2011 shall not exceed —

(a) where the applicant for employment is a foreign employee, one month’s salary for each year of —

(i) the period of validity of the foreign employee’s work pass; or

(ii) the period of the contract of employment,

whichever is the shorter, to be pro-rated according to the total relevant period, subject to a maximum of 2 months’ salary of the employee;

(2) The reference to fees in paragraph (1) shall not include a reference to any fee charged or received by a licensee in respect of costs incurred by or on behalf of an applicant for employment outside Singapore.

(3) For the purposes of section 14 of the Act, a licensee may charge and receive any form of fees, remuneration, profit or compensation from any applicant for workers or any employer.

(4) The licensee shall, as soon as practicable after receiving any fee, whether directly or indirectly, from an applicant for employment, issue a written receipt for the fee accompanied by an itemised list of components of the fee to the applicant for employment.

VI. Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed Sing)

Section 22A. Restrictions on receipt, etc., of moneys in connection with employment of foreign employee

(1) No person shall deduct from any salary payable to a foreign employee, or demand or receive, directly or indirectly and whether in Singapore or elsewhere, from a foreign employee any sum or other benefit —

(a) as consideration or as a condition for the employment of the foreign employee, whether by that person or any other person;

(b) as consideration or as a condition for the continued employment of the foreign employee, whether by that person or any other person; or

(c) as a financial guarantee related, in any way, to the employment of the foreign employee, whether by that person or any other person.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $30,000 or to imprisonment for a term not exceeding 2 years or to both.
(3) Any person who deducts from any salary payable to a foreign employee, or demands or receives, directly or indirectly and whether in Singapore or elsewhere, from a foreign employee any sum or other benefit, not being —

(a) the whole or part of any fee, cost, levy, penalty, charge or amount that the employer of the foreign employee shall bear and be liable to pay under section 25(6);

(b) the whole or part of any fee or deduction prescribed as recoverable from the foreign employee under section 25(6)(a);

(c) where sections 26 to 32 of the Employment Act (Cap. 91) apply to the foreign employee, the whole or part of any deduction from the salary of the foreign employee authorised to be made under those sections;

(d) where sections 26 to 32 of the Employment Act do not apply to the foreign employee, the whole or part of any deduction from the salary of the foreign employee made in accordance with the terms of the employment of the foreign employee; or

(e) the whole or part of any fee, remuneration, profit or compensation that a licensee under the Employment Agencies Act (Cap. 92) may lawfully charge the foreign employee and receive under that Act,

shall be presumed, until the contrary is proved, to have done so as consideration for the employment of the foreign employee.

[Act 24 of 2012 wef 09/11/2012]

VII. Fraudulent misrepresentation

<table>
<thead>
<tr>
<th>Derry v Peek</th>
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<tr>
<td>[1889] 14 App Cas 337</td>
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</table>

**Holding**

- “In an action for deceit, […] it is not enough to establish misrepresentation alone; it is conceded on all hands that something more must be proved to cast liability”.

- “First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice.”

- “Secondly, fraud is proved when it is [shown] that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states.”

- “To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably
covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief.”

- “Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.”

- “In my opinion making a false statement through want of care falls far short of, and is a very different thing from, fraud, and the same may be said of a false representation honestly believed though on insufficient grounds.”

- There were obviously reasons that untrue statement, and they “honestly believed what they stated to be a true and fair representation of the facts”.

<table>
<thead>
<tr>
<th>Summary of facts</th>
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<tbody>
<tr>
<td>The defendant were directors of a tramway company who issued prospectus stating that the company had the right to use steam power instead of horses. Under the terms of the relevant Act, the consent of the Board of Trade was required and they had not acquired this right yet.</td>
</tr>
<tr>
<td>The plaintiff subscribed for shares in the company on the strength of this prospectus. The consent was subsequently refused and the company wound up</td>
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<tr>
<td>The plaintiff sued the defendant for deceit.</td>
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VIII. Illegality of contract

<table>
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<tr>
<th>Archbolds (Freightage) Ltd v Spanglett Ltd</th>
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<tr>
<td>[1961] QBD 374</td>
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<tr>
<th>Holding</th>
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<tr>
<td>179: “The effect of illegality upon a contract may be threefold. If at the time of making the contract there is an intent to perform it in an unlawful way, the contract, although it remains alive, is unenforceable at the suit of the party having that intent; if the intent is held in common, it is not enforceable at “</td>
</tr>
<tr>
<td>179-180: “Another effect of illegality is to prevent a plaintiff from recovering under a contract if in order to prove his rights under it he has to rely upon his own illegal act; he may not do that even though he can show that at the time of making the contract he had no intent to break the law and that at the time of performance he did not know that what he was doing was illegal.”</td>
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<tr>
<td>180: “The third effect of illegality is to avoid the contract ab initio and that arises if the making of the contract is expressly or</td>
</tr>
</tbody>
</table>
impliedly prohibited by statute or is otherwise contrary to public policy.”

**Summary of facts**

“The defendants were furniture manufacturers in London and owned a number of vans with “C” licences under the Road and Rail Traffic Act, 1933, which enabled them to carry their own goods, but did not allow them to carry for reward the goods of others. The plaintiffs were carriers with offices in London and Leeds, and their vehicles had “A” licences under the Act, which enabled them to carry the goods of others for reward. The plaintiffs’ London office, as a result of a telephone conversation with some unidentified person from the defendants’ office, believed that the defendants’ vehicle had "A" licences, and employed the defendants to carry a part of a load for them on the defendants’ van which was taking some of their (the defendants’) furniture from London to Leeds.

The defendants’ driver, having delivered those goods, spoke on the telephone to the traffic manager of the plaintiffs’ office at Leeds to see if he could obtain a load for his empty van from Leeds to London, and said that he had just carried goods from the plaintiffs’ London office to Leeds. The traffic manager replied that he had a load, which was in fact 200 cases of whisky, but he made no inquiries from the driver as to whether he had an "A" licence.

The defendants’ van was duly loaded with the whisky, which was stolen on the way to the London docks owing to the driver’s negligence.

On a claim by the plaintiffs for damages for the loss of the whisky, the defendants pleaded the illegality of the contract, in that their van did not have an "A" licence as required by the Act of 1933.”

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**Mohamed v Alaga**

[2000] 1 WLR 1815

**Holding**

- 1824: [Citing *St. John Shipping Corporation v Joseph Rank Ltd* [1957] 1 Q.B. 267 at 283] “The second principle is that the court will not enforce a contract which is expressly or impliedly prohibited by statute. If the contract is of this class it does not matter what the intent of the parties is; if the statute prohibits the contract, it is unenforceable whether the parties meant to break the law or not. A significant distinction between the two classes is this. In the former class you have only to look and see what acts the statute prohibits; it does not matter whether or not it prohibits a contract; if a contract is deliberately made to do a prohibited act, that contract will be unenforceable. In the latter class, you have to consider not what acts the statute prohibits, but what contracts it prohibits;
but you are not concerned at all with the intent of the parties; if the parties enter into a prohibited contract, that contract is unenforceable.”

- 1825: “[E]ven if the alleged agreement is discarded as illegal and unenforceable, and without making any reference to that agreement at all, the plaintiff is entitled to be paid a reasonable sum for professional services rendered by him to the defendant on behalf of the defendant's clients, the surrounding circumstances being such as to show that such services were not rendered gratuitously.”

- 1825: “[T]he plaintiff is not seeking to recover any part of the consideration payable under the unlawful contract, but simply a reasonable reward for professional services rendered. I accept that as an accurate description of what on this limited basis the plaintiff is, in truth, seeking. It is furthermore in my judgment relevant that the parties are not in a situation in which their blameworthiness is equal. The defendant is a solicitors' firm and bound by the rules. It should reasonably be assumed to know what the rules are and to comply with them. If, in truth, it made the agreement as alleged, then it would seem very probable that it acted in knowing disregard of professional rules binding upon it. By contrast the plaintiff, on the assumption made (which I have no difficulty in accepting), was ignorant that there was any reason why the defendant should not make the agreement which he says was made. In other commercial fields, after all, such agreements are common […] On that limited basis I would for my part allow the appeal and reinstate the action to the extent of permitting the plaintiff to pursue a quantum meruit claim for reasonable remuneration for professional services rendered.”

<table>
<thead>
<tr>
<th>Summary of facts</th>
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<tbody>
<tr>
<td>Solicitors contracted with a translator for translation services and introduction of clients to the firm; they would pay translator a share of their fees contrary to legislation. The translator sued for monies owing under the contract; the solicitors claimed the agreement was illegal.</td>
</tr>
</tbody>
</table>

**Strongman (1945) Ltd v Sincock**

[1955] 2 QB 525

**Holding**

- 526: “The builders could not recover the price under the contract, since the contract was illegal as being absolutely prohibited by the regulations.”

- 526: “The assurance given by the architect amounted to a warranty or collateral contract that he would obtain the
supplementary licences or stop the work if he could not obtain them.”

- 535: “[T]here was a warranty, or [putting it more accurately] a promise by the architect that he would get supplementary licences, or that if he failed to get them he would stop the work. The builders say the on the faith of that promise they did the work, and as the promise was broken they can recover damages in respect of it.”

- 526: “That unless the builders had themselves been morally to blame or culpably negligent they might recover damages in a civil action for breach of warranty (and similarly for fraud), since they had been led to commit the criminal offence which was absolutely prohibited by the promise or representation of the architect.”

- 526: “That these builders had not been culpably negligent in themselves failing to obtain licences or ascertaining that they had been obtained, since, as between architect and builder, the primary obligation to obtain licences was by universal practice admitted to be on the architect, and that duty was not displaced in the present case by the fact that the architect was also the building owner. The builders were accordingly entitled to damages.”

- 537: “When a builder is doing work for a lay owner - if I may so describe him - the primary obligation is on the builder to see that there is a licence. He ought not simply to rely on the word of the lay owner. He ought to inspect the licence himself. If he does not do so, it is his own fault if he finds himself landed in an illegality. But in this case there was not a lay owner. The owner was the architect, and he himself said in evidence: "I agree that where there is an architect it is the universal practice for the architect and not the builder to get the licence." No fault, it seems to me, can, in these circumstances, be attributed to the builder”

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<tr>
<th>Summary of facts</th>
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<tr>
<td>An architect owner contracted with builders to supply materials and carry out work at his premises, and promised orally that he would obtain all the licences necessary at that date under regulation 56A of the Defence (General) Regulations, 1939. Work considerably in excess of the licences granted was carried out. The builders sought a claim for the balance of the price over the licensed amount, or alternatively, damages for a similar amount for breach of the warranty to obtain the licenses.</td>
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</table>
**PP v Donohue Enilia**  
*[2005] 1 SLR 220*

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<tr>
<th>Holding</th>
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<tr>
<td>[51] – [53]: There was no basis not to grant compensation for the period where there was no valid work permit as there was no evidence suggesting that the maid had been aware of the revocation of her work permit.</td>
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<th>Summary of facts</th>
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<tr>
<td>The respondent was the employer of a foreign maid. The maid's work permit was revoked when the respondent defaulted on the payment of the maid levy, but the respondent continued to engage the services of the maid. Throughout the period of employment, the respondent did not pay the maid any salary. The maid eventually reported the respondent to the police.</td>
</tr>
<tr>
<td>The respondent pleaded guilty in the magistrate's court to a charge under s 5(1) of the Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed) (<em>the EFWA</em>) for employing a foreign worker without a valid work permit and to a charge under s 22(1)(a) of the EFWA for failing to comply with the conditions of the work permit to pay the foreign worker a salary.</td>
</tr>
<tr>
<td>The trial judge, however, refused the Prosecution's application for a compensation order to be made for the unpaid salaries owed by the respondent.</td>
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<td>The Prosecution appealed against the refusal to grant a compensation order.</td>
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<th>Analysis</th>
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<tr>
<td>Professor Chandran suggests that the employee’s innocence of the illegality may be a factor in determining the whether the EA can apply to the contract.</td>
</tr>
<tr>
<td>However, it is notable that <em>Donohue Enilia</em> is a case about criminal compensation. As demonstrated by Asiawerks, extracted above, the applicability of the EA is likely tied to the enforceability of the contract. Innocence of the employee is thus likely to be relevant as a consideration in common law rules on illegality of contract.</td>
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**Ting Siew May v Boon Lay Choo**  
*[2014] 3 SLR 609*

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<th>Holding</th>
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| [66]: [Where] a contract is entered into with the object of committing an illegal act, the general approach that the courts
should undertake is to examine the relevant policy considerations underlying the illegality principle so as to produce a proportionate response to the illegality in each case.

- [70]: This process requires the court to consider a number of general factors including:
  o whether allowing the claim would undermine the purpose of the prohibiting rule;
  o the nature and gravity of the illegality;
  o the remoteness or centrality of the illegality to the contract;
  o the object, intent and conduct of the parties; and
  o the consequences of denying the claim.
- [126]: [The reliance principle] is usually invoked only by a contracting party seeking to recover (on a restitutionary basis) what it had transferred to the other party, pursuant to the (illegal) contract.

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<th>Summary of facts</th>
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<td>There was a property cooling measure that reduced the size of the loan that the property buyers were eligible to receive, from an 80% loan-to-value ratio to 60%. The buyers obtained an option to purchase a property after the loan was effective. The loan was backdated to circumvent the amended regulation. The seller refused to honour the option on the grounds of illegality of the contract. The Court of Appeal found that the contract was unenforceable at common law, as it was entered into with the object of contravening a written law.</td>
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IX. Misrepresentation

**Bisset v Wilkinson**

[1927] AC 177 NZ Privy Council

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<th>Holding</th>
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<td>The purchaser unable to set aside contract, because the statement was not a statement of fact, but a statement of opinion which was honestly held and thus not actionable.</td>
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<td>There was no asymmetry of information as both parties were in the same position as they were both aware that the land had never been used for sheep farming. Neither were experts in the sheep farming trade as well</td>
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<th>Summary of facts</th>
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<tr>
<td>The plaintiff purchased a piece of farm land to use as a sheep farm. He asked the seller of the farm how many sheep the land would hold. The seller had not used it as a sheep farm but estimated that it would</td>
</tr>
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</table>
carry 2,000 sheep. In reliance of this statement the claimant purchased the land. The estimate turned out to be wrong and the claimant brought an action for misrepresentation, seeking to rescind the contract.

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**Deutsche Bank AG v Chang Tse Wen**

[2012] SGHC 248

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<th>Holding</th>
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<tr>
<td>[93]: “For a statement to constitute an actionable misrepresentation, it must be a statement of a present fact. This would exclude statements as to future intention, predictions, statements of opinion or belief, sales puffs, exaggerations and statements of law.”</td>
</tr>
<tr>
<td>[93]: [Citing Bestland Development Pte Ltd v Thasin Development Pte Ltd [1991] SGHC 27] “A distinction ought to be drawn between a representation of an existing fact and a promise to do something in the future. Furthermore, mere praise by a man of his own goods or undertaking is a matter of puffing and pushing and does not amount to representation. However, a statement of opinion may in certain circumstances involve a statement of fact.”</td>
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<tr>
<td>[95]: “However, a finding that the statements in question were statements as to future intention rather than statements of present fact is not necessarily fatal to a misrepresentation claim.”</td>
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<tr>
<td>[96]: “Statements as to future facts may therefore be re-characterised as statements implying (i) that the maker of the statement honestly believed that the event would happen in the future; or (ii) that the maker of the statement had reasonable grounds for making such an assertion.”</td>
</tr>
<tr>
<td>[97]: “The main difficulty in trying to found an action for misrepresentation on statements of future intention is an evidential one. The representee must prove, on a balance of probabilities, the maker’s lack of honest belief in the statement.”</td>
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<th>Summary of facts</th>
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<td>The plaintiff sued the defendant for repayment of $1.79m USD outstanding from his private wealth management account.</td>
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<tr>
<td>The defendant counterclaimed for damages arising from actionable misrepresentation, fraudulent misrepresentation, breach of duty of care, breach of fiduciary duty, resulting in losses of some $49m USD due to the plaintiff’s mismanagement of his private wealth</td>
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management account.

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<tr>
<th><strong>Dimmock v Hallett</strong></th>
<th>[1866] 2 Ch App 21</th>
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<tr>
<td><strong>Holding</strong></td>
<td>• There was a half-truth which amounted to a “misrepresentation calculated materially to mislead a purchaser”.</td>
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<tr>
<td><strong>Summary of facts</strong></td>
<td>The defendant was a seller of a farm, and had told the plaintiff, the purchaser, that all farms on the land were fully let. However, he did not inform the plaintiff that the tenants had given notice to quit. The plaintiff bought the land, thinking that tenants would stay. The tenants left, and the plaintiff sued the defendant for misrepresentation.</td>
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<tr>
<th><strong>Edgington v Fitzmaurice</strong></th>
<th>[1885] 29 Ch D 459</th>
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| **Holding**                | • “A misstatement of the intention of the defendant in doing a particular act may be a misstatement of fact, and if the plaintiff was misled by it, an action of deceit may be founded on it.”
• “Where a plaintiff has been induced both by his own mistake and by a material misstatement by the defendant to do an act by which he receives injury, the defendant may be made liable in an action for deceit.” |
| **Summary of facts**       | “The directors of a company issued a prospectus inviting subscriptions for debentures, and stating that the objects of the issue of debentures were to complete alterations in the buildings of the company, to purchase horses and vans, and to develop the trade of the company. The real object of the loan was to enable the directors to pay off pressing liabilities. The Plaintiff advanced money on some of the debentures under the erroneous belief that the prospectus offered a charge upon the property of the company, and stated in his evidence that he would not have advanced his money but for such belief, but that he also relied upon the statements contained in the prospectus. The company became insolvent.” |
**Holmes v Jones**  
*(1907) 4 CLR 1692*

<table>
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<tr>
<th>Holding</th>
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<tr>
<td>• The defendant is not entitled to rely on the original misrepresentation as it did not induce him to enter into the contract. He had relied on his own information gathered from his inspection to enter into the contract.</td>
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<tr>
<td>• There is a rebuttable inference of reliance. For this inference to arise, the claimant has to prove that the statement would have induced a reasonable person to enter the contract.</td>
</tr>
<tr>
<td>• If it can be shown that the claimant relied on his own independently acquired information and not upon the misrepresentation, the element of inducement would be lacking and it would not amount to an operative misrepresentation.</td>
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<th>Summary of facts</th>
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<td>The plaintiff tried to sell land to the defendant, but had made false representations as to the number of livestock on it. The defendant was informed of the falsity of the statement and refused to enter into the contract, but negotiated another deal on a different basis a few months after inspecting the grounds.</td>
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<td>The defendant later argued that the original misrepresentation had induced him to enter the contract that was signed a few months later after his inspection.</td>
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**Leow Chin Hua v Ng Poh Buan**  
*[2005] SGHC 39*

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<th>Holding</th>
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<td>• [13]: “Admittedly, a party who has had the opportunity to inspect documents but does not do so is not necessarily deprived of the right to assert that he was deceived by a false representation: see <em>Redgrave v Hurd</em> (1881) 20 Ch D 1. However, it is quite clear that if a party conducts his own investigation and does not rely on the misrepresentation, it can no longer be said that the false statement had an effect on him: see <em>Attwood v Small</em> (1838) 6 Cl &amp; Fin 232; 7 ER 684.”</td>
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</table>
Summary of facts

The defendant represented to the plaintiff that the business had a turnover of $800,000 and made a profit of $200,000 a year. Before the plaintiff entered into a joint venture with the defendant, the plaintiff checked the accounts and thought it was worth his while to enter into a joint venture with the defendant.

The plaintiff then invested in the business, which subsequently started to lose money. The plaintiff then claimed that the defendant had misrepresented him and sought to rescind the contract.

**Redgrave v Hurd**

[1881] 20 Ch D 1

**Holding**

- 2: "[T]hat where one person induces another to enter into an agreement with him by a material representation which is untrue, it is no defence to an action to rescind the contract that the person to whom the representation was made had the means of discovering, and might, with reasonable diligence, have discovered, that it was untrue."

- 2: "[I]t is no defence in such an action that the Defendant made a cursory and incomplete inquiry into the facts, for that if a material representation is made to him he must be taken to have entered into the contract on the faith of it, and in order to take away his right to have the contract rescinded if it is untrue, it must be [shown] either that he had knowledge of facts which [showed] it to be untrue, or that he stated in terms, or [showed] clearly by his conduct, that he did not rely on the representation."

**Summary of facts**

The plaintiff, a solicitor, wanted to sell his business. He told the defendant, a buyer, that his business brought in £300/year, and brought the accounts of his business to the defendant.

The defendant only took a cursory look and declined to look further. Had he done so, he would have noticed that the business only brought in £200/year.

The contract was concluded, but the defendant later found out and refused to perform. The plaintiff sued for specific performance, while the defendant sought to rescind the contract.
### Smith v Land & House Property Corporation

**[1884] 28 Ch D 7**

**Holding**
- The court rejected vendor’s argument on the basis that his statement was held to contain an implicit assertion that he knew of no facts which would lead to the conclusion that the tenant was actually not a “most desirable tenant”.
- “In a case where the facts are equally well known to both parties, what one of them says to the other is frequently nothing but an expression of opinion. Such a statement is, in a sense, a statement of fact about the condition of the man’s own mind. Nevertheless, this is an irrelevant fact, for it is of no consequence what the opinion is.”
- “But if the facts are not equally known to both sides, then a statement of opinion by the one who knows the facts best involves very often a statement of material fact, for he impliedly states that he knows facts which justify his opinion.”

**Summary of facts**
The plaintiff purchased a hotel. The seller described a tenant to be a “most desirable tenant”. This was despite the seller’s knowledge that the tenant was in arrears and on the verge of bankruptcy, and the rent which he had paid was only paid under the threat of legal action.

The plaintiff bought the property and the tenant defaulted on payments. The plaintiff sued the seller for misrepresentation.

### Spice Girls Ltd v Aprilla World Service BV

**[2002] EMLR 27**

**Holding**
- The defendant was liable for misrepresentation by conduct that the group would stay intact.
- The representation that no one was going to leave the group was necessarily implicit in the conduct of the Spice Girls. Although AWS had accepted the risk that one of the girls may leave after the contract was concluded, it did not accept the risk that one of them had already decided to leave prior to contract formation.

**Summary of facts**
The defendant, the Spice Girls, entered into a contract with the plaintiff, in which the plaintiff would sponsor the defendant’s concert tour in return for promotional work to be carried out by the defendant.

Before the contract was concluded, the members of the Spice Girls were aware that one of them had the intention to leave the group, but
nobody informed the plaintiff of this. Instead, the Spice Girls went ahead with a photoshoot with all members present, organised just before the contract was concluded.

The plaintiff then sued for misrepresentation after the member left (as this would reduce the sponsorship appeal of the Spice Girls with a missing member), claiming that they were induced into entering the contract.

The defendant claimed that a clause in the contract had already allocated the risk of one of the members leaving the group to AWS.

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<th>Trans-World (Aluminium) Ltd v Cornelder China (Singapore)</th>
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<td>[2003] 3 SLR 501</td>
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**Holding**

- The claim for misrepresentation was dismissed. There is no general duty for full disclosure.
- [66], [68], [126] and [130]: “Misrepresentation by silence required more than mere silence. There ought to be a willful suppression of material and important facts. Thus where silence was alleged to constitute misleading conduct, the proper approach was to assess silence as a circumstance like any other act or statement and in the context in which it occurred.”
- [132] to [136]: “There was no duty of care owed by the defendants as there was no voluntary assumption of responsibility here. There was no obligation to speak in the context of negotiations for an ordinary commercial contract. While S had chosen to answer questions posed to him, he was not asked nor did he undertake to provide information on title or adverse claims.”

**Summary of facts**

“The plaintiffs entered into a contract with M for the purchase of cargo in China. The cargo was in the custody of the defendant warehousemen and collateral managers. The plaintiffs alleged that the defendants’ employee, S, had represented to them that the cargo carried no risk as to title and delivery. However, the cargo was already the subject of an injunction and subsequently, in litigation in the Chinese courts, it was held that M did not have good title to the cargo.

The plaintiffs commenced an action against the defendants for misrepresentation, whether fraudulent, innocent or negligent.”
With v O’Flanaghan
[1936] Ch 575

Holding
- The defendant was under an obligation to disclose this change of circumstances to the plaintiff because (1) there was a continuing representation, and (2) the defendant had a duty to communicate the fundamental change of circumstances to the plaintiff.

Summary of facts
The plaintiff purchased a medical practice from the defendant. The plaintiff was induced to buy the practice by the defendant's statement that the practice took £2,000 per annum. This statement was true at the time the negotiations for the sale of the practice began. However, by time the sale was completed the practice was virtually worthless due to the ill-health of the medical practitioner. The defendant had failed to disclose this fact to the plaintiff.

X. Oral promises

Bannerman v White
[1861] 10 CBNS 844

Holding
- Where a statement is made close to the time of the transaction it is more likely to be a term. The two day interval between making the statement and forming the contract was sufficiently close to render the statement a term.

- The undertaking given by plaintiff was relied upon by the defendant in agreeing to purchase. It was the term upon which the defendant contracted and would be contrary to the defendant's intention (which was known to plaintiff) should the contract remain valid if sulphur was used.

Summary of facts
The plaintiff agreed by contract to purchase some hops to be used for making beer. He asked the seller if the hops had been treated with sulphur and told him if they had he wouldn't buy them as he would not be able to use them for making beer if they had. The defendant assured him that the hops had not been treated with sulphur. In fact they had been treated with sulphur.
### Birch v Paramount Estates Ltd

**[1956] 167 Estates Gazette 396**

**Holding**
- An oral warranty collateral to the contract was found because parties intended for the contract to be partly written, partly oral.

**Analysis**
Comparing this case with *Oscar Chess*, in both cases, the statement as not reduced to writing, but the outcomes were different. The two cases can be distinguished by whether the parties intended for the contract to be partly written, partly oral, or wholly written.

### Dick Bentley Productions v Harold Smith Motors

**[1965] 2 All ER 65**

**Holding**
- The statement was a term, not a representation.
- If a representation is made in the course of dealings for a contract for the very purpose of inducing a client to enter into the contract, there is prima facie ground for inferring that the representation was intended as a warranty.
- While in this case, the representation was held to be a warranty, the court also noted, by way of *dicta*, that if it could have been demonstrated that the defendant had made his representation in good faith and could not have reasonably discovered the falsity of his statement, it would not then be just to hold the defendant liable for misrepresentation.

**Summary of facts**
The defendant told the plaintiff that the car had been fitted with replacement engine and gearbox, and that it had since done only 20,000 miles (the mileage shown on the odometer). The plaintiff bought the car, and found it to be unsatisfactory.

The trial judge held the mileage statement to be untrue though not dishonest, and awarded the plaintiff damages for breach of warranty (taken to mean a binding promise in the ordinary sense). The defendant appealed.
Kleinwort Benson Ltd v Malaysia Mining Corporation BHD
[1989] 1 WLR 379

**Holding**
- The defendants’ letter of comfort was simply a representation of fact which did not amount to a contract promise. Hence, the defendants were not legally bound to the letter of comfort.

**Summary of facts**
The plaintiff agreed to make a £10 million credit facility available to a subsidiary company of the defendant. The defendant refused to act as guarantors, but gave the plaintiff a letter of comfort stating that “it is our policy to ensure that the business of [the subsidiary company] is at all times in a position to meet its liabilities to you under the above arrangements”.

The subsidiary company later ceased to trade after the collapse of the market at a time when its indebtedness to the plaintiff was £10 million. The defendant refused to honour their undertaking in their letter of comfort.

Oscar Chess Ltd v Williams
[1957] 1 All ER 325

**Holding**
- An affirmation without warranty is only a representation; a warranty required to make up a term.
- “When the seller states a fact which is or should be within his own knowledge and of which the buyer is ignorant, intending that the buyer should act on it and he does so, it is easy to infer a warranty.”
- “If, however, the seller, when he states a fact, makes it clear that he has no knowledge of his own but has got his information elsewhere, and is merely passing it on, it is not so easy to imply a warranty.”
- “If the seller says: ‘I believe the car is a 1948 Morris. Here is the registration book to prove it’, there is clearly no warranty. It is a statement of belief, not a contractual promise. If however, the seller says: ‘I guarantee that it is a 1948 Morris. This is borne out by the registration book, but you need not rely solely on that. I give you my own guarantee that it is’, there is clearly a warranty. The seller is making himself contractually responsible, even though the registration book is wrong.”

**Summary**
The defendant sold the plaintiff a car which was actually a 1939 model. The registration book showed that it was first registered in
of facts
1948. The defendant honestly believed the car to be a 1948 model and showed the salesman for the plaintiff the registration book. The salesman also believed it was a 1948. The purchase price of £290 was calculated on this basis. If the plaintiff had known it to be a 1939 model, he would have paid only £175 for it.

The plaintiff claimed £115 as damages for breach of warranty. The trial judge held that the assumption that car was a 1948 model was fundamental and gave judgment for the plaintiff. The defendant appealed.

XI. Evidence Act (Cap 97, 1997 Rev Ed Sing)

Parole Evidence Rule

Section 93. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.

Section 94. Exclusion of evidence of oral agreement

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms subject to the following provisions:

(a) any fact may be proved which would invalidate any document or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law;

(b) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved; in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document;

(c) the existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved;

(d) the existence of any distinct subsequent oral agreement, to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents;
(e) any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved; except that the annexing of such incident would not be repugnant to or inconsistent with the express terms of the contract;

(f) any fact may be proved which shows in what manner the language of a document is related to existing facts.

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### Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd

**[2008] 3 SLR(R) 1029**

<table>
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<tr>
<th>Holding</th>
<th>The main features of the approach to determining the admissibility of extrinsic evidence to affect written contracts are as follows (at [132]):</th>
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<td>A court should take into account the essence and attributes of the document being examined. The court ought to be more reluctant to allow extrinsic evidence to affect standard form contracts and commercial documents.</td>
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<td></td>
<td>If parties intended to embody their entire agreement in a written contract, no extrinsic evidence is admissible to contradict, vary, add to or subtract from its term under ss 93 and 94 of the Evidence Act.</td>
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<td></td>
<td>Extrinsic evidence is admissible under proviso (f) to s 94 to aid in the interpretation of written words. Ambiguity is not a prerequisite for the admissibility of extrinsic evidence.</td>
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<td></td>
<td>The extrinsic evidence in question is admissible so long as it is relevant, reasonably available to all the contract parties and relates to a clear or obvious context. There should be no absolute or rigid prohibition against evidence of previous negotiations or subsequent conduct, although this will require more extensive scrutiny by the court in the future. Declarations of subjective intention remain inadmissible except for the purpose of giving meaning to terms which have been determined to be latently ambiguous.</td>
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<td>Extrinsic evidence may lead to possible alternative interpretations of written words. A court may give effect to these alternative interpretations, bearing in mind s 94 of the Evidence Act. The normal canons of interpretation apply in conjunction with the relevant provisions of the Evidence Act (ss 95-100).</td>
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<td></td>
<td>Extrinsic evidence should only be used to explain and illuminate the written words, and not to contradict or vary them. Where the court concludes that the parties have used the wrong words, rectification may be a more appropriate remedy.</td>
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| Summary | Facts of the case are not particularly relevant to our manual. |
### Sembcorp Marine Ltd v PPL Holdings Pte Ltd

**[2013] 4 SLR 193**

#### Holding

- [65]: There are four clear propositions of the contextual approach to contractual interpretation.
  - First, the admissibility of extrinsic evidence generally is governed by rules of evidence and not by the rules of contractual interpretation.
  - Second, the rules governing the admissibility of extrinsic evidence in Singapore are to be found first in the EA, then in the common law.
  - Third, the general admissibility of extrinsic evidence under s 94(f) of the EA must be read together with the exclusionary provisions of the EA, in particular, ss 95 and 96.
  - Fourth, extrinsic evidence of surrounding circumstances is generally admissible under s 94(f). However, it was and properly remains the position that extrinsic evidence in the form of parol evidence of the drafter's intentions is generally inadmissible unless it can in some way be brought within the exceptions in ss 97 to 100.

- [73]: To buttress the evidentiary qualifications to the contextual approach to the construction of a contract, the imposition of four requirements of civil procedure are essential:
  - First, parties who contend that the factual matrix is relevant to the construction of the contract must plead with specificity each fact of the factual matrix that they wish to rely on in support of their construction of the contract.
  - Second, the factual circumstances in which the facts were known to both or all the relevant parties must also be pleaded with sufficient particularity.
  - Third, parties should in their pleadings specify the effect which such facts will have on their contended construction.
  - Fourth, the obligation of parties to disclose evidence would be limited by the extent to which the evidence is relevant to the facts pleaded.

#### Summary of facts

Facts of the case are not particularly relevant to our manual.
XII. *Work Injury Compensation Act* (Cap 354, 2009 Rev Ed Sing)

**Section 6. Persons entitled to compensation**

(1) Compensation under this Act shall be payable to or for the benefit of the employee or, where death results from the injury, to the deceased employee’s estate or to or for the benefit of his dependants as provided by this Act.

(2) Where a dependant dies before a claim under this Act is determined by the Commissioner, the legal personal representative of the dependant shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the employee.

(3) Where a deceased employee has no dependant, the compensation shall be paid into a fund to be known as the Workers’ Fund which shall be established, maintained and applied in accordance with regulations made under this Act and the person managing the Fund shall be entitled to claim the compensation.

**Section 23. Compulsory insurance against employer’s liability**

(1) Every employer shall insure and maintain insurance under one or more approved policies with an insurer within the meaning of the Insurance Act (Cap. 142) against all liabilities which he may incur under the provisions of this Act in respect of any employee employed by him unless the Minister, by notification in the Gazette, waives the requirement of such insurance in relation to any employer.

(2) The Minister may, from time to time, prescribe the minimum amounts for which an employer shall insure himself in respect of any of his liabilities under this Act.

(3) For the avoidance of doubt, an employer shall be liable to pay any liability that he may incur under this Act in excess of the insurance limits that the Minister may prescribe under subsection (2).

(4) In this section, “approved policy” means a policy of insurance not subject to any conditions, exclusions or exceptions prohibited by regulations made under this Act.

(5) Any conditions, exclusions or exceptions imposed in a policy of insurance by any insurer which are prohibited by regulations made under this Act shall not absolve the insurer from any liability under the policy which the insurer may incur under the provisions of this Act.
FOURTH SCHEDULE

CLASSES OF PERSONS NOT COVERED

1. Any member of the Singapore Armed Forces.

2. Any officer of the Singapore Police Force, the Singapore Civil Defence Force, the Central Narcotics Bureau or the Singapore Prisons Service.

3. A domestic worker, being any person employed in or in connection with the domestic services of any private premises.

XIII. Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed Sing)

Section 12. Duties of employers

(1) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of his employees at work.

(2) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of persons (not being his employees) who may be affected by any undertaking carried on by him in the workplace.

(3) For the purposes of subsection (1), the measures necessary to ensure the safety and health of persons at work include —

(a) providing and maintaining for those persons a work environment which is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;

(b) ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article or process used by those persons;

(c) ensuring that those persons are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things —

(i) in their workplace; or

(ii) near their workplace and under the control of the employer;

(d) developing and implementing procedures for dealing with emergencies that may arise while those persons are at work; and

(e) ensuring that those persons at work have adequate instruction, information, training and supervision as is necessary for them to perform their work.

(4) Every employer shall, where required by the regulations, give to persons (not being his employees) the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health while those persons are at his workplace.

Section 14. Duties of principals

(1) Subject to subsection (2), it shall be the duty of every principal to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of —

(a) any contractor engaged by the principal when at work;
(b) any direct or indirect subcontractor engaged by such contractor when at work; and
(c) any employee employed by such contractor or subcontractor when at work.

(2) The duty imposed on the principal in subsection (1) shall only apply where the contractor, subcontractor or employee referred to in that subsection is working under the direction of the principal as to the manner in which the work is carried out.

(3) It shall be the duty of every principal to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of persons (other than a person referred to in subsection (1)(a), (b) or (c) working under the principal’s direction) who may be affected by any undertaking carried on by him in the workplace.

(4) For the purposes of subsection (1), the measures necessary to ensure the safety and health of persons at work include —
(a) providing and maintaining for those persons a work environment which is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;
(b) ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article or process used by those persons;
(c) ensuring that those persons are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things —
   (i) in their workplace; or
   (ii) near their workplace and under the control of the principal;
(d) developing and implementing procedures for dealing with emergencies that may arise while those persons are at work; and
(e) ensuring that those persons at work have adequate instruction, information, training and supervision as is necessary for them to perform their work.

(5) Every principal shall, where required by the regulations, give to persons (other than a person referred to in subsection (1)(a), (b) or (c) working under the principal’s direction) the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health while those persons are at his workplace.

XIV. Tort

**Chandran a/l Subbiah v Dockers Marine Pte Ltd**

[2010] 1 SLR 786

<table>
<thead>
<tr>
<th>Holding</th>
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<tr>
<td>• An employer owes employee non-delegable duty of care to ensure her personal safety at the workplace (even when the employee is temporarily sent to work on someone else’s premises)</td>
</tr>
<tr>
<td>• A duty of care is owed regardless if the sub-contractor or the main employer was careless (important in showing that even if the job was sub-contracted out, the main employer can still</td>
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</table>
be held responsible),

- [17]: “A distinctive feature of an employer’s duty of care to his employees for their safety is that it is personal and therefore non-delegable. This means that the employer cannot escape liability simply by baldly asserting that another party was negligent and responsible for the employee’s injury.”

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<thead>
<tr>
<th>Summary of facts</th>
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<tr>
<td>“The appellant worked for the respondent as a stevedore. On 18 October 2005, the appellant was instructed by the respondent to move cargo containers on board a vessel, the Tasman Mariner (&quot;the vessel&quot;). Prior to the commencement of work no safety inspection or safety briefing was carried out by the respondent's supervisor; neither was any safety equipment supplied to the appellant even though he was required to work from heights. During the course of his engagement on board the vessel, a ladder (&quot;the defective ladder&quot;) on which the appellant was standing suddenly detached from the hull of the vessel. This caused the appellant to fall about 10m into a hatch of the vessel. Resulting thereto, he sustained severe injuries. Consequently, the appellant started proceedings to recover damages from the respondent.”</td>
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### Oberoi Imperial Hotel v Tan Kiah Eng


<table>
<thead>
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<th>Holding</th>
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<tr>
<td>- The employer owed employee non-delegable duty under statute.</td>
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<tr>
<td>- [25]: “[W]e were of the view that [the employers] were clearly in breach of their absolute duty under s 22 of [Factories Act (Cap 104, 1985 Rev Ed) which provides: (1) Every dangerous part of any machinery […] shall be securely fenced […]”</td>
</tr>
<tr>
<td>- [26]: “The removal of …safety feature clearly put the [employers] in breach of their s 22 duty.”</td>
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<th>Summary of facts</th>
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| “The respondent Tan was employed by the appellant hotel Oberoi as a laundry operator. Her hand was seriously injured while operating the laundry press which had been altered. Tan sued Oberoi for damages for the injuries suffered, alleging that the injuries were caused by an unsafe system. The alteration to the laundry press was alleged to be in breach of Oberoi’s common law duties as employers. Alternatively, Tan alleged that Oberoi breached their statutory duties imposed by the equivalent of the present ss 20 to 22 of the Factories Act (Cap 104) (‘the Act’). Oberoi denied Tan’s allegations, the appellants and alleged that Tan was contributorily negligent and in breach of her statutory duty under the present ss 80 and 81 of the Act. The defence
of *volenti non fit injuria* was also pleaded. The trial judge found Oberoi wholly liable and they appealed, arguing that the trial judge erred in rejecting their argument that Tan was contributorily negligent.”

---

### Jurong Primewide Pte Ltd v Moh Seng Cranes Pte Ltd and others

**[2014] 2 SLR 360; [2014] SGCA 6**

#### Holding

- [2]: “The parties’ operational activities were embraced by the regulatory framework installed by the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) ("WSHA") and the relevant regulations (collectively, "the WSH Regime"). In this regard, there was no common law tort of careless performance of a statutory duty. The mere presence of a statutory duty did not automatically give rise to a concomitant common law duty of care. Rather, the presence of a statutory duty would fall within the rubric of the existing analysis for negligence: at [36] and [37].”

- [6]: "Industry standards should be taken into account in assessing the standard of care. The industry standard provided by the Singapore Standard SS 536 2008 Code of Practice ("the Code") was applicable here. So were the stipulations under WSHA: at [43].”

- The second quotation gives guidance on how to assess the standard of care once a duty of care has been established.

#### Summary of facts

“The appellant, Jurong Primewide Pte Ltd ("JPW") was the main contractor of a development at a worksite. The third respondent, MA Builders Pte Ltd ("MA") had various subcontracts with JPW to carry out structural, architectural and external works on the worksite. The second respondent, Hup Hin Transport Co Pte Ltd ("Hup Hin"), had a rental agreement with JPW to supply cranes to the worksite ("crane supply contract"), and a hiring contract with Moh Seng Cranes Pte. Ltd. ("Moh Seng"), to hire Moh Seng's mobile cranes whenever required.

MA made a request to JPW for a mobile crane to lift some steel rebars. In turn JPW requested Hup Hin to deliver a mobile crane to the worksite the next day. As Hup Hin did not have any cranes immediately available for hire, Hup Hin hired one from Moh Seng. The next day, one Lian Lam Hoe ("Lian"), Moh Seng's employee, drove..."
the crane to the worksite. Upon arrival, he was directed by the lifting supervisor employed by MA ("Lifting Supervisor"), to park the crane at a designated location at the worksite. Lian raised concerns that the designated location would be unable to bear the weight of the crane. The Lifting Supervisor assured Lian that the ground comprised of hard flooring which could safely support the crane's weight. Lian continued to harbour concerns and conveyed this to JPW's Safety Officer. After conferring with the Lifting Supervisor, JPW's Safety Officer reassured Lian that the ground was safe. Lian then deployed the crane in accordance with the Lifting Supervisor's instructions. During the lifting operation, part of the crane collapsed into a concealed man-hole, causing the crane to topple over.

The High Court judge ("the Judge") held that the Lifting Supervisor was JPW's representative and that JPW was wholly liable in negligence to Moh Seng for the damaged crane. The Judge also held that no contributory negligence was attributable to Moh Seng and MA. Finally, the Judge dismissed JPW's contractual claim for an indemnity against both Hup Hin and MA. As regards the claim against Hup Hin, the Judge held that the legal basis of the relationship between JPW, Hup Hin and Moh Seng was a tripartite oral contract between the parties ("oral contract"). The crane supply contract, which contained an indemnity clause, was not incorporated into the oral contract. JPW's claim against MA for breach of the subcontracts also failed. The Judge construed "wilful default" in the indemnity clause to refer to JPW's failure to take reasonable care. Given his earlier finding of negligence on JPW's part, JPW could not claim an indemnity against MA. JPW appealed against the entirety of the Judge's decision.

---

**Holding**

- This case involved a claim for damages as a result of injuries arising from a traffic accident.
- "It is trite law that the legal burden, or the burden of proving a fact to the requisite standard of proof, always remains with the party who seeks to prove that fact. The evidential burden, or the burden of adducing evidence to meet the standard of proof or to prevent the opposing party from meeting the standard of proof, may be on either party, depending on the circumstances of the case. Jeffrey Pinsler illustrates the point of the shifting of the evidential burden clearly in Evidence, Advocacy and the Litigation Process (2nd Edition) at page 240:

  - [11]: "Unlike the legal burden, the evidential burden can shift throughout the trial. Put another way, the state of the
evidence can shift so that at one moment the prosecution’s case is strong enough to satisfy the standard of proof (proof beyond a reasonable doubt) and at another, it is not. In the former situation, the evidential burden shifts to the accused in the sense that if he does not adduce evidence to bring the prosecution’s case below the standard of proof (i.e. by creating a reasonable doubt), he would lose. As a matter of practice, the court does not consider the incidence of the evidential burden at different moments in the proceedings. The crucial time for this purpose is at the end of the prosecution’s case. He must discharge the evidential burden by then in order for the accused to be called upon to enter his defence [...] The same principles apply to the facts in issue which need to be proved by a plaintiff and a defendant in civil proceedings."

- [12]: “Applying the above principles to the case before me, the legal burden was on the plaintiff to prove negligence on the part of the 1st and/or 2nd defendant, as was pleaded in the statement of claim. The evidential burden would be initially on the plaintiff to establish such negligence on a balance of probabilities. If he achieved this, the burden would shift to the defendant to try at least to equalise the probabilities.”

- [14]: “In the present case, similarly, there was a prima facie case of negligence against both the defendants or either of them, and it was for each defendant to displace it.”

Summary of facts

[2]-[4]: “The circumstances surrounding the accident which occurred on 23 September 2003 at about 8:30 pm at the junction of Admiralty Road West and Woodlands Avenue 8 were straightforward. The weather was clear, the roads were dry and the traffic was light. The 1st defendant was riding a motorcycle along Admiralty Road West. The plaintiff was his pillion rider. The 2nd defendant was the owner and driver of a car which was travelling along Admiralty Road West in the opposite direction.

At the T-junction of Admiralty Road West and Woodlands Avenue 8, a signal-controlled junction, as the motorcycle was making a right turn into Woodlands Avenue 8, a collision took place between the motorcycle and the car. The car hit the left side of the motorcycle. As a result of the impact, both the plaintiff and the 1st defendant fell from the motorcycle. According to the 2nd defendant, the plaintiff landed on the roof of his car and fell onto the rear windscreen. The 1st defendant landed on his front windscreen before falling to the ground.

In his statement of claim, the plaintiff alleged negligence on the part of the 1st defendant and/or 2nd defendant. The respective defendants blamed each other for the accident. Both claimed to have the right of way when the accident occurred. What was pertinent was that in their pleadings, neither defendant blamed the plaintiff, who was a pillion rider, in any way for the accident. I highlighted this fact as it was a
chapter 2: Common Legal Problems and Available Remedies

factor I took into account in my findings later in this judgment."
(The facts of how the plaintiff proved the accident are not very relevant to migrant worker claims.)

<table>
<thead>
<tr>
<th>Amus bin Pangkong v Jurong Shipyards Ltd and another</th>
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Holding
- Held, allowing the appeal.
- [7]: “The burden of proving what was reasonably practicable in relation to s 33(3) lay not on the person injured but on the person responsible for maintaining the safety of the workplace.”

Summary of facts
“The appellant worker was employed by the second respondents ("the employers") to carry out blasting work in a tank of a vessel at the shipyard of the first respondents ("shipyard owners"). The shipyard owners subcontracted the blasting work to the employers. The worker accidentally fell to the bottom of the tank and when his co-workers discovered him, he was not wearing a safety belt. However, an insurance adjuster for the shipyard owner’s insurers recorded a statement where the worker admitted wearing a safety belt. At trial, the worker disputed the contents of the statement and that the signature on it was his. A co-worker testified that there was no safety equipment available on the day of the accident and that any safety equipment had been given long before that day. The worker claimed damages for personal injuries suffered as a result of the negligence of the shipyard owners and/or the employers, a breach of their duties as occupiers of the vessel and a breach of their statutory duties under the Factories Act (Cap 104, 1998 Rev Ed) ("the Act"). The district judge dismissed all the worker’s claims.

On appeal the worker argued that the district judge erred in: (1) finding that he had on a safety belt consequently erred in concluding that the employers were not in breach of their duty to provide the worker with a safety belt; (2) confining the duty to the commencement of the blasting work as the duty to provide a safe system of work was continuous; (3) finding that the employers’ failure to supervise the workers was not the proximate cause of the worker’s injuries; (4) finding that the first respondents were not occupiers of the tank in the vessel; (5) finding that the employers were not liable to the worker as occupiers; and (6) concluding that there was no breach of s 33(3) and 33(7) of the Act by either of the respondents.

Section 33(3) of the Act provided that there should be safe access and egress from any place or work and s 33(7) provided, among other
things, that a secure foothold and handhold be provided for a person who had to work at a height of more than 3 metres."

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<tr>
<th><strong>Araveanthan and another v Nippon Pigment (S) Pte Ltd</strong></th>
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<td><strong>[1992] SGHC 20</strong></td>
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<tr>
<th><strong>Holding</strong></th>
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<tr>
<td>• The wording of s 24 of the Factories Act (Cap 104, 1985 Rev Ed) indicated that the duties were absolute in the sense that once it was proved that the safeguards and machinery were not maintained or kept in position as required, the first plaintiff did not need to prove any lack of care on the part of the factory owner.</td>
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<th><strong>Summary of facts</strong></th>
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<tr>
<td>“The first plaintiff, an infant, sued the defendant by his father and next friend for damages in respect of personal injuries he suffered during an industrial accident in the defendant's factory. The first plaintiff argued that the accident was caused by the defendant's negligence and/or breach of statutory duty.</td>
</tr>
<tr>
<td>The first plaintiff had been employed by the defendant as a machine operator. The first plaintiff operated a plastic injection moulding machine. The machine had a gate guard which acted as an automatic safety device. When the gate guard was open, the moving mould should have remained stationary. At the time of the accident, the gate guard was open and the first plaintiff was removing a plate from the machine. Instead of remaining stationary, the moving mould closed on the first plaintiff's right hand. As a result of the accident, the first plaintiff's right index, middle and ring fingers had to be completely amputated. He was assessed to have 70% permanent incapacity for the purposes of estimating workmen's compensation.”</td>
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Chapter 3:
Procedures for Pursuing Remedies
CHAPTER 3: PROCEDURES FOR PURSUING REMEDIES

1. INTRODUCTION

I. An outline of the chapter

1.1 The procedures mentioned in this chapter mainly apply to workers with work permits or a special pass that allows them to remain in Singapore. However, migrant workers holding an S-pass who wish to bring a claim in Singapore courts may also refer to the relevant sections explaining the process of bringing a civil claim in Singapore or from abroad.

1.2 Depending on the validity of the work permit, possible procedural routes will be explored in the following sections:

1.3 Section 2 will provide a broad overview and brief introduction to the routes of redress available to migrant workers, including negotiating with the employer, approaching the Ministry of Manpower (MOM) and pursuing a civil claim.

1.4 Section 3 analyses the legal routes available when a migrant worker remains in Singapore, either through a valid work permit or, in the case of an expired or cancelled work permit, where the migrant worker holds a special pass. With the exception of Foreign Domestic Workers (FDWs), migrant worker claims can be brought to MOM. The migrant worker may undergo optional mediation, and subsequently decide to go to MOM's Labour Court, where she may obtain a judgment by the Assistant Commissioners for Labour (ACL).

Alternatively, migrant workers may be able to pursue civil claims in the District Court, Magistrate’s Court or the Small Claims Tribunal (SCT).

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1 A “special pass” is a pass issued at the discretion of the immigration official, or MOM official, as authorised by the immigration official under regulation 15 of the Immigration Regulations. It allows the holder to enter or remain in Singapore for a period of time not exceeding one month. See Immigration Regulations (Cap 133, Reg 1, 1998 Rev Ed Sing), reg 15. See Section 6.IX for the text of the law.

2 Note that because foreign domestic workers (FDWs) are not covered by the Employment Act and the Work Injury Compensation Act, the MOM procedures covered in this manual are not applicable to FDWs. However, they can still take the civil route and bring civil claims to the District Court, Magistrate’s Court or Small Claims Tribunal (SCT). See Employment Act (Cap 91, 2009 Rev Ed Sing), s 2 [EA]; Work Injury Compensation Act (Cap 354, 2009 Rev Ed Sing) Fourth Schedule [WICA]. See Section 6.VI and Section 6.XIV for the text of the law.

3 As ACLs, the directors and some of the Prosecuting Officers adopt a quasi-judicial role in adjudicating disputes relating to claims under the Act. See WICA, supra note 49, s 2A; MOM, Divisions and Statutory Boards: Legal Services Department, online: Ministry of Manpower <http://www.mom.gov.sg>.

4 Note that the SCT route is rather limited. See Section 3.IV.C.
1.5 Section 4 explains the legal routes available when the migrant worker no longer holds a valid work pass and hence, must return to their home country. For those who have already returned home, an existing MOM judgment can be enforced via an application for a Writ of Seizure and Sale (WSS) or a Garnishee proceeding.\(^5\) Alternatively, the migrant worker may attempt to raise a civil claim remotely, through a Singapore-licensed lawyer.\(^6\)

1.6 Section 5 provides a conclusive summary of this chapter.

1.7 Section 6 consists of the relevant statutes and case law that are referenced in this chapter.

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\(^5\) See Section 4.II.B.
\(^6\) See Section 4.III.
Chart 1: An overview of the legal options available to migrant workers

Legal Options Available to Migrant Worker

Migrant Worker in Singapore

Ministry of Manpower (MOM)

Mediation (optional)

MOM’s Labour Court

Judgment

Civil Claim (filed locally)

If judgment is unsatisfactory, it is possible to appeal to the High Court

Civil Claim (filed remotely)

Migrant Worker in Home Country

Enforcement of Judgment

Apply

Garnishee Order

Writ of Seizure and Sale
II. Migrant workers in Singapore – work pass holders

1.8 The legal routes available to migrant workers who wish to bring legal claims range from approaching the Ministry of Manpower (MOM), while they are still in Singapore, to bringing up a civil claim from abroad when they have returned to their home countries. The legal options available to the worker are closely linked to the length of time they can remain in Singapore, which in turn depends on whether the client holds a valid work pass.

1.9 In order to work in Singapore, all non-residents must hold a valid work pass. Employers who hire foreign workers who do not hold work pass may be prosecuted under the Employment of Foreign Manpower Act (EFMA).

1.10 Briefly, the work passes commonly held by foreign workers include:

- Employment Pass: for those who earn a fixed monthly salary of at least $3,300 and hold professional qualifications;
- S-Pass: for mid-level skilled workers who earn a fixed monthly salary of at least $2,200;
- Work permit: for low-skilled or semi-skilled workers.

1.11 The available routes covered in this manual are mostly only applicable to workers holding a work permit or, if the work permit has expired or been cancelled, a special pass. This does not mean to say that S-pass workers have no recourse. S-pass workers may still bring claims via the civil route.

1.12 The following section will explain more about the difficulties that migrant workers face while pursuing claims in Singapore and explore the process of pursuing claims in Singapore via the MOM route and the civil litigation route.

2. OVERVIEW OF THE AVAILABLE ROUTES TO REMEDY FOR MIGRANT WORKERS

2.1 There are three main ways that a migrant worker (the client) may bring a claim against her employer: conducting negotiations directly with the employer; approaching MOM; and lastly, bringing a claim in civil court. These will be explained respectively in Sections I, II and III.

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9 All dollar figures stated in this chapter are in Singapore dollars unless otherwise noted.
I. Negotiating with the employer

2.2. Lawyers may assist and represent their clients in settlement negotiations with the client’s employer prior to pursuing action through MOM or the civil courts. This type of negotiation is entirely distinct from negotiations conducted under the MOM route (discussed below). Unfortunately, migrant workers who are still employed have weak bargaining power, as the employer can terminate the migrant worker’s employment and work permit with relatively little difficulty, resulting in repatriation within seven days. Migrant workers may also be reluctant to pursue negotiations for fear of retaliation, ill-treatment and harassment against themselves or their family members in their home country by agents of the employer, although this fear may extend to any attempts of redress. Employers may also believe that they can wait until the expiration of a migrant worker’s work permit, which would render pursuing a claim within Singapore unfeasible, forcing the client to pursue their claim from abroad.

2.3. It is therefore important for practitioners to alert employers that a client can nevertheless pursue a claim through the MOM route, and that clients may still proceed with their claim even after returning home. This may improve a client’s bargaining position, as an employer will understand that they cannot simply terminate their employee’s work permit and send their employee home without fear of legal action.

2.4. Even after the client returns home, practitioners can remain in contact with their clients, and help them pursue a civil claim remotely. To this end, practitioners should obtain detailed contact information from the client. See Chapter 4 for additional information, but the most critical information will include:

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11 An employer must arrange for the departure of the worker within the following seven days. A migrant worker will face serious consequences, including fines, if he remains in Singapore past this point. See MOM, Foreign Manpower: Passes & Visas, Work Permit (Foreign Worker) – Cancellation & Renewal, online: <http://www.mom.gov.sg>. [MOM, Cancellation & Renewal].

12 There have been cases of forced repatriation, sometimes prematurely, with the help of repatriation companies. See Jolovan Wham, “Repatriation [sic] Companies – Manpower Minister’s response belittles the efforts of migrant workers” (30 November 2011), online: The Online Citizen <http://www.theonlinecitizen.com>; Wham, “Repatriation Companies – Manpower Minister’s response”; Wham, “TOC Expose: Repatriation companies” (14 January 2009), online: The Online Citizen <http://www.theonlinecitizen.com>; Joyce Wong, “Gripped by two repatriation agents, Monjor is taken to airport” (30 March 2014), online: Transient Workers Count Too <http://twc2.org.sg>.

13 There have been cases of illegal detention and beatings. See Au Waipang, “Crime and ambivalence” (17 November 2011), online: Yawning Bread <http://yawningbread.wordpress.com>; Farah, “Foreign worker told: ‘if we kill you there won’t be any witness’” (25 July 2012), online: Transient Workers Count Too <http://twc2.org.sg>.

14 This manual uses the term “practitioners” in its broadest sense to refer to people of all professions who work with and on behalf of migrant workers, including lawyers, case workers, social workers, activists, non-legally trained advocates, etc.
2.5. Where negotiations with the employer are successful, a clear and accurate written record of the agreement should be drafted, signed and dated by both parties (and preferably witnessed). Where negotiations are refused or unsuccessful, the client may bring their claim to MOM or even start a civil claim in Singapore or from their home country. In such a case, employers should be forewarned that the failure to negotiate may result in a more favourable outcome for the client, as MOM may look upon the client’s case more positively where negotiation was attempted.\footnote{MOM may look upon the client’s case more positively where the client attempted negotiation but was refused by the employer. Similarly for civil claims, pursuant to the Rules of Court, the court may in exercising its discretion as to costs take into account “the parties’ conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution.” Hence, there may be possible adverse costs orders against the employer where negotiations were refused. See Rules of Court (Cap 322, R 5, 2006 Rev Ed Sing), o 59 r 5(c) [Rules of Court]. See Section 6.XI for the text of the law.}

A written record of attempted negotiations will be helpful in proving to MOM that a good faith effort to resolve the dispute was attempted.

II. Approaching the Ministry of Manpower (MOM)

2.6. MOM has a number of mechanisms to resolve many of the legal issues migrant workers face in connection with their employment:

2.7. Excluding FDWs,\footnote{Supra note 49.} migrant workers who suffered injuries at work may claim compensation under the Work Injury Compensation Act (WICA).\footnote{WICA, supra note 49, s 3(1). See Section 6.XIV for the text of the law.} Those who experienced issues with their employment, such as non-payment of wages may bring a claim under the Employment Act (EA). Other claims include those against employment agencies, which can be brought up under the Employment Agencies Act (EAA).\footnote{MOM normally directs these workers to the Small Claims Tribunal to lodge their complaint. However, MOM does not extend special passes to employment agency claims, thus it is difficult for the migrant worker to remain in Singapore to see through their claims if their work permits are cancelled or expire. See H.O.M.E. & TWC2, Justice Delayed, Justice Denied: The Experiences of Migrant Workers in Singapore (2010) at 26, online: Transient Workers Count Too <http://twc2.org.sg/wp-content/uploads/2013/09/Justice-Delayed-Justice-Denied-ver2.pdf>. [H.O.M.E. & TWC2, Justice Delayed, Justice Denied].} For migrant workers who have experienced illegal deployment or employment, they can technically notify MOM of infringements of employment regulations under EFMA. However, migrant workers may be sanctioned for participating in illegal activity unless they can prove they were unaware of the illegal act. Practitioners should thus fully assess the clients’ cases prior to filing a complaint with MOM.
2.8. Through these complaint procedures, migrant workers can obtain judgments that have the force of law. Note, however, that MOM judgments usually result in monetary remedies such as damages and compensation rather than injunctive remedies. The procedure for these commonly pursued claims by migrant workers is discussed in detail in Section 3.

III. Bringing a claim to Singapore’s civil court

2.9. Migrant workers have the option of choosing not to go through the MOM route and instead bring their claims in civil court. Such claims may range from common law claims, such as negligence, to statutory claims such as the EA and WICA. Before introducing the various courts where civil claims may be heard, a brief introduction to the Singapore court system may be helpful.

2.10. The Singaporean court system consists of two tiers – the State Courts and the Supreme Court.

2.11. The State Courts include three courts that hear civil claims:\(^{19}\)

- The District Court hears claims for amounts in dispute that do not exceed $250,000;\(^ {20}\)
- The Magistrate’s Court hears claims for amounts in dispute not exceeding $60,000; and
- The Small Claims Tribunal (SCT) hears any claim not exceeding $10,000 (or up to $20,000 where both parties to the dispute agree) which arises from a dispute regarding a contract for the sale of goods, the provision of services, or in tort, where there is damage caused to any property. The latter excludes damage sustained in an accident arising out of or in connection with the use of a motor vehicle.

2.12. The Supreme Court consists of the High Court and the Court of Appeal:

- The High Court hears civil claims for amounts in dispute exceeding $250,000;\(^ {21}\) and
- The Court of Appeal hears appeals of cases from the High Court.\(^ {22}\)

2.13. Parties may appeal against any decision from the State Courts, whether given by a District Judge or Magistrate to the High Court.\(^ {23}\) From the High Court, parties may appeal to the Court of Appeal unless the claims are barred from appeal under the law.\(^ {24}\)

\(^{19}\) Civil Justice Division, Processes & Procedures: Going to Court on Civil Matters, online: <https://app.statecourts.gov.sg>.

\(^{20}\) “Amount in dispute” refers to the amount that the claimant, i.e. the client, is trying to claim through his lawsuit.


\(^{22}\) Ibid.

\(^{23}\) Ibid.

\(^{24}\) Ibid.
2.14. Generally, a migrant worker’s claim is unlikely to exceed $250,000 and hence she should bring her claims to the District Court, Magistrate’s Court or, where appropriate, the SCT. More on how to make a civil claim in Singapore and from overseas can be found below in Sections 3 and 4 respectively.

Chart 2: An overview of the court system in Singapore

<table>
<thead>
<tr>
<th>Singapore Court System</th>
<th>State Courts</th>
<th>Supreme Court</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>District Court</td>
<td>Magistrate’s Court</td>
</tr>
<tr>
<td>Civil Claims where amount in dispute is less than $250,000</td>
<td>Civil Claims where amount in dispute is less than $60,000</td>
<td></td>
</tr>
<tr>
<td>Small Claims Tribunal*</td>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Civil Claims where amount in dispute is less than $10,000</td>
<td>Family Court</td>
<td></td>
</tr>
<tr>
<td>When parties agree, civil claims where amount of dispute is less than $20,000 can also be heard</td>
<td>Juvenile Court</td>
<td></td>
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<tr>
<td></td>
<td>Bail Court</td>
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<td></td>
<td>Criminal Courts</td>
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<td></td>
<td>Coroner’s Court</td>
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<td></td>
<td>Community Court</td>
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<td></td>
<td>Centralised Sentencing Court</td>
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<td></td>
<td>Filter Court</td>
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<tr>
<td></td>
<td>Mentions Court</td>
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<tr>
<td></td>
<td>Night Courts</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>High Court</th>
<th>Court of Appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Claims where amount in dispute is more than $250,000</td>
<td>Civil Claims on appeal from the High Court</td>
<td></td>
</tr>
</tbody>
</table>

*Small Claims Tribunal handling small civil claims up to $10,000.
3. LEGAL OPTIONS AVAILABLE TO MIGRANT WORKERS IN SINGAPORE

I. Introduction

3.1. Migrant workers entering Singapore hold work permits that are generally valid for up to two years. Clients thus have a limited period in which they may approach MOM or commence a civil claim to resolve disputes with their employer or with Singaporean employment agencies (such as wage disputes, lack of compensation for workplace injury, etc.). In the absence of a special pass, the expiry of the work permit would interrupt any legal proceedings that the migrant worker wishes to bring, whether to MOM or the civil court.

3.2. Section 3 is further divided into the following: Part II elaborates on the situation faced by migrant workers in trying to remain in Singapore in order to complete their legal proceedings. Part III of this section explains the MOM avenues available to the migrant worker. Part IV explains the process of commencing a civil claim within Singapore.

II. The difficulties of remaining in Singapore

3.3. Migrant workers generally face difficulties pursuing claims while they are in Singapore due to the fact that they have to leave once their work permits are cancelled or have expired, unless they acquire a special pass. However, while a special pass may allow the worker to stay in Singapore, it imposes certain other restrictions, the most important being a prohibition on obtaining employment. A scheme has been put in place to allow workers to have a job temporarily, however, there are still a number of workers who fall through the gaps of the Temporary Job Scheme (TJS). This will be explained in Parts A to E below.

A. Immigration issues

3.4. Generally, migrant workers hesitate to pursue claims while employed, due to the fear of losing their job and having their work permits cancelled by their employer or by MOM. Without a work permit, migrant workers are unable to remain or work in Singapore legally. Migrant workers holding work permits are tied to their employer, as employers must pay a security bond to MOM to guarantee the repatriation of the worker once the work permit expires or is cancelled. Under this system, the migrant worker has to leave Singapore and

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25 MOM, Cancellation & Renewal, supra note 11.
return home before they can acquire a new work permit and new employer. Migrant workers are hence highly dependent upon their employers in order to maintain their jobs and work permits. They risk their livelihood and the legal status to work in Singapore when they file a complaint against the employer through MOM.

3.5. Moreover, employers may take measures to forcibly repatriate migrant workers, an unfortunately common practice. In the absence of explicit provisions for termination in the employment contract, the EA stipulates minimum notice for termination by either the worker or the employer. This period ranges from just one to four weeks (the less time the worker has been employed, the shorter the period of notice). Employers also have the power to cancel a worker’s work permit unilaterally, by following a simple online procedure, without any requirement to establish that notice of termination of employment has been given in accordance with the EA.

3.6. Their vulnerabilities often force migrant workers to wait until the end of their contract to file claims, usually after two years. This results in the following problems:

- There is little time to see through claims before the worker must return home
- Claims brought under the EA or worker’s compensation under WICA are subject to a time bar of one year.

3.7. However, these problems can be partially avoided if the migrant worker is able to obtain a special pass after their work permits have expired or have been cancelled.

B. Special pass for temporary residency

3.8. Under immigration regulations, migrant workers may be granted a “special pass” which allows them to remain in Singapore, pending processing or adjudication of their claims. This pass is issued at the discretion of MOM, based on whether the Ministry "assesses that a worker has a legitimate reason to stay on in Singapore to resolve a dispute or claim against the employer or to obtain

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31 EA, supra note 2, s 10. See Section 6.VI for the text of the law.
32 Ibid.
35 See Sections 3.21 and 3.27.
medical treatment and complete the work injury compensation process.”  

Special passes are only issued for periods of up to one month. These passes are usually only extended when MOM decides to investigate the worker’s employer, and desires to allow the worker to remain legally until the investigation concludes.  

C. Limitations on holding a special pass

3.9. There are a number of difficulties in obtaining the special pass, including:

- MOM will only issue special passes to workers with salary or work injury compensation claims and other similar allowable claims arising directly out of their authorized employment in Singapore;
- Workers seeking other claims, such as recovering fees paid to agents, will generally not be issued a special pass;  

3.10. Most importantly, without a special pass authorising their stay in Singapore, migrant workers have very limited time to conclude their claims in the jurisdiction.

3.11. Migrant workers who hold a special pass still face a number of problems. While a MOM claim can now typically be concluded in less than a year, migrant workers may lack accommodation in the interim and face financial hardships, as they will not be permitted to work without special dispensation under the Temporary Job Scheme, which is discussed below. If a migrant worker obtains illegal employment, she may be subject to warnings, fines or imprisonment, which will usually result in repatriation and a dismissal of their claims by MOM.


40 Ibid.

41 Ibid note 11, migrant workers would only have a maximum of seven days before they must leave Singapore and go back to their home country.

42 Fordyce, “Nabbing immigration offenders affects special pass holders too”, supra note 38.


44 Fordyce, “Nabbing immigration offenders affects special pass holders too”, supra note 38.

45 EFMA, supra note 7, s 5(7). See Section 6.VII.

46 Fordyce, “MOM tough on worker, lets employer run rings around laws” (2 January 2013), online: Transient Workers Count Too <https://twc2.org.sg>. 

D. Temporary Job Scheme (TJS)

3.12. Some special pass holders 47 may be eligible for MOM’s discretionary Temporary Job Scheme (TJS), which helps workers find paid employment while they assist MOM in an investigation or act as witnesses in any prosecutions. Under the TJS, migrant workers on Special Passes are “matched” with potential employers through a central data repository. Once matched, an employer can apply to MOM for a work permit for the worker. MOM may then issue a work permit to that migrant worker for 6 months. 48 MOM has the discretion to extend these work permits. 49

3.13. However, the TJS may not be the best solution for a migrant – the process to secure a job is slow 50 and a worker will not be guaranteed a job 51 as the availability of work depends on market conditions and the number of employers who choose to participate in the TJS. 52 In fact, few employers are actually aware of this scheme. Furthermore, employers who know of the TJS may be reluctant to hire such migrant workers, as they may be viewed as “troublemakers” because they have already filed a claim with MOM. 53 As a result, there is only a limited range of jobs available on the TJS 54 that have low pay and potentially unsatisfactory working conditions. 55 In addition, accommodation and food are not always provided by the employers. 56 Thus, the TJS may be ineffective in alleviating the migrant worker’s financial burden while they wait for their claims to be processed in Singapore.

E. Cancellation/expiry of work permit

3.14. Where a migrant worker’s work permit has expired or is cancelled by the employer prematurely, the migrant worker will not be allowed to stay legally in Singapore unless MOM issues them a special pass. 57 Again, MOM grants special passes for claims pursued through MOM, but it will not issue special passes to workers who wish to pursue civil claims. 58 If a migrant worker wishes

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47 Note, not all workers under the Special Pass will fall under the TJS, such as workers pursuing salary claims or work injury compensation claims. Workers helping with investigations may include investigations against criminal offences of employers. See H.O.M.E. & TWC2, Justice Delayed, Justice Denied, supra note 18 at 29.
48 H.O.M.E. & TWC2, Justice Delayed, Justice Denied, supra note 18 at 29
49 H.O.M.E. & TWC2, Justice Delayed, Justice Denied, supra note 18 at 29.
50 Alex Au, “Amin and his abusive employers” (13 September 2012), online: Transient Workers Count Too <http://twc2.org.sg>.
52 H.O.M.E. & TWC2, Justice Delayed, Justice Denied, supra note 18 at 29.
54 Fordyce, “Nabbing immigration offenders affects special pass holders too”, supra note 38.
55 Nguyen Minh Quan, “Frustrating time as Badal waits for ministry to look into salary deductions” (18 June 2014), online: Transient Workers Count Too <http://twc2.org.sg>.
56 Au, “Made to stand in the corner like children”, supra note 53.
58 Ibid.
to pursue a claim, but is unable to remain in Singapore as they do not hold a valid work permit or special pass, they must return to their home country and can only pursue a civil claim remotely. Section 4 will discuss alternative legal routes available when the migrant worker has returned to their home country.

Chart 3: An overview of the legal routes available to a migrant worker pursuing a claim in Singapore
III. Using the Ministry of Manpower (MOM) route

3.15. Bringing a civil claim in Singapore courts can be a costly and prolonged process. Instead, migrant workers may elect to seek redress through mechanisms available within MOM. The MOM route is only available to migrant workers who are physically present in Singapore, and who hold a valid work permit or special pass. This segment will explore in detail two of the most common claims that migrant workers, excluding foreign domestic workers, may bring.

3.16. An MOM claim can normally be concluded in less than a year. However, where the migrant worker is required or decides to leave the country, redress under the MOM process will be discontinued.

3.17. If the client wishes to bring up claims regarding their employment, such as wage disputes, they should bring a claim under the EA. If the client has suffered a work-related injury, they should bring a claim under WICA. See Chapter 2 for the substantive issues involved in each of these claims. Note that these two routes are not available to FDWs.

59 When lodging a claim or complaint under the EA, MOM may require workers to attend meetings scheduled with an MOM officer and the worker’s ex-employer. If the worker fails to attend the scheduled meetings, the case lodged with MOM would not be processed and verified. See MOM, Employment Standards Online (ESOL), online: Ministry of Manpower <http://www.mom.gov.sg/services-forms/labour-relations/Pages/esol-individual.aspx>; When lodging a claim under WICA, the client may be required to attend pre-hearing conferences, when a notice is served upon him. The failure to attend the pre-hearing conferences would be to the disadvantage of the worker. See WICA, supra note 2, s 25B and s 25C. See Section 6.XIV for the text of the law.

60 Domestic workers are explicitly excluded from the EA or WICA claims. First, domestic workers are explicitly excluded from the definition of “employee” within section 2 of the EA, and hence they are not covered by the EA. Second, the Fourth Schedule “classes of persons not covered” of WICA similarly excludes “a domestic worker, being any person employed in or in connection with the domestic services of any private premises” from its provisions on compensation for workplace injuries and occupational illnesses. See EA, supra note 2, s 2. See Section 6.VI for the text of the law; WICA, supra note 2, Fourth Schedule; See above, supra note 2. See Section 6.XIV for the text of the law.

61 Additionally, should the client have any claims against an employment agency, he may bring up a claim under the Employment Agencies Act (EAA). Note that MOM does not allow migrant workers pursuing agency fee-related claims to hold a special pass when their work permit is terminated. See Employment Agencies Act (Cap 92, 2012 rev Ed Sing); Employment Agencies Rules 2011 (Cap 92). The client may also bring up issues such as illegal employment, illegal deployment and making false declarations to MOM, as these are infringements to the Employment of Foreign Manpower Act (EFMA). It is important to note that migrant workers are not allowed to pursue salary claims for illegal deployment, which occurs when employers deploy the workers to do jobs in other sectors or companies that are not stated in their work permit. This is to discourage workers to continue to work illegally at other jobs or companies without reporting it to MOM. See EFMA, supra note 7. See Section 6.VII for the text of the law.


63 Supra note 2. See also supra note 60.
A. Employment Act (EA) claims

3.18. The EA covers employees under a contract of service with an employer. It excludes domestic workers and certain other limited categories of workers. Claims for violations under the EA are handled by the Labour Relations and Workplaces Division (LRWD) of MOM. Complementing the substantive considerations outlined in Chapter 2, this section will focus on the process of making a claim under the EA via the MOM route.

i. Time bar to claim under the Employment Act (EA)

3.19. Two time bars limit the availability of making a claim through the EA.

3.20. First, for both mediation and MOM’s Labour Court processes, the migrant worker must lodge the case with MOM within 6 months from the date of the termination of their employment. For example, if the contract of service was terminated on 1 January 2014, the claim must be filed by 30 June 2014.

3.21. Second, under the EA, MOM is only empowered to enquire into issues arising less than one year from the date of the claim being lodged. This applies to both voluntary mediation and for adjudication under MOM’s Labour Court. Hence, where a migrant worker waits to lodge a salary claim at the end of a two year contract, for example because they are fearful of reprisal, and the claims for salary arrears from the first year of employment will be barred.

3.22. Alternatively, workers pursuing redress for disputes covered by the EA may choose to file a claim with the civil courts. When filing a civil claim, clients will not be restricted by the one year time bar and will instead be subject to a much longer six year limitation period.

ii. Process of lodging a claim through the Employment Act (EA)

3.23. A migrant worker can lodge a claim under the EA through the Employment Standards Online (ESOL) portal. Following the lodging of the claim, either

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64 Supra note 2. See also supra note 60. See also MOM, Employment Practices, The Employment Act: Who it covers, online: Ministry of Manpower <http://www.mom.gov.sg>. See also Chapter 2, Section 2.17-2.19.
65 EA, supra note 2 s 115(2). See Section 6.VI for the text of the law.
66 Ibid.
67 See also MOM, Services & Forms, Employment Standards Online (ESOL), online: Ministry of Manpower <http://www.mom.gov.sg>.
68 EA, supra note 2, s 115(2). See Section 6.VI for the text of the law.
70 As provided under the EA s 122, the time bar under the EA s 115, the Commissioner’s power to inquire into complaints, does not apply to civil claims as “nothing in this part shall limit or affect the jurisdiction of any court”. See EA, supra note 2, s 122; EA, supra note 2, s 115(2). See Section 6.VI for the text of the law.
71 EA, supra note 2, s 119. See Section 6.VI for the text of the law.
mediation or labour court procedures will commence. Note that for both mediation and the Labour Court processes described below, both parties must be present and cannot be represented by lawyers. However, as the employer is technically a company, the company can send an officer other than the employee’s direct supervisor or the company president.

1) Mediation

3.24. Following the lodging of the claim, the LRWD will review the claim and an advisory officer may conduct a voluntary mediation session, at no charge, for the worker and the employer. Alternatively, the client can opt to lodge their claim directly with MOM’s Labour Court.

2) Adjudication by MOM’s Labour Court

3.25. Post-mediation, where one or both parties are dissatisfied with the result of the mediation process, they can apply for adjudication by MOM’s Labour Court. The application cost for a hearing is $3. Both parties present their cases, following which the Assistant Commissioner for Labour (ACL) will issue a judgment.

B. Work Injury Compensation Act (WICA) claims

3.26. WICA provides compensation to workers when they sustain injuries or contract an illness while in the course of their employment in Singapore. Please see Chapter 2 for an explanation of the substantive law. This section will discuss the process of making a WICA claim.

i. Time Bar to claims under the Work Injury Compensation Act (WICA)

3.27. For those wishing to claim compensation, a time limit of one year exists, beginning from the date of the accident causing the injury or the date of death.

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72 To lodge a claim under the EA, MOM has set up a portal called Employment Standards Online (ESOL). See MOM, Services & Forms, Employment Standards Online (ESOL) for Individual Users, online: Ministry of Manpower <http://www.mom.gov.sg>.

73 Aris Chan, “Hired on Sufferance, China’s Migrant Workers in Singapore” (2011) China Labour Bulletin Research Reports at 44; While a lawyer is not required, they may represent a client in bringing a WICA claim.

74 Note that “Labour Court” and “Labour Tribunal” have been used interchangeably in the literature. As Labour Court now appears to be the prevailing usage, the term Labour Court will be used throughout.

75 Note that ACLs may not be legally trained.

76 WICA, supra note 2, s 3(1). See Section 6.XIV for the text of the law.

77 See Chapter 2, Section 5.

78 WICA, supra note 2, s 11. See Section 6.XIV for the text of the law.
ii. Process of lodging a claim through the Work Injury Compensation Act (WICA)

3.28. The claim process is divided into five steps:79

1) Reporting the incident;
2) Filing the claim;
3) Medical assessment;
4) Receipt by MOM of the assessment; and
5) Dispute resolution.

C. Additional notes

i. Work injury claims: comparing WICA & civil claims

3.29. Instead of pursuing a claim under the WICA route, clients may pursue a civil claim for compensation under common law. These two routes of redress for a work injury differ in two critical aspects.

3.30. First, compensation under a civil claim is not capped, unlike the WICA claim.80 However, it is more difficult to establish employer liability under a civil claim, as the claimants must prove that the employer was at fault.

3.31. Second, the worker is only allowed to pursue one channel. Thus, if the worker has seen through a claim in civil court, she would be barred from access to the WICA route and vice versa.81 However, a worker may proceed with a civil claim as long as she withdraws her WICA Claim before an order by the ACL has been made.82 Likewise, a worker who withdraws her claim in civil court before judgment is able to proceed with WICA claim as long as it is within the time bar of one year from the accident.83

3.32. The differences between pursuing a WICA claim and raising a civil claim stated here are not exhaustive. A more detailed comparison between a WICA claim and a civil claim can be found in Chapter 2, Section 5.

80 Chapter 2 Section 5 for statutory caps.
81 WICA, supra note 2, s 33. See Section 6.XIV for the text of the law.
82 Yang Dan v Xian De Lai Shanghai Cuisine Pte Ltd [2010] SGHC 346. [2011] 2 SLR 379. The judge ruled that if a pre-hearing conference was held and an agreement to settle all matters was reached at that hearing, the Commissioner may record a Settlement Order. Once a Settlement Order was made, the workman would lose his right to withdraw his WICA Claim and cannot proceed with a civil claim. If the workman did not agree to a settlement of all matters at the pre-hearing conference, the workman still has his right to withdraw. However, after the WICA claim has proceeded to a hearing and if the Commissioner made a Post-Hearing Order, it would be too late for the workman to withdraw his WICA claim or to proceed with a civil claim. However, a workman may proceed with a civil claim as long as he withdraws his WICA claim before an order by the ACL has been made. See Section 6.XIV for a summary of the case.
ii. Compensation limits: comparing EA & WICA

3.33. Under the EA, the amount of compensation a worker can obtain will vary based on the amount of disputed wage or salary.84

3.34. However, under WICA, compensation is calculated based on the type of injury, and is capped at certain amounts.85 A full table on the compensation limits can be found in Chapter 2 Section 5.IV.A, Table 10 to Table 13.

3.35. The differences between making a WICA claim and an EA claim are summarised briefly in the table below:

<table>
<thead>
<tr>
<th>WICA Claim</th>
<th>EA Claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation is capped</td>
<td>Compensation may vary based on the amount that the migrant worker is trying to claim</td>
</tr>
<tr>
<td>Amount of compensation will depend on the type of injury suffered</td>
<td></td>
</tr>
</tbody>
</table>

IV. Commencing a civil claim while the client is in Singapore

3.36. A migrant worker who wishes to bring a civil claim while in Singapore must hold a valid work permit or some other valid residency status, as MOM will not grant special residency passes for migrant workers who are seeking claims in civil court.86 When the work permit expires or is cancelled, and the worker has no other form of valid residency, they will be forced to pursue a claim remotely. This is explored in Section 4 below.

3.37. Depending on the amount at stake, clients may decide to either bring a claim to the Magistrate’s Court or District Court, explained in Part A, or to the Small Claims Tribunal, explained in Part C. Part D will elaborate on the costs that a civil claim may incur.

A. Bringing a civil claim to the Magistrate’s Court or District Court

3.38. The Magistrate’s Court deals with claims for which the amount in dispute does not exceed $60,000.87 Most migrant workers will likely bring claims in this court.

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84 See Chapter 2 Section 2.I.C. for more details.
85 See Chapter 2 Section 5.II. for comparison of pursuing claims via WICA versus tort in civil law. See also MOM, WICA: FAQ, supra note 83. See also http://www.mom.gov.sg/legislation/occupational-safety-health/Pages/work-injury-compensation-act-faqs.aspx - sthash.DTx0wVES.dpuf
87 Supra note 19.
For larger amounts, the District Court handles claims amounts in dispute not exceeding $250,000. Please see Chart 4 below for a visual guide to the civil claim process.

i. **Process of commencing a civil claim**

3.39. The client commences civil action by filing documents pursuant to an originating process under the Writ of Summons or originating summons. Proceedings in which a substantial dispute of fact is likely to arise are commenced by Writ. As such, most civil actions in tort and contract are commenced by way of a Writ. An action will only be commenced by way of originating summons when it is required by statute or when there is a dispute concerned with matters of law where there is unlikely to be any substantial dispute of fact. Clients are more likely to commence a civil action by way of a Writ.

3.40. The Writ is filed in the District Court or Magistrate's Court, by the worker making a claim (the plaintiff) and personally served on the employer or the respective party against whom the claim is made (the defendant). This form of personal service is generally required throughout the litigation. The Writ must be endorsed with a statement of claim (which will set out the material facts underpinning the claim). Or, if a Writ is not endorsed with a statement of claim, a concise statement of the nature of the claim made or the relief or remedy sought should be included.

3.41. **If the claim is contested:** After being served the Writ of Summons, if the defendant wishes to contest the client's claim, they must inform both the Court

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88 Parties may also agree in writing to have the matter heard by the District Court, even though the sum in dispute exceeds $250,000. Where the plaintiff limits his claim to $250,000, the District Court can also hear the case.


90 Ibid.


and the client of their intention by entering an “appearance.”

This is not a physical appearance but a memorandum of appearance (a document) which is filed and served through eLitigation. The defendant must file a memorandum of appearance in Court within eight days after they have been served with the Writ of Summons.

**3.42. Judgment in default of appearance:** If the defendant fails to enter an appearance within the time specified in the writ, the Court may enter a judgment against them. This may be a final judgment or an interlocutory judgment, depending on the nature of the claim. The Court, may, upon an application, however, set aside or vary such a judgment as it thinks is just. At this juncture, if the Writ is not endorsed with a statement of claim, the statement of claim must be served within 14 days after the defendant enters an appearance.

**3.43. If there is a defence and counterclaim:** Within 14 days from the date of being served the Writ of Summons, the defendant must file her defence in Court and also serve a copy of their defence on the client’s address of service or on the client’s solicitors at their office address.

**3.44.** If the defendant alleges that she has any claim or is entitled to any relief or remedy against the plaintiff, the defendant may make a counterclaim in the same action brought by the client. In this case, the pleading is known as the defence and counterclaim.

**3.45.** The plaintiff may serve on the defendant her reply (and defence to a counterclaim), within 14 days after the defence (and counterclaim) has been served on the plaintiff.

**3.46. Judgment in Default of Defence:** If the defendant has been served the Writ of Summons and has entered an appearance, but either has no defence to the claim or any part of the claim or does not file any defence, the plaintiff may apply to the Court for judgment against the defendant. This may be a final judgment or an interlocutory judgment, depending on the nature of the claim. However, upon application by the relevant party, the Court may set aside or vary such a judgment as it thinks is just.

**ii. A primer on procedure for hearing of civil claims**

**3.47.** If a claim is contested by the defendant, the claim will proceed to be adjudicated at trial in the Magistrate’s or District Court. This section is a brief primer on the key stages of a civil case.

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3.48. **Summons for Directions**\(^99\): This is used to determine what further steps must be taken in order for parties to effectively prepare for trial. The court will decide and give directions relating to the filing and exchanging of affidavits, the number of witnesses a party may require, and the number of trial days required. A summons for directions is usually filed when pleadings close (this occurs 14 days after service of the defence or the reply, and/or defence to the counterclaim) or after an application for summary judgment is resolved.

3.49. **Interlocutory applications**: Before a civil case goes to trial, it will usually go through various stages and parties must comply with the various requirements under the Rules of Court. During the pre-trial stage, it is common for each party to file interlocutory applications to the court in further preparation of a case. Common interlocutory applications filed in civil cases include:

- Application for summary judgment\(^100\): where the plaintiff can apply for an order of judgment without trial on the grounds that the defendant has no real defence to contest his claim.
- Applications for striking out\(^101\): where a party can apply for the court to strike out the whole or parts of the other party’s pleadings, such as the statement of claim and defence. A defendant may use these proceedings to strike out the entire statement of claim (i.e. the entire civil case), if it believes the claim is unmeritorious.
- Application for the other party to provide further and better particulars of the documents filed\(^102\) or the amendment of the various documents filed\(^103\).
- Application for discovery of documents\(^104\): through this process, the court can order that parties disclose to each other the documents in their possession, custody or power which are relevant to the matter in dispute between them.

3.50. **Setting Down**: After various pre-trial matters and interlocutory applications have been addressed (including requirements for discovery and disclosure of all documents and other evidence to be relied on at trial), the parties need to make an application to set down the case for trial\(^105\). This is a step that needs to be taken by a party (usually the plaintiff) before the case can proceed to trial.

3.51. **Trial and post-trial**: At the trial, parties will put on their respective cases, adduce relevant evidence and call witness to support their cases. At the conclusion of trial, the court will give its judgment on the case. The court can give judgment immediately or can adjourn the case and inform the parties on a later date to attend before the court for the delivery of judgment. In certain

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\(^105\) The detailed requirements and procedure to set an action down for trial are found in the Rules of Court, *supra* note 15, o 34. See Section 6.XI for the text of the law.
cases, such as personal injury claims, the conclusion of a trial may not fully dispose of the claim. The court may grant judgment on the issue of liability but not make a ruling on the precise amount of damages that has to be paid to a successful plaintiff. In such a case, the amount of damages to be awarded will be assessed by a registrar in a hearing in chambers at a later stage.\textsuperscript{106}

iii. Simplified process for hearing civil claims\textsuperscript{107}

3.52. If the claim is brought in the Magistrate’s Court, it will be subject to a simplified civil process. For District Court claims, parties may opt into the simplified procedure.\textsuperscript{108} However, this rule does not apply to non-injury motor accident actions or actions for personal injuries.\textsuperscript{109} Accordingly, if the parts of the claim concern workplace injury under the tort of negligence or physical abuse and other non-work injuries, then the simplified process will not apply to this claim.

3.53. The focus of this simplified procedure is to facilitate an early resolution of the dispute. Given the focus on early resolution, the simplified process should generally be preferred over the normal procedure for civil cases. The key features of this simplified process are as follows.

3.54. **Upfront Disclosure:** Parties are required to file and serve a list of relevant documents with their pleadings (i.e. the statement of claim, defence and reply). Copies of the documents in the list are to be furnished within 7 days of a written request.\textsuperscript{110} If a written request for a copy of any document on the other party’s list of documents is not met within 7 days of request, the party making the request may file an application for production.\textsuperscript{111}

3.55. **Exclusion of Certain Interlocutory Applications:** Interlocutory applications for summary judgment, discovery and inspection of documents and interrogatories are not available in the simplified process.\textsuperscript{112}

3.56. **Case Management Conference ("CMC"):** After the defence is filed, the court will convene a CMC for the purpose of assisting the parties in the management of the case from an early stage of the proceedings.\textsuperscript{113} CMCs will generally be convened within 50 days after a defence is filed, and the notice to attend CMC will be sent approximately 21 days before the CMC.\textsuperscript{114} At the CMC, the court will help the parties identify and narrow the issues, deal with relevant interlocutory matters and discuss follow up case management. Lawyers

\textsuperscript{113} Rules of Court, supra note 15, o 108 r 3(1). See Section 6.XI for the text of the law.
representing parties should be present at the CMC and the court may require lawyers representing a party to attend the CMC.

3.57. Seven days before the CMC, parties will be required to file through eLitigation: (i) a form with a list of issues in dispute and a list of witnesses they intend to call,\textsuperscript{115} as well as (ii) an ‘ADR Form’,\textsuperscript{116} This form requires parties to consider various alternative dispute resolution options to resolve the claim, including mediation, neutral evaluation and arbitration.

3.58. At the CMC, the court may manage the case by encouraging the parties to cooperate, assisting parties to identify and narrow issues, encouraging the parties to negotiate to resolve the issues, use alternative dispute resolution procedures or even settle the case. The court will also give directions to ensure the case progresses expeditiously, including fixing timelines for the case.\textsuperscript{117}

3.59. **Simplified Trial:** If the matter proceeds to trial, the court can give directions for a simplified trial. Simplified trials will be conducted with limited times allocated for examination (10 minutes), cross-examination (60 minutes) and re-examination (10 minutes) for each witness; and closing submissions (30 minutes).\textsuperscript{118}

\textsuperscript{115} The State Courts Practice Directions, Ibid., Form 3 of Appendix A.

\textsuperscript{116} The State Courts Practice Directions, Ibid., Form 7 of Appendix A.

\textsuperscript{117} The State Courts Practice Directions, Ibid., Part III s 20(11).

\textsuperscript{118} Rules of Court, supra note15, o 108 r 5. See Section 6.XI for the text of the law.
B. Security for costs

3.60. Clients returning home or who pursue a civil claim from abroad face the risk of a court order forcing them to pay a security deposit for their employer’s legal
costs. Employers must apply to the court for an order to pay security costs, and must show that the case falls within one of the instances that allows the court to decide if it would be just to order the worker to pay security. The court will consider all circumstances of the case in making its decision, including whether an order would be likely to prevent the plaintiff from pursuing a genuine claim. However, it may be possible for the client to appeal against a decision ordering payment of security.

C. Bringing a civil claim to the Small Claims Tribunal (SCT)

3.61. The Small Claims Tribunal (SCT) hears any claim not exceeding $10,000 (or up to $20,000 where both parties to the dispute agree) which arises from a dispute regarding a contract for the sale of goods, the provision of services, or in tort, where there is damage caused to any property. While the costs of going to the SCT is more affordable, there are a number of limitations that will bar migrant workers from utilising this route.

   i. Limits on the types of claims that the Small Claims Tribunal can hear

3.62. The SCT cannot hear employment claims or tort claims. However it can hear claims arising from a contract for the provision of services. In the migrant labour context, it could hear claims regarding an employment agency’s failure to guarantee legal jobs for migrant workers, or of an employment agency charging agent fees that are not in keeping with the EA.

3.63. Lawyers are not permitted to represent any of the parties in proceedings before the SCT. Unless the SCT decides that a claim is either vexatious or frivolous, costs are not awarded to the winning party. A time bar of one year exists to bring any claims to the SCT. If the incident happened more than one year ago, the SCT will not be able to hear the claim.

120 The most relevant element in this context is be Rules of Court, supra note 15, o 23, r 1(1)(a) “(1) Where, on the application of a defendant to an action or other proceeding in the Court, it appears to the Court — (a) that the plaintiff is ordinarily resident out of the jurisdiction;...then, if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant’s costs of the action or other proceeding as it thinks just”.
121 At the time of writing (September 2014), there is insufficient case law to describe the circumstances in which the courts will sustain a challenge to the employer’s application for security costs.
123 The latter excludes damage sustained in an accident arising out of or in connection with the use of a motor vehicle; supra note 19.
125 Ibid.
ii. **Process of bringing a claim to the Small Claims Tribunal (SCT)**

3.64. To lodge or file a claim at the SCT, the plaintiff may do so at the SCT physically or via fax. The client must prepare the following items:

- A properly completed, legible and signed original Claim Form;
- 3 photocopies of the above original Claim Form;
- 1 photocopy each of any other supporting documents;
- If the Respondent is a corporation, an original copy of the latest Instant Information search [Business Profile] of the Respondent should be obtained no earlier than 1 month from the date of filing of the Claim; and
- A photocopy of the plaintiff’s identification document or if a practitioner is filing on behalf of the plaintiff, then additionally a photocopy of their identification document.

3.65. If a document is in any language other than English, a certified translation of the document must also be provided. A date will be fixed for the attendance of parties at consultation within 10 to 14 days upon registration.

3.66. After a claim is filed, the SCT will require the parties to first attend a consultation where a Registrar or Assistant Registrar of the SCT will attempt to mediate a settlement. Further consultations can be set at the Registrar’s or Assistant Registrar’s discretion.

3.67. If no settlement can be reached, a hearing date will be given for the parties to attend a hearing before a Referee. The hearing will generally be set for within...
7 to 10 days of the consultation. The parties may still attempt to resolve the matter between themselves before the consultation date. Should they reach a settlement, and if the client wishes to withdraw the claim, the client must write to the SCT and withdraw the claim. Parties should also inform the SCT, in writing, about the settlement.

Chart 5: Process of bringing a claim to the SCT

D. Legal costs involved

By choosing to make their legal claims heard, clients will be subject to a range of costs that they often cannot afford. Costs are defined as including fees,

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136 General Reference Booklet, supra note 132 at 11.
137 SCT, Lodging a Claim, supra note 127.
CHAPTER 3: PROCEDURES FOR PURSUING REMEDIES

charguments, disbursements, expenses and remunerations. This deters them from seeking legal aid and many migrant workers choose instead to simply return home. This also reduces the effectiveness of seeking legal aid where the client is burdened by costs that put them in even greater debt after trial. Thus, it is the job of the practitioner or lawyer to minimise the costs their client incurs.

i. Ineligibility for legal aid

3.69. Migrant workers are not eligible for legal aid in civil claims, as this form of legal aid is only available to Singapore citizens and Permanent Residents in Singapore. Without the pro bono services of a lawyer, migrant workers will typically not have the funds to hire a lawyer to mount a claim.

ii. Fees payable to the District Court or Magistrate’s Court

3.70. Court fees are prescribed in a number of statutory regulations and are payable at various stages in civil proceedings. Fees are separately payable in respect of services, such as sealing documents, providing copies of documents and the use of the court for hearings. Court hearing fees are usually paid at the time the matter is set down for hearing, i.e. when the parties are ready for the hearing. These fees are usually paid by the plaintiff or the party who applies for the hearing date.

3.71. Courts in Singapore follow the principle that “costs follow the event,” meaning that the costs of an action are usually awarded to the successful litigant. This is a huge disincentive for migrant workers to commence civil claims as they may be unwilling to take the risk of losing the case and ending up further in debt. On average, costs awarded can reportedly amount to at least $1,000.

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138 *Rules of Court, o 59 r (1)*, *supra* note 15, see Section 6 XI for the text of the law; Cost issues in litigation is explained as: A successful party would ordinarily be entitled to claim costs from his opponent (i.e. party and party costs); and both parties would have to pay the bills of their respective lawyers (i.e. solicitor and client costs). See Pinsler, *Principles of Civil Procedure* (Singapore: Academy Publishing, 2013) at Chapter 26.

139 Based on extensive field research, many migrant workers choose to return home with only a fraction of the total amount owed to them. Some may even leave without any compensation at all.


142 It is difficult for a migrant worker to appear as a litigant-in-person, especially due to language barriers and lack of familiarity with their legal rights.

143 Supreme Court of Singapore, “Civil Proceedings: Commencement of an Action - Court Fees and Hearing Fees”, online: Supreme Court of Singapore <http://app.supremecourt.gov.sg/> [Civil Proceedings, Court Fees and Hearing Fees].


146 Pinsler, “Legal Procedure (Civil)”, *supra* note 96, at 8.

147 Interview with June Lim, Senior Associate, Fortis Law Corporation and other lawyers.
CHAPTER 3: PROCEDURES FOR PURSUING REMEDIES

iii. Fees payable to the Small Claims Tribunal

3.72. The plaintiff must pay a lodgement fee to lodge or file a claim at the Tribunals.\(^\text{148}\)

<table>
<thead>
<tr>
<th>Table 16: Fees payable to the SCT(^\text{149})</th>
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<tbody>
<tr>
<td>\textbf{Not exceeding} &amp; \textbf{Exceeding} &amp; \textbf{Exceeding}</td>
</tr>
<tr>
<td>\textbf{$5,000$} &amp; \textbf{$5,000$ but not} &amp; \textbf{$10,000$ but not}</td>
</tr>
<tr>
<td>\textbf{Consumer claim} &amp; \textbf{$10$} &amp; \textbf{$20$} &amp; \textbf{1% of claim amount}</td>
</tr>
<tr>
<td>\textbf{Non-consumer claims (e.g. claims against employment agencies)} &amp; \textbf{$50$} &amp; \textbf{$100$} &amp; \textbf{3% of claim amount}</td>
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3.73. If the client has applied for an SCT claim via fax, payment must be made within seven days from the date of acknowledgment, failing which the claim will be deemed to have been withdrawn.\(^\text{150}\)

E. Time Bars

3.74. Claims made in contract law or torts that do not involve personal injury are subject to a time bar of \textbf{six years} from the date on which the cause of action occurred.\(^\text{151}\) Torts that involve personal injury are subject to a time bar of \textbf{three years}.


\(^{149}\) SCT, Lodging a Claim, supra note 127.

\(^{150}\) Ibid.

\(^{151}\) Limitations Act (Cap 163, 1996 Rev Ed Sing), s 6(1)(a) [Limitations Act].
4. LEGAL OPTIONS AVAILABLE TO MIGRANT WORKERS IN THEIR HOME COUNTRY

I. Introduction

4.1. Many migrant workers go home before they are able to bring their claims to MOM or raise a civil claim in Singapore. In the event that the client has to return home after completing the process of making a claim through the MOM route, they can still carry out the process of enforcing MOM judgments from their home country. To enforce an MOM judgment, the client can apply for a Writ of Seizure and Sale (WSS) or a Garnishee Proceeding. This is elaborated in Section II below.

4.2. For those who have not brought claims or obtained a judgment via the MOM route, they may attempt to raise a civil claim remotely from their home country. The process for doing so will be explored in Section III below.
Chart 6: Overview of legal routes available to migrant workers pursuing a claim or enforcing a judgment from abroad

Migrant Worker in Singapore

- With MOM Judgment OR With Court Judgment
- No MOM Judgment OR No Court Judgment

Migrant Worker in Home Country

- Enforce MOM OR Court Judgment
- Start a Civil Claim Remotely

- Apply
  - Writ of Seizure and Sale
  - Garnishee Proceedings
II. Enforcing a judgment from either the Minister of Manpower (MOM) or the civil court when the client is abroad

4.3. After obtaining a Judgment or Order for the payment of money (e.g., payment of wages), the client may apply to enforce the judgment by a Garnishee proceeding or a Writ of Seizure and Sale (WSS) or by commencing insolvency proceedings. Parts B, C and D will explain the process of applying for a Garnishee proceeding, a WSS and commencing insolvency proceedings. The client may have his lawyer apply for and execute a Garnishee order and a WSS on his behalf or commence insolvency proceedings. This is possible even if the client is abroad. Part E will explain the Power of Attorney (POA), which the client may grant to an NGO, to ensure that money and items collected by the NGO from MOM (or through other methods of execution) can be safely returned to them in their home country. Part F then briefly touches on the possibility of utilising a "soft" law approach through MOM.

A. A few preliminary notes

i. A note about finality of judgments from the Ministry of Manpower

4.4. First, it is paramount to determine whether the MOM judgment can be open to challenge by the employer, which would hinder or delay enforcement of the judgment by the migrant worker. A MOM judgment can be appealed to the High Court, although it is subject to certain time bars. Regarding EA Claims, any person dissatisfied with a MOM judgment may "within 14 days after the decision or order appeal to the High Court" from the decision or order." Similarly for WICA claims, a party may "appeal to the High Court whose decision shall be final." However, not all judgments can be appealed: "no appeal shall lie against any order unless a substantial question of law is involved in the appeal and the amount in dispute is not less than $1,000."157

154 The High Court hears both criminal and civil cases as a court of first instance. The High Court also hears appeals from the decisions of District Courts and Magistrate's Courts in civil and criminal cases, and decides points of law reserved in special cases submitted by a District Court or a Magistrate's Court. In addition, the High Court has general supervisory and revisionary jurisdiction over all subordinate courts in any civil or criminal matter. Supreme Court of Singapore, "About Us: Our Courts", online: Supreme Court of Singapore <http://app.supremecourt.gov.sg/>.
155 EA, supra note 2, s 117(1); However, based on extensive field research, it is noted that 14 days does not seem to be a hard deadline requiring strict adherence to in practice. See Section 6.VI for the text of the law.
156 WICA, supra note 2, s 29(1). See Section 6.XIV for the text of the law.
157 Ibid, s 29(2A). The requirement of a substantial question of law means that it is "not enough for there to be a mere question of law or that the Court takes the view that a different interpretation of the facts could have been drawn" (Kee Yau Chong v S H Interdeco Pte Ltd [2014] 1 SLR 189). In Pang Chew Kim v Wartsila Singapore Pte Ltd [2012] 1 SLR 15 [Pang Chew Kim] at [19], Tay Yong Kwang J noted that the following range of errors of law are relevant for an appeal
ii. A note about time bars

4.5. There are no time bars to the use of Garnishee proceedings or WSS. However, the passage of time allows unscrupulous employers to liquidate their company's assets or declare bankruptcy. The former leaves the plaintiff with little recourse for obtaining the judgment, while the bankruptcy process may enable other creditors to obtain their payment prior to the plaintiff, potentially leaving the company empty of assets by the time the plaintiff's claim gains priority.

B. Garnishee proceedings

4.6. If the client has obtained a judgment from MOM, such as a judgment that the employer has to pay unpaid wages owed to the client, but the employer fails to pay, the client may apply for a garnishee order from the District Courts or Magistrate's Courts.

i. What is a garnishee proceeding?

4.7. A "garnishee order absolute" is a court order directed at a garnishee (usually a third party who holds some of the debtor's assets or a bank) requiring them to release to the client, i.e., the Judgment Creditor, any moneys which the employer, i.e., the Judgment Debtor, owes them.

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under s 29(2A): "... misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or rejecting admissible and relevant evidence; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty to give reasons, and misdirecting oneself as to the burden of proof." But see Pang Chew Kim at [20]; conversely, findings of fact are appealable only if they are findings that "no person acting judicially and properly instructed as to the relevant law could have come to the determination upon appeal". See Section 6.XIV for the text of the law.

158 While Limitation Act, supra note 151, s 6(3) provides time limits for actions to enforce judgments, Desert Palace Inc v Poh Soon Kiat [2009] SGCA 60 [Desert Palace] clarifies that s 6(3) should be interpreted restrictively "to exclude a writ of execution on a judgment and all other modes of enforcement like Garnishee proceedings...for which the [Limitation Act] does not prescribe any time bar". In this regard, the court noted that a distinction has been drawn in case law between an "action" upon a judgment and an "execution" of a judgment, and further highlighted policy reasons supporting such a distinction. See Section 6.X for the text of the law.

159 Nevertheless, with regard to a WSS, pursuant to Rules of Court, supra note 15, o 46 r 2, a WSS to enforce a judgment or order may not be issued without the leave of Court where "6 years or more have lapsed since the date of the judgment or order". Rather than categorizing this as a time bar, the court in Desert Palace, ibid, viewed the requirement for leave as "more a procedural and monitoring measure than a substantive mandatory measure to extinguish execution on a judgment the moment six years or more has elapsed". See Section 6.XI for the text of the law.


CHAPTER 3: PROCEDURES FOR PURSUING REMEDIES

4.8. Here is a hypothetical illustration:

Muneeb is a migrant worker from India. Muneeb’s employer, Mr Wang, fails to pay Muneeb his salary, despite a judgment from MOM through the Labour Court ordering him to do so. Muneeb can begin a suit against Mr Wang to obtain the funds. Muneeb goes to court and obtains a garnishee order to attach the funds that Mr Wang has on deposit at a bank. In this scenario, Muneeb is the judgment creditor, as Mr Wang owes him money, and Mr Wang is the judgment debtor, as he owes Muneeb money, and the bank is the Garnishee, meaning the bank will be required to give Mr Wang’s funds to Muneeb.\(^\text{161}\)

ii. Application process

4.9. A garnishee order is not enforceable unless it is made absolute, i.e. complete. To make a garnishee order absolute, two main components must be fulfilled:

1) First, the Judgment Creditor must apply for the Garnishee order, which may be filed as an ex parte (i.e. with only one of the parties appearing in court) Summons in Chamber\(^\text{162}\) supported by an affidavit;\(^\text{163}\) and

2) Second, the garnishee order must be served on the garnishee and Judgment Debtor personally at least seven days before the return date.\(^\text{164}\)

4.10. If the garnishee does not dispute the order,\(^\text{165}\) then the garnishee order will be made absolute.\(^\text{166}\)


\(^{162}\) The ex parte Summons in Chambers includes:
- A request that a return date for all interested parties be set to attend before the court.
- A request that a statement all debts due or accruing due from the garnishee to the judgment debtor be attached.
- A statement that the sum attached be limited to a certain fixed amount. This particular sum usually consists of the amount of the judgment, post judgment interest and the costs of the garnishee application itself. See Subordinate Courts, Garnishee Proceedings, supra note 160.

\(^{163}\) The affidavit includes:
- Identifying the judgment to be enforced.
- Stating the amount remaining unpaid.
- Stating that to the best of the information or belief of the client, the garnishee is within the jurisdiction and is indebted to the judgment debtor. The sources of information or the grounds of belief should then be stated. Ibid.

\(^{164}\) This would be set in the ex parte Summons in Chamber. Ibid.

\(^{165}\) There are three situations where the Garnishee order can be disputed:
1. If there is no money held by the garnishee:
   The judgment creditor must attend and ask for the order to be discharged.
2. In the situation that the Garnishee objects to an order:
   In this situation, the court can summarily decide the issue. If there is an issue of fact, the court has the discretion to order that the issue be sent for trial, either before a Judge or the Registrar. The court will provide all necessary directions for the trial including setting out the issues to be tried. The directions will usually conform to Form 101 of
4.11. Once the garnishee order has been granted, a draft order of court should be prepared and submitted to Summons-in-Chambers court. Upon acceptance of the draft, counsel for the judgment creditor should file two copies of the final order. Then, a return date for the hearing of the garnishee order absolute application will be stated in the order. Currently, the court schedules the hearing date approximately four weeks from the granting of the garnishee order.

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the Rules, with the necessary modifications. If there is conflicting evidence in the affidavits given by the garnishee and the judgment creditor, then the matter will be sent for trial and will not be decided summarily.

3. Where there are claims of Third Persons:
The onus is on the garnishee to inform the court of any claim or lien over the moneys which is known to him. If there is any such claim by a third person over the debt sought to be garnished, the court can order that the person attends court and dispose of the issue summarily, or deal with it in a similar way for cases where the garnishee objects to the order absolute being made. Ibid.


168 Ibid.

169 Ibid.
Chart 6: Process of applying for a Garnishee Order

**Step 1:** Client applies for a Garnishee Order

**Step 2:** Garnishee Order must be served on the Garnishee and the employer personally

If the Garnishee does not dispute the order

**Garnishee Order Absolute**

**Step 3:** Submit a draft order of court to Summons-in-Chambers

**Step 4:** File 2 copies of the final order

**Attend Hearing**

The client will have to lodge:

a) Ex parte Summons in Chambers (2 copies)
b) An Affidavit (1 copy)

Garnishee Order must be served at least 7 days before the return date

The Garnishee Order may be disputed in the following ways:

- The Garnishee does not hold any money
- The Garnishee objects to an order
- A third person lays claim to the money owed by the Garnishee

The hearing date will be stated in the final order.
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4.12. Note that when the client is not in Singapore, she must produce a certificate from the Monetary Authority of Singapore granting permission for the payment, either unconditionally or on conditions which have been complied with.

iii. Costs for the garnishee application

4.13. Where an order absolute is made, the Rules of Court prescribe the amount of costs that should be awarded. Only after paying the costs due to the judgment creditor and to the garnishee will the garnished amount be used to extinguish the judgment debt. This means that the garnished sum of money will first be used to pay the costs of the garnishee application before it can be used to compensate the client for the sum owed by the other party.

Chart 7: Costs of garnishee application and paying off debt owed to the migrant worker

![Diagram]

4.14. In all other situations, court costs will be at the discretion of the court. Where there is no debt due or accruing from the garnishee, the order nisi, i.e. order made absolute based on fulfilling certain conditions, is usually discharged with no order as to costs. Thus, the client will have to bear the cost of the garnishee application. However, the discretion with regard to costs is broad. The court may order the judgment debtor to bear the costs of the garnishee proceedings if it deems it appropriate.

4.15. Below is a continuation of the previous hypothetical in 4.8 for illustration:

Mr Wang owes $3,000 of unpaid salary to Muneeb. When Muneeb has obtained a garnishee order, money will be obtained from the Garnishee (in this case the bank). However, the bank has only $2,500 owed to Mr Wang. The $2,500 will first be used to pay the costs of applying for the garnishee order. After settling

174 Subordinate Courts, Garnishee Proceedings, supra note 160.
those costs, the remaining money can be used to pay down the debt that Mr Wang owed Muneeb. Note that incomplete fulfilment of the debt does not cancel the remaining debt. Here, Muneeb may attempt to pursue other methods of recovering the remaining debt.

iv. Limits of a garnishee proceeding

4.16. There are a few limits to pursuing a garnishee proceeding:

- As long as the garnishee is not within the jurisdiction, a garnishee order is not possible;
- Current law exempts the wages or salary of a judgment debtor from being garnished; and
- A garnishee proceeding does not guarantee that the client will be fully compensated. As illustrated in the above hypothetical, if the amount that the garnishee owes the judgment debtor is less than what the judgment debtor owes the judgment creditor, the garnishee order may be fulfilled without fully paying off the debt owed.

C. Writ of Seizure and Sale (WSS)

4.17. Another way to enforce a judgment obtained from MOM is to obtain a Writ of Seizure and Sale (WSS).\(^{177}\)

i. What is a Writ of Seizure and Sale (WSS)?

4.18. A WSS is a court order authorising a bailiff (an officer of the court), to seize the moveable property\(^{178}\) belonging to the judgment debtor.\(^{179}\) In this context, the debtor is generally the client’s employer. Thereafter, the bailiff arranges an auction sale of the seized property and the proceeds of sale will be used to satisfy the judgment debt (after deducting the execution costs and the bailiff’s expenses).\(^{180}\)

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\(^{178}\) As an example of property belonging to the judgment creditor: If the employer of the client owns a restaurant, then the tables, chairs, dishes, and even the building itself can be seized by the bailiff and then auctioned.

\(^{179}\) The bailiffs are empowered under the *State Courts Act* (Cap 321, 2007 Rev Ed Sing), s 15 & s 16 to handle the enforcement proceedings. The bailiffs may, under the authority given to them under the *State Courts Act*, s 16 enter the house of the judgment debtor or premises of a third party to execute and carry into effect all Writs of Execution and Court Orders. The State Courts of Singapore, “Civil Justice Division- Bailiffs Section”, online: The State Courts of Singapore <https://app.statecourts.gov.sg/>[Civil Justice Division - Bailiff’s Section].

\(^{180}\) Ibid.
ii. Application process

4.19. **Step 1**: If the client has a lawyer, the lawyer must complete electronic template forms online through eLitigation (assuming the lawyer is subscribed to eLitigation). This can be accomplished by the lawyer alone if the client is not in Singapore. If the client does not have a lawyer, or the lawyer is not subscribed to eLitigation, they may also complete the hardcopy forms, which are available at the Service Bureau.

4.20. **Step 2**: The Bailiff, an officer of the court, will inform the claimant, i.e. the client, by way of an Appointment Letter by post or fax (if a fax number is furnished) of the date fixed for execution. If the client, his lawyer, or the client’s donee who holds the Power of Attorney (POA) does not receive an Appointment Letter from the Bailiffs Section within three weeks after submitting or filing the documents, she can contact the Bailiffs’ Section.

4.21. **Step 3**: The claimant, i.e. the client may authorise a representative to attend on her behalf through a POA if they are unable to be present on the appointed date (e.g. if they have returned to their home country).

4.22. The claimant or the authorised representative must provide the Bailiff assigned to the case (as indicated in the Appointment Letter):

- The Appointment Letter (issued by the Bailiff);
- The official receipt to confirm that deposit of $300 or such amount as requested by the Bailiff, has been paid at the Finance Section of the State Courts; and
- A letter of authorisation and indemnity duly signed by the claimant.

4.23. Note that if the claimant or their representative is absent on the appointed seizure date, they will have to re-apply for a fresh seizure date.

iii. Costs

4.23. The usual costs incurred in the WSS process are reflected in the table below.

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182 For a step-by-step guide to completing the forms electronically, see “Writ of Seizure and Sale”, online: eLitigation [https://www.elitigation.sg/getready/writ.html](https://www.elitigation.sg/getready/writ.html).
185 State Courts Bailiff Section, telephone no. +65 64355871.
187 Ibid.
CHAPTER 3: PROCEDURES FOR PURSUING REMEDIES

Table 17: Costs of a WSS Process

<table>
<thead>
<tr>
<th>Documents</th>
<th>District Court</th>
<th>Magistrate’s Court</th>
<th>Small Claims Tribunal</th>
</tr>
</thead>
<tbody>
<tr>
<td>WSS</td>
<td>$270.00</td>
<td>$155.00</td>
<td>$60.00</td>
</tr>
<tr>
<td>Undertaking, Declaration and Indemnity</td>
<td>$10.00</td>
<td>$10.00</td>
<td>$10.00</td>
</tr>
<tr>
<td>Order of Tribunal</td>
<td>-</td>
<td>-</td>
<td>$10.00</td>
</tr>
<tr>
<td>Total</td>
<td>$280.00</td>
<td>$165.00</td>
<td>$80.00</td>
</tr>
</tbody>
</table>

4.24. Note that the above fees do not include eLitigation electronic filing and manual handling fees. Also, no refunds are allowed should the worker decide to discontinue the WSS. Should the court find any administrative errors/clerical errors, rejection fees will be charged.

4.25. Additional costs incurred in the WSS process include:

- Bailiff’s attendance fee of $50.00 per hour or part thereof will be levied when attending to the WSS;
- Items belonging to the judgment debtor will be assessed a Court commission once seized. The minimum amount of commission is $50;
- An additional Court commission will be charged upon sale of the seized property. The minimum amount of commission is $100;
- If the estimated value of the seized items is $2,000 or below, the auctioneer’s fee will be at least $150. If the estimated value of the seized items is above $2,000, the auctioneer’s fee will be at least $800;
- Locksmith charges; and
- Valuation charges.

4.26. Note that the expenses may be recovered from the debtor if the execution is successful and the proceeds of sale are sufficient to cover the judgment debt and the expenses incurred. If the auction sale proceeds are insufficient to

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190 Ibid.
191 Ibid.
cover the Bailiff’s execution expenses, the balance outstanding expenses will be deducted from the creditor’s deposit.

iv. Limits of a Writ of Seizure and Sale (WSS)

4.27. The high costs of applying for a WSS deters many migrant workers who are already facing financial hardship. While they may recover these expenses through the execution of the writ, obtaining the funds to begin WSS proceedings can be challenging.

4.28. Note there is no guarantee that a WSS can be successfully executed. Enforcing a writ may become impossible if the company lacks sufficient assets (for instance when a company is bankrupt or in financial difficulty). Unfortunately, unscrupulous and unethical companies may shift their assets in a bid to avoid paying the workers or any judgments entered against them. In the end, the worker may end up returning home empty handed, or with just a fraction of what is owed to them, despite having acquired a court order and spending so much in the process in the hope that the employer would “pay up” to avoid the auctioning of assets.

D. Insolvency Proceedings

4.29. Another method to enforcing judgments is to commence insolvency proceedings against an employer. If the employer is an individual person, bankruptcy proceedings must be undertaken. If the employer is a company, winding up proceedings must be undertaken.

4.30. Both bankruptcy and winding up proceedings are ‘collective’ proceedings taken against debtors, meaning that once an insolvency proceeding is successful, an administrator will be appointed to realise the assets of the debtor and distribute the realisations to the debtor’s creditors, including the client.

i. Application process – Bankruptcy

4.31. In order to bring bankruptcy proceedings, the client must be owed more than $10,000 and this debt must be liquidated and payable immediately. If the client is owed less than this amount, he can still bring the bankruptcy proceedings through a joint application made with other creditors, where the aggregate amount owed is more than $10,000.

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192 State Courts of Singapore, “Enforcing Judgments or Orders by WSS”, supra note 188.
193 H.O.M.E. & TWC2, Justice Delayed, Justice Denied, supra note 18 at 15.
194 Please note that this amount will soon be raised to $15,000, when the provisions of the Bankruptcy (Amendment) Act 2015 are brought into force. Please check on whether this threshold figure has changed.
4.32. Even if the criteria above is satisfied, the Court will not make a bankruptcy order against the debtor unless it is shown that the debtor cannot pay his debts. A general outline of steps that can be taken to establish this is as follows:

- **Step 1**: Serve a statutory demand on the debtor providing 21 days to repay the debt. If the client has completed Garnishee or WSS proceedings, this step can be skipped. This is because non-satisfaction of execution proceedings such as Garnishee or WSS proceedings are another form of proving an inability to pay debts.

- **Step 2**: If the debtor does not satisfy the statutory demand, commence a bankruptcy application which must be supported by an affidavit. The bankruptcy application and supporting affidavit must be served on the debtor.

- **Step 3**: Comply with various requirements before the hearing of the bankruptcy application.

- **Step 4**: Attend the bankruptcy hearing, where the court will decide whether to make the bankruptcy order against the debtor. If certain criteria are met, the court may also adjourn the hearing to refer the matter to the Official Assignee for the purpose of allowing the Official Assignee to determine whether the debtor is suitable for a debt repayment scheme.

4.33. If a bankruptcy order is made against the debtor, the Official Assignee will usually be appointed as the trustee in bankruptcy. However, an application can be made to appoint a private person as the trustee in bankruptcy. This trustee will manage the administration of the bankruptcy, which includes realising the debtor's property and distributing proceeds to the creditors.

ii. **Application process – Winding up**

4.34. In order to successfully bring winding up proceedings, the client must show that the company is unable to pay its debts. A general outline for how this can be accomplished is as follows:

- **Step 1**: Serve a statutory demand on the debtor. The demand must be for an amount greater than $10,000 and must give the company 21 days to repay the debt.

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197 This is because non-satisfaction of execution proceedings such as Garnishee or WSS proceedings are another form of proving an inability to pay debts. Bankruptcy Act (Cap 20, 2009 Rev Ed Sing), s 62(b). See Section 6.II for the text of the law.

198 Bankruptcy Rules (R1, 2006 Rev Ed Sing), Rules 99, 100 and Form 2.


200 Generally speaking the following documents would have to be filed:

- An affidavit of service of the bankruptcy application;
- An affidavit of service of the statutory demand;
- An affidavit of non-satisfaction, i.e. to confirm that the debtor has not paid the debt in between the filing of the bankruptcy application and the bankruptcy hearing;
- Payment of a $1,600 deposit to the Official Assignee


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... to repay the debt.203 If the client has completed Garnishee or WSS proceedings, this step can be skipped.204

- **Step 2**: Commence a winding up application, which must be supported by an affidavit.205 The winding up application must be served on the debtor.206
- **Step 3**: Attend before the Registrar to satisfy him that the various pre-hearing requirements of the winding up application have been met.207
- **Step 4**: Attend the winding up hearing, where the court will decide whether to wind up the company.

4.35. If a winding up order is made against the company, the court will appoint an approved liquidator or the Official Receiver to act as liquidator. The liquidator will manage the administration of the winding up, which includes realising the company’s assets and distributing proceeds to the creditors. Generally speaking, if no approved liquidators are nominated at the winding up hearing, the court will normally appoint the Official Receiver as the liquidator.

iii. Costs

4.36. The usual costs incurred in insolvency proceedings are reflected in the table below.

<table>
<thead>
<tr>
<th>Table 18: Estimated costs of insolvency proceedings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Item</strong></td>
</tr>
<tr>
<td>Estimated filing &amp; lodgement fees</td>
</tr>
<tr>
<td>Deposit to Official Assignee / Official Receiver</td>
</tr>
<tr>
<td>Estimated: Advertising costs</td>
</tr>
</tbody>
</table>

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204 This is because non-satisfaction of execution proceedings such as Garnishee or WSS proceedings are another form of proving an inability to pay debts. **Companies Act** (Cap 50, 2006 Rev Ed Sing), s 254(2)(b). See Section 6.III for the text of the law.

205 **Companies (Winding Up) Rules** (R1, 2006 Rev Ed Sing), rules 24 and 25.

206 **Companies (Winding Up) Rules** (R1, 2006 Rev Ed Sing), rule 26.

207 **Companies (Winding Up) Rules** (R1, 2006 Rev Ed Sing), rule 32. Generally speaking the prehearing requirements are:

- the winding up application has been duly published in the Gazette and advertised;
- the affidavit supporting the winding up application has been filed;
- the affidavit of service has been filed;
- the consent in writing of the approved liquidator (if any) nominated by the applicant has been obtained and filed; and
- Payment of a $5,200 deposit to the Official Receiver.
### iv. Distributions in insolvency proceedings and Priority of employee claims in these proceedings.

4.37. **Distribution of unsecured debts:** As insolvency proceedings are collective in nature, debtors or company’s assets will be distributed ‘pari passu’ or proportionally amongst all unsecured creditors. For example, this means if the value of a creditor’s claim is 10% of total ordinary unsecured debts, he will receive 10% of the distributed assets.

4.38. **Preferential Debts:** However in certain cases, some debts are given preferential priority in insolvency proceedings.\(^{208}\) This means that realised assets will be used to pay these creditors first, before payments to unsecured creditors and certain secured creditors\(^{209}\) are made. Several types of common client claims that might be preferential debts include:

- Costs and expenses of the bankruptcy / winding up application (applicable if it is brought by a client);
- wages or salary owed to employees and ex gratia payments and retrenchment benefits, up to a cap of $12,500;
- amounts due in respect of work injury compensation claims under the Work Injury Compensation Act; and
- remuneration in lieu of vacation leave.

4.39. Unless the majority of the client’s debts are likely to be preferential debts, her claims can often amount to a small proportion of the total debts of a debtor or company. She will thus receive a relatively small proportion of the debtor’s/company’s assets that are available for unsecured creditors. When coupled with the high costs and deposits required for applications for insolvency proceedings, these proceedings should only be considered as a last resort for non-preferential debts.\(^{210}\)

4.40. However, it should be noted that while the total costs of completing insolvency proceedings may be high, initiating the first step, i.e. serving a statutory demand on the employer, does not incur significant costs. Consideration should be given to threatening insolvency proceedings via a statutory demand, as the very severe consequences that arise from being made bankrupt or wound up may compel some employers to pay a client’s outstanding claim, or at least enter into settlement negotiations.

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\(^{209}\) Companies Act (Cap 50, 2006 Rev Ed Sing), s 328(5). In certain situations, employee claims may also be given priority status over secured creditors in non-insolvency proceedings, see Companies Act (Cap 50, 2006 Rev Ed Sing), s 226, EA, s 33.

\(^{210}\) In certain cases, some of a client’s claims may not be given preferential status. For example, a claim under the tort of negligence will normally be treated as an unsecured claim.
v. When an employer is facing insolvency proceedings or has already been declared bankrupt or wound up

4.41. Insolvency proceedings can be commenced by any creditor. It is thus common for clients to encounter employers that are facing these proceedings, or have been declared bankrupt or wound up. If this is the case, there are several implications on claims by clients.

4.42. When the client is making a claim **before** the individual is declared bankrupt or a company is wound up, there is a possibility that the court may stay (i.e. suspend) the client’s claim.\(^{211}\) Additionally, if the client has started Garnishee or WSS proceedings, he will not be entitled to retain any benefits of these proceedings unless they are completed either before the date of the bankruptcy order\(^{212}\) or the date that the winding up application is filed,\(^{213}\) as the case may be.

4.43. After an individual is declared bankrupt or a company is wound up, the client can no longer pursue any legal claim in order to recover funds owed prior to bankruptcy\(^ {214}\) or the winding up.\(^ {215}\) In order to find out whether an individual is bankrupt or a company has been wound up, insolvency searches should be conducted. There are several service providers which offer such searches, one of which can be found on the Ministry of Law’s website.\(^ {216}\)

4.44. Clients can however submit a Proof of Debt form to the trustee in bankruptcy or the liquidator. If the Official Assignee is acting as the trustee or the Official Receiver is acting as the liquidator, this can be done electronically\(^ {217}\) for $5.\(^ {218}\) The client should submit a Proof of Debt form\(^ {219}\) even if he was the applicant in

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219 Template forms can be found at:


the bankruptcy or winding up proceeding, as the client will not be entitled to any distributions from the insolvent estate unless a proof of debt has been filed.

E. Power of Attorney (POA)

4.45. A Power of Attorney (POA) is an “instrument created by a person who entrusts someone to act on her behalf.” The person who creates the POA, in this case the client, is called the “donor,” and the person who receives the authority to act on behalf of the donor is called the “donee.”

A POA may be deposited with the Supreme Court.

4.46. A POA can grant a range of powers, from the ability to make minor decisions to the ability to make all decisions relevant to the case. It is important for the client to discuss with the donee the range of powers that he wishes to give before the client makes a decision.

4.47. A comprehensive letter of engagement should be sufficient for lawyers to act on behalf of their clients. However, a POA may be useful for NGOs who may need to collect items or money from MOM on their client's behalf. For instance, when MOM does not have the registered home country address of a worker, MOM looks to send any monies to NGOs such as HOME, TWC2, HealthServe or others.

F. “Soft” Law Approaches of the Ministry of Manpower - blacklisting the employer

4.48. MOM has the power to debar (commonly referred to as “blacklisting”) employers in cases of legal violations. Companies who are debarred “will not be allowed to apply for work passes for new foreign workers, as well as renew the work passes of their existing foreign workers.” This can impact the company’s operations, and such a soft law approach may be effective in inducing compliance by the employer. While debarment does not result in compensation, a threat of approaching MOM about a debarment may be a useful negotiating tool in an attempt to obtain a favourable settlement from the employer.

4.49. One successful case where compliance was induced is the case of Ms Leng:

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221 Ibid.


225 Ibid.

4.50. Ms. Leng, an officer in the tourism industry, was owed salary arrears by her former employer, and she obtained a Labour Court order for payment. The former employer was recalcitrant, but when MOM placed the company and its directors under debarment, they “finally realised the seriousness of not complying with the Labour order, and the company quickly settled Ms Leng’s payments in full”.

III. Starting a civil claim on behalf of clients abroad

4.51. Clients who have already left Singapore may still potentially present evidence, and a case could be brought in Singapore courts with the aid of a Singapore-based lawyer. A client may choose to travel to Singapore, or alternatively, they may present evidence through other avenues such as deposition or video conferencing.

A. Choice of courts

4.52. Legal practitioners can bring their client’s claims to the District Court or the Magistrate’s Court, depending on the amount in dispute, i.e. the amount which the client is trying to claim.\textsuperscript{227}

B. Appearing in Singapore courts – ways of presenting evidence

4.53. The Rules of Court prescribe severe consequences for parties who do not appear for certain court hearings.\textsuperscript{228} Judges may commence the trial without the party, make a summary judgment, or dismiss the claim.\textsuperscript{229} However, “appearance” need not always mean an appearance in person.

i. Physical appearance from abroad

4.54. Clients almost always have the option of travelling to Singapore. While they must pay costs of travel up front, recent case law suggests that they may claim back at least some of these expenses should they win.\textsuperscript{230} Such expenses include the cost of travel even within their home country (e.g. when the worker lives in a place that is distant from the main city with the airport).\textsuperscript{231} Under existing case law,\textsuperscript{232} costs are awarded at the discretion of the court\textsuperscript{233} based on the principle

\textsuperscript{227} See supra note 19.
\textsuperscript{228} Rules of Court, supra note 15, o 35 r 1. See Section 6.XI for the text of the law.
\textsuperscript{229} See Lin Tsang Kit and Another v Chng Thiam Kwee [2005] SGHC 10 where the second plaintiff’s claim was dismissed because he did not appear to testify at trial. See Section 6.XI for the text of the law.
\textsuperscript{231} Ibid, where land transport expenses of $95 incurred in China to travel to and from the airport were recoverable.
\textsuperscript{232} Ibid.
\textsuperscript{233} Rules of Court, supra note 15, o 59 r 1(1); “in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid.” See Section 6.XI for the text of the law.
of reasonableness. This principle is broad and requires claimants to show that the costs incurred were reasonable and necessary, and that the costs were “proportionately incurred” in the “entire context of that matter.”

ii. Presentation of affidavits

With regard to affidavits, the general rule is that at “a trial of an action commenced by writ, evidence-in-chief of a witness shall be given by way of affidavit.” Unless the opposing party and the court agree to admit evidence without need for cross-examination, affidavits of evidence-in-chief by an absent witness are disallowed except with the leave of the court.

iii. Video Conferencing

If the client cannot be physically present in Singapore for court hearings, they may also apply to appear via video conferencing.

1) Video-conferencing fees

The costs of using a video-conferencing facility to present testimony may be prohibitive for most migrant workers. The client must pay the fees for using the technology court and its video conferencing facilities in both their home country and in Singapore.

The fees payable in Singapore are reflected in the table below.

Table 19: Costs of video-conferencing

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Booking the technology court</td>
<td>$50 per day</td>
</tr>
<tr>
<td>Booking the technology court's video</td>
<td>$1,000 per day</td>
</tr>
<tr>
<td>conferencing facility</td>
<td></td>
</tr>
</tbody>
</table>

In addition, the client must also pay any other video-conferencing the fees incurred in the country where the witness is physically present (for example, they have to pay for the costs of conducting video conferencing from the location.)

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234 Rules of Court, supra note 15, 59 r 27(2); “there shall be allowed a reasonable amount in respect of all costs reasonably incurred”. See Section 6.XI for the text of the law.
236 Lin Jian Wei, ibid, at [56]. See Section 6.XI for a summary of the case.
4.60. It remains to be seen whether successful claimants will be entitled to costs for video-conferencing facilities.

2) Conditions to allow video conferencing

4.61. As a general principle, witness testimony is to be given in person and in open court, and is “subject to these Rules and the Evidence Act, and any other written law relating to evidence”. However, the Evidence Act provides that “a person, may with leave of the court, give evidence through a live video or live television link in any proceeding, other than proceedings in a criminal matter”. The legal issue is whether a migrant worker may with leave of court, give evidence through video-conferencing, obviating the need for physical presence in Singapore.

4.62. The Singapore court has outlined three stages of inquiry for whether to allow appearance by video conferencing.

4.63. **Stage 1:** First, application for leave must fall under one of four threshold grounds. Relevant to migrant workers who have returned to their home country, one threshold ground allows video conferencing when the witness is outside of Singapore.

4.64. **Stage 2:** The court must then consider whether leave should be granted, taking into account the following three factors:

1) The reasons for the witness being unable to give evidence in Singapore;
2) The administrative and technical facilities and arrangements made at the place where the witness is to give his evidence; and
3) Whether any party to the proceedings would be unfairly prejudiced.


243 *Evidence Act*, supra note 239, where allowing video conferencing for witnesses physically outside of Singapore is allowed for non-criminal proceedings but barred in criminal proceedings; *c.f.* *Kim Gwang Seok v Public Prosecutor* [2012] 4 SLR 821; [2012] SGCA 51 at [24], [27] – [29], where the Court of Appeal explicitly clarified that Criminal Procedure Code (Cap 68, 2012 Rev Ed Sing) s 281 should not be applied to allow witnesses who are physically outside Singapore to give evidence via video link for criminal proceedings in Singapore. See Section 6.VIII for the text of the law.

244 The case of *Sonica*, supra note 241, is the leading authority on the principles governing leave for video-conferencing. In *Sonica*, the plaintiff claimed to have entered into a contract with the defendant, which the defendant subsequently breached, leading to its loss of profits and possible legal liability to a third party. The plaintiff made an oral application pursuant to *Evidence Act*, supra note 239, s 62A for video-conferencing for two witnesses on grounds that they were unable to come to Singapore to give oral evidence at trial. See Section 6.VIII for the text of the law.

245 See *Evidence Act*, supra note 239, s 62A(1)(c). The four grounds are: (a) the witness is below the age of 16 years; (b) it is expressly agreed between the parties to the proceedings that evidence may be so given; (c) the witness is outside Singapore; or (d) the court is satisfied that it is expedient in the interests of justice to do so. (emphasis added). See Section 6.VIII for the text of the law.

4.65. These factors are non-exhaustive. Other factors that have been considered by Singapore courts include:

- **The materiality of the evidence at hand:** where the evidence is peripheral to the main issues at trial, an order approving video-conferencing would not normally be justified.\(^{247}\)
- **The “security and confidentiality of the proceedings”:** where the court is uncertain of the security and confidentiality of the proceedings conducted through video conferencing, it may not allow video conferencing to proceed.\(^ {248}\)
- **Whether the person giving evidence is a party to the proceedings, or is giving testimony as a witness:** Video-conferencing may be requested for two kinds of witnesses - one who is a party to the proceedings and one who is not.

4.66. In cases where the witness is not a party to the proceedings and is in a separate jurisdiction, they are non-compellable to testify in court. Courts are thus more sympathetic to the need for video-conferencing.\(^{249}\) Conversely, where the witness is a party to the proceeding, courts are less inclined to allow the use of video-conferencing, though this is not decisive.\(^{250}\) Additional litigation will be needed to test the courts’ willingness to allow migrant worker clients to appear remotely.

4.67. **Stage 3:** Finally, pursuant to s 62A(5) of the Evidence Act, the court “shall not make an order under this section [...] if to do so would be inconsistent with the court’s duty to ensure that the proceedings are conducted fairly to the parties to the proceedings.”\(^ {251}\) The court will consider whether and to what extent permitting or denying video-conferencing could prejudice each party.\(^ {252}\)

\(^{247}\) See *Sonica*, supra note 241, at [19]. The plaintiffs’ request for the second witness to give evidence through video-conferencing was rejected as his evidence related merely to the credibility of witnesses. See Section 6.VIII for the text of the law.

\(^{248}\) See *IB v Comptroller of Income Tax* [2005] SGDC 50, at [42]. In the case of an appeal against the Comptroller of Income Tax’s Notice of Assessment for tax payable, the appellant requested to give evidence by video-link from Xian, China. The court noted the absence of any adequate measures to safeguard the “security and confidentiality of the proceedings being conducted via video-link to private premises nominated by the Appellant” as a reason militating against video-conferencing. See Section 6.VIII for a summary of the case.

\(^{249}\) See *Sonica*, supra note 241, at [12]. The plaintiffs’ request for the first witness to give evidence through video-conferencing was granted. The court noted that the plaintiffs had no control over Mr Kawamura and they had made the necessary attempts to secure Mr Kawamura’s presence in Singapore without any success. See Section 6.VIII for the text of the law.

\(^{250}\) Pursuant to s 62A(2), the court should consider all the other circumstances of the case. See also *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR(R) 381, at [27]: “[i]f sufficient reason is given why the actual physical presence of foreign witnesses cannot be effected, a court should lean in favour of permitting video-linked evidence in lieu of the normal rule of physical testimony. Sufficient reason ought to be a relatively low threshold to overcome and should be assessed with a liberal and pragmatic attitude.” See Section 6.VIII for the text of the law.


\(^{252}\) See *Sonica*, supra note 241, at [15]. The court balanced the prejudice to the defendants if video-conferencing of the first witness was granted against the prejudice to the plaintiffs if video-conferencing was denied. It found no prejudice to the defendants, as they would not be taken by surprise by the intended testimony, there was no objection that the
CHAPTER 3: PROCEDURES FOR PURSUING REMEDIES

4.68. This question of unfair prejudice is an “overriding consideration in such an application.”

4.69. Ultimately, while the decision to allow for video-conferencing follows the three stage outlined above, it involves a balancing exercise by the Court between the various competing factors in the case.

iv. Evidence by Deposition

4.70. In special circumstances, when the client will not be available to give evidence by live testimony at trial, evidence via the deposition process is possible. This involves the examination of the person before a judicial officer in a formal proceeding. During the course of the examination, the substance of the testimony is recorded in the form of a deposition, which is then submitted to the registry and used as evidence at the trial.

4.71. The examination is ordered by the court and takes place under oath before a Judge, the Registrar, or some other person, at any place determined by the court.

4.72. Clients outside of the jurisdiction, may apply through their lawyer for a letter of request to be issued to the judicial authorities of the country in which the client is to give evidence. Alternatively, an application may be made for a special examiner, appointed by the Singapore court, to take the evidence of the person in the foreign country, with the permission of the government of that country. These applications can only be made in the High Court, even if the proceedings were commenced in the State Courts. The client will have to bear the costs of the examination (including examiner’s fees and local costs incurred in the foreign jurisdiction).

evidence was very complicated or technical, and the facilities utilised allowed for cross examination. Conversely, if the plaintiffs were denied leave, they would be unable to adduce evidence that was material to the main action. See Section 6.VIII for a summary of the case.

253 See Jeffrey Pinsler, Civil Practice in Singapore and Malaysia (Lexis: 1996) at 578 (Lexis); “o 39 governs the procedure for evidence by deposition. O 39 must be read with a vital provision in o 38; namely, rule 9 of that Order which provides that no deposition is to be received in evidence unless the deposition was taken pursuant to an order of court under O 39, r 1, and ‘either the party against whom the evidence is offered consents, or it is proved to the satisfaction of the court that the deponent is dead, or beyond the jurisdiction of the court, or unable from sickness or other infirmity to attend the trial’. Additionally, the party who intends to use the deposition in evidence at the trial must give notice of his intention to do so ‘a reasonable time’ before the trial. With regard to the issue of authenticity, a deposition ‘purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person’.”


256 Ibid, o 39, r 2.

257 Ibid, o 39, r 2(3).

258 Ibid, o 39, r 14.
5. **CONCLUSION**

5.1. For migrant workers who must return home, the ideal situation is to obtain a settlement and collect payment prior to returning home.

5.2. However, when negotiations fail or where negotiations cannot be carried out, various legal routes remain available even to those who cannot stay in Singapore. What route a migrant worker should take depends upon such issues as costs, time bars to claims, evidence needed and, most importantly, the length of time that they can remain in Singapore in order to see a claim through.

5.3. For those who must return home before the claim is resolved, the MOM route is only open to the extent they can complete procedures before they leave. Clients do not need to remain in Singapore to pursue a judgment, so a lawyer may be able to collect any amount awarded or agreed to via MOM procedures after the client has returned home.

5.4. For all other clients, a claim in civil court is technically possible whether or not the client is in Singapore.

5.5. Clients who have returned or are about to return home should sign a POA that grants the practitioner or lawyer the authority to carry out enforcement or legal proceedings in Singapore on their behalf.

5.6. Following an analysis of statutory and case law, Chapter 4 will explain the challenges of representing a client who resides abroad, and potential avenues to find a local cooperating partner.

6. **BLACK LETTER LAW AND CASE LAW ANALYSIS**

I. **Introduction**

6.1. Many references to various statutes and cases were made throughout Chapter 3. Arranged in alphabetical order, this section is a compilation of the relevant portions of the aforementioned statutes as well as the respective case law to better explain the position of the Singapore courts in the interpretation of the law.

II. *Bankruptcy Act* (Cap 20, 2009 Rev Ed Sing)

Section 33. **Appointment of person other than Official Assignee as trustee in bankruptcy**

(1) The court may —

(a) on making a bankruptcy order; and

(b) on the application of the creditor who applied for the bankruptcy order,
appoint a person other than the Official Assignee to be the trustee of the bankrupt's estate

Section 61. Grounds of bankruptcy application

(1) No bankruptcy application shall be made to the court in respect of any debt or debts unless at the time the application is made —

(a) the amount of the debt, or the aggregate amount of the debts, is not less than $10,000;

(b) the debt or each of the debts is for a liquidated sum payable to the applicant creditor immediately;

(c) the debtor is unable to pay the debt or each of the debts; and

(d) where the debt or each of the debts is incurred outside Singapore, such debt is payable by the debtor to the applicant creditor by virtue of a judgment or an award which is enforceable by execution in Singapore.

Section 62. Presumption of inability to pay debts

For the purposes of a creditor's bankruptcy application, a debtor shall, until he proves to the contrary, be presumed to be unable to pay any debt within the meaning of section 61(1)(c) if the debt is immediately payable and —

(a) the applicant creditor to whom the debt is owed has served on him in the prescribed manner, a statutory demand;

(ii) at least 21 days have elapsed since the statutory demand was served; and

(iii) the debtor has neither complied with it nor applied to the court to set it aside;

(b) execution issued against him in respect of a judgment debt owed to the applicant creditor has been returned unsatisfied in whole or in part;

(c) he has departed from or remained outside Singapore with the intention of defeating, delaying or obstructing a creditor in the recovery of the debt; or

(d) the Official Assignee has —

(i) issued a certificate of inapplicability of a debt repayment scheme under section 56L;

(ii) issued a certificate of failure of a debt repayment scheme under section 56M(1); or

(iii) revoked a certificate of completion of a debt repayment scheme under section 56O(1),

in respect of the debtor within 90 days immediately preceding the date on which the bankruptcy application is made, and the applicant creditor had proved the debt under that debt repayment scheme.
Section 74. Power to stay proceedings against person or property of debtor

(1) Any court may by order, at any time after the making of a bankruptcy application, stay any action, execution or other legal process against the person or property of the debtor.

(2) Where an order is made under subsection (1) staying any action or proceedings or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by prepaid registered post to the address for service of the plaintiff or other party prosecuting such proceedings.

Section 76. Effect of bankruptcy order

(1) On the making of a bankruptcy order —

(a) the property of the bankrupt shall —

(i) vest in the Official Assignee without any further conveyance, assignment or transfer; and

(ii) become divisible among his creditors;

(b) the Official Assignee shall be constituted receiver of the bankrupt's property; and

(c) unless otherwise provided by this Act —

(i) no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy shall have any remedy against the person or property of the bankrupt in respect of that debt; and

(ii) no action or proceedings shall be proceeded with or commenced against the bankrupt in respect of that debt, except by leave of the court and in accordance with such terms as the court may impose.

(2) Where a bankruptcy order is made against a firm, the order shall operate as if it were a bankruptcy order made against each of the persons who, at the time of the order, is a partner in the firm.

(3) This section shall not affect the right of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been enacted.

(4) Notwithstanding subsection (3) and section 94, no secured creditor shall be entitled to any interest in respect of his debt after the making of a bankruptcy order if he does not realise his security within 6 months from the date of the bankruptcy order or such further period as the Official Assignee may determine.

Section 90. Priority of debts

(1) Subject to this Act, in the distribution of the property of a bankrupt, there shall be paid in priority to all other debts —

(a) firstly, the costs and expenses of administration or otherwise incurred by the Official Assignee and the costs of the applicant for the bankruptcy order (whether taxed or agreed) and the costs and expenses properly incurred by a nominee in respect of the administration of any voluntary arrangement under Part V:
(b) secondly, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating the conditions of employment of any employee;

(c) thirdly, subject to subsection (2), the amount due to an employee as a retrenchment benefit or an ex gratia payment under any contract of employment or award or agreement that regulates the conditions of employment, whether such amount becomes payable before, on or after the date of the bankruptcy order;

(d) fourthly, all amounts due in respect of any work injury compensation under the Work Injury Compensation Act (Cap. 354) accrued before, on or after the date of the bankruptcy order;

(e) fifthly, all amounts due in respect of contributions payable during the 12 months immediately before, on or after the date of the bankruptcy order by the bankrupt as the employer of any person under any written law relating to employees’ superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the Income Tax Act (Cap. 134);

(f) sixthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death, to any other person in his right, accrued in respect of any period before, on or after the date of the bankruptcy order;

(g) seventhly, the amount of all taxes assessed and any goods and services tax due under any written law before the date of the bankruptcy order or assessed at any time before the time fixed for the proving of debts has expired; and

(h) eighthly, all premiums (including interest and penalties for late payment) and other sums payable in respect of the bankrupt’s insurance cover under the MediShield Life Scheme referred to in section 3 of the MediShield Life Scheme Act 2015 before the time fixed for the proving of debts has expired.

(2) The amount payable under subsection (1)(b) and (c) shall not exceed an amount that is equivalent to 5 months’ salary whether for time or piecework in respect of services rendered by any employee to the bankrupt or $7,500, whichever is the lesser.

(3) The Minister may, by order published in the Gazette, amend subsection (2) by varying the amount specified in that subsection as the maximum amount payable under subsection (1)(b) and (c).

(4) For the purposes of subsection (1)(b) and (c) —

“employee” means a person who has entered into or works under a contract of service with the bankrupt and includes a subcontractor of labour;

“wages or salary” includes —

(a) all arrears of money due to a subcontractor of labour;

(b) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, as the case may be, whether such amount becomes payable before, on or after the date of the bankruptcy order; and

(c) any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates the
CHAPTER 3: PROCEDURES FOR PURSUING REMEDIES

conditions of his employment, whether such amount becomes payable before, on or after the date of the bankruptcy order.

(5) For the purposes of subsection (1)(c) —

“ex gratia payment” means the amount payable to an employee on the bankruptcy of his employer or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and “the amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be;

“retrenchment benefit” means the amount payable to an employee on the bankruptcy of his employer, on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and “the amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be, or if no amount is stipulated therein, such amount as is stipulated by the Commissioner for Labour.

(6) The debts in each class specified in subsection (1) shall rank in the order therein specified but debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(7) Where any payment has been made to any employee of the bankrupt on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a bankruptcy, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the bankruptcy has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(8) Where any creditor has given any indemnity or made any payment of moneys by virtue of which any asset of the bankrupt has been recovered, protected or preserved, the court may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks run by him in so doing.

(9) Where an interim receiver has been appointed under section 73 before the making of the bankruptcy order, the date of the appointment shall, for the purposes of this section, be deemed to be the date of the bankruptcy order.

Section 105. Restriction of rights of creditor under execution or attachment

(1) Where the creditor of a bankrupt has issued execution against the goods or lands of the bankrupt or has attached any debt due or property belonging to him, the creditor shall not be entitled to retain the benefit of the execution or attachment against the Official Assignee unless he has completed the execution or attachment before the date of the bankruptcy order, except that —

(a) a person who purchases in good faith under a sale by the Sheriff any goods of a bankrupt on which an execution has been levied shall in all cases acquire a good title to them against the Official Assignee; and
(b) the rights conferred by this subsection on the Official Assignee may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purposes of this Act —

(a) an execution against goods is completed by seizure and sale;

(b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against land or any interest therein is completed by registering under any written law relating to the registration of land a writ of seizure and sale attaching the interest of the bankrupt in the land described therein.

III. Companies Act (Cap 50, 2006 Rev Ed Sing)

Section 254. Circumstances in which company may be wound up by Court

(2) A company shall be deemed to be unable to pay its debts if —

(a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding $10,000 then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring the company to pay the sum so due, and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

Section 258. Power to stay or restrain proceedings against company

At any time after the making of a winding up application and before a winding up order has been made, the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

Section 260. Avoidance of certain attachments, etc.

Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the Court shall be void.

Section 262. Actions stayed on winding up order

(3) When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except —
(a) by leave of the Court; and

(b) in accordance with such terms as the Court imposes.

**Section 328. Priorities**

(1) Subject to the provisions of this Act, in a winding up there shall be paid in priority to all other unsecured debts —

(a) firstly, the costs and expenses of the winding up including the taxed costs of the applicant for the winding up order payable under section 256, the remuneration of the liquidator and the costs of any audit carried out pursuant to section 317;

(b) secondly, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment of any employee;

(c) thirdly, subject to subsection (2), the amount due to an employee as a retrenchment benefit or ex gratia payment under any contract of employment or award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up;

(d) fourthly, all amounts due in respect of work injury compensation under the Work Injury Compensation Act (Cap. 354) accrued before, on or after the commencement of the winding up;

(e) fifthly, all amounts due in respect of contributions payable during the 12 months next before, on or after the commencement of the winding up by the company as the employer of any person under any written law relating to employees’ superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the law relating to income tax;

(f) sixthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before, on or after the commencement of the winding up; and

(g) seventhly, the amount of all tax assessed and all goods and services tax due under any written law before the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired.

(2) The amount payable under subsection (1)(b) and (c) shall not exceed such amount as may be prescribed by the Minister by order published in the Gazette.

(2B) For the purposes of —

(a) subsection (1)(b) and (c) —

“employee” means a person who has entered into or works under a contract of service with an employer and includes a subcontractor of labour;

“wages or salary” shall be deemed to include —

(i) all arrears of money due to a subcontractor of labour;

(ii) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such
termination, as the case may be, whether such amount becomes payable before, on or after the commencement of the winding up; and

(iii) any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up;

(b) subsection (1)(c) —

“ex gratia payment” means the amount payable to an employee on the winding up of a company or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and “the amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be;

“retrenchment benefit” means the amount payable to an employee on the winding up of a company or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and “the amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be, or if no amount is stipulated therein, such amount as is stipulated by the Commissioner for Labour.

(3) The debts in each class, specified in subsection (1), shall rank in the order therein specified but as between debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(4) Where any payment has been made to any employee of the company on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(5) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1)(a), (b), (c), (e) and (f) and any amount payable in priority by virtue of subsection (4), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company (which charge, as created, was a floating charge), and shall be paid accordingly out of any property comprised in or subject to that charge.

(6) Where the company is under a contract of insurance (entered into before the commencement of the winding up) insured against liability to third parties, then if any such liability is incurred by the company (either before or after the commencement of the winding up) and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer the amount shall, after deducting any expenses of or incidental to getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).
(7) If the liability of the insurer to the company is less than the liability of the company to the third party, nothing in subsection (6) shall limit the rights of the third party in respect of the balance.

(8) Subsections (6) and (7) shall have effect notwithstanding any agreement to the contrary entered into after 29th December 1967.

(9) Notwithstanding anything in subsection (1)—

(a) paragraph (d) of that subsection shall not apply in relation to the winding up of a company in any case where the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the company has entered into a contract with an insurer in respect of any liability under any law relating to work injury compensation; and

(b) where a company has given security for the payment or repayment of any amount to which paragraph (g) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realised from such security.

(10) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the Court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risks run by them in so doing.

IV. Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed Sing)

Section 48. Deposit of power of attorney

(1) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, notarial certificate or other sufficient evidence, or a true copy of the instrument duly compared therewith and marked by the Registrar, Deputy Registrar or Assistant Registrar of the Supreme Court with the words “true copy”, or, if the instrument is registered in Malaysia, an office copy thereof, may be deposited in the Registry of the Supreme Court.

(b) For the purposes of this section, a photographic reproduction of any such instrument made in such manner and of such dimensions as may be prescribed by general rule shall be deemed to be a true copy of the instrument.

(c) The affidavit or declaration, if any, verifying the execution of any instrument creating a power of attorney, or, where an office or true copy of such an instrument is deposited, an office or true copy of that affidavit or declaration, shall be deposited with the instrument or copy of the instrument, and paragraphs (a) and (b) shall apply, mutatis mutandis, to such office or true copy.

(2) In the case of any instrument creating a power of attorney in a foreign language being so deposited, there shall be deposited therewith a translation thereof, certified by a sworn interpreter of the court, or if there is no interpreter attached to the court sworn to interpret in the
language in which the instrument is written, the translation shall be verified by a statutory declaration of some person qualified to translate it.

(3) A separate file of instruments so deposited shall be kept, and any person may search that file and inspect every instrument so deposited, and an office copy thereof, and if in a foreign language, of the translation thereof, shall be delivered out to him on request.

(4) A copy of an instrument so deposited may be presented at the Registry, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(5) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Registry.

(6) If the instrument so deposited is in a foreign language, an office copy of the translation deposited with the instrument shall without further proof be admissible in evidence as a correct translation of the original document.

(7) The fees to be taken in the Registry shall be fixed by the Chief Justice.

(8) If any such instrument so deposited at any time thereafter has been or is revoked, the Registrar of the Supreme Court, on being satisfied by affidavit or statutory declaration or otherwise that the instrument has been revoked, shall endorse thereon a certificate stating that it has been revoked and the date thereof, and thereupon the instrument shall be deemed to have been duly revoked as from the date of that certificate.

(9) Nothing in this section shall be deemed to affect or invalidate a revocation of any such instrument where no certificate is made or any earlier revocation thereof.

(10) Any reference in subsections (2), (3), (4), (5), (6), (8) and (9) to an instrument shall be deemed to include a reference to a true or office copy of the instrument deposited in accordance with subsection (1).

(11) Any reference in section 8 or any written law to a power of attorney deposited, filed or registered under or in the manner provided by this section includes a reference to a lasting power of attorney registered under the Mental Capacity Act 2008.

V. Criminal Procedure Code (Cap 68, 2012 Rev Ed Sing)

Section 281. Evidence through video or television links

(1) Notwithstanding any provision of this Code or of any other written law, but subject to the provisions of this section, the court may allow the evidence of a person in Singapore (except the accused) to be given through a live video or live television link in any trial, inquiry, appeal or other proceedings if —

(a) the witness is below the age of 16 years;

(b) the offence charged is an offence specified in subsection (2);

(c) the court is satisfied that it is in the interests of justice to do so; or

(d) the Minister certifies that it is in the public interest to do so.

(2) The offences for the purposes of subsection (1)(b) are —
(a) an offence that involves an assault on or injury or a threat of injury to persons, including an offence under sections 319 to 338 of the Penal Code (Cap. 224);

(b) an offence under Part II of the Children and Young Persons Act (Cap. 38) (relating to protection of children and young persons);

(c) an offence under sections 354 to 358 and sections 375 to 377B of the Penal Code;

(d) an offence under Part XI of the Women's Charter (Cap. 353) (relating to offences against women and girls); and

(e) any other offence that the Minister may, after consulting the Chief Justice, prescribe.

(3) Notwithstanding any provision of this Code or of any other written law, the court may order an accused to appear before it through a live video or live television link while in remand in Singapore in proceedings for any of the following matters:

(a) an application for bail or release on personal bond at any time after an accused is first produced before a Magistrate pursuant to Article 9(4) of the Constitution;

(b) an extension of the remand of an accused under section 238; and

(c) any other matters that the Minister may, after consulting the Chief Justice, prescribe.

(4) Notwithstanding any provision of this Code or of any other written law but subject to subsection (5), an accused who is not a juvenile may appear before the court through a live video or live television link while in remand in Singapore in proceedings for an application for remand or for bail or for release on personal bond when he is first produced before a Magistrate pursuant to Article 9(4) of the Constitution.

(5) A court may, if it considers it necessary, either on its own motion or on the application of an accused, require an accused to be produced in person before it in proceedings referred to in subsection (4).

(6) In exercising its powers under subsection (1), (3) or (4), the court may make an order on all or any of the following matters:

(a) the persons who may be present at the place with the witness;

(b) that a person be kept away from the place while the witness is giving evidence;

(c) the persons in the courtroom who must be able to be heard, or seen and heard, by the witness and by the persons with the witness;

(d) the persons in the courtroom who must not be able to be heard, or seen and heard, by the witness and by the persons with the witness;

(e) the persons in the courtroom who must be able to see and hear the witness and the persons with the witness;

(f) the stages in the proceedings during which a specified part of the order is to apply;

(g) the method of operation of the live video or live television link system including compliance with such minimum technical standards as may be determined by the Chief Justice;

(h) any other order that the court considers necessary in the interests of justice.

(7) The court may revoke, suspend or vary an order made under this section if —
(a) the live video or live television link system stops working and it would cause unreasonable delay to wait until a working system becomes available;

(b) it is necessary for the court to do so to comply with its duty to ensure fairness in the proceedings;

(c) it is necessary for the court to do so in order that the witness can identify a person or a thing or so that the witness can participate in or view a demonstration or an experiment;

(d) it is necessary for the court to do so because part of the proceedings is being heard outside a courtroom; or

(e) there has been a material change in the circumstances after the court has made the order.

(8) The court must not make an order under this section, or include a particular provision in such an order, if to do so would be inconsistent with its duty to ensure that the proceedings are conducted fairly to all parties.

(9) An order made under this section does not cease to apply merely because the person in respect of whom it was made reaches the age of 16 years before the proceedings in which it was made are finally concluded.

(10) When a witness gives evidence in proceedings through a live video or live television link, the evidence is to be regarded for the purposes of sections 193, 194, 195, 196, 205 and 209 of the Penal Code as having been given in those proceedings.

(11) If a witness gives evidence in accordance with this section, for the purposes of this Code and the Evidence Act (Cap. 97), he is regarded as giving evidence in the presence of the court and the accused, as the case may be.

(12) In subsection (6), (10) and (11), a reference to “witness” includes a reference to an accused who appears before a court through a live video or live television link under subsection (3) or (4).

(13) The Chief Justice may make such rules as appear to him to be necessary or expedient to give effect to this section and for prescribing anything that may be prescribed under this section.

**Kim Gwang Seok v Public Prosecutor**


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<td>• [24]: “Parliament clearly intended that s 364A [of the Criminal Procedure Code] should not be applied to allow witnesses who were physically outside Singapore to give evidence via video link for criminal proceedings in Singapore because of the potential problem of foreign witnesses giving false evidence to exonerate accused persons, particularly in cases involving drug offences, which was exactly the situation in the present case.”</td>
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<td>• Furthermore, it seemed that the norm was that witnesses had to be physically present in court to give evidence, as a matter of both practice and law. The provisions in the CPC were based on the assumption that the entire trial process, which included the giving of</td>
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evidence by witnesses, was to be physically conducted in a courtroom. The manner in which s 364A [of the Criminal Procedure Code] itself was framed reinforced this point: s 364A [of the Criminal Procedure Code] provided a sole and exceptional avenue for allowing a witness to give evidence in a criminal proceeding while physically outside of the court through video link, as could be inferred from the presence of the words "[n]otwithstanding any other provision of this Act or the Evidence Act" at the beginning of s 364A [of the Criminal Procedure Code]: at [27 and [28].

● As far as adduction of evidence by video link was concerned, Parliament clearly intended that criminal proceedings were to be treated differently from civil proceedings. Section 62A of the Evidence Act (Cap 97, 1997 Rev Ed) expressly permitted witnesses to give evidence from abroad via video link for civil proceedings in Singapore. For criminal proceedings, the witnesses who were giving evidence via video link had to be present in Singapore even though they need not be physically present in court before the judge.

Summary of facts

The appellant was a Korean national who was charged for an offence under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) of engaging in a conspiracy to export drugs from Singapore to Australia. He filed a criminal motion seeking leave from the High Court to allow five Korean nationals to testify for him at his impending trial via video link from Korea, with a view towards establishing his defence to the charge.

VI. Employment Act (Cap 91, 2009 Rev Ed Sing)

Section 2. Interpretation

(1) In this Act, unless the context otherwise requires — …

“employee” means a person who has entered into or works under a contract of service with an employer and includes a workman, and any officer or employee of the Government included in a category, class or description of such officers or employees declared by the President to be employees for the purposes of this Act or any provision thereof, but does not include —

(a) any seafarer;
(b) any domestic worker;
(c) subject to subsection (2), any person employed in a managerial or an executive position; and
(d) any person belonging to any other class of persons whom the Minister may, from time to time by notification in the Gazette, declare not to be employees for the purposes of this Act;

Section 3. Appointment of officers

(1) The Minister may appoint an officer to be styled the Commissioner for Labour (referred to in this Act as the Commissioner) and also one or more officers to be styled Deputy Commissioner
for Labour, Principal Assistant Commissioner for Labour or Assistant Commissioner for Labour, who, subject to such limitations as may be prescribed, may perform all duties imposed and exercise all powers conferred on the Commissioner by this Act, and every duty so performed and power so exercised shall be deemed to have been duly performed and exercised for the purposes of this Act.

(2) The Minister may appoint such number of inspecting officers and other officers as he may consider necessary or expedient for the purposes of this Act.

Section 10. Notice of termination of contract

(1) Either party to a contract of service may at any time give to the other party notice of his intention to terminate the contract of service.

(2) The length of such notice shall be the same for both employer and employee and shall be determined by any provision made for the notice in the terms of the contract of service, or, in the absence of such provision, shall be in accordance with subsection (3).

(3) The notice to terminate the service of a person who is employed under a contract of service shall be not less than —

   (a) one day’s notice if he has been so employed for less than 26 weeks;

   (b) one week’s notice if he has been so employed for 26 weeks or more but less than 2 years;

   (c) 2 weeks’ notice if he has been so employed for 2 years or more but less than 5 years; and

   (d) 4 weeks’ notice if he has been so employed for 5 years or more.

(4) This section shall not be taken to prevent either party from waiving his right to notice on any occasion.

(5) Such notice shall be written and may be given at any time, and the day on which the notice is given shall be included in the period of the notice.

Section 115. Commissioner’s power to inquire into complaints

(1) Subject to this section, the Commissioner may inquire into and decide any dispute between an employee and his employer or any person liable under the provisions of this Act to pay any salary due to the employee where the dispute arises out of any term in the contract of service between the employee and his employer or out of any of the provisions of this Act, and in pursuance of that decision may make an order in the prescribed form for the payment by either party of such sum of money as he considers just without limitation of the amount thereof.

(2) The Commissioner shall not inquire into any dispute in respect of matters arising earlier than one year from the date of lodging a claim under section 119 or the termination of the contract of service of or by the person claiming under that section:

Provided that the person claiming in respect of matters arising out of or as the result of a termination of a contract of service has lodged a claim under section 119 within 6 months of the termination of the contract of service.

(3) The powers of the Commissioner under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Part, any claim by a subcontractor for labour against a contractor or subcontractor for any sum which the subcontractor for labour
claims to be due to him in respect of any labour provided by him under his contract with the contractor or subcontractor and to make such consequential orders as may be necessary to give effect to his decision.

(3A) Where the employee is employed in a managerial or an executive position, an order for the payment of money under subsection (1) shall not exceed $20,000.

(3B) Subject to subsection (3C), any order made by the Commissioner under subsection (1) in the absence of a party concerned or affected by the order may be set aside or varied by the Commissioner, on the application of that party, on such terms as the Commissioner thinks just.

(3C) An application to set aside or vary an order made by the Commissioner referred to in subsection (3B) shall be made no later than 14 days after the date of the order.

(4) In this section, “employer” includes the transferor and the transferee of an undertaking or part thereof referred to in section 18A.

Section 117. Right of appeal

(1) Where any person interested is dissatisfied with the decision or order of the Commissioner, he may, within 14 days after the decision or order, appeal to the High Court from the decision or order.

(2) The procedure governing any such appeal to the High Court shall be as provided for in the Rules of Court.

Section 119. Procedure for making and hearing claims

(1) The mode of procedure for the making and hearing of claims shall be as follows:

(a) the person claiming shall lodge a memorandum at the office of the Commissioner, specifying shortly the subject-matter of the claim and the remedy sought to be obtained, or he may make his claim in person to the Commissioner who shall immediately reduce it or cause it to be reduced in writing;

(b) upon receipt of the memorandum or verbal claim and of the registration fee payable by the person in accordance with the rates specified in the Second Schedule, the Commissioner shall summon in writing the party against whom the claim is made, giving reasonable notice to him of the nature of the claim and the time and place at which the claim will be inquired into, and he shall also notify or summon all persons whose interests may appear to him likely to be affected by the proceedings;

(c) the Commissioner may also summon such witnesses as either party may wish to call;

(d) if the party against whom a claim is made wishes to make a counterclaim against the party claiming, he shall notify the Commissioner and the other party in writing of the nature and amount of the counterclaim not less than 3 days before the date of the inquiry;

(e) at any time between the issuing of summons and the hearing of the claim, the Commissioner may hold or cause to be held a preliminary inquiry at which the party claiming and the party against whom the claim is made shall be present after having been notified in writing of the inquiry;
(f) at the preliminary inquiry the parties may amend or withdraw the whole claim or portion thereof, make a counterclaim or reach a settlement in respect of the claim;

(g) if a settlement is effected at a preliminary inquiry in respect of a claim or portion thereof, the Commissioner shall make an order recording the terms of the settlement and that order shall have effect as if it were an order made under paragraph (h);

(h) at the time and place appointed the parties shall attend and state their case before the Commissioner and may call evidence, and the Commissioner, having heard on oath or affirmation the statements and evidence and any other evidence which he may consider necessary, shall give his decision and make such order in the prescribed form as may be necessary for giving effect to the decision;

(i) if any person interested has been duly summoned by the Commissioner to attend at the inquiry and makes default in so doing, the Commissioner may hear the claim and make his decision in the absence of that person notwithstanding that the interest of that person may be prejudicially affected by his decision;

(j) the Commissioner shall keep a case book, in which he shall enter notes of the evidence taken and the decisions arrived at in each case heard before him and shall authenticate them by attaching his signature thereto, and the record in the case book shall be sufficient evidence of the giving of any decision, or of the making of any order, and of the terms thereof; and any person interested in a dispute, decision or order, shall be entitled to a copy of the record upon payment of the prescribed fee.

(2) In hearing claims or conducting proceedings under this Part, the Commissioner —

(a) shall not be bound to act in a formal manner or in accordance with the Evidence Act (Cap. 97) but may inform himself on any matters in such manner as he thinks just; and

(b) shall act according to equity, good conscience and the merits of the case without regard to technicalities.

(3) All proceedings before the Commissioner shall be held in private.

Section 122. Jurisdiction of courts not affected

Nothing in this Part shall limit or affect the jurisdiction of any court.

VII. Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed Sing)

Section 5. Prohibition of employment of foreign employee without work pass

(1) No person shall employ a foreign employee unless the foreign employee has a valid work pass.

(2) No foreign employee shall be in the employment of an employer without a valid work pass.

(3) No person shall employ a foreign employee otherwise than in accordance with the conditions of the foreign employee’s work pass.

(4) In any proceedings for an offence under subsection (1), it shall not be a defence for a defendant to prove that he did not know that the employee was a foreign national unless the
defendant further proves that he had exercised due diligence to ascertain the nationality of the employee.

(5) For the purpose of subsection (4), a defendant shall not be deemed to have exercised due diligence unless he had checked the passport, document of identity or other travel document of the employee.

(6) Any person who contravenes subsection (1) shall be guilty of an offence and shall —

(a) be liable on conviction to a fine of not less than $5,000 and not more than $30,000 or to imprisonment for a term not exceeding 12 months or to both; and

(b) on a second or subsequent conviction —

(i) in the case of an individual, be punished with a fine of not less than $10,000 and not more than $30,000 and with imprisonment for a term of not less than one month and not more than 12 months; or

(ii) in any other case, be punished with a fine of not less than $20,000 and not more than $60,000.

(6A) [Deleted by Act 24 of 2012 wef 09/11/2012]

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 2 years or to both.

(7A) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000.

(8) For the purposes of this section —

(a) [Deleted by Act 24 of 2012 wef 09/11/2012]

(b) for the avoidance of doubt, where a person has been convicted of an offence under subsection (6), and he has on a previous occasion been convicted for contravening section 5(1) of the Employment of Foreign Workers Act (Cap. 91A, 1997 Ed.) in force immediately before 1st July 2007, the first-mentioned conviction shall be considered a second or subsequent conviction under subsection (6); and

(c) all convictions against the same person for the contravention of subsection (1) at one and the same trial shall be deemed to be one conviction.

Section 22B. Proscribed manpower-related practices

(1) Any person who —

(a) obtains a work pass for a foreign employee for a trade or business that does not exist, that is not in operation or that does not require the employment of such a foreign employee; and

(b) fails to employ the foreign employee,

shall be guilty of an offence and shall on conviction be punished with imprisonment for a term of not less than 6 months and not more than 2 years and shall also be liable to a fine not exceeding $6,000.
Section 23. Abetment of offences

(1) Any person who abets the commission of an offence under this Act shall be guilty of the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

VIII. Evidence Act (Cap 97, 1997 Rev Ed Sing)

Section 23. Admissions in civil cases when relevant

(1) In civil cases, no admission is relevant if it is made —

(a) upon an express condition that evidence of it is not to be given; or

(b) upon circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

(2) Nothing in subsection (1) shall be taken —

(a) to exempt any advocate or solicitor from giving evidence of any matter of which he may be compelled to give evidence under section 128; or

(b) to exempt any legal counsel in an entity from giving evidence of any matter of which he may be compelled to give evidence under section 128A.

Section 62A. Evidence through live video or live television links

(1) Notwithstanding any other provision of this Act, a person may, with leave of the court, give evidence through a live video or live television link in any proceedings, other than proceedings in a criminal matter, if —

(a) the witness is below the age of 16 years;

(b) it is expressly agreed between the parties to the proceedings that evidence may be so given;

(c) the witness is outside Singapore; or

(d) the court is satisfied that it is expedient in the interests of justice to do so.

(2) In considering whether to grant leave for a witness outside Singapore to give evidence by live video or live television link under this section, the court shall have regard to all the circumstances of the case including the following:

(a) the reasons for the witness being unable to give evidence in Singapore;

(b) the administrative and technical facilities and arrangements made at the place where the witness is to give his evidence; and

(c) whether any party to the proceedings would be unfairly prejudiced.

(3) The court may, in granting leave under subsection (1), make an order on all or any of the following matters:
(a) the persons who may be present at the place where the witness is giving evidence;
(b) that a person be excluded from the place while the witness is giving evidence;
(c) the persons in the courtroom who must be able to be heard, or seen and heard, by the witness and by the persons with the witness;
(d) the persons in the courtroom who must not be able to be heard, or seen and heard, by the witness and by the persons with the witness;
(e) the persons in the courtroom who must be able to see and hear the witness and the persons with the witness;
(f) the stages in the proceedings during which a specified part of the order is to have effect;
(g) the method of operation of the live video or live television link system including compliance with such minimum technical standards as may be determined by the Chief Justice; and
(h) any other order the court considers necessary in the interests of justice.

(4) The court may revoke, suspend or vary an order made under this section if —
(a) the live video or live television link system stops working and it would cause unreasonable delay to wait until a working system becomes available;
(b) it is necessary for the court to do so to comply with its duty to ensure that the proceedings are conducted fairly to the parties thereto;
(c) it is necessary for the court to do so, so that the witness can identify a person or a thing or so that the witness can participate in or view a demonstration or an experiment;
(d) it is necessary for the court to do so because part of the proceedings is being heard outside a courtroom; or
(e) there has been a material change in the circumstances after the court has made an order.

(5) The court shall not make an order under this section, or include a particular provision in such an order, if to do so would be inconsistent with the court's duty to ensure that the proceedings are conducted fairly to the parties to the proceedings.

(6) An order made under this section shall not cease to have effect merely because the person in respect of whom it was made attains the age of 16 years before the proceedings in which it was made are finally determined.

(7) Evidence given by a witness, whether in Singapore or elsewhere, through a live video or live television link by virtue of this section shall be deemed for the purposes of sections 193, 194, 195, 196, 205 and 209 of the Penal Code (Cap. 224) as having been given in the proceedings in which it is given.

(8) Where a witness gives evidence in accordance with this section, he shall, for the purposes of this Act, be deemed to be giving evidence in the presence of the court.

(9) The Rules Committee constituted under the Supreme Court of Judicature Act (Cap. 322) may make such rules as appear to it to be necessary or expedient for the purpose of giving effect to this section and for prescribing anything which may be prescribed under this section.
IB v Comptroller of Income Tax

[2005] SGDC 50

**Holding**

- In considering whether to grant leave under s 62A(2) [of the Evidence Act], the Board considered measures to safeguard the security and confidentiality of the proceedings being conducted via video conferencing to private premises nominated by the Appellant.

[42] “The Appellant's subsequent application for leave at the last minute before the hearing to give evidence by video-link from Xian, China was opposed by the respondent on the grounds that they would be unfairly prejudiced. For evidence through live video-link, the applicant must satisfy the conditions in s 62A of the Evidence Act. Some of the circumstances that the Board should consider whether or not to grant leave in this case are laid out in s 62A(2) of the Evidence Act. After hearing the parties' submissions, the Board refused to grant leave to the Appellant's application on these reasons as well as the absence of any adequate measure to safeguard the security and confidentiality of the proceedings being conducted via video-link to private premises nominated by the Appellant.”

**Summary of facts**

Facts of the case not particularly relevant to this context

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**Peters Roger May v Pinder Lillian Gek Lian**

[2006] 2 SLR 381

**Holding**

- Held that the ready availability and accessibility of video conferencing coupled with its relative affordability has diminished the significance of the physical convenience of a witness as a yardstick in assessing the appropriateness of a forum.

[26]: “The easy and ready availability of video link nowadays warrants an altogether different, more measured and pragmatic re-assessment of the need for the physical presence of foreign witnesses in stay proceedings. Geographical proximity and physical convenience are no longer compelling factors nudging a decision on *forum non conveniens* towards the most “witness convenient” jurisdiction from the viewpoint of physical access. Historically, the availability and convenience of witnesses was a relevant factor as it had a bearing on the costs of preparing and/or presenting a case and, most crucially, in
ensuring that all the relevant evidence was adduced before the adjudicating court. The advent of technology however has fortunately engendered affordable costs of video-linked evidence with unprecedented clarity and life-like verisimilitude, so that the importance of this last factor recedes very much into the background both in terms of relevance and importance. In other words, the availability and accessibility of video links coupled with its relative affordability have diminished the significance of the “physical convenience” of witnesses as a yardstick in assessing the appropriateness of a forum.”

- The threshold to granting leave for video conferencing ought to be relatively low.

[27]: “The respondent has not advanced any arguments, cogent or otherwise, why adducing evidence by video link in this case would be in any way inconvenient, unsuitable or prejudicial. If sufficient reason is given why the actual physical presence of foreign witnesses cannot be effected, a court should lean in favour of permitting video-linked evidence in lieu of the normal rule of physical testimony. Sufficient reason ought to be a relatively low threshold to overcome and should be assessed with a liberal and pragmatic latitude. If a witness is not normally resident within a jurisdiction, that may itself afford a sufficient reason with a view to minimising costs. On the other hand, if for instance the evidence of an important foreign witness cannot be voluntarily obtained by video link, this could tip the balance in favour of hearing the matter in the foreign jurisdiction where the witness resides so the witness can be compelled to give evidence there. Even then, the importance of that witness personally giving evidence as a factor may not be critical if deposition taking is available. The relative gravity of this factor must invariably be weighed and measured against the nature and relevance of the proposed evidence.”

Summary of facts

- The parts of the case that are relevant pertain to forum non conveniens and its relationship with video conferencing. The respondent requested for a stay of proceedings, arguing that England (as opposed to Singapore) was the more appropriate forum for the determination of the proceedings, one reason being the convenience of witnesses.

**Sonica Industries v Fu Yu Manufacturing Ltd**

[1999] SGCA 63

**Holding**

- There are four grounds for an application for leave under s 62A(1) of the Evidence Act. Further the court must have regard to all the circumstances of the case, including the three non-exhaustive factors in s 62A(2) of the Evidence
Act. Finally, the court will consider the overriding question of unfair prejudice under s 62A(5) of the Evidence Act.

[10]: “In this case, the application was made on the ground that the two witnesses were outside Singapore and were unable to come to Singapore to give oral evidence. Thus, para (c) of s 62A(1) was satisfied. That, of course, was not the end of the matter. The court must have regard to all the circumstances of the case, including the three particular circumstances described in sub-s (2) of s 62A of the Act.”

[15]: “The question of unfair prejudice is an overriding consideration in such an application. Subsection (5) of s 62A of the Act provides expressly that the court is not to make an order under that section, or to include a particular provision in such an order, if to do so would be inconsistent with the court’s duty to ensure that the proceedings are conducted fairly to the parties to the proceedings.”

• With regard to Mr Kawamura, the plaintiff’s request for video conferencing was granted. First, in considering all circumstances of the case pursuant to s 62A(2) of the Evidence Act, the court noted that the plaintiffs had no control over Mr. Kawamura and had made the necessary attempts to secure his presence in Singapore without any success. Second, regarding the issue of prejudice, the court balanced the prejudice to the defendants if video-conferencing were granted against prejudice to the plaintiffs if video-conferencing were denied.

[12]: “The fact remained that Mr. Kawamura had always been located overseas, and in particular in California. To come to Singapore to give evidence for the plaintiffs at the trial, Mr Kawamura had to make a special arrangement for the purpose. It must be remembered that Mr Kawamura was not in any way obliged to give evidence on behalf of the plaintiffs. Indeed, Mr Kawamura is an employee of Kanematsu, and according to the plaintiffs, Kanematsu has made a claim against the plaintiffs and is therefore in some degree of contention with them. Clearly, the plaintiffs have no control over Mr Kawamura and can only rely on his willingness to help them. In all the circumstances, we were of the view that the plaintiffs had made the necessary attempts to secure Mr Kawamura’s presence in Singapore for the purpose of the trial but without any success.”

[16]: “In this case, we can see no prejudice to the defendants by an order allowing Mr Kawamura to give evidence via live video or television link. The plaintiffs have identified the particular facts and issues which could be proved by Mr Kawamura’s testimony. A statement of the evidence of Mr Kawamura had already been furnished to the
defendants. The defendants would not be taken by surprise by the evidence that is intended to be led. There was also no objection that the evidence of Mr Kawamura would be very complicated or technical. The video or television link facilities would still allow the defendants' counsel to cross-examine Mr Kawamura on his evidence."

[17]: "On the other hand, if the plaintiffs were refused leave to use the video or television link facilities, they would be unable to adduce critical evidence pertaining to the resale contract alleged to have been made with Kanematsu, as well as evidence on how Kanematsu came to cancel their orders with the plaintiffs. Apparently, the alleged contract for the resale was not otherwise evidenced by any purchase order, due to Kanematsu’s standard procedure. Mr Kawamura would be in a position to give relevant evidence on this point. We agreed with the plaintiffs that Mr Kawamura’s evidence on the resale contract was material in the main action. Leave should be given for such evidence to be adduced via video link, as no prejudice is thereby caused to the defendants."

- With regard to Mr Lee, the plaintiff’s request for video conferencing was rejected as his evidence related merely to the credibility of the witness.

[19]: "As for the other witness, Mr Paul Lee, his evidence related solely to the alleged improper threat alleged to have been uttered to Mr Kawamura by the defendants’ officers. This evidence was not material to the issues in the main action and related merely to the credibility of Mr Kawamura and the defendants’ witnesses. At best, this evidence was only peripheral to the main issues in the trial, and we did not think that it justified an order allowing Mr Paul Lee to give evidence by live video or television link."

| Summary of facts | The plaintiff claimed to have entered into a contract with the defendant which was subsequently breached by the defendant, resulting in a loss of profits and possible legal liability to a third party. The plaintiff made an oral application pursuant to s 62A of the Evidence Act for leave to allow video-conferencing for two witnesses, Mr Kawamura and Mr Lee, on grounds that they were unable to come to Singapore to give oral evidence at trial. |
IX. *Immigration Regulations* (Cap 133, Reg 1, 1998 Rev Ed Sing)

**Regulation 2. Definitions**

“Controller” includes —

(a) an immigration officer or other person authorised by the Controller to act generally on his behalf under these Regulations; and

(b) where the Controller authorises an immigration officer or other person to act on his behalf for the purpose of one or more but not all of these Regulations, for the purposes of such regulation, the immigration officer or other person so authorised;

**Regulation 15. Special pass**

(1) A special pass, other than a special pass issued under section 6A \(^{260}\) of the Act, may be issued by the Controller to any person if the Controller considers the issue of such a pass desirable —

(a) in order to afford an opportunity of making enquiry for the purpose of determining whether that person is entitled to an entry permit or is otherwise entitled to enter Singapore under the provisions of the Act or of these Regulations or whether that person is a prohibited immigrant;

(b) in order to afford that person a reasonable opportunity of prosecuting an appeal under the provisions of the Act against any decision of the Controller; or

(c) for any other special reason.

(2) A special pass shall entitle the holder thereof to enter Singapore or remain therein for such period, not exceeding one month, as may be stated in the pass except that the Controller may from time to time extend the period of the pass, and in special circumstances, the period of such extension may exceed one month.

(3) [Deleted by S 393/2008]

(4) A special pass may at any time be cancelled by the Controller except that the Controller shall not cancel a pass issued under paragraph (1)(b) otherwise than for breach of any condition imposed in respect thereof until the appeal, in respect of which the pass has been issued, has been determined.

(5) Where a special pass is to be issued, the applicant shall, if so required, furnish to the Controller 2 recent photographs of himself.

\(^{260}\) Immigration Regulations, supra note 1, s 6A. See Section 6.IX for the text of the law.
X. *Limitations Act (Cap 163, 1996 Rev Ed Sing)*

**Section 6. Limitation of actions of contract and tort and certain other actions**

(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:

(a) actions founded on a contract or on tort;

(b) actions to enforce a recognizance;

(c) actions to enforce an award;

(d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture.

(2) An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action.

(3) An action upon any judgment shall not be brought after the expiration of 12 years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of 6 years from the date on which the interest became due.

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**Desert Palace Inc v Poh Soon Kia**

*[2009] SGCA 60*

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<th>Holding</th>
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<td>Held that s 6(3) of the Limitation Act does not prescribe any time bar for garnishee proceedings or a writ of seizure. In this regard, the court noted that a distinction has been drawn in case law between an “action” upon a judgment and an “execution” of a judgment, and highlighted policy reasons supporting such a distinction.</td>
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[60]: “In *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd* [2005] 2 All ER 304, a judgment creditor presented a winding-up petition based on a judgment that was more than six years old. The judgment debtors’ attempt to strike out the winding up petition on the basis that it was statute-barred after the expiration of six years from the date on which the judgment became enforceable was dismissed. It was held that “an action upon a judgment” had the special or technical meaning of a “fresh action” brought upon a judgment in order to obtain a second judgment, which could be executed. Insolvency proceedings, whether personal or corporate, did not fall within the scope of that special meaning and it was not open to the court to interpret the expression “action upon a judgment” in s 24 (1) of the 1980 Act in the sense indicated by the extended definition of “action” in s 38(1) which stated, *inter alia*, that “[i]n this Act, unless the context otherwise requires, ‘action’ includes any proceeding in a court of law, including an ecclesiastical court”. Mummery LJ in the English Court of Appeal said (at [31]): There is, in my opinion, much to be said
for the submission of Mr Anthony Mann QC (as he then was) appearing as counsel for the plaintiff judgment creditors in Lowsley’s case [1999] 1 ACT 329 at 333: There are good policy reasons for distinguishing between action and execution. Limitation statutes are intended to prevent stale claims, to relieve a potential defendant of the uncertainty of a potential claim against [him] and to remove the injustice of increasing difficulties of proof as time goes by. These considerations do not apply to execution. If it is unfair to have a judgment debt outstanding with interest running at a high rate, the debtor has the remedy of paying the debt or taking out his own bankruptcy if he cannot pay it.

[63]: “In the LA, unless the context otherwise requires, an “action” also includes a suit or any other proceedings in a court. Basically, there are two ways of enforcing a judgment: by execution and by action. However, a writ of execution does not come within s 6 (3) of the LA, a stand that I would take in reliance on the authorities above. The Court of Appeal in Tan Kim Seng v Ibrahim Victor Adam [2004] 1 SLR(R) 181 at [29] also observed that there was a distinction between “execution” and “an action upon any judgment” and referred to Halsbury’s Laws of England vol 28 (Butterworths, 4th Ed Reissue, 1997) at para 916: [A]n action upon a judgment applies only to the enforcement of judgments by suing on them and does not apply to the issue of executions upon judgments for which the leave of the court is required, after six years have elapsed, by RSC Ord 46 r 2(1)(a); in matters of limitation the right to sue on a judgment has always been regarded as quite distinct from the right to issue execution under it, but the court will not give leave to issue execution when the right of action is barred.”

[64] “As such, the law of limitation of actions would not affect the rules in relation to execution (and would also not apply to applications to levy execution for that matter). If it did, then an argument could be made that O 46 r 2 which subjected the writ of execution to enforce a judgment or order to the leave of the court where six years or more had lapsed since the date of the judgment or order could be in conflict with s 6(3) of the LA which allowed 12 years for bringing an action upon any judgment as of right under the statute. Further, the fact that the court could theoretically grant leave to the plaintiff to issue a writ of execution to enforce a judgment even after more than 12 years had elapsed would appear to contradict the time bar set out in s 6(3) of the LA, if that section was intended to apply to enforcement of a judgment by way of a writ of execution. If a matter was time-barred under the LA, a court would not have the power or the discretion to extend time beyond the time bar by granting leave.

[65]: “The policy reasons for distinguishing between “action” and “execution” as set out by Mummery LJ (see [60] above), and the reasons why the considerations of potential defendants being subjected to the uncertainty of stale claims and the injustice of increasing difficulties of proof with time did
not apply to the procedural steps needed for execution on a judgment already obtained (as opposed to that of a fresh substantive action upon a judgment) made much sense to me. They also explained the rationale for the absence of a time bar for the procedural enforcement of a judgment like the writ of execution or other modes of enforcement; and why a case of a fresh action on a judgment to obtain another substantive judgment must be treated differently and be made subject to a time bar. If a limitation period were to exist for execution of a judgment, then a clever judgment debtor can simply avoid payment of the judgment debt by hiding his assets well and keeping them out of reach of the judgment creditor as long as possible by using the international financial and banking systems and setting up shell companies or trusts in overseas jurisdictions to hold and hide his assets. The existence of a time bar for procedural execution may incentivise a judgment debtor to frustrate the judgment creditor’s search for his assets until the execution on the judgment against him is time-barred. Passage of time should not on principle be allowed to morph into an instrument to extinguish a judgment debt and make a mockery of the execution process on a judgment of the court."

[66]: "Public policy and the interests of justice should instead lean in favour of the position that it is for the judgment debtor to seek out the judgment creditor and settle the judgment creditor’s judgment debt expeditiously. There is no good reason why the court should favour cat and mouse games that are usually played out when judgment debtors use all possible means to delay and if possible evade enforcement or execution. The court ought not to favour those who have no qualms about flouting orders of court to pay on judgment debts."

[67]: "A time bar for procedural execution of a judgment would have the inadvertent and unintended effect of encouraging such cat-and-mouse games. The resources of both the court and the judgment creditor are often expended unnecessarily whereby the judgment creditor has to search far and wide for the assets of the judgment debtor, take up numerous court enforcement measures and try to execute on the judgment that he has obtained, probably with much effort and costs on his part already. It would not make sense to make it more difficult for the judgment creditor to obtain the fruits of the judgment he has obtained by imposing a time bar for procedural execution on judgments in the LA. A judgment debtor ought to recognise the authority of the order of the court directing that he, the judgment debtor, pays the judgment creditor. By not paying, it is the judgment debtor who is breaching the order of the court for him to pay. It is important to note that a judgment is no longer a claim but an order of court to be obeyed by the judgment debtor after the claim has been adjudicated by the court in favour of the judgment creditor. The judgment creditor as the winning party tries to ensure that the judgment as an order of the court is respected and obeyed by the losing party (and is not
rendered a paper judgment to be treated with scorn and disdain). Hence, for good public policy reasons, the court should lean in favour of assisting the winning party rather than the losing party. This in my view is a good reason to interpret “action upon any judgment” in s 6(3) of the LA restrictively to exclude a writ of execution on a judgment and all other modes of enforcement like garnishee proceedings, charging orders and insolvency proceedings, for which the LA does not prescribe any time bar, and accordingly, a judgment obtained is never “dead” because procedural execution on it always remains possible.”

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<th>Summary of facts</th>
<th>Facts of the case not particularly relevant to this context.</th>
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XI. **Rules of Court** (Cap 322, R 5, 2006 Rev Ed Sing)

**Interpretation** (O. 59, r. 1)

(1) In this Order —

“costs” includes fees, charges, disbursements, expenses and remuneration;

**Order 23. Security for costs**

**Security for costs of action, etc. (O. 23, r.1)**

(1) Where, on the application of a defendant to an action or other proceeding in the Court, it appears to the Court —

(a) that the plaintiff is ordinarily resident out of the jurisdiction;

(b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so;

I subject to paragraph (2), that the plaintiff’s address is not stated in the writ or other originating process or is incorrectly stated therein; or

(d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation, then, if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant’s costs of the action or other proceeding as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of paragraph (1) if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.
(3) Where, on the application of a defendant to an action or other proceeding in the Court, it appears to the Court —

(a) that a party, who is not a party to the action or proceeding (referred to hereinafter as a “non-party”), has assigned the right to the claim to the plaintiff with a view to avoiding his liability for costs; or

(b) that the non-party has contributed or agreed to contribute to the plaintiff's costs in return for a share of any money or property which the plaintiff may recover in the action or proceeding, and the non-party is a person against whom a costs order may be made, then, if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the non-party to give such security for the defendant's costs of the action or other proceeding as the Court thinks just.

(4) An application for an order under paragraph (3) shall be made by summons, which must be served on the non-party personally and on every party to the proceedings.

(5) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(6) The references in paragraphs (1), (2) and (3) to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

**Manner of giving security (O. 23, r. 2)**

Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct.

**Saving for written law (O. 23, r. 3)**

This Order is without prejudice to the provisions of any written law which empowers the Court to require security to be given for the costs of any proceedings.

**Order 35. Proceedings at Trial**

**Failure to appear by both parties or one of them (O. 35, r. 1)**

(a) If, when the trial of an action is called on, neither party appears, the Judge may dismiss the action or make any other order as he thinks fit. (2) If, when the trial of an action is called on, one party does not appear, the Judge may proceed with the trial of the action or any counterclaim in the absence of that party, or may without trial give judgment or dismiss the action, or make any other order as he thinks fit.
CHAPTER 3: PROCEDURES FOR PURSUING REMEDIES

Lin Tsang Kit and Another v Chng Thiam Kwee
[2005] SGHC 10

Holding
- The second plaintiff's claim was dismissed under O 35 r. 1 of the Rules of Court because his "written testimony would have no probative value whatsoever, as the contents and his veracity could not be tested under cross examination."

[30]: "I had made it clear from the outset to counsel for the plaintiffs that if the second plaintiff did not testify, I would have no alternative but to dismiss his claim. His written testimony would have no probative value whatsoever, as the contents and his veracity could not be tested under cross-examination. Accordingly, as the second plaintiff failed to testify despite my warning his counsel of the consequences thereof, I am dismissing his claim pursuant to O 35 r 1(1) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed)."

Summary of facts
Case involving a claim by two plaintiffs against a defendant Singapore businessman for breach of trust by selling trust shares without accounting to them for the sales proceeds. Alternatively, it was argued that the court should find that a trust was created between the plaintiffs and the defendant's company, with the defendant as managing director acting dishonestly in assisting the company's breach of trust. According to the plaintiff's counsel, the second plaintiff had applied to court to give his evidence by way of video conferencing due to his advanced and medical condition but his application was denied. The second plaintiff did not appear to testify at trial.

Order 38. Evidence in General

General rule: Witnesses to be examined (O. 38, r. 1)
Subject to these Rules and the Evidence Act (Chapter 97), and any other written law relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses in open Court.

Depositions when receivable in evidence at trial (O. 38, r. 9)
(1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless —

(a) the deposition was taken in pursuance of an order under Order 39, Rule 1; and

(b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.

(2) A party intending to use any deposition in evidence at the trial of a cause or matter must, at a reasonable time before the trial, give notice of his intention to do so to the other party.
(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

Order 39. Evidence by Deposition: Examiners of the court

Power to order depositions to be taken (O. 39, r. 1)

(1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order in Form 73 for the examination on oath before a Judge or the Registrar or some other person, at any place, of any person.

(2) An order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit.

Where person to be examined is out of jurisdiction (O. 39, r. 2)

(1) Where the person in relation to whom an order under Rule 1 is required is out of the jurisdiction, an application may be made —

(a) for an order in Form 74 under that Rule for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person; or

(b) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for an order in Form 75 under that Rule appointing a special examiner to take the evidence of that person in that country.

(2) An application may be made for the appointment as special examiner of a Singapore consul in the country in which the evidence is to be taken or his deputy —

(a) if there subsists with respect to that country a Civil Procedure Convention providing for the taking of the evidence of any person in that country for the assistance of proceedings in the High Court; or

(b) with the consent of the Minister. (3) An application under this Rule can only be made in the High Court even if the proceedings are commenced in the Subordinate Courts.

Order for payment of examiner’s fees (O. 39, r. 14)

(1) If the fees and expenses due to an examiner are not paid, he may report that fact to the Court, and the Court may make an order against the party, on whose application the order for examination was made, to pay the examiner the fees and expenses due to him in respect of the examination.

(2) An order under this Rule shall not prejudice any determination on the taxation of costs or otherwise as to the party by whom the costs of the examination are ultimately to be borne.
**Order 45. Enforcement of Judgment and Orders**

**Enforcement of judgment, etc., for payment of money (O. 45, r. 1)**

(1) Subject to these Rules and section 43 of the Subordinate Courts Act (Chapter 321) where applicable, a judgment or order for the payment of money, not being a judgment or order for the payment of money into Court, may be enforced by one or more of the following means:

(a) writ of seizure and sale;

(b) garnishee proceedings;

I the appointment of a receiver;

(d) in a case in which Rule 5 applies, an order of committal.

(2) Subject to these Rules, a judgment or order for the payment of money into Court may be enforced by one or more of the following means:

(a) the appointment of a receiver;

(b) in a case in which Rule 5 applies, an order of committal.

(3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a Court under the Debtors Act (Chapter 73) to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him, or to any written law relating to bankruptcy or the winding up of companies.

(4) In this Order, references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

**Order 46. Writ of Execution: General**

**When leave to issue any writ of execution is necessary (O. 46, r. 2)**

(1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases:

(a) where 6 years or more have lapsed since the date of the judgment or order;

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**Desert Palace Inc v Poh Soon Kia**

[2009] SGCA 60

<table>
<thead>
<tr>
<th>Holding</th>
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<tr>
<td>• While the court determined that there are no time bars for the execution of judgments, it nevertheless noted that with regard to writ of seizures, pursuant to O 46 r 2 of the Rules of Court, they may not be issued without the leave of court where “6 years or more have lapsed since the date of the judgment or order”.</td>
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[68]: “I recognise the existence of O 46 r 2 where a writ of execution (which includes a writ of seizure and sale, a writ of possession and a writ of delivery) to enforce a domestic judgment or order may not be issued without the permission of the court where six years or more has elapsed but this
does not mean that a time bar of six years has thereby been created. A statutory limitation must be created by way of an Act of Parliament as in the Limitation Act, and not in some subsidiary legislation (e.g., in the Rules of Court) since a time bar has the effect of taking away a substantive right, i.e., enforcement of a domestic judgment by way of a writ of execution. I further note that O 46 is limited in its scope and it applies only to a writ of execution but not other forms of enforcement on a judgment. Although there is no time bar, the court should nevertheless, for good administration of justice, monitor enforcement of its judgments by way of a writ of execution if more than six years had elapsed, which I believe is the rationale for O 46. Order 46 r 2 balances the need to allow time for unhindered execution on a judgment by the judgment creditor and the need to see that the judgment creditor does not sit on his hands and make no real effort to search for the assets of the judgment debtor and use the appropriate enforcement measures to satisfy his judgment debt. The requirement for the court’s discretionary leave as prescribed under O 46 is more a procedural and monitoring measure than a substantive mandatory measure to extinguish execution on a judgment the moment six years or more has elapsed since the date of the judgment. In any event, if such a substantive mandatory measure amounting to a statutory time bar was intended, then it should more appropriately be made by amending the LA than by inserting it as a rule within the Rules of Court.”

| Summary of facts | Facts of the case not particularly relevant to this context. |

**Order 47. Writ of Seizure and Sale**

**Power to stay execution by writ of seizure and sale (O. 47, r. 1)**

(1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution —

(a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or

(b) that the applicant is unable from any cause to pay the money, then, notwithstanding anything in Rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of seizure and sale either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this Rule, if not made at the time the judgment is given or order made, must be made by summons and may be so made notwithstanding that the party liable to execution did not enter an appearance in the action.
Separate writs to enforce payment of costs, etc. (O. 47, r. 2)

(1) Where only the payment of money, together with costs to be taxed, is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been taxed, the party entitled to enforce that judgment or order may issue a writ of seizure and sale to enforce the judgment or order and, not less than 8 days after the issue of that writ, he may issue a second writ to enforce payment of the taxed costs.

(2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, issue a separate writ of seizure and sale to enforce payment of any damages or costs awarded to him by that judgment or order.

Where landlord claims arrears of rent of premises where property seized (O. 47, r. 3)

(1) Where the landlord or any other person entitled to receive the rent of the premises in which any movable property has been seized by the Sheriff has any claims for arrears of rent of those premises, he may apply to the Court, at any time before the sale of such property, for a writ of distress for recovery of such arrears of rent.

(2) When a writ of distress has been issued the provisions of section 20 of the Distress Act (Chapter 84) shall apply.

(3) Unless a writ of distress is issued for the recovery of such arrears of rent, the property seized by the Sheriff shall be deemed not to be liable to be seized under a writ of distress and to be free from all claims in respect of rent and may be dealt with accordingly and the landlord or other person entitled to receive rent as aforesaid shall have no claim in respect of the property or to the proceeds of sale or any part thereof.

Immovable property (O. 47, r. 4)

(1) Where the property to be seized consists of immovable property or any interest therein, the following provisions shall apply:

(a) seizure shall be effected by registering under any written law relating to the immovable property a writ of seizure and sale in Form 83 (which for the purpose of this Rule and Rule 5 shall be called the order) attaching the interest of the judgment debtor in the immovable property described therein and, upon registration, such interest shall be deemed to be seized by the Sheriff;

(b) an application for an order under this Rule may be made by ex parte by summons;

(c) the application must be supported by an affidavit —

(i) identifying the judgment or order to be enforced;

(ii) stating the name of the judgment debtor in respect of whose immovable property or interest an order is sought;

(iii) stating the amount remaining unpaid under the judgment or order at the time of application;

(iv) specifying the immovable property or the interest therein in respect of which an order is sought; and
(v) stating that to the best of the information or belief of the deponent, the immovable property or interest in question is the judgment debtor’s and stating the sources of the deponent’s information or the grounds for his belief;

(d) as many copies of the order as the case may require shall be issued to the judgment creditor in order that he may present the order, in compliance with the provisions of any written law relating to such immovable property, for registration at the Registry of Deeds or the Land Titles Registry, as the case may be, of the Singapore Land Authority;

(e) after registering the order, the judgment creditor must —

(i) file a Request for direction to the Sheriff in Form 95 and a direction to the Sheriff in Form 96; and

(ii) upon compliance with sub-paragraph (i), the Sheriff must serve a copy of the order and the notice of seizure in Form 97 on the judgment debtor forthwith and, if the judgment debtor cannot be found, must affix a copy thereof to some conspicuous part of the immovable property seized;

(f) subject to sub-paragraph (g), any order made under this Rule shall, unless registered under any written law relating to such immovable property, remain in force for 6 months from the date thereof;

(g) upon the application of any judgment creditor on whose application an order has been made, the Court, if it thinks just, may from time to time by order extend the period of 6 months referred to in sub-paragraph (f) for any period not exceeding 6 months, and the provisions of sub-paragraphs (d) and (e) shall apply to such order; and

(h) the Court may at any time, on sufficient cause being shown, order that property seized under this Rule shall be released.

(2) Order 46, Rule 6 (1) and (2), shall not apply to the order made under paragraph (1).

Sale of immovable property (O. 47, r. 5)

Sale of immovable property, or any interest therein, shall be subject to the following conditions:

(a) there shall be no sale until the expiration of 30 days from the date of registration of the order under Rule 4 (1) (a); 

(b) the particulars and conditions of sale shall be settled by the Sheriff or his solicitor;

(c) the judgment debtor may apply by summons to the Court for postponement of the sale in order that he may raise the amount leviable under the order by mortgage or lease, or sale of a portion only, of the immovable property seized, or by sale of any other property of the judgment debtor, or otherwise, and the Court, if satisfied that there is reasonable ground to believe that the said amount may be raised in any such manner, may postpone the sale for such period and on such terms as are just;

(d) the judgment creditor may apply to the Court for the appointment of a receiver of the rents and profits, or a receiver and a manager of the immovable property, in lieu of sale thereof, and on such application, the Court may appoint such receiver or receiver and manager, and give all necessary directions in respect of such rents and profits or immovable property;
(e) where the interest of the judgment debtor in any immovable property, seized and sold under the order, includes a right to the immediate possession thereof, the Sheriff shall put the purchaser in possession;

(f) pending the execution or endorsement of any deed or document which is ordinarily lawfully required to give effect to any sale by the Sheriff, the Court may by order appoint the Sheriff to receive any rents and profits due to the purchaser in respect of the property sold; and

(g) the Sheriff may at any time apply to the Court for directions with respect to the immovable property or any interest therein seized under the order and may, or, if the Court so directs, must give notice of the application to the judgment creditor, the judgment debtor and any other party interested in the property.

Securities (O. 47, r. 6)

(1) Where the property to be seized consists of any Government stock, or any stock of any company or corporation registered or incorporated under any written law, including any such stock standing in the name of the Accountant-General, to which the judgment debtor is beneficially entitled, seizure thereof must be made by a notice in Form 98, signed by the Sheriff, attaching such stock.

(2) The notice must be addressed —

(a) in the case of Government stock, to the Accountant-General;

(b) in the case of stock listed on the Stock Exchange of Singapore Ltd. and held under a central depository system, to the depository for the time being and the company or corporation concerned;

(c) in the case of other stock, to the company or corporation concerned; and

(d) in the case of stock standing in the name of the Accountant-General, to the Accountant-General, and together with a copy of the writ of seizure and sale must be served by the Sheriff by any mode of service as he thinks fit.

(3) A copy of the notice must at the same time be sent to the judgment debtor at his address for service.

(4) On receipt of such notice, the judgment debtor must hand over to the Sheriff at his office any indicia of title in his possession relating to such stock, or where any such indicia of title are not in his possession, must notify the Sheriff in writing of the name and address of the person having possession thereof.

(5) The Sheriff must further send a copy of the notice to any person, other than the judgment debtor, in whose possession he has reason to believe any such indicia of title to be.

(6) After the receipt of any notice sent under paragraph (2), and unless the notice is withdrawn, no transfer of the stock or any interest therein, as the case may be, shall be registered or effected unless the transfer be executed or directed by the Sheriff, and any such transfer or direction by the Sheriff shall have the same effect as if the registered holder or beneficial owner of such stock had executed the transfer, and shall be dealt with accordingly.
(7) All interest or dividends becoming due and payable or benefits accruing after receipt of such notice, and until withdrawal thereof or transfer or direction by the Sheriff as above mentioned, must be paid or transmitted to the Sheriff.

(8) Any notice served under paragraph (2) may be withdrawn by notice in writing to that effect signed by the Sheriff and served to the person and in the manner provided by paragraph (2).

(9) In this Order, “Government stock” means any stock issued by the Government or any funds of or annuity granted by the Government and “stock” includes shares, debentures, debenture stock and stock options.

(10) The Court, on the application of the judgment debtor or any other person interested in the stock seized under this Rule, may at any time, on sufficient cause being shown, order that the stock or any part thereof be released.

Sale of securities (O. 47, r. 7)

(1) Stock seized under Rule 6 may be sold through the agency of a broker.

(2) If the indicia of title are not in the possession of the Sheriff, he may apply to the Court for such directions as may be necessary to give effect to the sale.

* O. 47, r. 8 was deleted.

Withdrawal and suspension of writ (O. 47, r. 9)

(1) Where any execution creditor requests the Sheriff to withdraw the seizure, he shall be deemed to have abandoned the execution, and the Sheriff shall mark the writ of seizure and sale as withdrawn by request of the execution creditor: Provided that where the request is made in consequence of a claim having been made in interpleader proceedings, the execution shall be deemed to be abandoned in respect only of the property so claimed.

(2) A writ of seizure and sale which has been withdrawn under this Rule shall not be re-issued but the execution creditor may apply by summons supported by affidavit stating the grounds of the application for a fresh writ of seizure and sale to be issued, and such writ shall take priority according to its date of issue.

Order 49. Garnishee Proceedings

Attachment of debt due to judgment debtor (O. 49, r. 1)

(1) Where a person (referred to in these Rules as the judgment creditor) has obtained a judgment or order for the payment by some other person (referred to in these Rules as the judgment debtor) of money, not being a judgment or order for the payment of money into Court, and any other person within the jurisdiction (referred to in this Order as the garnishee) is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any written law, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.
(2) An order in Form 101 under this Rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

(3) In this Order, “any debt due or accruing due” includes a current or deposit account with a bank or other financial institution, whether or not the deposit has matured and notwithstanding any restriction as to the mode of withdrawal.

Application for order (O. 49, r. 2)

An application for an order under Rule 1 must be made by ex parte summons supported by an affidavit in Form 102—

(a) identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application; and

(b) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent’s information or the grounds for his belief.

Service and effect of order to show cause (O. 49, r. 3)

(1) An order under Rule 1 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served—

(a) on the garnishee personally; and

(b) unless the Court otherwise directs, on the judgment debtor.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

No appearance or dispute of liability by garnishee (O. 49, r. 4)

(1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may, subject to Rule 7, make a final order\textsuperscript{261} in one of the forms in Form 103 under Rule 1 against the garnishee.

(2) A final order\textsuperscript{262} under Rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

\textsuperscript{261} Formerly known as an “order absolute.”

\textsuperscript{262} Formerly known as an “order absolute.”
Dispute of liability by garnishee (O. 49, r. 5)

Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order in Form 104 that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried.

Claims of third persons (O. 49, r. 6)

(1) If in garnishee proceedings it is brought to the notice of the Court that some person other than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the Court may order that person to attend before the Court and state the nature of the claim with particulars thereof.

(2) After hearing any person who attends before the Court in compliance with an order under paragraph (1), the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in Rule 5.

Judgment creditor resident outside scheduled territories (O. 49, r. 7)

(1) The Court shall not make an order under Rule 1 requiring the garnishee to pay any sum to or for the credit of any judgment creditor resident outside the scheduled territories unless that creditor produces a certificate that the Monetary Authority of Singapore has given permission under the Exchange Control Act (Chapter 99), for the payment unconditionally or on conditions which have been complied with.

(2) If it appears to the Court that payment by the garnishee to the judgment creditor will contravene any provision of the Exchange Control Act, it may order the garnishee to pay into Court the amount due to the judgment creditor and the costs of the garnishee proceedings after deduction of his own costs, if the Court so orders.

Discharge of garnishee (O. 49, r. 8)

Any payment made by a garnishee in compliance with a final order under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

Money in Court (O. 49, r. 9)

(1) Where money is standing to the credit of the judgment debtor in Court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to

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263 Formerly known as an “order absolute.”
the Court by summons for an order that the money or so much thereof as is sufficient to satisfy
the judgment or order sought to be enforced and the costs of the application be paid to the
judgment creditor.

(2) On issuing a summons under this Rule the applicant must produce the summons at the
office of the Accountant-General and leave a copy at that office, and the money to which the
application relates shall not be paid out of Court until after the determination of the application. If
the application is dismissed, the applicant must give notice of that fact to the Accountant-
General.

(3) Unless the Court otherwise directs, the summons must be served on the judgment debtor at
least 7 days before the day named therein for the hearing of it.

(4) Subject to Order 70, Rule 24, the Court hearing an application under this Rule may make
such order with respect to the money in Court as it thinks just.

Costs (O. 49, r. 10)

The costs of any application for an order under Rule 1 or 9, and of any proceedings arising
therefrom or incidental thereto, shall, unless the Court otherwise directs, be retained by the
judgment creditor out of the money recovered by him under the order and in priority to the
judgment debt.

Order 55. Appeals to High Court from court, tribunal or person

Application (O. 55, r. 1)

(1) Subject to paragraphs (2) and (4), this Order shall apply to every appeal which under any
written law lies to the High Court from any court, tribunal or person.

(2) This Order shall not apply to an appeal from a Subordinate Court constituted under the
Subordinate Courts Act264 (Chapter 321) or any application by case stated.

(3) Rules 2 to 7 shall, in relation to an appeal to which the Order applies, have effect subject to
any provision made in relation to that appeal by any other provision of these Rules or under any
written law.

(4) In this Order, references to a tribunal shall be construed as references to any tribunal
constituted under any written law other than any of the ordinary courts of law.

Order 59. Costs

Interpretation (O. 59, r. 1)

(2) In this Order —
“costs” includes fees, charges, disbursements, expenses and remuneration;

264 Note the Subordinate Courts have since been renamed as the State Courts.
CHAPTER 3: PROCEDURES FOR PURSUING REMEDIES

Special matters to be taken into account in exercising discretion (O. 59, r. 5)

The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account any payment of money into Court and the amount of such payment and the conduct of all the parties, including conduct before, as well as during, the proceedings, and in particular the extent to which the parties followed any relevant pre-action protocol or practice direction for the time being issued by the Registrar.

When a party may sign judgment for costs without an order (O. 59, r. 10)

(1) Where —

(a) a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made by him therein against any defendant; or

(b) an action, a cause or matter is deemed discontinued,

the defendant may, unless the Court otherwise orders, tax his costs of the action, cause or matter and if the taxed costs are not paid within 4 days after taxation, may sign judgment for them. The reference to a defendant in this paragraph shall be construed as a reference to the person (howsoever described) who is in the position of defendant in the proceeding in question, including a proceeding on a counterclaim.

(2) If a plaintiff accepts money paid into Court in satisfaction of the cause of action, or all the causes of action, in respect of which he claims, or if he accepts a sum or sums paid in respect of one or more specified causes of action and gives notice that he abandons the others, then subject to paragraph (4), he may, after 4 days from payment out and unless the Court otherwise orders, tax his costs incurred to the time of receipt of the notice of payment into Court and 48 hours after taxation may sign judgment for his taxed costs.

(3) Where a plaintiff in an action for libel or slander against several defendants sued jointly accepts money paid into Court by one of the defendants, he may, subject to paragraph (4), tax his costs and sign judgment for them against that defendant in accordance with paragraph (2).

(4) Where money paid into Court in an action is accepted by the plaintiff after the trial or hearing has begun, the plaintiff shall not be entitled to tax his costs under paragraph (2) or (3).

(5) When an appeal is deemed to have been withdrawn under Order 55D or Order 57 —

(a) the respondent may tax his costs of and incidental to the appeal, and, if the taxed costs are not paid within 4 days after taxation, may sign judgment for them; and

(b) any sum of money lodged in Court as security for the costs of the appeal shall be paid out to the respondent towards satisfaction of the judgment for taxed costs without an order of the Court and the balance, if any, shall be paid to the appellant.

Basis of taxation (O. 59, r. 27)

(1) Subject to the other provisions of these Rules, the amount of costs which any party shall be entitled to recover is the amount allowed after taxation on the standard basis where —

(a) an order is made that the costs of one party to proceedings be paid by another party to those proceedings;

(b) an order is made for the payment of costs out of any fund; or
(c) no order for costs is required, unless it appears to the Court to be appropriate to order costs to be taxed on the indemnity basis.

(2) On a taxation of costs on the standard basis, there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these Rules, the term “the standard basis”, in relation to the taxation of costs, shall be construed accordingly.

(3) On a taxation on the indemnity basis, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these Rules, the term “the indemnity basis”, in relation to the taxation of costs, shall be construed accordingly.

(4) Where the Court makes an order for costs without indicating the basis of taxation or an order that costs be taxed on any basis other than the standard basis or the indemnity basis, the costs shall be taxed on the standard basis.

(5) Notwithstanding paragraphs (1) to (4), if any action is brought in the High Court, which would have been within the jurisdiction of a Subordinate Court, the plaintiff shall not be entitled to any more costs than he would have been entitled to if the proceedings had been brought in a Subordinate Court, unless in any such action a Judge certifies that there was sufficient reason for bringing the action in the High Court.

| **Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang**  
| **Holding** |
| • Held that the travel expenses incurred by the respondent were both reasonable and reasonably incurred. The quantum of these expenses was proportionate when considered on an item by item basis as well as in the aggregate, [22]. |
| • An assessment of costs requires consideration to be given to all facts and circumstances. |
| [33] “The issue of costs is fundamentally a matter of assessment based on the entire myriad of relevant facts and circumstances. It is not, and can never be, a precise science. To lay down a general rule that costs must be mathematically and precisely pegged to the final apportionment of liability, would fail to ensure justice in each case. It is for this reason that the legal framework in O 59 of the ROC as interpreted by this court in Lin Jian Wei requires due consideration to be given to all the relevant facts and circumstances.” |
| **Summary of facts** |
| The respondent, a Chinese foreign worker employed by the appellant, was injured in the course of his work in July 2010. He commenced an action against the appellant in February 2011 seeking compensation. In the meantime, as the respondent was unable to work and maintain his Singapore work pass, he returned to China. Sometime in July 2011, he flew back to Singapore for the purpose of attending and giving evidence at the trial. On 25 July 2011, which was the very first day of the trial, the parties reached a settlement. The appellant agreed to bear 80% liability.
Final judgment was entered against the appellant for damages of $75,000, and costs and disbursements to be agreed or taxed.

The parties later agreed on the costs due to the respondent but they were unable to agree on the disbursements. The appellant took issue with the respondent's claim for travel expenses of $1,208. Out of this, a sum of $1,113 was for the respondent's return air tickets for travel between Shanghai and Singapore and the remainder of $95 was for land transport expenses incurred in China to travel to and from the airport.

The appellant did not dispute that the itemised amounts were reasonable. The appellant's case was that it was not obliged to pay these expenses as a matter of legal principle. The respondent eventually filed an application for the taxation of the disbursements.

---

**Lin Jian Wei and another v Lim Eng Hock Peter**  

**Holding**

- By O 59 r 27(2) and para 1(2) of Appendix 1, costs are in the discretion of the court. However, this discretion is not unfettered.

  [56] “in assessing whether costs incurred are reasonable, it needs to be shown that the costs incurred were not just reasonable and necessary for the disposal of the matter, but also, in the entire context of that matter, proportionately incurred”

- Clarified that proportionality should be considered both on an item by item basis and on a global basis.

  [78] “The approach that should be adopted in taxation is that the Court should first assess the relative complexity of the matter, the work supposedly done against what was reasonably required in the prevailing circumstances, the reasonableness and proportionality of the amounts claimed on an item by item basis and thereafter, assess the proportionality of the resulting aggregate costs. In this exercise, all the Appendix 1 considerations are relevant. In the general scheme of things, no single consideration ordinarily ought to take precedence. In every matter, this calls for careful judgment by reference to existing precedents and guidelines. A taxing officer should consider the complexity of the issues of fact and law which arose in the matter against the backdrop of the statements as to the amount of time spent by the solicitors and also the seniority of the counsel involved in order to determine whether the costs claimed for the amount of time spent is reasonable and proportionate. […].”

**Summary of facts**  
Facts of the case are not particularly relevant to our manual.
Miscellaneous (Appendix 2, Part III.) [from Rules of Court, O 55]

3. Where a plaintiff or defendant signs judgment for costs under Rule 10, there shall be allowed the following costs, in addition to disbursements:

<table>
<thead>
<tr>
<th>Costs to be allowed</th>
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<tbody>
<tr>
<td>High Court</td>
</tr>
<tr>
<td>Costs of judgment</td>
</tr>
</tbody>
</table>

4. Where upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money, a garnishee order is made under Order 49, Rule 1 against a garnishee attaching debts due or accruing due from him to the debtor, there shall be allowed the following costs, in addition to disbursements:

(a) to the garnishee, to be deducted by him from any debt owing by him as aforesaid before payments to the applicant —

<table>
<thead>
<tr>
<th>If no affidavit used</th>
<th>If affidavit used</th>
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<tbody>
<tr>
<td>High Court</td>
<td>District Court</td>
</tr>
<tr>
<td>$150</td>
<td>$150</td>
</tr>
</tbody>
</table>

(b) to the applicant, to be retained, unless the Court otherwise orders, out of the money recovered by him under the garnishee order and in priority to the amount of the debt owing to him under the judgment or order —

<table>
<thead>
<tr>
<th>Costs to be allowed</th>
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<tbody>
<tr>
<td>High Court</td>
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<tr>
<td>$750</td>
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</tbody>
</table>

Order 60. The Registry

Filing of instruments creating powers of attorney (O. 60, r. 6)

(1) An instrument creating a power of attorney which is presented for deposit in the Registry of the Supreme Court under —
(a) section 27 of the Trustees Act (Chapter 337); or
(b) section 48 of the Conveyancing and Law of Property Act (Chapter 61), shall not be deposited therein unless the execution of the instrument has been verified in accordance with Rule 7 and the instrument is accompanied —

   (i) except where Rule 7 (b) applies, by the affidavit, declaration, certificate or other evidence by which the execution was verified;

   (ii) in the case of an instrument presented for filing under section 27 of the Trustees Act (Chapter 337), by the statutory declaration required by subsection (4) of that section.

(2) Without prejudice to section 48 of the Conveyancing and Law of Property Act (Chapter 61), a certified copy of an instrument creating a power of attorney which is presented for deposit in the Registry of the Supreme Court under that section shall not be deposited therein unless —

   (a) the execution of the instrument has been verified in accordance with Rule 7;

   (b) the signature of the person who verified the copy is sufficiently verified; and

   (c) except where Rule 7 (b) applies and subject to paragraph (3), the copy is accompanied by the affidavit, declaration, certificate or other evidence by which the execution was verified.

(3) If the affidavit, declaration, certificate or other evidence verifying the execution of the instrument is so bound up with or attached to the instrument that they cannot conveniently be separated, it shall be sufficient for the purpose of paragraph (2) to produce and show to the proper officer in the Registry the original affidavit, declaration, certificate or other evidence and to file a certified or office copy thereof.

Verification of execution of power of attorney (O. 60, r. 7)
The execution of such an instrument or statutory declaration as is referred to in Rule 6 (1) may be verified —

   (a) by an affidavit or statutory declaration sworn or made by the attesting witness or some other person in whose presence the instrument was executed, or, if no such person is available, by some impartial person who knows the signature of the donor of the power of attorney created by the instrument;

   (b) if the instrument was attested by a Commissioner for Oaths, by the signature of the Commissioner as attesting witness; or

   (c) by such other evidence as, in the opinion of the Registrar is sufficient.

Inspection, etc., of powers of attorney (O. 60, r. 8)
(1) An index shall be kept in the Registry of the Supreme Court of all instruments and certified copies to which Rule 6 relates deposited in the said Registry and of the names of the donors of the powers of attorney created by such instruments.

(2) Any person shall, on payment of the prescribed fee, be entitled —

   (a) to search the index;
(b) to inspect any document filed or deposited in the Registry in accordance with Rule 6; and
(c) to be supplied with an office copy of such document; and a copy of any such document may be presented at the Registry to be marked as an office copy

XII. State Courts Act (Cap 321, 2007 Rev Ed Sing)

Section 15. Powers and duties of certain State Court officers

The bailiffs and process servers shall —

(a) execute all writs, summonses, warrants, orders, notices and other mandatory processes of the State Courts given to them;
(b) make a return of the same together with the manner of the execution thereof to the court from which the process issued; and
(c) arrest and receive all such persons and property as are committed to the custody of the State Courts.

Section 15A. Solicitor, etc., authorised to act as bailiff

(1) Subject to such directions as may be given by the Presiding Judge of the State Courts, the registrar may authorise a solicitor or a person employed by a solicitor to exercise the powers and perform the duties of a bailiff during such period or on such occasion as the registrar thinks fit and subject to such terms and conditions as the registrar may determine.

(2) Section 68(2) shall apply to a solicitor or person authorised under subsection (1) as it applies to an officer of a State Court.

Section 16. Special powers of bailiffs

The bailiffs in executing any writ of seizure and sale or any other writ of execution or of distress may effect an entry into any building, and for that purpose, if necessary, may break open any outer or inner door or window of the building or any receptacle therein, using such force as is reasonably necessary to effect an entry.

XIII. Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed Sing)

Section 13. Writs of execution

A judgment of the High Court for the payment of money to any person or into court may be enforced by a writ, to be called a writ of seizure and sale, under which all the property, movable or immovable, of whatever description, of a judgment debtor may be seized, except —
(a) the wearing apparel and bedding of the judgment debtor or his family, and the tools and implements of his trade, when the value of such apparel, bedding, tools and implements does not exceed $1,000;

(b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such animals and seed-grain or produce as may in the opinion of the court be necessary to enable him to earn his livelihood as such;

(c) the wages or salary of the judgment debtor;

(d) any pension, gratuity or allowance granted by the Government; and

(e) the share of the judgment debtor in a partnership, as to which the judgment creditor is entitled to proceed to obtain a charge under any provision of any written law relating to partnership.

<table>
<thead>
<tr>
<th>American Express Bank Ltd v Abdul Manaff bin Ahmad</th>
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<tbody>
<tr>
<td>[2003] 4 SLR 780</td>
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<table>
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<tr>
<th>Holding</th>
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</thead>
<tbody>
<tr>
<td>The court decided that s 13(c) of the SCJA is applicable to the garnishee process, and therefore, wages and salaries cannot be garnished.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Summary of facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeals against the High Court decision that the wages or salaries of judgment debtors may be garnished.</td>
</tr>
</tbody>
</table>

XIV.  

**Work Injury Compensation Act** (Cap 354, 2009 Rev Ed Sing)

**Section 2A. Appointment of Assistant Commissioners, investigation officers and authorised persons**

(1) The Commissioner may appoint such number of public officers as Assistant Commissioners (Work Injury Compensation) and investigation officers and such persons as authorised persons, as may be necessary to assist the Commissioner in the administration of this Act.

(2) The Commissioner may delegate the exercise of all or any of the powers conferred or duties imposed upon him by this Act (except the power of delegation conferred by this subsection) to any Assistant Commissioner, investigation officer or authorised person, subject to such conditions or limitations as the Commissioner may specify.

**Section 3. Employer’s liability for compensation**

(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to an employee, his employer shall be liable to pay compensation in accordance with the provisions of this Act.

(2) An accident happening to an employee while he is, with the express or implied permission of his employer, travelling as a passenger by any means of transport to or from his place of work
shall be deemed to arise out of and in the course of his employment if at the time of the accident the means of transport is being operated by or on behalf of his employer or by some other person by whom it is operated in pursuance of arrangements made with his employer and is not being operated in the ordinary course of a public transport service.

(3) An accident happening to an employee in or about any premises at which he is for the time being employed for the purposes of his employer’s trade or business shall be deemed to arise out of and in the course of his employment if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue or protect persons who are, or are thought to be or possibly to be injured or imperilled, or to avert or minimise damage or loss to property.

(4) An accident happening to an employee shall be deemed to arise out of and in the course of his employment notwithstanding that he was at the time of the accident acting in contravention of any written law or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if —

(a) the accident would have been deemed so to have arisen had such act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and

(b) such act was done for the purposes of and in connection with the employer’s trade or business.

(5) An employer shall not be liable to pay compensation in respect of —

(a) any injury to an employee resulting from an accident if it is proved that the injury to the employee is directly attributable to the employee having been at the time thereof under the influence of alcohol or a drug not prescribed by a medical practitioner;

(b) any incapacity or death resulting from a deliberate self-injury or the deliberate aggravation of an accidental injury; or

(c) any injury to an employee suffered in a fight or an attempted assault on one or more persons unless —

(i) the employee did not assault or attempt to assault any other person in the fight or attempted assault, or did assault any such person in the exercise of the right of private defence in accordance with sections 97 to 106 of the Penal Code (Cap. 224); or

(ii) the employee was, at the time when the injury was received, breaking up or preventing the fight or assault, or in the course of safeguarding life or any property of any person or maintaining law and order, under any instruction or with the consent (whether express or implied) of his employer or a principal referred to in section 17.

(5A) In this section, “drug” means —

(a) controlled drug within the meaning of the Misuse of Drugs Act (Cap. 185); or

(b) a prescription only drug specified for the purposes of section 29 of the Medicines Act (Cap. 176) that is not prescribed by a medical practitioner for the employee’s consumption or use.

(6) For the purposes of this Act, an accident arising in the course of an employee’s employment shall be deemed, in the absence of evidence to the contrary, to have arisen out of that employment.
Section 11. Notice and claim

(1) Except as provided in this section, proceedings for the recovery of compensation for an injury under this Act shall not be maintainable unless —

(a) notice of the accident has been given to the employer by or on behalf of the employee as soon as practicable after the happening thereof;

(b) a claim for compensation with respect to that accident has been made within one year from the happening of the accident causing the injury, or, in the case of death, within one year from the date of the death; and

(c) the claim has been made in such form and manner as the Commissioner may determine.

(2) No notice to the employer shall be necessary where a fatal accident has occurred.

(3) The want of or any defect or inaccuracy in a notice shall not be a bar to the maintenance of proceedings if —

(a) the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident; or

(b) it is found in the proceedings for settling the claim that the employer is not, or would not be, if a notice or an amended notice were then given and the hearing postponed, prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from Singapore or other reasonable cause.

(4) Subject to subsection (4A), the making of a claim after the lapse of the period specified in subsection (1) shall not be a bar to the maintenance of proceedings if it is found that the delay was occasioned by mistake, absence from Singapore or other reasonable cause.

(4A) The making of a claim after the lapse of the period specified in subsection (1) shall be a bar to the maintenance of proceedings in respect of an accident if it is found that the delay was occasioned by the claimant having instituted an action for damages in any court for compensation with respect to that accident if —

(a) the accident occurs on or after the date of commencement of the Work Injury Compensation (Amendment) Act 2011 (referred to in this subsection as the appointed day); or

(b) the accident occurred before the appointed day, and the claim is made after the expiry of the period of 12 months beginning on the appointed day.

(4B) For the purposes of subsections (4) and (4A), it is immaterial whether there were any previous claims made in respect of that accident.

(5) Notice to the employer (or, if there is more than one employer, to one of such employers) in respect of an injury may be given either in writing or orally to the foreman or other person under whose supervision the employee was employed, or to any person designated for the purpose by the employer, and shall state in ordinary language the cause of the injury and the date on which and the place at which the accident happened.

(6) The notice if in writing may be given by delivering the notice at, or sending it by registered post addressed to, the residence or place of business of the person to whom it is to be given.
Section 29. Appeal from decision of Commissioner

(1) Subject to section 24(3B), any person aggrieved by any order of the Commissioner made under this Act may appeal to the High Court whose decision shall be final.

(2) The procedure governing any such appeal to the High Court shall be as provided for in the Rules of Court.

(2A) No appeal shall lie against any order unless a substantial question of law is involved in the appeal and the amount in dispute is not less than $1,000.

(3) Notwithstanding any appeal under this section, the employer shall deposit with the Commissioner the amount of compensation ordered by the Commissioner under section 25A, 25B, 25C or 25D within 21 days from the date of the Commissioner’s decision, and the deposit shall be held by the Commissioner pending the outcome of the appeal.

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**Kee Yau Chong v S H Interdeco Pte Ltd**

[2014] 1 SLR 189

**Holding**

- With regard to s 29(2A) of WICA, the court noted that the requirement of a *substantial* question of law means that it is “not enough for there to be a mere question of law or that the Court takes the view that a different interpretation of the facts could have been drawn”.

  [15]: “As can be seen, it is necessary (but insufficient) for there to be a "substantial question of law" before an appeal against an order made by the learned Assistant Commissioner will avail itself to "any person aggrieved" by such order. In deciding whether the requirements for an appeal against an order made by the learned Assistant Commissioner have been met, it is not enough for there to be a *mere* question of law or that the Court takes the view that a *different interpretation of the facts* could have been drawn. Only a *substantial* question of law will suffice.”

**Summary of facts**

Appeal against the labour court’s dismissal of the claimant’s claim on the grounds that no “accident” had taken place within the meaning of WICA.

---

**Pang Chew Kim v Wartsila Singapore Pte Ltd**

[2012] 1 SLR 15

**Holding**

- With regard to s 29(2A) of WICA, the court noted the range of errors of law that may provide grounds for appeal.

  [19]: “In determining the range of errors of law that may provide grounds for appeal under s 29(2A), the courts have accepted the full range of errors of law listed in *Halsbury’s*..."
at para 70:... misinterpretation of a statute or any other legal
document or a rule of common law; asking oneself and
answering the wrong question, taking irrelevant considerations
into account or failing to take relevant considerations into
account when purporting to apply the law to the facts;
admitting inadmissible evidence or rejecting admissible and
relevant evidence; exercising a discretion on the basis of
incorrect legal principles; giving reasons which disclose faulty
legal reasoning or which are inadequate to fulfil an express
duty to give reasons, and misdirecting oneself as to the
burden of proof."

[21]: “While the court will not generally disturb findings of facts
unless they are such that "no person acting judicially and
properly instructed as to the relevant law could have come to
the determination upon appeal" (Karuppiiah at [13]), there is no
similar rule precluding courts from assessing the robustness of
inferences drawn from the facts as found by the
Commissioner.”

Summary of facts

Appeal against the labour court judgment on the interpretation of s3 of
WICA.

Section 33. Limitation of employee’s right of action

(1) Nothing in this Act shall be deemed to confer any right to compensation on an employee in
respect of any injury if he has instituted an action for damages in respect of that injury in any
court against his employer or if he has recovered damages in respect of that injury in any court
from his employer.

(2) Subject to subsections (2A) and (2B), no action for damages shall be maintainable in any
court by an employee against his employer in respect of any injury by accident arising out of
and in the course of employment —

(a) if he has a claim for compensation for that injury under the provisions of this Act and
does not withdraw his claim within a period of 28 days after the service of the notice of
assessment of compensation in respect of that claim;

(b) if he and his employer have agreed or are deemed to have agreed to the notice of
assessment under section 24(2)(a) for that injury; or

(c) if he has recovered damages in respect of the injury in any court from any other
person.

(2A) Where —

(a) a claim for compensation under this Act is made for an employee’s injury by
accident arising out of and in the course of the employment;

(b) there is no objection by the employee to the notice of assessment of compensation
in respect of that claim;
(c) the compensation ordered by the Commissioner thereafter in respect of that claim is of a lesser amount than that stated in that notice of assessment of compensation in respect of that claim;

(d) within a period of 28 days after the making of the order, the employee notifies the Commissioner and the employer in writing that he does not accept the compensation so ordered, and has not received or retained any part of such compensation earlier paid (if any) by the employer; and

(e) no appeal under section 29 is made against the order, the employee may institute an action in any court against his employer for damages in respect of that injury and any order made by the Commissioner in respect of that injury shall be void.

(2B) Where —

(a) the Commissioner assesses or makes an order that no compensation shall be payable for a claim for compensation for an employee’s injury by accident arising out of and in the course of employment because —

(i) the injury did not arise out of and in the course of the employee’s employment; or

(ii) the injured person is not an employee within the meaning of this Act; or

(b) an appeal to the High Court under section 29 from an order made by the Commissioner has failed because of any reason mentioned in paragraph (a)(i) or (ii), the employee may institute an action in any court to recover damages independently of this Act for injury caused by that accident.

(3) If an action is brought within the time specified in section 11 in any court to recover damages independently of this Act for injury caused by any accident and it is determined in the action or on appeal that the injury is one for which the employer is not liable but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court shall, if the employee so chooses, proceed to assess the compensation and may deduct therefrom all or any part of the costs which, in its judgment, have been caused by the employee instituting the action instead of proceeding under this Act.

(4) In any proceedings under subsection (3) when the court assesses the compensation, it shall give a certificate of the compensation it has awarded and the direction it has given, if any, as to the deduction of costs and such certificate shall have the same effect as a judgment of the court.

---

Yang Dan v Xian De Lai Shanghai Cuisine Pte Ltd

**Holding**

- Appeal should be allowed because the respondent did not withdraw his Compensation Claim before the order of 7 May 2008 was made.

- The correct interpretation of s 33(2)(a) WCA is that a workman may proceed with a General Law Claim even after the Commissioner has assessed that zero compensation is payable on his Compensation Claim provided that he first withdraws his Compensation Claim (emphasis added).
[57]: “(a) Under s 24(3) WCA, the Commissioner’s assessment becomes a Deemed Order if there is no objection thereto within two weeks of the service of the notice of assessment. Section 25(1) WCA refers to a period of 14 days to do so which is the same as the two week period. Once there is a Deemed Order, it is then, in my view, too late for the workman to withdraw his Compensation Claim. In this regard, while the District Judge said that the consequence of a failure to object within the relevant time frame is that the workman loses his right to a hearing and cannot appeal (see Yang Dan at [32]) it is important to bear in mind that a further consequence of a failure to object within the relevant time frame is that the assessment becomes a Deemed Order.”

“(b) If however there is an objection to the assessment within the relevant time frame, the assessment does not become a Deemed Order. The workman’s right to withdraw his Compensation Claim and proceed with a General Law Claim continues for the time being even if he was not the one who had objected to the assessment.”

- However, once an order has been made on the Compensation Claim, the “workman” may no longer withdraw his Compensation Claim to pursue a General Law Claim.

[57]: “(c) If there is a pre-hearing conference and an agreement is reached to settle all matters for hearing in that conference, the Commissioner may record a Settlement Order. At that point, the workman will lose his right to withdraw his Compensation Claim and proceed with a General Law Claim.”

“(d) If the workman does not agree to a settlement of all matters at the pre-hearing conference, the workman’s right to withdraw continues for the time being. However, after the Compensation Claim proceeds to a hearing and the Commissioner makes a Post-hearing Order, it will be too late for the workman to withdraw his Compensation Claim or to proceed with a General Law Claim.”

<table>
<thead>
<tr>
<th>Summary of facts</th>
<th>Appeal against the interpretation of s 33(2), s 33(2A) and s 33(2B) of WICA.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The respondent, Yang Dan, having previously received an assessment of zero incapaciry in his WICA Claim, subsequently attempted to make a General Law Claim.</td>
</tr>
</tbody>
</table>
FOURTH SCHEDULE [from WICA]

Classes of persons not covered

1. Any member of the Singapore Armed Forces.

2. Any officer of the Singapore Police Force, the Singapore Civil Defence Force, the Central Narcotics Bureau or the Singapore Prisons Service.

3. A domestic worker, being any person employed in or in connection with the domestic services of any private premises.
Chapter 4: 
Finding Local Partners 
by Douglas MacLean, Justice Without Borders
CHAPTER 4: FINDING LOCAL PARTNERS

1. FINDING A PARTNER WHEN THE CLIENT LEAVES SINGAPORE

1.1. This chapter explains the logistics and challenges involved in finding and working with local partners in the client’s home community. Partners are indispensable in ensuring that the client remains in contact and can see their Singapore-based claims through to completion.

1.2. This chapter is thus divided into eight sections. Section 1 provides a brief overview of the importance of finding a local partner, Section 2 describes the major challenges involved in remote representation, Section 3 provides an overview of how local partners can support remote representation, Section 4 discusses preparations needed for remote representation, Section 5 describes how to find a partner in the client’s home country, Section 6 introduces the mechanics and considerations in forming a partnership with another entity, Section 7 discusses how practitioners in clients’ home communities may attempt to seek legal assistance in Singapore, and Section 8 closes with an overview of how to assess the viability of a client’s claims for remote representation.

1.3. Pursuing a legal claim from abroad is difficult. Even when the law, as in Singapore, enables clients to pursue claims remotely, the logistical hurdles often prove to be very challenging for both the lawyer and the client. This is particularly true for migrant workers, who generally must rely upon pro bono representation, given that they are often busy attempting to find work, may not be fluent in their lawyer’s language(s) and may live in remote areas where reliable telecommunications are scarce.

1.4. A local lawyer, direct service organisation,¹ or other individual or organisation who can serve as a reliable liaison or partner for the Singaporean lawyer in the client’s community can help to overcome some of these barriers. This chapter discusses how local partners can meet Singaporean lawyers’ specific needs during the litigation, how to find potential partners, and the legal considerations in partnering with another individual or entity.

1.5. For readers in the client’s home country who believe their client may have a viable legal claim in Singapore, please see Section 7 for methods of finding legal aid in Singapore.

¹ Direct service organisations are generally community organisations that provide social services directly to a client population. This can include legal consultations, medical care, counselling, job training, and other such services.
2. **MAJOR CHALLENGES IN REMOTE REPRESENTATION**

2.1. Singaporean service providers and pro bono lawyers have reported that clients who have suffered labour exploitation or even human trafficking are unlikely to bring claims if they believe they cannot stay in Singapore long enough to conclude the claim. As explained in Chapter 3, there is no legal residency status available to those who seek civil damages against their employers or against a Singaporean agency. The only alternative is the Ministry of Manpower’s (MOM) dispute resolution and adjudication processes. These can take months, during which time the client may well remain unemployed. Faced with financial pressures, the client is much more likely to accept an unfair settlement or forego complaint procedures entirely. For those who attempt to pursue civil claims after return, the simple logistical barriers can be enough to bring the legal claim to a halt. Below are four of the most common issues that lawyers and clients face in remote representation.

I. **Telecommunication challenges**

2.2. Unfortunately, maintaining contact with a client post-return can be immensely challenging. Internet telecommunications such as Skype are often unreliable, causing frustration when calls are repeatedly dropped. Phone calls can be expensive, and when the client lives in a more remote area, telecommunications may be poor or non-existent. Finally, clients may move within their own country, or change cell phone numbers, complicating continued contact. The latter has been reported amongst Indonesian clients, as new phone numbers are inexpensive to obtain in Indonesia.

II. **Language barriers**

2.3. Lack of fluency in the lawyer’s spoken language can make communication particularly difficult, and again give rise to frustration. Miscommunication can result in clients missing important deadlines, providing the wrong materials, or simply becoming confused about the state of their claim and/or the nature of the decisions that they as clients must make. Clients may also misunderstand their chances of success or of the pace of process, becoming impatient with or even distrusting their lawyer. Facing other responsibilities and challenges in their own lives, these frustrations may compel clients to simply drop the case.

III. **Cultural differences and lack of understanding about the legal process**

2.4. Many clients are unlikely to have had much experience with legal systems in the past, or perhaps have had a negative experience. Their own country’s legal system may be quite different and/or vulnerable to corruption, causing the client to distrust the Singaporean legal system as well. Like most non-lawyers, clients

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2 See Chapter 3 Section 3.IV.
are also generally unaware of the processes required to pursue a claim and collect a judgment, let alone the amount of time such tasks will require. Compounded with language barriers, clients may not have a full understanding of the legal process, leading to frustration when this process fails to produce results.

IV. Time and availability

2.5. Finally, clients may have irregular schedules when they return home, making regular meetings particularly challenging. Missed appointments can become the norm, forcing the Singaporean advocate to expend time and resources following up with the client by phone and e-mail.

3. HOW A LOCAL PARTNER CAN SUPPORT REMOTE REPRESENTATION

3.1. A reliable local partner can help take on many of the burdens of case management that clients are ill-equipped to handle. Partners are often direct service providers, pro bono lawyers, or university legal clinics in the client’s place of residence. The following subsections explain the advantages of having a local partner, as well as the different types of partners generally available.

3.2. For those with clients from Indonesia, the Philippines or Thailand, please contact Justice Without Borders for a free consultation in locating a partner in these countries.

I. Advantages of having a local partner

3.3. Face-to-face communication is vital for many clients, and local partners provide an immediate point of contact for their case. Clients are also more likely to trust someone they can meet directly, who speaks their language, and who understands their culture. For Singaporean lawyers, a local partner can not only translate case updates into the client’s language, but she can explain it in a way that is easier to understand and culturally appropriate. Most importantly, a local partner can work with the client’s schedule, following up with them in person as needed.

3.4. Additionally, local partners are more likely to have a higher level understanding of general legal principles, as well as issues specific to migrant workers. While Singaporean advocates will need to explain legal and logistical issues that are unique to the Singaporean legal system, their more specialised grounding makes communication between practitioners easier. Finally, local partners are in a better position to collect needed evidence and testimony, and can help arrange teleconferences as needed.
II. Legal, paralegal, and non-law practitioners as partners

3.5. While a Singapore-licensed attorney is generally required to meet clients’ legal needs within Singapore, home country support usually does not actually require the help of a licensed attorney. While local lawyers can certainly be very valuable partners, most of the needs of the Singaporean lawyer can be met by using paralegals (such as caseworkers with some practical background in legal matters) or even properly trained non-legal partners.

3.6. Note that different countries have different licensing requirements for conducting law-related activities. This manual’s focus on remedies within the Singaporean jurisdiction means that activities carried out in the client’s home country will generally be unrelated to local legal processes. However, practitioners should confirm that activities such as evidence collection and taking depositions do not require a specific license in the client’s home country. Finally, if clients decide to bring suit against local employment agents or brokers in their home countries, a locally-licensed attorney will be necessary.

4. PREPARING FOR REMOTE REPRESENTATION

I. For clients who have not yet left Singapore

4.1. Lawyers should conduct as much case preparation as possible prior to the client’s departure. While each case will have slightly different tasks, practitioners should attempt to complete the following items before the client leaves Singapore:

A. Obtain relevant contact information in the client’s destination

4.2. Practitioners should obtain as much information as possible from the client to ensure that they may keep in contact. Such information can include:

1) Local cell phone number(s)
2) E-mail address(es)
3) Next physical address
4) Address and phone number for family members
5) Notification of any plans to move within their home country or to migrate again
6) Contact information for a friend in Singapore as a backup

B. Explain and provide a written copy of the expected next steps and overall course of the litigation. Include next steps and a scheduled time to talk once the client has returned home.

4.3. A full consultation prior to the client’s departure is essential to preparing her for the challenges of remote representation. Practitioners should fully explain the course of the negotiations or litigation as it stands at that time. Where possible, written copies of the same information should be provided in both English and the client’s home language. These documents will also be essential for partners
in the client's home country, and preparing them in advance will smooth the process of building a good working relationship. Finally, clients should have a concrete understanding of what they must do when they return home, even if that only involves contacting their lawyer for a follow-up. While clients may require flexibility in scheduling their first meeting post-return, setting an initial date and time to follow up will help to maintain a sense of momentum and keep the client involved in the case.

C. Complete procedures that require the client's presence

4.4. While remedies via the MOM route become unavailable once the client leaves Singapore, civil claims only require the client's presence under certain conditions. The following table broadly outlines the minimum amount of work that must be done in order to successfully continue (or postpone) a case after the client departs Singapore. For complete details on civil processes, please see Chapter 3. Note that in all cases, the client should sign a letter of engagement authorizing the lawyer to accomplish whatever next steps will be needed following the client's return.

Table 20: Legal remedy procedures and necessary preparation while client is in Singapore

<table>
<thead>
<tr>
<th>Type of procedure</th>
<th>Necessary work while in Singapore</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOM adjudication procedures</td>
<td>Client must remain in Singapore until adjudication is finalized or until a settlement is entered. Mediation or adjudication cannot be continued after leaving Singapore.</td>
</tr>
<tr>
<td>Worker’s injury claim under WICA</td>
<td>Client must usually obtain a medical certificate from a licensed Singaporean hospital.³</td>
</tr>
<tr>
<td>Civil claim - Contract, tort, or Employment Act, etc.</td>
<td>None. However, all relevant evidence the client holds should be collected, photocopied (one copy for client), and documented. Note that the client may pursue only MOM claims or civil claims, not both. See Chapter 3.</td>
</tr>
<tr>
<td>Enforcing a judgment</td>
<td>None.</td>
</tr>
</tbody>
</table>

³ See Chapter 2 Section III.
II. For clients who are or have already returned home

4.5. Clients who cannot remain in Singapore fall under several categories, but together have similar needs, which are explained below. Types of clients under this category include clients who must immediately leave Singapore and those who first contact a Singaporean lawyer from abroad.

A. Clients in Singapore who must return immediately

4.6. Some clients may be forced to leave Singapore before practitioners can complete either MOM adjudication, a WICA claim or filing a civil claim, as described in the previous table. Establishing and maintaining contact is paramount to continuing representation, and practitioners should work quickly to inform the client of immediate next steps and to establish a regular meeting schedule. While the client is ultimately responsible for maintaining contact, the lawyer must be cognizant of the challenges that clients face in doing so. A clear set of next steps and an initial calling schedule will provide both structure and momentum for both the client and the lawyer.

B. Potential clients who make first contact with an SG lawyer from abroad

4.7. In some cases, initial contact with a lawyer may occur after a worker has returned to their home country. Although currently a rare occurrence, direct service organisations in Indonesia, the Philippines, and elsewhere are increasingly working with counterparts in host countries like Singapore to establish lines of communication so that workers with potentially viable legal claims can attempt to seek legal remedies in the host country even after they return home.

4.8. In most such cases, Singaporean lawyers will first be contacted by a direct service or legal aid organisation in the client’s home country. This organisation may either act only as a referral agency or as the lawyer’s partner in bringing the case. Practitioners should first confirm whether the organisation has the capacity and willingness to continue as a liaison with the client should the lawyer agree to take the case.

4.9. In cases where a potential client makes contact with a Singaporean practitioner via a local organisation, the practitioner should first assess the extent to which that organisation is willing to continue serving as a liaison. Lawyers should be prepared to fully explain both what the partner organisation would be asked to do in the near term, and to give an idea of the duration and level of support needed should civil litigation proceed.
CHAPTER 4: FINDING LOCAL PARTNERS

5. AVENUES TO FINDING A PARTNERING ORGANISATION IN THE 
CLIENT’S HOME COUNTRY

5.1. This section describes some of the potential organisations in clients’ home 
countries that lawyers in Singapore may be able to approach as partners and 
liaisons after the client has returned home. These are not listed in any particular 
order, and the benefits and drawbacks to working with each group will be 
explored.

5.2. Note that the best potential partners are very likely to vary from location to 
location. It may well take approaching several of the entities listed below before 
an appropriate partner is identified. Lawyers should thus investigate which 
entities seem the most appropriate, given the client’s geographic point of return, 
and approach them first.

5.3. Finding a partner in the client’s home country can be the most challenging step 
in the representation. Clients who move to large urban areas will likely have 
multiple options, while those who move to more remote areas may have none 
and must settle for a liaison some distance away in a larger town. Where 
possible, clients should be encouraged to help find an appropriate partner, as 
their relationship with the local partner is as important as that between the 
partner and the practitioner.

5.4. In many cases, practitioners’ first points of contact in the client's home country 
may simply lead to referrals, either in the same city where the client lives or 
hopefully somewhere nearby. International and national organisations in the 
home country may be able to help in locating an appropriate partner within their 
own professional networks.

5.5. Those seeking partners in Indonesia, the Philippines, or Thailand, can contact 
Justice Without Borders for a free consultation in locating partners.

5.6. For practitioners who have no contacts within a client’s home country, the 
following entities can serve as productive first points of contact:

I. National bar associations

5.7. These organisations are likely to have the largest directory of legal partners in a 
given country. Unfortunately, pro bono services within the bar association may 
be minimal or non-existent, with many lawyers refusing to take cases without 
compensation. Another crucial disadvantage in finding a local attorney is that it 
can be quite difficult to vet them. Bar associations usually include both lawyers 
who represent labour interests and those who serve employers and brokers. 
Without the ability to properly vet the attorney, practitioners run the risk of 
engaging a local partner who could actively work against the client’s interests. 
Thus, it is important to obtain references from other credible sources for any 
lawyer contacted through a national bar association.
5.8. Pro bono directories may be a safer alternative, but not all bar associations keep such lists. Where they do, practitioners will need to find and vet lawyers who live near the client and who express interest in assisting the case.

II. Law faculty (legal clinics)

5.9. Many home country universities now house pro bono or reduced fee legal clinics to serve the local community.

5.10. The major advantage of working with a law faculty partner is that the law students frequently have better command of at least written English, and are often enthusiastic to help. Where clients have returned to their home community, they may well be more trusting of working with faculty and students who are from their community as well. Note that students may require additional training and supervision, so it is vital to ensure that the supervising clinical staff are fully informed and understand the scope and details of the work.

5.11. A key disadvantage is that migrant worker-focused legal clinics are still relatively rare, and in some countries, even legal scholars who are familiar with labour migration can be difficult to find. That said, it may be worth contacting a law faculty closest to the client to learn whether a staff member may be willing to help (and bring in student volunteers in the process) or may be able to provide a reference to someone in the common who can serve as a liaison.

III. Community-based and non-governmental organisations

5.12. Most partners are likely to be local direct service organisations. These can be divided between local legal aid organisations, organisations with paralegals (i.e. trained caseworkers who are not licensed attorneys), and organisations without paralegal staff. While all three types of organisations may be able to provide sufficient assistance, Singaporean lawyers will need to fully discuss the intended scope of the partnership to ensure that the organisation has sufficient capacity to undertake both the technical and non-technical aspects of the casework.

5.13. Additionally, these organisations should be vetted to ensure that they are known entities, particularly in the field in which they work. Although support from international organisations is often a good indicator of credibility, smaller organisations that have been vetted by national level non-governmental organizations (NGOs) or other entities can also be appropriate. Practitioners serving clients living in remote areas may have few choices, and may need to adjust their expectations accordingly. However, where an organisation is unknown, or there is any suspicion that the organisation is unreliable or seems otherwise suspicious, lawyers should opt instead for a reliable organisation more distant from the client.
IV. Relevant religious institutions

5.14. In many countries, religious institutions are the key community organisations within their area. If the client is comfortable with a religious institution, practitioners should consider finding and vetting such potential partners. A critical advantage of these partners is that clients from their religion may be much more likely to trust and engage with these actors on the basis of shared religion, even when they do not personally know the particular church, mosque, or temple.

5.15. Several considerations exist in pursuing religious organisations as partners, however. First and most importantly, the major religions are by no means monolithic. Cultural, ethnic and sectarian divisions amongst many of the major religions will require the lawyer to determine the particular sect of the religion to which the client belongs. When in doubt, consulting with local service providers or other experts is strongly recommended. These experts may recommend against attempting to engage religious institutions in the client’s home community, especially given considerations of whether such institutions are structured to provide the sort of liaison services needed.

5.16. Second, where such organisations in the client’s home community appears to be the best opportunity for finding an appropriate partner, the lawyer may be able to inquire with Singapore-based religious organisations that serve the same ethnic and sectarian community as the client’s. Again, care must be taken to ensure that the lawyer approaches the appropriate organisation. An Indian Muslim organisation is unlikely to have many useful connections to Muslim organisations in Central Java in Indonesia, for example.

5.17. Finally, even after such introductions are made, care must still be taken to ensure that these local partners fully support migrant workers and do not have conflicts of interest via ties to employment agencies or brokers in the area. Again on a practical level, not all such partners will have caseworkers on staff, so assessing capacity is also crucial.

V. International organisations

5.18. International governmental and non-governmental organisations with local offices in the client’s home country often have the most extensive networks of local partners. Introductions from these organisations can save time in the vetting process, as such local entities are likely to be known and more trustworthy. However, practitioners are still encouraged to vet the organisation for sufficient capacity.

A. International governmental organisations

5.19. Three governmental organisations are most involved in migrant worker issues and are likely to have access to potential local partners: the International Labour Organisation, (ILO) the International Organisation for Migration (IOM), and various branches of the United Nations (UN) Note that these organisations’ presences in each country are likely to vary significantly, and the size of their
local office and particular mission focus for that country will have a large impact on the level of help they may be able to provide in finding a local partner. While practitioners should not expect direct partnerships with these organisations, it is certainly worth inquiring whether they have caseworkers to assist, particularly where clients locate themselves near these entities’ offices. All three organisations have mission goals that include supporting greater access to justice for migrant workers. The client’s goals of just compensation will thus align with their mission and these organisations thus may be willing to provide help in finding local partners where possible.

i. The ILO

5.20. The ILO is perhaps the most directly involved in labour migration issues in the region. Access to justice is often a high mission priority, and the organisation has partnered with governments and local labour unions to establish local migrant worker centres. Practitioners should examine the programs that the ILO has set up in the client’s country to determine whether such programs exist near the client’s current location. Where they do not, a phone consultation with ILO staff may help in identifying a reliable partner closer to the client.

ii. The IOM

5.21. The IOM frequently assists victims of human trafficking and exploitation in ensuring safe migration home and reintegration into their home communities. Those who use official IOM channels are most likely to obtain direct assistance from the IOM. These offices may have staff or volunteers who are equipped to partner with practitioners. However, lawyers should be prepared to ask IOM staff for referrals to local partner organisations instead, as their capacity may be limited.

iii. The UN – UNDP and UN Women

5.22. The most relevant UN agencies are the UN Development Program (UNDP) and, where the client is female, UN Women. As of printing, the former has a stated interest in access to justice for migrant workers, particularly (although not exclusively) for women, while the latter works to advance women’s rights, including for migrant workers. Note that each agency has separate and varying sizes of presence in home countries, with differing priorities by country. As these organisations often contract with local universities and NGOs to implement their missions, UNDP and UN Women are both good first points of contact for referrals to reliable agencies.

B. International law firms with presences in both Singapore and the home country

5.23. International law firms may be willing to assist pro bono, should they have an office in the client’s home country. For law firms, the opportunity to assist the client can help the firm either fulfil pro bono obligations to which it has committed, or else to create a positive story of community engagement in the client’s home country. Note that many international firms will not have a firm-wide pro bono program; they will instead set their pro bono activities at a national level, particularly in countries that require the firm to partner with a local
entity. Thus, firms that support migrant worker cases in Singapore may not necessarily do so abroad.

5.24. As always, proper vetting of the firm is important, particularly where home country offices are essentially once-separate local law firms that have formed a partnership with an international firm. Local labour brokers that supply employers in Singapore hire their own lawyers, and it is critical to confirm that law firms engaged in the home country are free of such conflicts of interest.

5.25. Should the firm prove appropriate, however, a law firm is one of the stronger partners that a practitioner can find. Local knowhow, experience with cross-border litigation, and sufficient capacity, including the potential for assisting in remote appearances via the firms’ own telecommunications equipment, are a few of the unique advantages that cooperating law firms can provide.

C. Singaporean embassy in the client’s home country

5.26. Singaporean embassies may keep lists of local law firms and lawyers whom they recommend to citizens who encounter legal issues while abroad. However, these entities are less likely to provide pro bono assistance.

6. ESTABLISHING A PARTNERSHIP WITH A LIAISON ORGANISATION

6.1. Potential partner organisations usually have relatively limited capacity. Providing a clear understanding of the potential commitment will make it more likely for them to either make a commitment or else assist in finding a local partner who has sufficient capacity to assist. The following describes the vetting process, followed by the most common activities that partner organisations will need to carry out.

I. Vetting potential partners

6.2. Prior to establishing a relationship, practitioners should vet potential partners to ensure that they are not only trustworthy, but have the capacity to meet the client’s and the practitioner’s needs. The following points apply to both organisations and individual pro bono attorneys who may partner with the practitioner:

A. What is the partner’s reputation?

6.3. Some basic background research may be sufficient to determine whether the potential partner is trustworthy. This is a key consideration in some home countries, where an organisation’s NGO status may simply be used to avoid tax liability for commercial activity. At worst, such organisations may actually have connections to unscrupulous employment agents or even human traffickers. Where information on the potential partner does not exist, practitioners should contact trustworthy entities in the client’s country to confirm that the potential partner is reliable. The International Labour Office (ILO), the International Organisation for Migration (IOM) or the UN, particularly the UN Development
Program (UNDP) or UN Women, are appropriate places to start, as their staff is often knowledgeable about local organisations.

**B. Does the partner organisation have sufficient language ability?**

6.4. In addition to speaking a language the lawyer understands, practitioners should confirm that the organisation has staff who speak the client’s own language or dialect. This is particularly important where the client’s first language is not the national language in their home country.

**C. Is there sufficient capacity to assist the lawyer?**

6.5. Organisations and pro bono attorneys are often already at capacity. While they may be willing to help, an honest assessment of whether they have the time and resources to assist is essential, particularly where case deadlines are involved. Practitioners should carefully map out the time commitment, the potential time span of the case, and the logistical issues that partner organisations will have to address so that both sides have a clear understanding of the people, time and monetary resources required for the case. Where potential partners do not have such capacity, these entities can still be helpful in recommending other appropriate partners.

**II. Creating a formal agreement with a partner**

6.6. Direct service and other aid organisations are usually bound by duties of client confidentiality that are similar to those of Singaporean lawyers. Practitioners will thus need to draw up a memorandum of understanding that authorizes cooperation, sharing of confidential client information, and procedures for transferring any monies collected in Singapore. The client should authorize this agreement after being fully informed of the nature of the agreement. The agreement should be in languages that the parties each understand, although this may be difficult, given resource constraints.

**III. Maintaining contact with the client**

6.7. Partners’ most important task is making sure that clients can remain in contact with their lawyers in Singapore. While a partner cannot keep a client locked into a case should she decide that she no longer wishes to pursue the matter, the relationship with the client is critical to ensuring that the client continues to trust and is engaged in the process.

6.8. Maintaining contact often requires only periodic phone conversations, or where possible, in-person visits between the local partner and client. Partners who are based in the client’s home community can more easily accomplish this, while clients who reside in more remote areas may need to rely upon organisations that are based in larger cities. Setting a regular check-in schedule, even when updates do not exist, is important not only in keeping the client connected, but also in building a relationship between the client and the partner.
6.9. Finally, migrant worker clients can be mobile. Both practitioners and partner organisations should be prepared for clients to move locations multiple times throughout the course of the case, including to other countries. These clients may be incredibly difficult to keep connected. For those clients who move within their own country, practitioners and partners should be prepared to find organisations in the client’s new location who can serve as the new liaison.

IV. Collecting evidence and taking depositions

6.10. Although much of the evidence for legal claims highlighted in this manual will reside in Singapore, clients may have taken home personal bankbooks, logs of payments, or other information vital to the case. Where evidence of dealings with brokers or employers that took place prior to the client’s departure are necessary to the case, partner organisations may need to collect such information, either from the client, the employment agency, or local government offices. Practitioners should determine what information is necessary and ensure that partner organisations have a clear understanding of what is needed, how to collect the information, and any deadline(s) that must be obeyed.

A. Explaining critical differences in evidence collection methods

6.11. Legal systems often have different requirements for how evidence is recorded and presented. Differences can range from required level of detail to proof of authenticity requirements, to even document formatting. Practitioners must provide partners with clear instructions, and where possible, pre-formatted forms that can help ensure that the evidence collected is admissible in Singaporean court. Failure to do so will result in wasted time and effort, as well as frustration for all involved. That said, practitioners should be prepared for delays and mistakes in evidence collection with new partners. Partner organisations may not be fully aware of the level of detail needed for Singaporean forms, and may rely upon methods that are valid in their own country in carrying out their tasks.

B. Arranging remote appearance in Singaporean court

6.12. Clients pursuing legal claims may be required to make an appearance in court. In some cases, they can do so remotely, via video conferencing.  

6.13. As of this printing, the minimum requirements for acceptable teleconferencing equipment or location is as yet unknown for migrant worker cases. It may be possible that a Skype meeting via a strong Internet connection may be acceptable. However, as the courts look to whether a location is acceptably “secure,” the court may impose additional restrictions on the form of telecommunications used.

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4 See Chapter 3, Section 4.II.B for information on the legal requirements of remote appearances.

5 Ibid.
6.14. Lawyers and their partners should therefore be prepared to locate facilities that meet the court’s requirements. The authors expect the following locations are more likely to prove acceptable:

- Universities with professional telecommunications equipment.
- United Nations facilities
- Government-run facilities
- Embassy facilities
- International law firms
- Television studios

6.15. Note that these facilities may require a fee to use. Practitioners and their partners will need to negotiate with facility owners for reduced or free use. For clients in Indonesia, the Philippines, or Thailand, please contact Justice Without Borders for assistance in locating such facilities.

7. HOME COUNTRY PRACTITIONERS SEEKING LEGAL AID IN SINGAPORE

7.1. For entities in the client’s home country who believe that their client may have a viable claim in Singapore, connecting with a Singaporean NGO, religious entity, or their own country’s embassy in Singapore can be an effective way to find legal aid. This section first provides basic questions useful in assessing the viability of a client’s claims before introducing the various options for seeking legal assistance.

7.2. To determine whether your client may have a viable legal claim in Singapore, please first consult Chapter 2 for potential remedies. Should you believe your client has a claim and you reside in Indonesia, the Philippines, or Thailand, please contact Justice Without Borders for a free consultation.

I. Singapore’s legal aid scheme

7.3. Currently, the Singaporean legal aid scheme does not offer legal aid to those who have already departed the jurisdiction. The Law Society of Singapore operates a pro bono office that may be able to help in exceptional circumstances via its Ad Hoc Pro Bono Referral Scheme, limited to finding a lawyer interested in assisting the case pro bono.⁶

II. Relevant NGOs

7.4. Singaporean NGOs are more familiar with the law and may be able to help make a further determination whether a viable case exists. However, no

⁶ See Law Society of Singapore Pro Bono Services Office, http://probono.lawsociety.org.sg or contact the office at +65 6534-1564, probonoservices@lawsoc.org.sg.
relevant NGO in Singapore employs their own legal staff. That said, these organisations may be able to help identify a pro bono lawyer willing to take on the case:

- **H.O.M.E.** [Indonesia, Philippines, China and others] – This organisation works with both domestic workers and labourers in other sectors. It is one of the largest direct service providers in Singapore.
- **Transient Workers Count Too (TWC2)** [Bangladesh, India, Indonesia, Philippines, and others] – Focusing on advocacy and some direct service, this organisation is most experienced in assisting clients with claims via the Ministry of Manpower (MOM) dispute resolution system.
- **HealthServe** [China] – This organisation works primarily with clients in the construction trades. It has paralegal staff to assist those with legal needs.

### III. Religious organisations

7.5. Singapore is a multi-ethnic country that includes representatives of most major religions, including Hinduism, Islam, Christianity, and others. Readers should consult related organisations in their own country on whether the institution may have connections with affiliated organisations in Singapore.

### IV. Embassies in Singapore

7.6. Almost all countries in the region have an embassy in Singapore. Some of these will have a labour attaché on staff, who is tasked with helping migrant workers from their country resolve legal and other issues encountered while in Singapore. Please note that the capacity to help workers will vary by embassy, and that embassy staff are not empowered to provide legal assistance in Singapore. However, embassies usually maintain a list of local lawyers who may be able to assist clients. These lawyers generally do not work pro bono. However, they may do so under exceptional circumstances or else provide referrals to a pro bono attorney. Note that, as is the case with other countries, pro bono attorneys in Singapore are often working at capacity and will likely prioritize those currently residing in Singapore.

### 8. ASSESSING THE CLIENT’S CLAIMS

8.1. Caseworkers in clients’ home countries should consider the following questions in assessing a client’s potential claim. The most important questions pertain to the amounts of money to be claimed, the amount of evidence available, and the commitment of clients to remaining in contact with their lawyer and pursuing the case.

#### I. How much can the client claim?

8.2. Also known as the “amount in controversy,” clients must be able to reasonably claim a sufficiently large amount of money to overcome the costs of remote representation. Even where a Singaporean lawyer works for free, clients must...
often pay court costs. These costs can be recovered should the client win, but the up-front costs can be expensive. Clients with proof of a Singaporean court judgment or a settlement, are good candidates for pro bono aid, as the Singaporean lawyer need only attempt to enforce the judgment. For all others, a claim of at least S$10,000 is likely needed to justify the time and costs involved.

II. Calculating costs

8.3. Those with unpaid wage, contract fraud, or illegal payment claims should calculate what they believe is owed, based on either written or oral evidence. Service providers should check these amounts against the evidence that the client has provided. Where the client claims that the employer orally promised a certain wage or other terms, evidence of payment or at least of hours worked will be essential to substantiating the claim.

8.4. For those injured in on-the-job accidents, please consult Chapter 2 for potential compensation under the Singapore workers compensation scheme (WICA) and requirements for making a claim. Those who are unable to claim under this scheme may still seek damages via civil litigation. However, costs can vary widely. Service providers should use the amounts set out in WICA as a baseline. Medical bills that can substantiate harm caused are particularly helpful. Where unsure, consultation with one of the Singaporean entities described above is recommended.

8.5. Those who claim other damages, including assault, battery, or sexual assault, should also contact one of the Singaporean entities below for additional assistance.

III. Assessing available evidence and procedural barriers to claims

8.6. Please see Chapters 2 and 3 for information on the evidence required for each claim. Evidence may be official documents, records that the client personally kept, phone or email records, or testimony from the client, coworkers, and/or other witnesses. Claims based entirely on oral evidence are likely very difficult to bring if the client is absent from Singapore.

8.7. Time limitations are often the biggest barriers that returnees will face in bringing claims. Please note the time barriers in Chapter 3. Additionally, incidents that happened further in the past are more difficult to substantiate. Records are more likely to have been lost or destroyed, witnesses may have moved or disappeared, and clients’ own memories may be faulty. Generally, the more recent the client’s experience, the more easily the case can be brought.

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7 See Chapter 2 Section 5.III.
IV. Paying security for court costs

8.8. Defendants in Singaporean civil claims and ask the court to order out-of-country plaintiffs to pay a security deposit for the defendant’s court and legal fees. These can run over $10,000. It is theoretically possible to plead indigence and convince the court to waive the security deposit, it is unclear at the time of publication (October 2014) the standard or rule that the courts apply in evaluating a request for a waiver.

V. Assessing the client’s interest in bringing the claim

8.9. Clients are often unaware of the time and effort involved in bringing a case, especially when the case is brought remotely. Practitioners should fully inform the client that regular communication will be essential, and that claims can take six months to two to three years before the case concludes. However, by breaking the process down into smaller, more manageable steps, practitioners can provide a sense of progress even though it is tempered with the possibility that the client may not be able to recover in the end.

8.10. Finally, in terms of potential outcomes should be aware of all possibilities, from obtaining a settlement relatively rapidly to cases going through both trial and appeal. At the same time, practitioners should inform the client that they do not need to immediately make such a long term commitment to the case. Should an initial assessment suggest the client has a viable claim, practitioners should start by offering to investigate on the client’s behalf. The act of simply following up on a potential claim can be very helpful for clients, giving them a sense that others are working on their behalf. This can contribute to their recovery from exploitation, whether or not they are ultimately able to recover in the end. In some circumstances, initial negotiations with the employer may lead to a settlement to the client’s satisfaction. As unscrupulous employers usually rely upon the client’s departure to end any legal complaint, the presence of a lawyer representing an overseas client may convince the employer to settle in order to avoid further legal headaches.

VI. Conclusion

8.11. A reliable partner in the client’s home community can make the difference between a successful case and another case that ends in disappointment. While the legal and procedural hurdles are very real, the non-legal issue of client contact is the most critical to address in making cross-border litigation a reality for migrant workers. Finding a reliable partner who has the time and capacity to support the litigation can be difficult, but the avenues introduced in this chapter should provide a starting point in finding a suitable counterpart. Justice Without Borders can also serve as a helpful resource in its target countries, including Thailand, The Philippines and Indonesia. Service providers in those countries with clients returning from Singapore can also contact the organisation for a free consultation. As the field of cross-border pro bono litigation develops, JWB will update this manual, providing additional know-how in finding and working with partners abroad.
“Because the right to just compensation shouldn’t end even when a victim returns home.”

Justice Without Borders