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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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 DERMINÉ, 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

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-SINO-GROMANS

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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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.
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.63 Workers usually have divisible contracts as they typically contract for monthly, hourly, or piece-rate salaries.64

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.

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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.65

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.66 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 alive67 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.68 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.69 Courts will also recognise partly oral, partly written contracts of service.70

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65 *Young v Queensland Trustees Limited*, [1956] HCA 51. See Chapter 2, Section 8.II for a case summary.
66 Ibid.
67 *MP-Bill*, supra note 63 [57].
68 Ibid. at [20].
69 *EA*, supra note 4 at s 2(1). See Chapter 2, Section 8.IV for the text of the law.
Elements

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.\footnote{Andrew B.L. Phang and Goh Yihan, \textit{Contract Law in Singapore}, (Singapore: Kluwer Law International, 2012) at para 1009, para 1012 [Phang and Goh, \textit{Contract Law in Singapore}].} 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.\footnote{Evidence Act (Cap 97, 1997 Rev Ed), ss 93-100. See also Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd [2008] 3 SLR(R) 1029 and Sembcorp Marine Ltd v PPL Holdings Pte Ltd [2013] 4 SLR 193. See Chapter 2, Section 8.XI for case summaries.} 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\footnote{Melaka Farm Resorts (M) Sdn Bhd v Hong Wei Seng, [2004] 6 MLJ 506 at [13] [Melaka Farm Resorts]. See Chapter 2, Section 8.IV for a case summary.} and a manager.\footnote{Ibid.}

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.\footnote{Carmichael, supra note 70.} 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.\footnote{Melaka Farm Resorts, supra note 73.}

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
real at the given point of time, do not legally bind the representer and they can
go back on their representation.\footnote{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{Oscar Chess Ltd v Williams, [1957] 1 All ER 325. See Chapter 2, Section 8.X 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{Dick Bentley Productions v Harold Smith Motors, [1965] 2 All ER 65 [Dick Bentley]. See Chapter 2, Section 8.X 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{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{Bannerman v White, [1861] 10 CBNS 844. See Chapter 2, Section 8.X 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, 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.\footnote{Birch v Paramount Estates Ltd, [1956] 167 Estates Gazette 396. See Chapter 2, Section 8.X for a case summary.}
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.

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.

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.

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.
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 Corneilder 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.
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.I 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.\textsuperscript{5} Alternatively, the migrant worker may attempt to raise a civil claim remotely, through a Singapore-licensed lawyer.\textsuperscript{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.

\textsuperscript{5} See Section 4.II.B.
\textsuperscript{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

If judgment is unsatisfactory, it is possible to appeal to the High Court

Migrant Worker in Home Country

Civil Claim (filed locally)

Civil Claim (filed remotely)

Judgment

If judgment is not enforced

Enforcement of Judgment

Apply

Garnishee Order

Writ of Seizure and Sale
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."
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.159

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.160

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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.XIV for the text of the law. 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.


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.  

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 supported by an affidavit; and

2) Second, the garnishee order must be served on the garnishee and Judgment Debtor personally at least seven days before the return date.

4.10. If the garnishee does not dispute the order, then the garnishee order will be made absolute.

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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.

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.

167 Subordinate Courts, Garnishee Proceedings, supra note 160.
168 Ibid.
169 Ibid.
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, 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.

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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.